



Office of the Finance Director

City of West Haven
 355 Main Street
 West Haven, Connecticut 06516

MARB Contract Form

Contract	Replacement of SCBA Bottle Refill Unit			
City Agency	Allingtown Fire District			
Vendor Utilized	Air Compressor Engineering			
Address	P.O. Box 738, WestField MA 01086			
City, State, Zip				
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2023-06] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	Grant-Assistance to Firefighters Grant (AFG)			
Quantity	1.00	Price Per:		Total Purchase Price \$58,561.00
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.)	<p>In February 2023, The Allingtown Fire Department solicited proposals to furnish all material, equipment, and labor for the complete replacement of the SCBA Compressor and Fill Station. The proposal also included removal of the old system, and installation of the new system is required. The selected respondent to the proposal was Air Compressor Engineering.</p> <p>The unit and components were in back order. The city did not receive the equipment until May 2024.</p> <p>Upon inspection of the invoice received, it was discovered that the bid was not submitted to MARB for approval. The City of West Haven is hereby submitting a copy of the proposal (dated 09/22 but submitted Feb 2023 bid) for transparency and policies and procedures as established under the tier IV designation of MARB.</p>			
Submitted by:	Michael Gormany, Finance Director			

City of West Haven

PURCHASING DEPARTMENT

355 Main Street, 3rd Floor
West Haven, Connecticut 06516
(203) 937-3500



Nancy Rossi
Mayor

Scott Jackson
Director of Finance

February 22, 2023

Air Compressor Engineering
632 West Avenue
Milford, CT 06460
Attn: Len Calandro

Dear Mr. Calandro

It is my pleasure to inform you that the City of West Haven has awarded **BID# 2023-06 SBCA Compressor and Fill Station** to Air Compressor Engineering. The purchase order will be sent under separate cover.

On behalf of the City of West Haven, I thank you for the time and effort that you devoted to crafting your proposal and I look forward to working with you.

Best Regards,

Tammy O'Connell

Tammy O'Connell
Procurement Specialist
City of West Haven
Purchasing Department

CITY OF WEST HAVEN FD – ALLINGTOWN
Bid Request Announcement
SCBA Bottle Re-Fill System



BID # 2023-06

The City of West Haven (here after referred to as the City) is soliciting bids to furnish all material, equipment, and labor for the complete replacement of the SCBA Compressor and Fill Station at the Allingtown Fire Department, located at 318 Fairfax St, West Haven, CT. Removal of the old system, and installation of the new system is required.

Responses to this ITB shall be submitted to the City of West Haven's Purchasing Director's Office, due not later than Monday, February 13, 2023 at 2:00pm. All proposals must be clearly marked **ITB – SBCA Compressor and Fill Station**. No oral, telephonic, emailed, or faxed responses shall be considered. No oral, telephonic, emailed, or faxed corrections, deletions, or additions to any response shall be accepted. The City reserves the right to reject any or all responses, and to waive any or all formalities in connection with this request. Any responses received after the above scheduled due date and time shall not be accepted or considered.

Bid information is available on the City of West Haven web site www.cityofwesthaven.com/bids.aspx

Respondents are required to submit the Bid Form by no later than February 13, 2023 at 2:00pm at West Haven City Hall, Office of the Purchasing Director, 3rd floor, 355 Main Street, West Haven, CT 06516, in a sealed envelope, clearly marked "**ITB – SBCA Compressor and Fill Station**". Proposals received after this time and date will be rejected.

The City reserves the right to reject any or all proposals if it deems such to be in the best interest of the City of West Haven. Questions regarding the Request for Proposals should be directed to Rick Spreyer, Director of Procurement, by e-mail at rspreyer@westhaven-ct.gov.

Rick Spreyer
Director of Procurement

CITY OF WEST HAVEN FD – ALLINGTOWN
Bid Request Announcement
SCBA Bottle Re-Fill System



WORK, REQUIREMENTS & SPECIFICATIONS: The scope of this project is to furnish all material, equipment, and labor for the complete replacement of the SCBA Compressor and Fill Station at 318 Fairfax St. The removal of the old system, and installation of the new system is required.

General Notes

1. Price shall include removal of the old compressor and all components to the engine bay so that they can be picked up by a subsequent buyer of the old used equipment.
2. Price of the system shall include complete installation of the new system and all components.
3. Price of the system shall include adequate training to be disseminated to (4) four duty shifts within the department.

Page 2 of 13

Air Compressor

1. 10 HP electric motor– Minimum
2. Motor provided cannot exceed available power as noted below:
 - a. 3 Phase
 - b. 60 Amps
 - c. 240 Volts
3. 13 CFM - Minimum
4. 6000 psi – Minimum
5. Must be able to fit through a door opening that is 79.5” tall and 30.75” wide
6. Must fit in an area that is 56” deep and 84” long. Ceiling height is 115”
 - a. This area must also include the supplemental storage specified below.
7. All moving components should be fully enclosed
8. Compressor shall be designed to allow easy maintenance and repair
9. Compressor shall possess an “Auto-Start” capability to maintain system pressure
10. Compressor shall include a remote air intake port connection
11. Compressor shall include pump oil pressure gauge and interstage pressure gauges
12. Compressor shall include an automatic condensate drain system

Fill Station

1. Fill station shall be capable of filling at least two SCBA bottles at a time
2. Fill station must fit in an area measuring 31” deep and 54” long
3. Fill station must fully encapsulate bottles and provide blast protection during fill operations.
4. Fill station will be rated to fill up to 5500 psi bottles
5. At a minimum, the fill station will include the following pressure gauges:
 - a. Supply pressure gauge
 - b. Regulator pressure gauge
 - c. SCBA bottle pressure gauge
6. At a minimum, the fill station will include the following controls:

CITY OF WEST HAVEN FD – ALLINGTOWN
Bid Request Announcement
SCBA Bottle Re-Fill System



- a. Regulator control allowing pressure to be set anywhere within the operating range of the compressor
 - b. Storage fill on and off valve
 - c. Bleed control valve
7. Fill station shall include SCUBA adapters to permit SCUBA tanks to be filled
 8. Fill station shall include a 20' auxiliary fill hose with pressure gauge, control valve and bleed valve

Page 3 of 13

Filtration System

1. The compressor will include an air filtration system that meets or exceeds NFPA 1989, 2013 edition.

Supplemental Air Storage

1. Compressor shall include three storage bottles
2. These bottles can be configured horizontally or vertically. This will be determined once exact configuration and dimensions of compressor are known. If you have exceptions to these specifications, please say so. Otherwise, the city will expect complete adherence.

Optional Items to Be Priced

1. Four bottle storage system instead of three \$ _____
2. Three SCBA bottle fill station instead of two \$ _____

Provide detailed information about the compressor and fill station, along with warranty information. Attach brochures if available.

This proposal will be awarded on the following Selection Criteria:

1. Ability to meet the scope of work as specified. Provide any exceptions.
2. Prices.
3. Warranty. Give Details.
4. Delivery and Installation Schedule

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 08/10/2022



Douglas Colter
WEST HAVEN, CITY OF
CITY OF WEST HAVEN 355 MAIN STREET
WEST HAVEN, CT 06516

EMW-2021-FG-10396

Dear Douglas Colter,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2021 Assistance to Firefighters Grant (AFG) Grant funding opportunity has been approved in the amount of \$66,666.66 in Federal funding. As a condition of this grant, you are required to contribute non-Federal funds equal to or greater than 5.00% of the Federal funds awarded, or \$3,333.34 for a total approved budget of \$70,000.00. Please see the FY 2021 AFG Notice of Funding Opportunity for information on how to meet this cost share requirement.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2021 AFG Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A handwritten signature in black ink, appearing to read "C Logan", with a stylized flourish at the end.

Christopher Logan
Acting Assistant Administrator
Grant Programs Directorate

Summary Award Memo

Program: Fiscal Year 2021 Assistance to Firefighters Grant

Recipient: WEST HAVEN, CITY OF

UEI-EFT: D18EAK71JJ87

DUNS number: 082662206

Award number: EMW-2021-FG-10396

Summary description of award

The purpose of the Assistance to Firefighters Grant program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Assistance to Firefighters Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for Fiscal Year (FY) 2021 Assistance to Firefighters Grants funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Amount awarded table

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the budgeted estimates for object classes for this award (including Federal share plus your cost share, if applicable):

Object Class	Total
Personnel	\$0.00
Fringe benefits	\$0.00
Travel	\$0.00
Equipment	\$70,000.00
Supplies	\$0.00
Contractual	\$0.00
Construction	\$0.00
Other	\$0.00
Indirect charges	\$0.00
Federal	\$66,666.66
Non-federal	\$3,333.34
Total	\$70,000.00
Program Income	\$0.00

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2021 AFG NOFO.

Approved request details:

Equipment

Air Compressor/Cascade/Fill Station (Fixed or Mobile) for filling SCBA

DESCRIPTION

High Pressure 6000 psi compressor, with a 6 bottle cascade storage system , and stationary two position fill station to refill SCBA air tanks

	QUANTITY	UNIT PRICE	TOTAL	BUDGET CLASS
Cost 1	1	\$70,000.00	\$70,000.00	Equipment

CHANGE FROM APPLICATION

Price from \$80,000.00 to \$70,000.00

JUSTIFICATION

Equipment: Fund with Adjustments: This reduction is because the cost requested for Air Compressor exceeds the average price range calculated from market research and prior awards for the same item.

Agreement Articles

Program: Fiscal Year 2021 Assistance to Firefighters Grant

Recipient: WEST HAVEN, CITY OF

UEI-EFT: D18EAK71JJ87

DUNS number: 082662206

Award number: EMW-2021-FG-10396

Table of contents

Article 1	Assurances, Administrative Requirements, Cost Principles, Representations and Certifications
Article 2	General Acknowledgements and Assurances
Article 3	Acknowledgement of Federal Funding from DHS
Article 4	Activities Conducted Abroad
Article 5	Age Discrimination Act of 1975
Article 6	Americans with Disabilities Act of 1990
Article 7	Best Practices for Collection and Use of Personally Identifiable Information
Article 8	Civil Rights Act of 1964 – Title VI
Article 9	Civil Rights Act of 1968
Article 10	Copyright
Article 11	Debarment and Suspension
Article 12	Drug-Free Workplace Regulations
Article 13	Duplication of Benefits
Article 14	Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX
Article 15	Energy Policy and Conservation Act
Article 16	False Claims Act and Program Fraud Civil Remedies
Article 17	Federal Debt Status
Article 18	Federal Leadership on Reducing Text Messaging while Driving
Article 19	Fly America Act of 1974
Article 20	Hotel and Motel Fire Safety Act of 1990
Article 21	John S. McCain National Defense Authorization Act of Fiscal Year 2019
Article 22	Limited English Proficiency (Civil Rights Act of 1964, Title VI)
Article 23	Lobbying Prohibitions
Article 24	National Environmental Policy Act
Article 25	Nondiscrimination in Matters Pertaining to Faith-Based Organizations

Article	Non-Supplanting Requirement	26
Article	Notice of Funding Opportunity Requirements	27
Article	Patents and Intellectual Property Rights	28
Article	Procurement of Recovered Materials	29
Article	Rehabilitation Act of 1973	30
Article	Reporting of Matters Related to Recipient Integrity and Performance	31
Article	Reporting Subawards and Executive Compensation	32
Article	Required Use of American Iron, Steel, Manufactured Products, and Construction Materials	33
Article	SAFECOM	34
Article	Terrorist Financing	35
Article	Trafficking Victims Protection Act of 2000 (TVPA)	36
Article	Universal Identifier and System of Award Management	37
Article	USA PATRIOT Act of 2001	38
Article	Use of DHS Seal, Logo and Flags	39
Article	Whistleblower Protection Act	40
Article	Acceptance of Post Award Changes	41
Article	Prior Approval for Modification of Approved Budget	42
Article	Disposition of Equipment Acquired Under the Federal Award	43
Article	Environmental Planning and Historic Preservation (EHP) Review	44
Article	Indirect Cost Rate	45
Article	Applicability of DHS Standard Terms and Conditions to Tribes	46
Article	Award Performance Goals	47
Article	EHP Compliance Review Required	48

Article 1**Assurances, Administrative Requirements, Cost Principles, Representations and Certifications**

I. DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the awarding agency. II. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002. III. By accepting this agreement, recipients, and their executives, as defined in 2 C.F.R. § 170.315, certify that their policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

Article 2**General Acknowledgements and Assurances**

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance. V. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article 3**Acknowledgement of Federal Funding from DHS**

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article 4**Activities Conducted Abroad**

Recipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article 5	Age Discrimination Act of 1975 Recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.
Article 6	Americans with Disabilities Act of 1990 Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101- 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.
Article 7	Best Practices for Collection and Use of Personally Identifiable Information Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.
Article 8	Civil Rights Act of 1964 – Title VI Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.
Article 9	Civil Rights Act of 1968 Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)

Article 10 Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article 11 Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article 12 Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

Article 13 Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article 14 Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article 15	Energy Policy and Conservation Act Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
Article 16	False Claims Act and Program Fraud Civil Remedies Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801- 3812, which details the administrative remedies for false claims and statements made.)
Article 17	Federal Debt Status All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)
Article 18	Federal Leadership on Reducing Text Messaging while Driving Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.
Article 19	Fly America Act of 1974 Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
Article 20	Hotel and Motel Fire Safety Act of 1990 Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a

Article 21 **John S. McCain National Defense Authorization Act of Fiscal Year 2019**
Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons

Article 22 **Limited English Proficiency (Civil Rights Act of 1964, Title VI)**
Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article 23 **Lobbying Prohibitions**
Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article 24 **National Environmental Policy Act**
Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans

Article 25	Nondiscrimination in Matters Pertaining to Faith-Based Organizations It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.
Article 26	Non-Supplanting Requirement Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.
Article 27	Notice of Funding Opportunity Requirements All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.
Article 28	Patents and Intellectual Property Rights Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
Article 29	Procurement of Recovered Materials States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) 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.

Article 30**Rehabilitation Act of 1973**

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article 31**Reporting of Matters Related to Recipient Integrity and Performance**

General Reporting Requirements: If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article 32**Reporting Subawards and Executive Compensation**

Reporting of first tier subawards. Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

Article 33**Required Use of American Iron, Steel, Manufactured Products, and Construction Materials**

Recipients and subrecipients must comply with the Build America, Buy America Act (BABAA), which was enacted as part of the Infrastructure Investment and Jobs Act §§ 70901-70927, Pub. L. No. 117-58 (2021); and Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers. See also Office of Management and Budget (OMB), Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure. Recipients and subrecipients of federal financial assistance programs for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States-- this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States —this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable

law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. (a) When the federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the OMB Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described. For awards by the Federal Emergency Management Agency (FEMA), existing waivers are available and the waiver process is described at 'Buy America' Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. For awards by other DHS components, please contact the applicable DHS FAO. To see whether a particular DHS federal financial assistance program is considered an infrastructure program and thus required to include a Buy America preference, please either contact the applicable DHS FAO, or for FEMA awards, please see Programs and Definitions: Build America, Buy America Act | FEMA.gov.

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Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

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In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/GMD Call Center at (866) 927-5646 or via e-mail to ASK-GMD@fema.dhs.gov if you have any questions.

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For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state subrecipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state subrecipients must follow the disposition requirements in accordance with state laws and procedures.

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DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal, state and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. To access the FEMA EHP screening form and instructions, go to the DHS/FEMA website. In order to initiate EHP review of your project(s), you must complete all relevant sections of this form and submit it to the Grant Programs Directorate (GPD) along with all other pertinent project information. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article 45**Indirect Cost Rate**

2 C.F.R. section 200.210(a)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.

Article 46**Applicability of DHS Standard Terms and Conditions to Tribes**

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

Article 47**Award Performance Goals**

FEMA will measure the recipient's performance of the grant by comparing the number of items requested in its application, the numbers acquired (ordered, paid, and received) within the period of performance. In order to measure performance, FEMA may request information throughout the period of performance. In its final performance report submitted at closeout, the recipient is required to report on the recipients compliance with the applicable industry, local, state and national standards described in the NOFO.

Article 48**EHP Compliance Review Required**

Under the Modification to a Facility, Equipment, or a component in the Wellness and Fitness Activity, this award includes work, such as ground disturbance, that triggers an EHP compliance review. The recipient is prohibited from committing, obligating, expending, or drawing down FY21 Assistance to Firefighters Grant funds in support of the Modification to Facility, Equipment or a component in the Wellness and Fitness Activity that requires the EHP compliance review, with a limited exception for any approved costs associated with the preparation, conducting, and completion of required EHP reviews. See the FY21 Assistance to Firefighters Grant NOFO for further information on EHP requirements and other applicable program guidance, including FEMA Information Bulletin No. 404. The recipient is required to obtain the required DHS/FEMA EHP compliance approval for this project pursuant to the FY21 Assistance to Firefighters Grant NOFO prior to commencing work for this project. DHS/FEMA will notify you when the EHP compliance review is complete, and work may begin. If the recipient requests a payment for one of the activities requiring EHP compliance review, FEMA may not make a payment for that work while the EHP compliance review is still pending. If FEMA discovers that work has been commenced under one of those activities prematurely, FEMA may disallow costs incurred prior to completion of the EHP compliance review and the receipt of DHS/FEMA approval to begin the work. Please contact your DHS/FEMA AFG Help Desk at 1-866-274-0960 or FireGrants@fema.dhs.gov to receive specific guidance regarding EHP compliance. If you have questions about this term and condition or believe it was placed in error, please contact the relevant Preparedness Officer.

Obligating document

1. Agreement No. EMW-2021-FG-10396	2. Amendment No. N/A	3. Recipient No. 066002126	4. Type of Action AWARD	5. Control No. WX00671N2022T		
6. Recipient Name and Address WEST HAVEN, CITY OF 355 MAIN ST WEST HAVEN, CT 06516		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Douglas Colter		9a. Phone No. 203-9373620	10. Name of FEMA Project Coordinator Assistance to Firefighters Grant Program		10a. Phone No. 1-866-274-0960	
11. Effective Date of This Action 08/10/2022	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING		14. Performance Period 08/17/2022 to 08/16/2024 Budget Period 08/17/2022 to 08/16/2024		
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
AFG	97.044	2022-F1-GB01 - P410-xxxx-4101-D	\$0.00	\$66,666.66	\$66,666.66	\$3,333.34
Totals			\$0.00	\$66,666.66	\$66,666.66	\$3,333.34
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title) Douglas Colter	DATE 09/14/2022
18. FEMA SIGNATORY OFFICIAL (Name and Title) Christopher Logan, Acting Assistant Administrator Grant Programs Directorate	DATE 08/10/2022

Article 10 Copyright

Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

Article 11 Debarment and Suspension

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Article 12 Drug-Free Workplace Regulations

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).

Article 13 Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

Article 14 Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

Article 15	Energy Policy and Conservation Act Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.
Article 16	False Claims Act and Program Fraud Civil Remedies Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801- 3812, which details the administrative remedies for false claims and statements made.)
Article 17	Federal Debt Status All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)
Article 18	Federal Leadership on Reducing Text Messaging while Driving Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.
Article 19	Fly America Act of 1974 Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.
Article 20	Hotel and Motel Fire Safety Act of 1990 Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a

Article 21 **John S. McCain National Defense Authorization Act of Fiscal Year 2019**
Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons

Article 22 **Limited English Proficiency (Civil Rights Act of 1964, Title VI)**
Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article 23 **Lobbying Prohibitions**
Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article 24 **National Environmental Policy Act**
Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans

Article 25	Nondiscrimination in Matters Pertaining to Faith-Based Organizations It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.
Article 26	Non-Supplanting Requirement Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.
Article 27	Notice of Funding Opportunity Requirements All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.
Article 28	Patents and Intellectual Property Rights Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
Article 29	Procurement of Recovered Materials States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) 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.

Article 30**Rehabilitation Act of 1973**

Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article 31**Reporting of Matters Related to Recipient Integrity and Performance**

General Reporting Requirements: If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article 32**Reporting Subawards and Executive Compensation**

Reporting of first tier subawards. Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

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Article 45**Indirect Cost Rate**

2 C.F.R. section 200.210(a)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.

Article 46**Applicability of DHS Standard Terms and Conditions to Tribes**

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to subrecipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

Article 47**Award Performance Goals**

FEMA will measure the recipient's performance of the grant by comparing the number of items requested in its application, the numbers acquired (ordered, paid, and received) within the period of performance. In order to measure performance, FEMA may request information throughout the period of performance. In its final performance report submitted at closeout, the recipient is required to report on the recipients compliance with the applicable industry, local, state and national standards described in the NOFO.

Article 48**EHP Compliance Review Required**

Under the Modification to a Facility, Equipment, or a component in the Wellness and Fitness Activity, this award includes work, such as ground disturbance, that triggers an EHP compliance review. The recipient is prohibited from committing, obligating, expending, or drawing down FY21 Assistance to Firefighters Grant funds in support of the Modification to Facility, Equipment or a component in the Wellness and Fitness Activity that requires the EHP compliance review, with a limited exception for any approved costs associated with the preparation, conducting, and completion of required EHP reviews. See the FY21 Assistance to Firefighters Grant NOFO for further information on EHP requirements and other applicable program guidance, including FEMA Information Bulletin No. 404. The recipient is required to obtain the required DHS/FEMA EHP compliance approval for this project pursuant to the FY21 Assistance to Firefighters Grant NOFO prior to commencing work for this project. DHS/FEMA will notify you when the EHP compliance review is complete, and work may begin. If the recipient requests a payment for one of the activities requiring EHP compliance review, FEMA may not make a payment for that work while the EHP compliance review is still pending. If FEMA discovers that work has been commenced under one of those activities prematurely, FEMA may disallow costs incurred prior to completion of the EHP compliance review and the receipt of DHS/FEMA approval to begin the work. Please contact your DHS/FEMA AFG Help Desk at 1-866-274-0960 or FireGrants@fema.dhs.gov to receive specific guidance regarding EHP compliance. If you have questions about this term and condition or believe it was placed in error, please contact the relevant Preparedness Officer.

Obligating document

1. Agreement No. EMW-2021-FG-10396	2. Amendment No. N/A	3. Recipient No. 066002126	4. Type of Action AWARD	5. Control No. WX00671N2022T		
6. Recipient Name and Address WEST HAVEN, CITY OF 355 MAIN ST WEST HAVEN, CT 06516		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Douglas Colter		9a. Phone No. 203-9373620	10. Name of FEMA Project Coordinator Assistance to Firefighters Grant Program		10a. Phone No. 1-866-274-0960	
11. Effective Date of This Action 08/10/2022	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING		14. Performance Period 08/17/2022 to 08/16/2024 Budget Period 08/17/2022 to 08/16/2024		
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
AFG	97.044	2022-F1-GB01 - P410-xxxx-4101-D	\$0.00	\$66,666.66	\$66,666.66	\$3,333.34
Totals			\$0.00	\$66,666.66	\$66,666.66	\$3,333.34
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title) Douglas Colter	DATE 09/14/2022
18. FEMA SIGNATORY OFFICIAL (Name and Title) Christopher Logan, Acting Assistant Administrator Grant Programs Directorate	DATE 08/10/2022



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract Name	Fire District Allingtown Garage Annex Project			
City Agency	Fire District Allingtown			
Vendor Utilized	Diversity Group Construction LLC			
Address	669 Center Street			
City, State, Zip	Wallingford CT 06492			
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2024-04] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	American Rescue Plan Act (ARPA)			
Quantity	1.00	Price Per:	Total Purchase Price	\$597,000.00
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.	The construction of a detached, two bay block garage on site at 318 Fairfax Street. Within the RFP, is the full scope of work attached.			
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst Michael Gormany, Finance Director			

AIA® Document A104® – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the 18th day of June in the year 2024
(In words, indicate day, month and year.)

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

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

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

Diversity Group Construction LLC
669 Center Street
Wallingford, Connecticut 06492

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

Fire District Allingtown Garage Annex
318 Fairfax Street
West Haven, Connecticut 06516

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

Russell and Dawson Inc.
1111 Main Street
East Hartford, Connecticut 06108

This ARPA-funded Project entails the construction of a detached two bay block garage on site at 318 Fairfax Street in West Haven, Connecticut and related scope of work as set forth in this Agreement, as well as in Exhibit 1 and Rider No. 1 to this Agreement (the "Rider").

The Owner and Contractor agree as follows:

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

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TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
- 5 DISPUTE RESOLUTION
- 6 ENUMERATION OF CONTRACT DOCUMENTS
- 7 GENERAL PROVISIONS
- 8 OWNER
- 9 CONTRACTOR
- 10 ARCHITECT
- 11 SUBCONTRACTORS
- 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 13 CHANGES IN THE WORK
- 14 TIME
- 15 PAYMENTS AND COMPLETION
- 16 PROTECTION OF PERSONS AND PROPERTY
- 17 INSURANCE AND BONDS
- 18 CORRECTION OF WORK
- 19 MISCELLANEOUS PROVISIONS
- 20 TERMINATION OF THE CONTRACT
- 21 CLAIMS AND DISPUTES

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.

See Rider No. 1 to this Agreement. (the "Rider").

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

The date of this Agreement.

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The date of satisfaction of all conditions precedent set forth in Section 15 of the Rider.

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

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

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

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

Not later than seven (7) months after the date of satisfaction of all conditions precedent set forth in Section 15 of the Rider.

By the following date:

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

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

See Exhibit C to the Rider for detailed schedule.

(Paragraph deleted)

ARTICLE 3 CONTRACT SUM

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

(Check the appropriate box.)

Stipulated Sum, in accordance with Section 3.2 below

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

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

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

§ 3.2 The Stipulated Sum shall be Five Hundred Ninety Seven Thousand Dollars (\$597,000.00), subject to additions and deductions as provided in the Contract Documents.

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

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

§ 3.2.2 Unit prices, if any:

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

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

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price
------	-------

§ 3.3 Cost of the Work Plus Contractor's Fee

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

§ 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:

(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. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

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

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

§ 3.4.3.3 Unit Prices, if any:

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

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

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

(Identify each allowance.)

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Item Price

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

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

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

(Paragraphs deleted)

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect based upon the Schedule of Values attached hereto as Exhibit 1, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents, including the Owner's right to dispute all or any portion of any Applications for Payment as provided below.

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

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than fourteen (14) days before the last Thursday of a month, except to the extent the Architect or Owner objects to such Application for Payment within forty-five (45) days after the first Tuesday of the following month, the Owner shall make payment to the Contractor within forty-five (45) days after the first Tuesday of the following month. If an Application for Payment is received by the Architect after the date fixed above, the Application for Payment shall be deemed submitted in the following month.

(Federal, state or local laws may require payment within a certain period of time.)

(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold five percent (5%) of the payment otherwise due as retainage.

§ 4.1.5 Payments due and unpaid under the Contract shall bear 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.
(Insert rate of interest agreed upon, if any.)

1.00% per month

§ 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

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- .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 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 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

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

[X] Litigation in a court of competent jurisdiction

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

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

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

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

§ 6.1.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 6.1.4 The Specifications:

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

See Specifications referenced in Exhibit A to the Rider.

Section	Title	Date	Pages
---------	-------	------	-------

§ 6.1.5 The Drawings:

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

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See Drawings referenced in Exhibit A to the Rider.

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

§ 6.1.6 The Addenda, if any:

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

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

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

.1 Other Exhibits:
(Check all boxes that apply.)

Exhibit 1, Schedule of Values

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

Rider

AIA Document A201-2017 General Terms and Conditions

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 7.2 The Contract

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

§ 7.3 The Work

The term "Work" means the construction and 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. 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 in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 7.6 Digital Data Use and Transmission

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

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

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

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to

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whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format 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.)

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

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 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. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 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.

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

§ 8.2 Owner's Right to Stop the Work

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

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services

made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting the Work. 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.

§ 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.

§ 9.2 Supervision and Construction Procedures

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

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

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

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

§ 9.4 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 that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties

required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 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. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information 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.

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

Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

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

§ 9.13 Access to Work

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

§ 9.14 Royalties, Patents and Copyrights

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

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify 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 as described in the Contract Documents 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 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 or delayed.

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

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

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and recommend to Owner the amounts due the Contractor in Certificates for Payment.

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

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor will respond to requests for submittals by the Architect within five (5) days after Architect's requests. The Contractor will provide mock-ups as directed by the Architect within five (5) days after Architect's requests.

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

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

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten (10) 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,

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and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 the defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

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

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

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

ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

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

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 The Schedule of Values for the various portions of the Work is attached hereto and made a part hereof as Exhibit 1. This Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within fourteen (14) days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

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

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§ 15.3 Applications for Payment

§ 15.3.1 In accordance with the provisions of Section 4.1.3, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the Schedule of Values. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage as provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 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 progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

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

§ 15.3.4 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.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven (7) 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 believes is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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. Additionally, the issuance of a Certificate for Payment shall not preclude Owner from objecting to or withholding some or all amounts in any Application for Payment.

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

- .1 defective Work not remedied:

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

§ 15.4.4 When the Contractor disputes the Architect's or Owner's decision regarding an Application for Payment under Section 15.4.2 or Section 15.4.3, in whole or in part, the Contractor may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, 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 a similar manner.

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

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

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the 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.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation of the Architect's belief that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete 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.

§ 15.7.3 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

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, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall 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. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and

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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.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 See Exhibit D to the Rider.

§ 17.1.2

(Paragraphs deleted)

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

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

(Table deleted)

(Paragraphs deleted)

§ 17.2 Owner's Insurance

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

(Table deleted)

(Paragraphs deleted)

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 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 the Contract Documents on the date of execution of the Contract.

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

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

Init.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. 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.

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, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Ken Carney, Chair
City of West Haven ARPA Committee
355 Main Street
West Haven, CT 06516

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

James A. Keaney Jr.
Diversity Group Construction LLC

init.

669 Center Street
Wallingford, Connecticut 06492

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of thirty (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 thirty (30) days, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, 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.

§ 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 reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven (7) days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or thirty (30) days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

Init.

§ 21.2 Notice of Claims

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

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

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case, not more than ten (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 21.3.

§ 21.4 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.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (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.

(Paragraphs deleted)

§ 21.10 Continuing Contract Performance

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

§ 21.11 Waiver of Claims for Consequential Damages

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

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

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

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

City of West Haven

Diversity Construction Group LLC

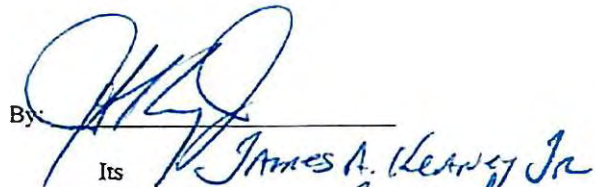
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By:

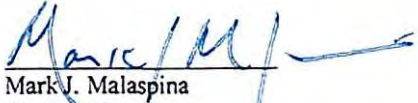

Hon. Dorinda K. Borer
Its Mayor

By:

Its
Duly Authorized


James A. Healey Jr.
President

Approved as to form:


Mark J. Malaspina
(Table deleted)

Carmody Torrance Sandak & Hennessey LLP

Init.

Additions and Deletions Report for AIA® Document A104® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:24:58 ET on 06/11/2024.

PAGE 1

AGREEMENT made as of the day of in the year 2024

...

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

...

Diversity Group Construction LLC
669 Center Street
Wallingford, Connecticut 06492

...

Fire District Allingtown Garage Annex
318 Fairfax Street
West Haven, Connecticut 06516

...

Russell and Dawson Inc.
1111 Main Street
East Hartford, Connecticut 06108

This ARPA-funded Project entails the construction of a detached two bay block garage on site at 318 Fairfax Street in West Haven, Connecticut and related scope of work as set forth in this Agreement, as well as in Exhibit I and Rider No. 1 to this Agreement (the "Rider").

The Owner and Contractor agree as follows: follows:

PAGE 2

21 CLAIMS AND DISPUTES

~~EXHIBIT A – DETERMINATION OF THE COST OF THE WORK~~

...

See Rider No. 1 to this Agreement. (the "Rider").

PAGE 3

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

Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

The date of satisfaction of all conditions precedent set forth in Section 15 of the Rider.

...

Not later than () calendar days from the date of commencement of the Work. Not later than seven (7) months after the date of satisfaction of all conditions precedent set forth in Section 15 of the Rider.

...

See Exhibit C to the Rider for detailed schedule.

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

...

Stipulated Sum, in accordance with Section 3.2 below

...

§ 3.2 The Stipulated Sum shall be ~~(\$)~~ Five Hundred Ninety Seven Thousand Dollars (\$597,000.00), subject to additions and deductions as provided in the Contract Documents.

PAGE 5

~~§ 3.5~~ Liquidated damages, if any:

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

...

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the ~~Architect~~, Architect based upon the Schedule of Values attached hereto as Exhibit I, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the ~~Contract Documents~~. Documents, including the Owner's right to dispute all or any portion of any Applications for Payment as provided below.

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

month.

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~day of a fourteen (14) days before the last Thursday of a month, except to the extent the Architect or Owner objects to such Application for Payment within forty-five (45) days after the first Tuesday of the following month~~, the Owner shall make payment of the certified amount to the Contractor not later than the ~~day of the~~ to the Contractor within forty-five (45) days after the first Tuesday of the following month. If an Application for Payment is received by the Architect after the date fixed

above, payment shall be made by the Owner not later than ~~()~~ days after the Architect receives the Application for Payment. The Application for Payment shall be deemed submitted in the following month.
(Federal, state or local laws may require payment within a certain period of time.)

...

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:
~~(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)~~ five percent (5%) of the payment otherwise due as retainage.

...

~~1.00% per month~~
PAGE 6

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~ thirty (30) days after the issuance of the Architect's final Certificate for Payment, or as follows:

...

- ~~Arbitration pursuant to Section 21.6 of this Agreement~~
- Litigation in a court of competent jurisdiction
- ~~Other (Specify)~~

...

See Specifications referenced in Exhibit A to the Rider.
PAGE 7

See Drawings referenced in Exhibit A to the Rider.

...

- ~~Exhibit A, Determination of the Cost of the Work~~ Exhibit I, Schedule of Values
- ~~AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:~~
~~(Insert the date of the E204 2017 incorporated into this Agreement.)~~

...

~~The Sustainability Plan:~~

Title	Date	Pages
-------	------	-------

...

~~Supplementary and other Conditions of the Contract:~~

Document	Title	Date	Pages
----------	-------	------	-------

...

Rider

AIA Document A201-2017 General Terms and Conditions

PAGE 8

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

PAGE 9

§ 8.1.1 Prior to commencement of the Work, at the written request by 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. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

PAGE 10

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it—the Work. 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.

...

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

PAGE 12

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

PAGE 13

§ 10.2 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, withheld or delayed.

...

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

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

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor will respond to requests for submittals by the Architect within five (5) days after Architect's requests. The Contractor will provide mock-ups as directed by the Architect within five (5) days after Architect's requests.

...

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten (10) 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.

PAGE 14

§ 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 the defective construction of a Separate Contractor.

...

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

PAGE 15

§ 15.1.1 ~~Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values~~ The Schedule of Values for the various portions of the Work is attached hereto and made a part hereof as Exhibit 1. This Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within fourteen (14) ~~fourteen (14)~~ days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

...

- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information,

schedule of shop drawings and samples, procurement and delivery of materials or equipment ~~equipment~~, the Owner's occupancy requirements, and the date of Substantial Completion; and

PAGE 16

~~§ 15.3.1 At least ten days before the date established for each progress payment. In accordance with the provisions of Section 4.1.3, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. Schedule of Values. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if as provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.~~

...

§ 15.4.1 The Architect will, within seven (7) 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~~ believes is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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. Additionally, the issuance of a Certificate for Payment shall not preclude Owner from objecting to or withholding some or all amounts in any Application for Payment.

PAGE 17

~~§ 15.4.4 When either party disputes the Architect's decision regarding a Certificate for Payment under the Contractor disputes the Architect's or Owner's decision regarding an Application for Payment under Section 15.4.2 or Section 15.4.3, in whole or in part, that party the Contractor may submit a Claim in accordance with Article 21.~~

...

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, 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 a similar manner.

PAGE 18

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation of the Architect's belief that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

~~§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:~~

See Exhibit D to the Rider.

~~§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~(\$)~~ each occurrence, ~~(\$)~~ general aggregate, and ~~(\$)~~ aggregate for products-completed operations hazard, providing coverage for claims including~~

- ~~1 — damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;~~
- ~~2 — personal and advertising injury;~~
- ~~3 — damages because of physical damage to or destruction of tangible property, including the loss of use of such property;~~
- ~~4 — bodily injury or property damage arising out of completed operations; and~~

~~5 — the Contractor's indemnity obligations under Section 9.15. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.~~

~~§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than ~~(\$)~~ per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of these motor vehicles along with any other statutorily required automobile coverage. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.~~

~~§ 17.1.4 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 such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 17.1.5 Workers' Compensation at statutory limits.~~

~~§ 17.1.6 Employers' Liability with policy limits not less than ~~(\$)~~ each accident, ~~(\$)~~ each employee, and ~~(\$)~~ policy limit.~~

~~§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate.~~

~~§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate.~~

~~§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~(\$)~~ per claim and ~~(\$)~~ in the aggregate.~~

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

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

~~§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.~~

~~§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~

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

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

Coverage

Limits

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

~~§ 17.2.1 Owner's Liability Insurance~~

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

~~§ 17.2.2 Property Insurance~~

~~§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.~~

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

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

~~§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

~~§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

~~§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

~~§ 17.2.2.7 Waiver of Subrogation~~

~~§ 17.2.2.7.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

~~§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~§ 17.2.2.8 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 Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

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

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

Coverage

Limits

...

§ 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.1.7.3 in Exhibit A, Determination of the Cost of the Work expense.~~

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. 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.

PAGE 20

Ken Carney, Chair
City of West Haven ARPA Committee
355 Main Street
West Haven, CT 06516

...

James A. Keaney Jr.
Diversity Group Construction LLC
669 Center Street
Wallingford, Connecticut 06492

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days' prior notice to the other party.

PAGE 21

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of ~~30~~ thirty (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~~ thirty (30) days, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, 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.

...

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven (7) days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

...

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially

to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or ~~30~~ thirty (30) days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

PAGE 22

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Architect within ~~24~~ twenty-one (21) days after occurrence of the event giving rise to such Claim or within ~~24~~ twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

...

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any ~~case~~ case, not more than ~~10~~ ten (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 21.3.

...

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

~~§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this 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.~~

~~§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, 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).~~

~~§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, 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.~~

~~§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

...

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

...

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

City of West Haven

Diversity Construction Group LLC

By:



By:



Hon. Dorinda K. Borer
Its Mavor

Its
Duly Authorized

James A. Kennedy Jr.
President

Approved as to form:

Mark J. Malaspina

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

Cannody Torrance Sandak & Hennessey LLP

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 its associated Additions and Deletions Report and this certification at 16:24:58 ET on 06/11/2024 under Order No. 4104243362 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Fire District Allingtown Garage Annex
318 Fairfax Street
West Haven, Connecticut 06516

THE OWNER:

(Name, legal status and address)

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

THE ARCHITECT:

(Name, legal status and address)

Russell and Dawson Inc.
1111 Main Street
East Hartford, Connecticut 06108

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

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14 **TERMINATION OR SUSPENSION OF THE CONTRACT**

15 **CLAIMS AND DISPUTES**

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User Notes:

(1936472172)

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

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Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of

1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

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(1936472172)

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors
and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,
9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,
11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the
Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.4

Costs

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,
12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching

3.14, 6.2.5

**Damage to Construction of Owner or Separate
Contractors**

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7

Damages for Delay

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

**Defective or Nonconforming Work, Acceptance,
Rejection and Correction of**

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time

**3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5**

Digital Data Use and Transmission

1.7

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2

Emergencies

10.4, 14.1.1.2, 15.1.5

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

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Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS
1

Governing Law
13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision
15.2
Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7

Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability
11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability
11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest
13.5

Interpretation
1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,
15.4.1.1

Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

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MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Init.

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User Notes:

(1936472172)

Project, Definition of
1.1.4
Project Representatives
 4.2.10
Property Insurance
 10.2.5, **11.2**
Proposal Requirements
 1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
 1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
 4.2.6, 12.2.1
Releases and Waivers of Liens
 9.3.1, 9.10.2
Representations
 3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
 3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
 3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples
by Contractor
 3.12
Rights and Remedies
 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
 12.2.4, **13.3**, 14, 15.4
Royalties, Patents and Copyrights
 3.17
Rules and Notices for Arbitration
 15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
 3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
 3.11, **3.12**, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
 4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
 1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
 15.1.2, 15.4.1.1
Stopping the Work
 2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
 9.6.7
Subcontractual Relations
 5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
 3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
 6.1.1, **11.3**
Substances, Hazardous
10.3
Substantial Completion
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2,
 15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
 5.2.3, 5.2.4
Substitution of Architect
 2.3.3
Substitutions of Materials
 3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Init.

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User Notes:

(1936472172)

Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2,
15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,

15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,

13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. 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. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and 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. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 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.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 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 only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

Init.

G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by 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. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by 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 only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

Init.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. 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.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been 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, except to the extent required by Section 6.1.3.

§ 2.5 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 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 the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 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.

§ 3.2.2 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 2.3.4, 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.

§ 3.2.3 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.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 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 under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 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.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 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 properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special 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 9.8.4.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for 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.

§ 3.7.2 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.

§ 3.7.3 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.

§ 3.7.4 Concealed or Unknown Conditions

If 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 (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 and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect 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 Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 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 Contract Sum but not 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 allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

Init.

delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 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.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

Init.

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 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.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 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 that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 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 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 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.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents 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.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations 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.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect'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 Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 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's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 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. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 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. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. 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. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by 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 that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect 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 that 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.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 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 for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 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 construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

Init.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 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 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, 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 consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine 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 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect 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.

§ 7.3.7 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.

§ 7.3.8 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 Architect. 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.

§ 7.3.9 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 Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

The Architect may 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

§ 8.2.1 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.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, 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 suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 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 encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven 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; or (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 of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; 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 as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 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 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and 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 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, 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 a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 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.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 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.

§ 9.8.2 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.

§ 9.8.3 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. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that 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.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. 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 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 listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 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 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 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 10.3.1 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.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 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 reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, 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 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. 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. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2 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.

§ 12.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 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 or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written 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.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 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.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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.

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of 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 and enter into no further subcontracts and purchase orders.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 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.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a 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 Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker 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 Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, 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.

§ 15.2.8 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.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its 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 the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. 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.

§ 15.4 Arbitration

§ 15.4.1 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 its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A 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 party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 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.

§ 15.4.3 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.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Additions and Deletions Report for **AIA® Document A201® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:20:41 ET on 06/11/2024.

PAGE 1

Fire District Allingtown Garage Annex
318 Fairfax Street
West Haven, Connecticut 06516

...

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

...

Russell and Dawson Inc.
1111 Main Street
East Hartford, Connecticut 06108

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 its associated Additions and Deletions Report and this certification at 16:20:41 ET on 06/11/2024 under Order No. 4104243362 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

**EXHIBIT 1
TO AGREEMENT BETWEEN
THE CITY OF WEST HAVEN AND DIVERSITY GROUP CONSTRUCTION LLC**

Schedule of Values

Concrete	\$45,000
Masonry	\$105,000
Steel	\$58,000
Roofing	\$35,000
HM Frames Doors	\$14,000
Overhead Doors	\$16,000
Carpentry	\$36,000
Flooring	\$17,000
Painting	\$11,000
HVAC	\$30,000
Electrical	\$50,000
Site	\$70,000
General	
Conditions	\$100,000
General Liability	\$10,000
Total	\$597,000

RIDER NO. 1 TO AGREEMENT (the “A104”) BETWEEN the CITY of WEST HAVEN (“OWNER”) AND DIVERSITY GROUP CONSTRUCTION LLC (“CONTRACTOR”) (AIA DOCUMENT A104-2017) DATED JUNE 18, 2024 (this “RIDER”)

This Rider is attached to and made a part of the above-referenced Agreement. The following Exhibits are attached to and made a part of this Rider:

- **Exhibit A**, Scope of Work;
- **Exhibit B**, Listing of Contractor's Employees Assigned to Project;
- **Exhibit C**, Contractor's Schedule for Performance;
- **Exhibit D**, Insurance Requirements; and
- **Exhibit E**, Federal Funding Requirements
- **Exhibit F**, Scope Review Document

Capitalized terms used but not defined in this Rider shall have the meaning given in the Agreement to which this Rider is attached and made a part of. References in this Rider to this Agreement mean such Agreement as amended by this Rider.

1. General/Document Hierarchy/Cross-References in A104. If any of the provisions of this Rider, including the Exhibits attached hereto and made a part hereof, conflict with or are otherwise inconsistent with the A104 to which this Rider is attached, the Specifications, and other Contract Documents, the more restrictive requirement and the higher standard, for the benefit of the Owner, as the case may be, shall prevail and be binding upon the Contractor. To the extent the A104 cross-references other AIA documents, such cross-referenced AIA documents shall be deemed to be to any agreement(s) that may be entered into between the Owner and any Contractor or Construction Manager for this Project, whether such agreements are AIA forms or otherwise. If any provisions of the Exhibits attached to and made a part of this Rider conflict with or are otherwise inconsistent with the provisions of the body of this Rider or with each other, the more restrictive requirement and the higher standard, for the benefit of the Owner, as the case may be, shall prevail and be binding upon the Contractor. If any of the provisions of the Contract Documents are inconsistent but there is no applicable stricter standard among them, the following priority of Contract Documents shall apply: First, this Rider; second, the Exhibits to this Rider; third, the A104; fourth, the Drawings; fifth, the Specifications; and sixth, the other Contract Documents.

2. Professional Services to be Rendered:

(a) **The Work of This Contract.** The following new § 1.1 is hereby added to the A104:

(i) **New § 1.1: “Contractor’s Responsibilities.** It is the intention of this Agreement that the Contractor shall provide for all necessary and appropriate construction services required for the construction and completion of the Project, in accordance with the Scope of Work, **Exhibit A** to the Rider, through and including Project closeout, whether specifically identified in this Agreement, and Construction Documents or the requirements reasonably implied or inferred therefrom. The schedule for the Scope of Work is set forth in **Exhibit C** to the Rider.”

(ii) New §1.2: “**Standard of Care.** The Contractor shall perform its services consistent with the professional skill and care ordinarily provided by Contractors practicing in the same or similar locality under the same or similar circumstances (the “Standard of Care”). The Contractor shall perform its services as expeditiously as is consistent with such professional skill and care, the orderly progress of the Project and the Standard of Care.”

3. Claims and Disputes.

(a) §21.11 of the A104 is hereby amended to include the following as the last sentence of the last paragraph thereof: “Notwithstanding the foregoing, no such waiver shall be applicable to indemnification requirements under § 5 of the Rider, or in the event of claims covered by insurance, to the extent such coverage is responsive and available.”

4. Dispute Resolution.

(a) § 5.1 of the A104 is hereby deleted in its entirety and replaced with the following new §5.1:

“Mediation shall be required and shall be before JAMS or like organization as may be agreed to by the parties. If mediation fails to resolve the parties’ dispute, either party may litigate the matter in any state or federal court located in the City of New Haven.

Contractor agrees that, to the extent necessary for, or in connection with, the resolution of any other claims involving Owner or the Project, Contractor, Contractor’s Consultants and any claims by or against either of them, may be joined in any separate arbitration or legal proceeding, upon Owner’s written request.”

5. Indemnification. § 9.15.1 of the A104 is hereby deleted in its entirety and replaced with the following new §9.15.1: “To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions, the Architect, Architect’s consultants, and agents and employees from and against any/all claims, actions, damages, losses and expenses, including but not limited to attorney’s fees, for any actual or alleged injury to any person or persons, including death, or any damage to or destruction of property, arising out of or in connection with the Work.”

6. Termination of the Contract.

(a) A104 §20.1 is hereby deleted and replaced with the following new §20.1: “If the Architect fails to certify payment as provided in Section 15.4.1 for a period of thirty (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 thirty (30) days, the Contractor shall provide Owner with a written notice to cure. If the Owner fails to make payment of such sums properly due to the Contractor within fifteen (15) days of such written notice, the Contractor may, upon seven (7) additional days’ written notice to the Owner and the Architect, 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.”

(b) The following new § 20.4 is hereby added to the A104: "Termination, suspension or abandonment by the Owner shall not give rise to any cause of action or claim against the Owner for any damages of any nature whatsoever, or for extra compensation or loss of anticipated profits. The Contractor shall be entitled only to amounts due to it in accordance with this Article 20. Termination of this Agreement for any reason shall not release the Contractor from any of its obligations under this Agreement existing at the time of termination."

7. **Progress Payments.** The following new § 21.1.1 is hereby added to the A104: "If a dispute arises between the Owner and the Contractor with respect to the Contractor's compensation or any term of this Agreement, notwithstanding any provision of the A104, the Contractor shall continue to fully perform under this Agreement if the Owner makes timely payment of fees and reimbursements in accordance with the payment provisions of this Agreement. If the dispute relates to fees, the Contractor shall be obligated to continue to perform provided that the Owner pays those particular fees which are not the subject of the dispute."

8. **Additional Provisions Regarding Compensation.** A104 Article 3 is hereby modified, as follows:

(a) **Compensation for Supplemental and Additional Services.** The following new § 3.4.4 is hereby added to the A104: "A condition of compensation for such services is that the Contractor has advised the Owner in writing before such services are performed that they are beyond the scope of this Agreement, and such services have been specifically authorized by the Owner in writing to the Contractor in advance of their performance. The Contractor shall keep detailed records of all time spent by the Contractor's employees in performance of such services; provided that, notwithstanding anything to the contrary in the Agreement, and without limiting the Owner's other available rights and remedies at law or in equity, Contractor shall not be compensated for any services, including without limitation for Supplemental Services or Additional Services, arising out of Contractor's negligence or breach of any of its obligations under this Agreement."

9. **Payment/Contractor's Records.** The following new § 4.1.6 is hereby added to the A104:

(i) The Contractor shall submit monthly Applications for Payments to the Owner or upon some other time basis mutually agreed upon in writing. Each Application for Payment shall include a detailed statement of services for which compensation is sought and expenses for which reimbursement is sought, together with such other substantiation as the Architect or Owner shall require. Each Application for Payment shall include all items of Work sought by the Contractor for compensation and for expenditures incurred through the date of the Work covered by the Application for Payment. The Contractor shall submit its final Application for Payment no later than thirty (30) calendar days after final completion of the construction of the Project.

(ii) The Contractor shall maintain, and shall require its consultants to maintain, accurate records, on an accounting basis acceptable to the Owner, of costs and expenses incurred by it and the exact hours worked by its personnel. On reasonable notice from the Owner, when applicable to services provided on an hourly basis or reimbursable expenses approved by the Owner, these records shall be available at the Contractor's office during business hours for audit and copying by the Owner. The Contractor shall retain these records for six (6) years after its receipt of final payment.

(iii) Each Application by the Contractor shall include a certification that the information contained in Contractor's Disclosure and Certification Affidavit executed in connection with entering into this Agreement remains true and correct in all material respects."

Part
JAC
6/18/24

10. Personnel Assigned to Project. The following new § 19.7 is hereby added to the A104: "To the fullest extent reasonably necessary to achieve the timely and proper performance of the Contractor's obligations under this Agreement, the individuals listed in **Exhibit B** to the Rider shall devote their full time and effort to the Project while employed by the Contractor, and they may not be removed from the Project or replaced by the Contractor to the extent they continue to be in the employ of the Contractor, without the Owner's prior written consent, which consent shall not be unreasonably withheld or delayed. The Owner reserves the right to require the removal of any personnel of the Contractor involved with the Project if, in the reasonable judgment of the Owner in consultation with the Contractor, such individual's performance is deemed unsatisfactory. The Contractor shall investigate such request and shall submit to Owner, for Owner's consent, which consent shall not be unreasonably withheld or delayed, the name of an individual Contractor suggests as a replacement."

11. Rules of Interpretation. As used in the Contract Documents, the terms "include", "including", and words of similar meaning shall mean without limitation. As used in the Contract Documents, the singular shall include the plural and vice versa, and reference to any gender shall mean the applicable gender.

12. Insurance. The Contractor shall furnish and maintain the insurance coverages set forth in **Exhibit D** to this Rider in accordance with the requirements set forth therein. If the Contractor fails to furnish and maintain the insurance required herein, the Owner may purchase such insurance on behalf of the Contractor, and the Contractor shall promptly pay the cost thereof to the Owner and supply any information needed to obtain such insurance upon demand.

13. Compliance with Federal Funding Requirements. This Project is being funded using federal funds. This Agreement and the Contractor's obligations under this Agreement are subject to any and all applicable federal funding requirements. Without limiting the generality of the foregoing, **Exhibit E** hereto sets forth certain federal funding requirements for this Agreement and the Project.

14. Other Provisions.

(a) **Notices.** The following new §7.9.3 is hereby added to the A104: "All notices shall be in writing and shall be delivered personally, by recognized overnight courier service, or by registered or certified mail, return receipt requested at the respective address for notice for each party as set forth below. Notice shall be effective on the date of delivery, or if delivery is refused, on the date of attempted delivery. Either party may change its address for notices by notifying the other party in accordance with this Section. Addresses for notice are as follows:

Owner:
City of West Haven
355 Main Street
West Haven, CT 06516
Attn: Ken Carney, Chair, ARPA Committee

Contractor:
Diversity Group Construction LLC

669 Center Street
Wallingford, CT 06492
Attn: James A. Keane Jr., President

(b) **No Waiver.** The following new §19.8 is hereby added to the A104: “No waiver of default hereunder shall be construed as a waiver of any subsequent default.”

(c) **Counterparts.** The following new §19.9 is hereby added to the A104: “This Agreement, including the Rider attached hereto, may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signed copies of this Agreement may be faxed and e-mailed with the same force and effect as if the originally executed Agreement had been delivered.”

(d) **Compliance with Laws.** In addition to complying with the provisions of § 12 of this Rider, the Contractor shall comply with all laws, rules, regulations, codes and ordinances applicable to its obligations under this Agreement.


15. Conditions Precedent. The following are conditions precedent to the effectiveness of this Agreement:

- A. A W-9 form executed and delivered by Contractor to Owner that is acceptable to Owner in its sole and absolute discretion;
- B. A Disclosure and Certification Affidavit executed and delivered by Contractor to Owner with information that is acceptable to Owner in its sole and absolute discretion. Each invoice by Contractor to Owner shall include a certification that the information contained in Contractor’s Disclosure and Certification Affidavit executed in connection with entering into this Agreement and which remains true and correct in all material respects;
- C. Provision of the insurance certificates referenced in Exhibit D to this Rider; and
- D. Approval of this Agreement by the West Haven Subcommittee of the Municipal Accountability Review Board of the State of Connecticut.

16. Scope Review Document. The Scope Review Document attached hereto as **Exhibit F** is hereby incorporated into this Rider.


THE TERMS AND CONDITIONS OF THIS RIDER NO. 1 ARE HEREBY AGREED TO AND ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE.

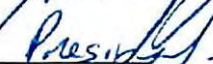
OWNER:
City of West Haven

By: 

Hon. Dorinda K. Borer
Mayor

CONTRACTOR:
Diversity Group Construction LLC

By: 

Its 
Duly Authorized

Approved as to form:



Mark J. Malaspina
Carmody Torrance Sandak & Hennessey LLP

EXHIBIT A

SCOPE OF WORK

The Work shall include:

1. The equipment, materials, and services stated in Owner's RFP # 2024-04, as well as all other documents and materials issued thereunder or in connection therewith, including:

- a. All Addenda (Addenda #'s 1-7 inclusive);
- b. All Specifications and all Addenda thereto;
- c. All Drawings and all Addenda thereto;
- d. All Requests for Information (RFIs) and responses issued pursuant thereto; and
- e. Contractor's bid documents and related submittals dated April 25, 2024.

EXHIBIT B

THE CONTRACTOR'S PERSONNEL ASSIGNED TO THE PROJECT

Monica Vergara	PM
Damien Ricci	Operations Manager
James A. Keaney Jr.	President

Part time

6/18/24

EXHIBIT C

SCHEDULE OF THE CONTRACTOR'S PERFORMANCE

Start Date for the Work

The date of satisfaction of all conditions precedent set forth in Section 15 of this Rider.

Final Completion Date for the Work

Seven (7) months after the Start Date for the Work.

EXHIBIT D

INSURANCE

Prior to the commencement of the work, and as a condition of site access, the Contractor (referred to hereinafter as the “*Contractor*”) shall deliver to the City of West Haven (referred to hereinafter as the “*Owner*”) a valid and currently dated Certificate of Insurance (“COI”).

The insurance coverage carried by the Contractor must be placed with and written by an insurance company admitted to do business in the State of Connecticut, and with a rating of A- or better by A.M. Best.

The insurance coverages carried by the Contractor (shown below) shall apply regardless of whether the operations, actions, derelictions or failures to act, from which any claim arises, are attributable to the Contractor, a subcontractor, a sub-subcontractor, or any consultant, officer, agent, employee or anyone directly or indirectly employed by any of them, including anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable state law. Failure of Contractor to provide a COI shall in no way limit or relieve Contractor of its duties and responsibilities in this Agreement. All policies of insurance shall be written on an occurrence basis.

At a minimum, the COI shall indicate that the following coverages and limits are in place:

1. **Commercial General Liability (“CGL”) – Minimum Limits Required:**

- \$2,000,000 General Aggregate
- \$2,000,000 Producers/Completed Operations Aggregate
- \$1,000,000 Each Occurrence
- \$1,000,000 Personal and Advertising Injury
- \$100,000 Fire Damage – Any One Fire
- \$5,000 Medical Expense – Any One Person

- The Owner (The City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** on the CGL policy carried by the Contractor. The Additional Insured coverage afforded to the Owner shall apply on a **primary and non-contributory basis** and include **completed operations** coverages.
- The CGL policy carried by the Contractor shall contain a **Waiver of Subrogation** clause and the Contractor hereby agrees to waive the Contractor’s right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

1. Business Auto/Commercial Auto Insurance – Minimum Limits required:

- \$1,000,000 Liability
- The Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** on the Commercial Auto/Business Auto policy carried by the Contractor.
- The Business Auto/Commercial Auto policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

2. Workers Compensation/Employers Liability Insurance:

- Coverages and limits as required by Connecticut State law
- Employer's Liability Limits:
- \$500,000 each accident
- \$500,000 aggregate for injury by disease
- \$500,000 each employee for injury by disease
- The Workers' Compensation/Employers Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

3. Professional Liability Insurance-- Minimum Limits required:

- \$1,000,000 per occurrence
- \$1,000,000 aggregate

4. Umbrella Liability/Excess Liability-- Minimum Limits required:

- \$5,000,000 Each Occurrence
- \$5,000,000 General Aggregate
- Policy will provide excess coverage over the Commercial General Liability, Business Auto and Workers' Compensation/Employer Liability policies carried by the organization.
- The Umbrella/Excess Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

No Limitation on Liability

With regard to any/all claims made against the Additional Insured by any employee of the Contractor, any subcontractor, or anyone directly or indirectly employed by the Contractor or any subcontractor, or anyone for whose acts the Contractor or any subcontractor might be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

Cancellation, Renewal and Modification

The Contractor shall maintain in effect all insurance coverages required under this agreement at the Contractor's sole expense and with insurance companies acceptable to the Owner. The policies shall contain a provision that the coverage will not be cancelled or non-renewed until at least thirty (30) days prior written notice has been given to the Owner.

EXHIBIT E

FEDERAL FUNDING REQUIREMENTS

For purposes of this Exhibit E, the term "contract" shall mean "Agreement". the term "contractor" shall mean "Contractor", and the term "Owner" shall mean the City of West Haven. For convenience, reference to any gender herein means the applicable gender.

During the performance of this contract, the contractor agrees as follows:

(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:

1. 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 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 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 the 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 as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by a 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 the 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 vendor. 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 the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor 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 may not charge the Owner directly or indirectly for any "Covered Telecom," as defined below. The federal government's System for Award Management (SAM) (<https://www.sam.gov>) lists certain "Excluded Parties" (as defined therein) who are excluded from receiving federal awards for "covered telecommunications equipment or services" referenced therein ("Covered Telecom"). Any procurements and resulting contracts prepared by the contractor for the Owner shall prohibit vendors from directly or indirectly charging the Owner for Covered Telecom.

Any and all procurements for construction services, goods or materials shall comply with the federal government's "Build America, Buy America" and "Buy American" requirements, if and to the extent applicable to the Project or any portion thereof.

EXHIBIT F
SCOPE REVIEW DOCUMENT

See Attached.

West Haven ARPA Committee
Invest in West Haven

Diversity Construction Group LLC for Firehouse Allingtown Garage Project
5/24/24

1. Provide a UIN NDEEC5GLCGG7, NCAGE#7KDM
2. W9 See Attached
3. Insurance naming the City of West Haven as additional insured See Insurance Certificate Attached
4. Liability X
5. Auto X
6. Comp X
7. Pollution X
8. Umbrella X
9. Emergency contact info _____

Monica Vergara PM: 203.907.7555

Damien Ricci Operations Manager :203.945.6170

James Keaney, President: 203.395.6079

10. Info for Contract who is the PM _____

Monica Vergara

mvergara@diversitycg.com

cell:203.907.7555

11. Understand the process for submitting invoices Yes, once a month to be finalized the Thursday before the 1st Tuesday of the Month.JAK

a. Architect signs off and delivered to ARPA committee in time

12. Not prevailing wage. New Construction Agreed, JAK

355 Main Street West Haven, CT 06516 • (203) 937-3500

Ken Carney • Dwight Knowles • Gary Pardo • Mike Last • Rolan Smith • Chris Barstern • Ken Farris •
Neil Cavallaro • Iris Diaz

West Haven ARPA Committee
Invest in West Haven

- 13. Permitting no cost except educational Agreed, JAK
- 14. PZ and Wetlands BY Owner
- 15. Contract is standard Standard unmodified AIA A104 is acceptable
- 16. No Bond Agreed JAK
- 17. No CHRO Agreed JAK
- 18. 10 percent retainage 5% retainage JAK
- 19. Bidder to describe safety plan Sample Safety Plan Attached
- 20. Bidder agrees to create a schedule of values by See Below need
for contract _____

Concrete	\$45,000
Masonry	\$105,000
Steel	\$58,000
Roofing	\$35,000
HM Frames, Doors	\$14,000
Overhead Doors	\$16,000
Carpentry	\$36,000
Flooring	\$17,000
Painting	\$11,000
HVAC	\$30,000
Electrical	\$50,000
Site	\$70,000
General Conditions	\$100,000
General Liability	\$10,000
Total	\$597,000

- 21. Bidder agrees to create a project schedule needed for the contract Draft
**Schedule Provided at scope review meeting. Approximately 2 months for
preconstruction and 5 months for construction.**
- 22. Bidder agrees to no overtime charges to the owner Agreed unless
directed. JAK

355 Main Street West Haven, CT 06516 • (203) 937-3500

Ken Carney • Dwight Knowles • Gary Perdo • Mike Last • Roban Smith • Chris Banstein • Ken Ferris •
Neil Cavallaro • Iris Diaz

West Haven ARPA Committee
Invest in West Haven

23. Bidder agrees to increase the crew size if needed to stay on schedule.
_Agreed if required. JAK_____
24. Bidder has all needed equipment to perform the work included in cost
_Confirmed. JAK_____
25. Bidder confirms that all general scope items were reviewed and has been
included in the cost of \$597,000 _Confirmed. JAK_____
26. Bidder agreed to all addendums _1-7 jak_____
27. Bidder agrees to accept all drawings and specs _Agreed. JAK_____
28. Bidder agrees to a weekly project meeting on-site at _Thursdays @ 4PM and
minutes. **_To be maintained by the Architect. JAK_____**
29. Bidder agrees to submit submittals timely _Agreed. JAK_____
30. Bidder agrees to submit shop drawings by __According to our submitted
schedule. JAK
31. Change orders 15 percent markup? __Agreed. JAK_____
32. Identifying staging areas as not to interfere with operations **_To be
reviewed with Fire Chief and monitored daily_____**
33. MEPs hook can't interfere with operations **To be coordinated with Fire
Chief._____**
34. Identify items with long lead times **_Anticipated lead times are listed in the
draft schedule that was provided._____**

The architect will create a list of special inspections so I can put that service out to bid

355 Main Street West Haven, CT 06516 • (203) 937-3500

Ken Carney • Dwight Knowles • Gary Perdo • Mike Last • Rohan Smith • Chris Barstein • Ken Ferris •
Neil Cavallaro • Iris Diaz

**CITY OF WEST HAVEN
REQUEST FOR PROPOSALS**

CITY RFP# 2024-04

ARPA PROJECT# 2022-015

FIRE DISTRICT ALLINGTOWN GARAGE ANNEX

The City of West Haven (hereafter referred to as the City) is seeking proposals for the construction of a detached, two bay block garage on site at 318 Fairfax Street in West Haven, CT. Please see the plans, specifications & read the full RFP in its entirety on our city website: www.cityofwesthaven.com. **A mandatory walk through will be held on: Thursday, February 15, 2024 at 2:00pm.**

Responses to this RFP shall be submitted to Tammy O'Connell, Procurement Specialist, City of West Haven, 355 Main Street, 3rd Fl. Purchasing Dept., West Haven, CT 06516. Proposals are due not later than Thursday, March 7, 2024 at 2:00pm. Respondents are required to submit one (1) original with two (2) copies of their proposal. All proposals must be sealed and clearly marked **RFP# 2024-04 Fire District Allingtown Garage Annex**. No oral, telephonic, emailed, or faxed responses shall be considered. No oral, telephonic, emailed, or faxed corrections, deletions, or additions to any response shall be accepted. The City reserves the right to reject any or all proposals, and to waive any or all formalities in connection with this request. Any responses received after the above scheduled due date and time, will be rejected. The City reserves the right to reject any or all proposals, if it deems such to be in the best interest of the City of West Haven.

All questions regarding this Request for Proposals should be directed to Tammy O'Connell, Procurement Specialist, by e-mail at toconnell@westhaven-ct.gov. **The RFI (Request for Information) deadline is Monday, February 26, 2024 at 2:00pm.**

- **MANDATORY WALKTHROUGH IS 02/15/2024 AT 2:00PM**
- **RFI PERIOD ENDS 02/26/2024 AT 2:00PM**
- **BIDS DUE NO LATER THAN 03/07/2024 AT 2:00PM**

Tammy O'Connell
Procurement Specialist

TABLE OF CONTENTS

TECHNICAL SPECIFICATIONS

DIVISION 01 – GENERAL REQUIREMENTS

SECTION 01010 – SUMMARY

SECTION 013300 – SUBMITTAL PROCEDURES

SECTION 015000 – TEMPORARY FACILITIES AND
CONTROLS SECTION 016000 – PRODUCT
REQUIREMENTS

SECTION 016400 – SUBSTITUTION

PROCEDURES SECTION 017700 – CLOSEOUT
PROCEDURES

DIVISION 03 – CONCRETE

SECTION 033000 – CAST-IN-PLACE
CONCRETE

DIVISION 04 – MASONRY

SECTION 042000 – UNIT MASONRY

SECTION 042100 – TYPE S MORTAR REMIX

DIVISION 05 – METALS

SECTION 053100 – STEEL DECKING

SECTION 055000 – METAL
FABRICATIONS

DIVISION 07 – THERMAL AND MOISTURE PROTECTION

SECTION 071113 – BITUMINOUS
DAMPPROOFING

SECTION 072100 – THERMAL
INSULATION

SECTION 072500 – WEATHER
BARRIERS

SECTION 072600 – VAPOR RETARDERS



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract Name	Stormwater Infrastructure Assessment & Design			
City Agency	Public Works			
Vendor Utilized	CDM Smith			
Address	101 East River Drive, Suite 1A			
City, State, Zip	East Hartford, CT 06108			
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2024-3] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source []			
Quote No('s) if applicable				
Source of Funds	Grant National Fish and Wildlife Grant and City Matching			
Quantity	1	Price Per:	Total Purchase Price	\$912,300
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.)	CDM Smith has been chosen by the City of West Haven to perform the work on SOLICITATION# 2024-03 Stormwater Infrastructure Assessment & Design for Project 2: Sanford Street Basin Stormwater Study & Project 3: Lake Street/Colonial Boulevard Area Flooding. Please note, there will be two separate contracts entered into per location (listed below). The draft of both contracts are attached to this submission Lake Street – 303,300 Lydia – 609,000			
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst Michael Gormany, Finance Director			

City of West Haven

355 Main Street
West Haven, Connecticut 06516
(203) 937-3620



Dorinda Borer
Mayor

Michael Gormany
Director of Finance

May 1, 2024

CDM Smith
101 East River Drive, Suite 1A
East Hartford, CT 06108
Attn: Joseph L. Laliberte

Dear Mr. Laliberte,

CDM Smith has been chosen by the City of West Haven to perform the work on **SOLICITATION# 2024-03 Stormwater Infrastructure Assessment & Design** for Project 2: Sanford Street Basin Stormwater Study & Project 3: Lake Street/Colonial Boulevard Area Flooding.

On behalf of the City of West Haven, I want to thank you for the time and effort that you devoted to crafting your proposal. We look forward to working with you!

Best Regards,

Tammy O'Connell

Tammy O'Connell
Procurement Specialist
City of West Haven
toconnell@westhaven-ct.gov
203-937-3529

AGREEMENT BETWEEN OWNER AND ENGINEER

THIS IS AN AGREEMENT made effective on _____, 2024 between City of West Haven, Connecticut ("OWNER") and CDM Smith Inc. ("ENGINEER").

OWNER's Project is generally identified as follows: Sanford Street Basin Stormwater Study (the "Project").

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance or furnishing of services by ENGINEER to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below.

1. SCOPE OF SERVICES

- 1.1 ENGINEER agrees to perform, or cause to be performed, for OWNER services as described in Exhibit A (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.

2. TIMES FOR RENDERING SERVICES

- 2.1 Specific time periods and/or specific dates for the performance of ENGINEER's Services are set forth in Exhibit A.
- 2.2 If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably. **shall be negotiated by both parties**
- 2.3 If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 2.4 Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services. If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ~~ENGINEER shall be entitled to equitable adjustment of the schedule and of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation.~~ **shall be renegotiated by both parties**

3. OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.

- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.
- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Be responsible for all requirements and instructions that it furnishes to ENGINEER, and for the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any relevant, material defect or nonconformance in ENGINEER's Services or in the work of any Contractor employed by Owner on the Project.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

4. PAYMENTS TO ENGINEER FOR SERVICES

4.1 Methods of Payment for Services of ENGINEER.

4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit A. If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional taxes in addition to the compensation to which Engineer is entitled.

4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Payments are due within ~~30~~ ⁴⁵ days of receipt of invoice.

4.1.3 ~~If OWNER fails to make any payment~~ ^{If OWNER fails to process payment in the ordinary course of business} due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

4.1.4 OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

5. GENERAL CONDITIONS

5.1 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

5.2 Technical Accuracy

Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

5.3 Opinions of Probable Construction Cost

Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.4 Reliance on Owner Provided Information

ENGINEER may use and rely on such requirements, programs, instructions, reports, data, and information provided by the OWNER in performing or furnishing services under this Agreement. ENGINEER's scope of work does not include verifying OWNER Provided Information for accuracy or completeness. OWNER may request an independent review of OWNER Provided Information by ENGINEER pursuant to a mutually agreed amendment to this Agreement. ENGINEER shall be entitled to an adjustment in price and schedule to the extent that any corrective action in ENGINEER's Services arises out of inaccurate OWNER Provided Information.

In the case where the ENGINEER's scope includes taking a preliminary or conceptual design that was prepared by another consultant for the OWNER and further developing that design to the level where it is appropriate to be issued for construction or bidding, ENGINEER shall not be responsible for latent errors or mistakes that are incorporated in that preliminary or conceptual design. Except where ENGINEER's scope explicitly includes a duty to validate or verify the preliminary or conceptual design or the underlying data and calculations, and then except only to the extent of the duty expressed in the scope, ENGINEER shall be entitled to rely on the preliminary or conceptual design as it appears in the documents provided by OWNER.

5.5 Compliance with Laws and Regulations, and Policies and Procedures

5.5.1 Engineer and Owner shall comply with applicable Laws and Regulations.

- 5.5.2 This Agreement is based on Laws and Regulations procedures as of the Effective Date. Changes after the Effective Date to Laws and Regulations may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- 5.5.3 Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- 5.5.4 Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- 5.5.5 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- 5.5.6 Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- 5.5.7 Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- 5.5.8 Engineer's services do not include providing legal advice or representation.
- 5.5.9 Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- 5.5.10 While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

5.6 Termination

The obligation to provide further services under this Agreement may be terminated:

- 5.6.1 The obligation to provide further services under this Agreement may be terminated for cause:

- A. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- B. by Engineer:
 - a) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
 - c) Engineer shall have no liability to Owner on account of such termination.
- C. Notwithstanding the foregoing, this Agreement will not terminate for cause if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure ^{within the . period} ~~within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.~~

5.6.2 The obligation to provide further services under this Agreement may be terminated for convenience, by Owner effective upon Engineer's receipt of notice from Owner.

5.6.3 Effective Date of Termination: The terminating party under Paragraph 5.5.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.6.4 Payments Upon Termination:

- A. In the event of any termination under Paragraph 5.5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 5.6.
- ~~B. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 5.5.4.a, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs.~~

Engineer to provide owner with a copy of any and all documents and instruments created regarding the project.

5.7 Use of Documents

- 5.7.1 All Documents are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- 5.7.2 If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- 5.7.3 Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- 5.7.4 OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Upon receipt of full payment due and owing for all Services, ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and related uses of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.
- 5.7.5 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.8 Controlling Law

This Agreement is to be governed by the Laws and Regulations of the State of Connecticut.

5.9 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement

however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.10 ~~Limitation of Liability~~ **No used.**

~~In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.~~

5.11 Successors and Assigns

5.11.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.10.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.11.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.11.3 Unless expressly provided otherwise in this Agreement:

- A. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Constructor, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.
- B. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.12 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.13 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and

binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.14 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

as agreed to by both parties

5.15 Environmental Site Conditions

5.15.1 It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

5.15.2 If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

5.15.3 OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

5.16 Insurance

ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property.

5.17 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.18 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.19 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.20 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.21 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.22 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.23 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

5.24 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.25 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

6. DEFINITIONS

Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

6.2 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to: (1) the Comprehensive Environmental Response,

Compensation and Liability Act, 42 U.S.C. §§9601 et seq, (“CERCLA”); (2) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (3) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (4) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (5) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (6) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (7) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.3 Construction Cost – •

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

6.4 Constructor

Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

6.5 Documents

As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.

6.6 ENGINEER’s Subcontractor.

A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.

6.7 Reimbursable Expenses.

The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit .

7. EXHIBITS AND SPECIAL PROVISIONS

7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

Exhibit A - Engineer's Services, Owner's Responsibilities, Time for Performance, Method of Payment, and Special Provisions.

Exhibit B - Engineer’s Certificate of Insurance

Exhibit C - City of West Haven's Request for Qualifications RFQ #2024-03 Stormwater Infrastructure Assessment and Design

Exhibit D – City of West Haven and Connecticut Department of Energy and Environmental Protection Agreement

Signature page follows.

This Agreement and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

ENGINEER:

Name: Dorinda Borer

Name: Joseph L. Laliberte, P.E.

Title: Mayor

Title: Senior Vice President

Date:

Date:

Address for giving notices:
City of West Haven
355 Main Street
West Haven, Connecticut 06516

Address for giving notices:
CDM Smith Inc.
101 East River Drive, Suite 1A
East Hartford, Connecticut 06108

Funds are available for the services herein.

Account No. _____

Date _____

Director of Finance

This contract is approved as to correctness of form.

Date _____

Corporation Counsel

EXHIBIT A

**Engineer's Services, Owner's Responsibilities,
Time for Performance, Method of Payment,
and Special Provisions**

**EXHIBIT A
TO AGREEMENT BETWEEN
OWNER AND ENGINEER
Scope of Work**

This is an exhibit attached to and made a part of the Agreement dated _____, 2024, between City of West Haven, Connecticut (OWNER) and CDM Smith Inc. (ENGINEER) for professional services.

1.0 ENGINEER'S SERVICES

This climate resilience study is the first step in the design process to address impacts of climate-related hazards within the Lydia/Sanford area, as shown on the attached Figure, which is prone to flooding during heavy rain events. ENGINEER will develop preliminary designs for reducing flooding in the Sanford Street Basin, in the Allingtown District, including potentially new piping, culverts, structured wetland, and a new outfall path to the Cove River. The results of this study will be critical in applying for further funding, ultimately leading to project implementation. This Task Order also includes conducting a Stormwater Utility Feasibility Study.

TASK 1 Sanford Street Area Stormwater Study

Task I.1 Data Collection and Field Investigations

Existing Data

Data to be collected, reviewed, and analyzed for the evaluation includes:

- Observations and anecdotal information from OWNER employees and other stormwater infrastructure stakeholders, including citizen complaints.
- Past reports, documentation, and evaluations of the existing stormwater system, focusing on previous stormwater events associated with flooding (for instance, superstorm Sandy and tropical storms Elsa and Ida) provided by OWNER. This may include news reports, call logs from OWNER (fire, police, public works, etc.), weather reports, and rainfall data.
- Previous field verification activity, existing conditions mapping, aerial photography, topographic mapping, wetland and environmental resource mapping, stormwater quality data, and records of past and ongoing infrastructure improvement projects.

Identification of Climate Vulnerabilities

Conduct a desktop vulnerability assessment by mapping available exposure data, which may include identification of:

- Vulnerable communities, including the social vulnerability index and mapping of environmental justice communities
- Health and community centers
- Key utility infrastructure
- Bridges, railroad crossings, evacuation routes, transit hubs
- Industrial and manufacturing facilities
- Ecological areas
- Socio-cultural spaces and historic sites
- Other critical facilities, critical infrastructure, and community lifelines

Zones of shared risk will be identified and highlighted based on the confluence of multiple factors.

Field Investigations

Before conducting the field investigations noted below, a site-specific Health and Safety Plan will be developed, as well as a Field Assessment Plan.

- Field Survey (total allowance budget of \$45,000):
 - ENGINEER will hire a specialty subcontractor to obtain the location and inverts of existing drainage system within the project area, as needed to develop hydraulic model.
 - After completion of model calibration and alternative analysis to lay out a conceptual plan, ENGINEER will hire a specialty subcontractor to pick up wetland flags and provide a topographical survey and coordinate with local utility providers for proposed locations of new pipes and green infrastructure, as needed within the total allowance budget.
- Wetland Flagging and Mapping: ENGINEER will hire a specialty subcontractor to field-delineate wetland resources. ENGINEER will characterize existing environmental conditions and habitat within the project area. A field completion memo will be prepared and wetland delineations will be provided in a digital mapping format.
- Flow Metering: ENGINEER will hire a specialty subcontractor to manage the installation, data collection, and maintenance of two area-velocity flow meters and one rain gauge in the project area for up to twelve week monitoring program. Locations in the drainage system will be selected to better understand local surcharge and flooding.
- Closed-Circuit Television (CCTV) Inspection: There are 15,000 feet of storm drains in the project area ranging in diameter from 8-inch to 48-inch. ENGINEER will coordinate with the OWNER for the OWNER to perform CCTV of prioritized storm drains within the project area. ENGINEER to provide OWNER with a map of priority areas to CCTV. OWNER to provide ENGINEER with videos from field inspections for review. ENGINEER will review pertinent CCTV results for pipes that are found to have laterals, defects, and/or debris. CCTV will primarily be used to confirm the connectivity and condition of the drainage system. The technical memorandum will include an updated connectivity map and a summary of the pipe condition.
- Geotechnical: Engineer will review available geologic and subsurface information before conducting field investigations. ENGINEER will conduct an initial site visit before the start of the subsurface explorations to mark the proposed boring locations in the field and to identify site conditions that could impact the planning and execution of the subsurface explorations program. ENGINEER will prepare the necessary subcontracts, engage a drilling subcontractor, and conduct a subsurface exploration that will include up to three days of subsurface borings. ENGINEER will be on-site full-time to coordinate the work and log the borings for the field program.

Some borings will be located along designated segments of roads where they can be accessed with a truck-mounted drill rig. Other borings requiring a track-mounted drill rig are proposed for areas where nature-based solutions are proposed in cross-country areas. Some brush or limited tree clearing may be required to access boring locations. The cut brush will be left on site. This scope of work does not include site grading or mass clearing to access the boring locations.

Standard Penetration Tests (SPTs) will be performed, and split-spoon samples will be collected on a continuous basis for the top 10 feet and at 5-foot intervals thereafter. The borings will be advanced to the target depth or practical refusal, whichever is shallower. The need to core rock will be a field decision based on the subsurface conditions encountered at the time of drilling. Borings will be advanced deeper if soft, loose, or organic soils are encountered at the target depth.

All the borings will be backfilled with excess soil cuttings and sand and topped off with an asphalt cold patch (if in a paved location). ENGINEER will coordinate with OWNER to remove and dispose of excess soil that cannot be returned down the borehole.

Drilling subcontractor will notify CBYD (Call Before You Dig) and the necessary utility agencies at least 72 hours before the start of the work. This scope assumes that OWNER will provide ENGINEER with any available plans that show locations of buried utilities in the vicinity of the borings. Neither ENGINEER nor our subcontractor can be held liable for damage to utilities inaccurately marked or unmarked by CBYD, or for

delays in the work due to CBYD. Drilling subcontractor will provide traffic cones and signage and coordinate with West Haven police for police details, if needed. It is assumed that no contamination is present in the subsurface soils and that no decontamination of drilling or sampling equipment will be required.

ENGINEER will perform mechanical sieve analyses, combined mechanical sieve with hydrometer analyses, and Atterberg Limits tests on selected cohesive soil samples.

ENGINEER will incorporate geotechnical information into Technical Memorandum (see below) that summarizes the field exploration program, site specific existing conditions, proposed project features, subsurface soil and groundwater conditions, and geotechnical recommendations for the design and construction of the project. Technical Memorandum will include subsurface exploration location plans, boring logs of subsurface conditions, and results of geotechnical laboratory test data.

- Environmental Sampling and Testing: ENGINEER will collect samples as part of the geotechnical drilling program. At least one sample per boring will be collected from each location to characterize material that may require off-site disposal as part of construction. A second sample may be required in areas where contamination is encountered in the field. Samples will be analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals, polychlorinated biphenyl's (PCBs), and total petroleum hydrocarbons (TPH). In addition, Toxicity Characteristic Leaching Procedure (TCLP) analysis will be conducted on any constituent that exceeds the 20 times rule trigger level.

Following the collection of the environmental sampling data, ENGINEER will prepare a summary of the environmental data collected incorporated into the Technical Memorandum (see below). Technical Memorandum will include possible disposal and/or re-use options available.

- Police Details: Budget of \$9,500 for police details, if required.

Task 1.2: Drainage System Modeling, Analysis, and Preliminary Design

Drainage System Hydraulic Modeling and Analysis

ENGINEER will delineate the watershed tributaries or subcatchments discharging to the storm drains within the Sanford Street basin area using the OWNER's GIS topography. Based on the data collection and review (Task 1.1), ENGINEER will develop a drainage model of the existing storm drainage system using the EPA Storm Water Management Model (SWMM). The model will be for the drainage system and will not include receiving waters (i.e., Cove River). Up to three historical storms with documented flooding will be simulated using the existing conditions model to check reported flooding and update model calibration. SWMM hydrologic and hydraulic model development and analysis will include the following:

- OWNER's consultant performing a separate study for the Cove River basin shall provide river stage boundary and tailwater design conditions at storm drain outfalls along Hamilton Street.
- Conduct field visits to inspect storm drains and locations where flooding was observed during extreme storms.
- Use SSURGO soil data to develop infiltration parameters.
- Use CT ECO 2016 LiDAR data for catchment delineation.
- Use CT ECO 2012 Impervious (uconn.edu) to develop SWMM catchment parameters.
- Use GIS and as-built drawings to develop the hydraulic model.
- Flow meter data review.
- Calibration based on monitored rainfall events during the metering period.
- Design storm simulation (10-, 50-, 100-, 200-year).
- Assess existing condition capacity for the storm drains based on design storms.

ENGINEER will work with the OWNER to select appropriate design conditions incorporating climate change conditions through at least 2050 for the storm drainage system. Information collected will identify problem areas and potential causes of flooding. ENGINEER will provide study area mapping, drainage computations (including hydraulic grade line), design assumptions, design criteria, plans, and hydraulic model output. ENGINEER will identify and describe the limitations of the existing storm drainage system. The analysis will identify the following:

- Existing drains that are appropriately sized and in good condition.
- Existing drains that require replacement either due to pipe condition or because they are determined to be undersized.
- Locations recommended for extension of the existing mainline drainage system with appropriately sized pipe to address street flooding.

Where applicable to address flooding, ENGINEER will develop and analyze five feasible alternatives to improve the existing drainage system using the design storm. ENGINEER will identify low points within the project area, research the possibility of redirecting stormwater to other areas, and evaluate impacts of storm conditions based on modeling results. The alternatives will focus on a blend of increased conveyance piping and new/relocated outfalls with nature-based solutions, such as potential wetland creation for flood storage and green infrastructure alternatives. Green infrastructure in certain areas may help improve stormwater quality and quantity and reduce downstream peak flow, reducing street flooding. ENGINEER will evaluate up to ten alternative design concepts addressing climate resiliency and water quality.

The draft alternatives will be developed with a particular focus on the following criteria:

- Reduces risks to climate vulnerabilities identified in Task 1.1.
- Incorporates co-benefits such as creating community amenities and reducing greenhouse gas emissions.
- Incorporates nature-based solutions and hybrid approaches.
- Incorporates the Connecticut Institute for Resilience & Climate Adaption's (CIRCA) PERSISTS framework (permissible, equitable, realistic, safe, innovative, scientific, transferable, and sustainable).
- Identifies applicable federal resilience grant opportunities and strategies for locally derived match funding.
- Incorporates infrastructure improvements, including improvements to existing stormwater infrastructure.
- Identify areas (based on field survey) with limited catch basins and storm drains and conduct model analysis to study the effectiveness of new storm drainage infrastructure.
- Identify areas to install green infrastructure and conduct model analysis to study the performance of each location.
- Identify areas that can be converted to wetlands and use the hydraulic model to analyze the effectiveness of routing flows away from the streets to be discharged into the wetlands.
- Using the hydraulic model, simulations of the drain system will be performed to determine if oversizing downstream pipe may provide for pipe storage of stormwater, coupled with consideration of installing check valves on existing and new outfall(s) to prevent Cove River from backing up into the drainage system.

The alternatives analysis will also consider catch basin locations and determine if additional basins are needed to convey drainage from flood-prone areas. ENGINEER will also evaluate the type of catch basin grate; for example, double-grated catch basins in low spots and high-capacity vane-style grates on streets with slopes (to increase the stormwater collected by the drainage system in the upper reaches before it reaches the flood-prone areas downstream) will be considered.

For all viable alternatives evaluated, upstream and downstream impacts will be considered within the project limits. For the selected alternative, ENGINEER will model a larger storm (ie the 200-year storm) to evaluate the performance of the recommended plan.

ENGINEER will evaluate alternatives and provide final recommendation(s) on the preferred alternative. The results of the alternative analysis will be summarized in a technical memorandum (see below).

Preliminary Design (30%)

For the selected alternative, 30% Preliminary Design will include:

- Plan and profile drawings (20-scale) for up to 10-sheets.
- Plans for green infrastructure (20-scale, for 10 alternative design concepts) for up to 5 sheets
- An opinion of probable construction cost.
- Calculations to support proposed drain sizes.
- Review of utility issues based on survey.

- Boring information from field explorations.

ENGINEER will submit the 30% plans and preliminary opinion of probable construction cost to the OWNER for review. After updating the drawings to address the OWNER's comments, Preliminary Design drawings will be suitable for the OWNER to proceed with Final Design under a separate agreement.

Technical Memorandum

Results of field investigations, modeling, alternatives analysis, preliminary design, and cost estimate will be summarized in a draft Technical Memorandum, which will be submitted to OWNER for review. The Technical Memorandum will identify permits required for the future design phase and potential regulatory concerns. ENGINEER will complete the initial consultation with State Historic Preservation Office (SHPO) regarding the potential presence of archaeological and cultural resources. ENGINEER will also submit an inquiry to the Natural Diversity Database (NDD), complete Information for Planning and Consultation (IPaC) with United States Fish and Wildlife, and incorporate the results into the Technical Memorandum.

After OWNER has reviewed the draft Technical Memorandum, ENGINEER will incorporate OWNER's comments into the final Technical Memorandum, which will be submitted in both hard copy and electronic format.

Task 1.3: Community Outreach

ENGINEER will facilitate two public meetings to solicit feedback from the community. Meeting attendees will be solicited for feedback regarding their own experiences within the City of West Haven related to flooding and other climate related risks. One meeting will be held at the beginning of the project to identify/confirm areas with climate vulnerabilities, and one meeting will be held after the alternatives analysis to obtain public input on the alternatives and recommended plan.

For the community outreach public meetings, ENGINEER will prepare an agenda, PowerPoint presentation, and meeting documents/figures (including graphics for green infrastructure alternatives) in advance, ENGINEER will draft meeting summary after. This task includes preparation of project status documents for public distribution and development of public outreach documents.

Task 1.4: Grant Applications

There are several available state and federal grant opportunities for future project phases, including final design and construction of the recommended plan. ENGINEER will coordinate with OWNER to select the most promising grant opportunities to pursue. Depending on the grant(s) being pursued by OWNER, either ENGINEER or an independent consultant will assist OWNER with preparing a grant application in coordination with CT DEEP, including developing a Benefit Cost Analysis (BCA).

Task 1.5: Project Management, Meetings, and Reporting

Management will be provided throughout all project phases to address ongoing activities, owner interface, and project staff-related efforts. The Project Manager will be responsible for coordinating all correspondence between the OWNER and ENGINEER internal parties. They will manage tasks, staff, schedule, budget, and oversee project work. The Project Manager will approve and submit engineering services billings to the OWNER with the assistance of administrative staff. The Project Manager will also be involved in reviewing that quality control measures are being implemented at all levels and assisting where necessary with overall management of the project. Project management and reporting is assumed to cover both Task 1 and Task 2 services.

ENGINEER will prepare for (including PowerPoint presentations, if needed) and attend various coordination meetings with City of West Haven staff, councils, departments, utilities, and the community. This scope includes:

- One workshop style meeting with OWNER to initiate the project, collect data, and identify climate vulnerability areas.
- Five progress meetings with OWNER and applicable stakeholders to solicit feedback/comments and identify other critical factors for evaluation of climate-related vulnerability.

- Corresponding with utilities for data gathering as needed.
- One workshop style meeting with relevant OWNER departments to review the alternatives and solicit feedback.

For meetings, ENGINEER will prepare an agenda, meeting documents/figures and draft meeting summaries. ENGINEER will finalize the meeting summaries after any comments are received from the OWNER. This scope includes several internal meetings, including: one kickoff meeting, one project quality management meeting, two technical review committee meetings, up to four progress meetings with OWNER, correspondence, compiling information for OWNER and coordination with OWNER over the project duration.

As required by the state grant, project reporting will include the following:

- **Quarterly Reporting:** ENGINEER will submit to DEEP project manager a quarterly report, containing progress made during that quarter, any significant deviations on schedule, any significant changes to project staff, additional pertinent information (such as analysis and explanation of cost overruns, unanticipated events/consequences, etc.), and any additional documentation requested by DEEP. Quarterly reports shall not exceed 2 full pages.
- **Final Reporting:** In addition to the design final deliverables included above, ENGINEER will submit to DEEP project manager a Final Report Executive Summary, not to exceed 5 pages, that demonstrates all elements of the scope of work have been met, as outlined in Appendix E of the OWNER's Grant Agreement; PowerPoint Slide(s) that highlight the accomplishments and lessons learned (no more than 3 slides); a copy of the funded activity, a copy of the implementation funding assessment, and a copy of the draft project narrative for a Federal grant application. ENGINEER will also submit with this Final Financial Report.
- **Climate Change Inclusion:** ENGINEER will submit to DEEP project manager, within 90 days of contract expiration, a draft summary of the Project Design that identifies what standards of rainfall it is designed for and how it accounts for future climate change conditions as referenced in the January 2021 Governor's Council on Climate Change report for DEEP review and approval. ENGINEER will respond to DEEP comments within 30 days and incorporate into the final Project Design.
- **Final Summary and Study Deliverables:** At the end of the period of performance of this grant, ENGINEER will submit to DEEP: a copy of the final Project Design and related activities funded by the grant; a copy of a draft project narrative for any federal grant application(s) intended to fund implementation of the project; a separate executive summary highlighting the process and lessons learned as detailed in Appendix E of the OWNER's Grant Agreement; a presentation slide (s) in PowerPoint format that communicates accomplishments and lessons learned as detailed in Appendix E of the OWNER's Grant Agreement; and a copy of the implementation funding assessment as detailed in Task1(b) of the OWNER's Grant Agreement.

TASK 2 Stormwater Utility Evaluation

Task 2.1: Identify and Review Existing Stormwater Infrastructure & Program

ENGINEER will facilitate a workshop with OWNER staff to collect information on the current status and function of the stormwater management program and system. The workshop will be attended by key OWNER staff and internal stakeholders, such as department employees that are involved in delivering stormwater management services. Information gathered and discussed at the workshop may include the following:

- Observations and anecdotal information from OWNER employees and other stormwater infrastructure stakeholders, including citizen complaints.
- Cost information to deliver existing services, including staff time, salaries, equipment usage, materials or any other related information necessary to estimate the average annual program cost.
- Past reports, documentation, and evaluations of the existing stormwater system with a particular focus on documentation of previous stormwater events associated with flooding, for instance superstorm Sandy and tropical storms Elsa and Ida; and
- Previous field verification activity, existing conditions mapping, and records of past and ongoing infrastructure improvement projects.
- Any previously identified short- and long-term improvement projects

Task 2.2: Data Analysis

ENGINEER will analyze the current status of the stormwater infrastructure from both a water quantity

(insufficient drainage system resulting in flooding) and water quality (MS4 and Consent Decree requirements). ENGINEER will utilize available OWNER GIS to map citywide watershed areas and overlay information from the initial data gathering efforts. This effort is not intended to develop specific project improvements, but rather to provide a representation of existing program needs and program status that may support the future need for additional funding.

Task 2.3: Cost Estimating

ENGINEER will estimate level of effort and average annual, planning level costs for the existing stormwater management program, including compliance with MS4 permit requirements and addressing stormwater system deficiencies for use in the stormwater utility feasibility study. Costs will be based upon information provided to ENGINEER by the OWNER in the workshop noted in Task 2.1. ENGINEER will provide benchmarking information from other similar communities as appropriate where local cost data is not available. The costs will be developed to identify the current level of service as well as up to two alternative, future levels of service to meet OWNERs short- and long-range funding requirements.

Task 2.4: Stormwater Utility Rate Structure Analysis

ENGINEER will discuss the concept of a potential future stormwater utility with OWNER, including potential rate structure alternatives with the capacity to fund the program needs identified in Task 2.3.

ENGINEER will use the residential and non-residential impervious area GIS data developed by the University of Connecticut Center for Land Use Education and Research to assess up to three rate structures, mixing different residential and non-residential rate variables. ENGINEER will not be developing parcel-level impervious area for properties within the OWNER's jurisdiction at this stage of the study. The data provided by the University of Connecticut is assumed to be sufficient for this planning level analysis, based on other similar projects performed by ENGINEER in Connecticut.

The analysis of stormwater fee structures will begin with an analysis of existing land cover. This process will result in an estimate of the total number of stormwater billing units within the City. This task will include the statistical analysis of imperviousness by parcel class: residential, multi-family, commercial, tax exempt, and public service in sufficient number to consider the rate structure and potential revenue generation capacity within the City.

In particular, ENGINEER will address variable single-family rates (e.g., tiered) rate structures for non-residential parcels such as ERU charges or per square foot charges. As part of this analysis, ENGINEER will also consider potential exemptions, assumed to be less than five percent of all accounts. The rate structure should be assessed based on equity and fairness as well as the fiscal consequences of the choices. ENGINEER's rate model will provide stormwater management program costs (from Existing and Future Program Review above) and an assessment of the revenues and costs for various rate structure alternatives.

The rate structure evaluation will also include the listing of potential, common credits offered by other similar utilities and the potential impact of credits on the user rate and revenue.

ENGINEER will prepare a PowerPoint presentation with a summary of potential rate structures for a stormwater utility concept and a matrix of proposed rates and revenue needs. The discussion will include how such a proposed finance structure will impact presently non-taxable properties.

Task 2.5: Billing System Requirements

ENGINEER will investigate billing options. Based on extensive experience, ENGINEER's typical recommendation is to bill a stormwater fee through an existing utility bill, such as the sewer bill. However, ENGINEER recognizes the potential challenges to that approach and alternative billing options will be explored, such as collecting the stormwater utility fees along with the annual Tax Assessor's bill or the creation of an entirely new utility billing structure. ENGINEER will identify and evaluate the advantages and disadvantages of alternative billing methods.

Task 2.6: Stormwater Utility Feasibility Study

ENGINEER will produce a Feasibility Report that summarizes the work completed under Task 2. Prior to drafting the reports, a collaborative workshop will be held with the OWNER's and other stakeholders to discuss the results of the individual subtasks and conduct knowledge-sharing. After the conclusion of the workshop, ENGINEER will prepare electronic copies of the draft Feasibility Reports for review and comment by OWNER. ENGINEER will incorporate one round of comments into a final report. The report will lay out the next steps for advancing the Stormwater Utility concept if the OWNER elects to continue with the process. These next steps likely will include updating the OWNER's aerial photographs so that the amount of impervious area in total and assigned to specific properties is most recent and accurate, as well as development of a public outreach/education program (next steps not included in this scope).

The report's appendix will include sample stormwater utility rate ordinances from other communities in Connecticut. A stormwater utility ordinance will not be developed at this stage of the project since additional technical work is required to support the future stormwater utility implementation, if desired.

ENGINEER will also prepare a PowerPoint presentation that summarizes the results of the Study. ENGINEER will participate in one presentation with OWNER's leadership team (to be determined).

2.0 OWNER'S RESPONSIBILITIES

2.1 OWNER's consultant performing a separate study for the Cove River basin shall provide river stage boundary and tailwater design conditions at storm drain outfalls along Hamilton Street.

3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

TASK 1 Sanford Street Area Stormwater Study

ENGINEER will complete the scope of services within twelve months of receiving authorization to proceed. Final report and drawings will be provided within one month of receiving final comments from OWNER.

TASK 2 Stormwater Utility Evaluation

ENGINEER will complete the Stormwater Utility Feasibility Study Report within eight months of authorization to proceed. Final report will be provided within one month of receiving final comments from OWNER.

4.0 METHOD OF PAYMENT

The method of payment for Services rendered by ENGINEER shall be as set forth below:

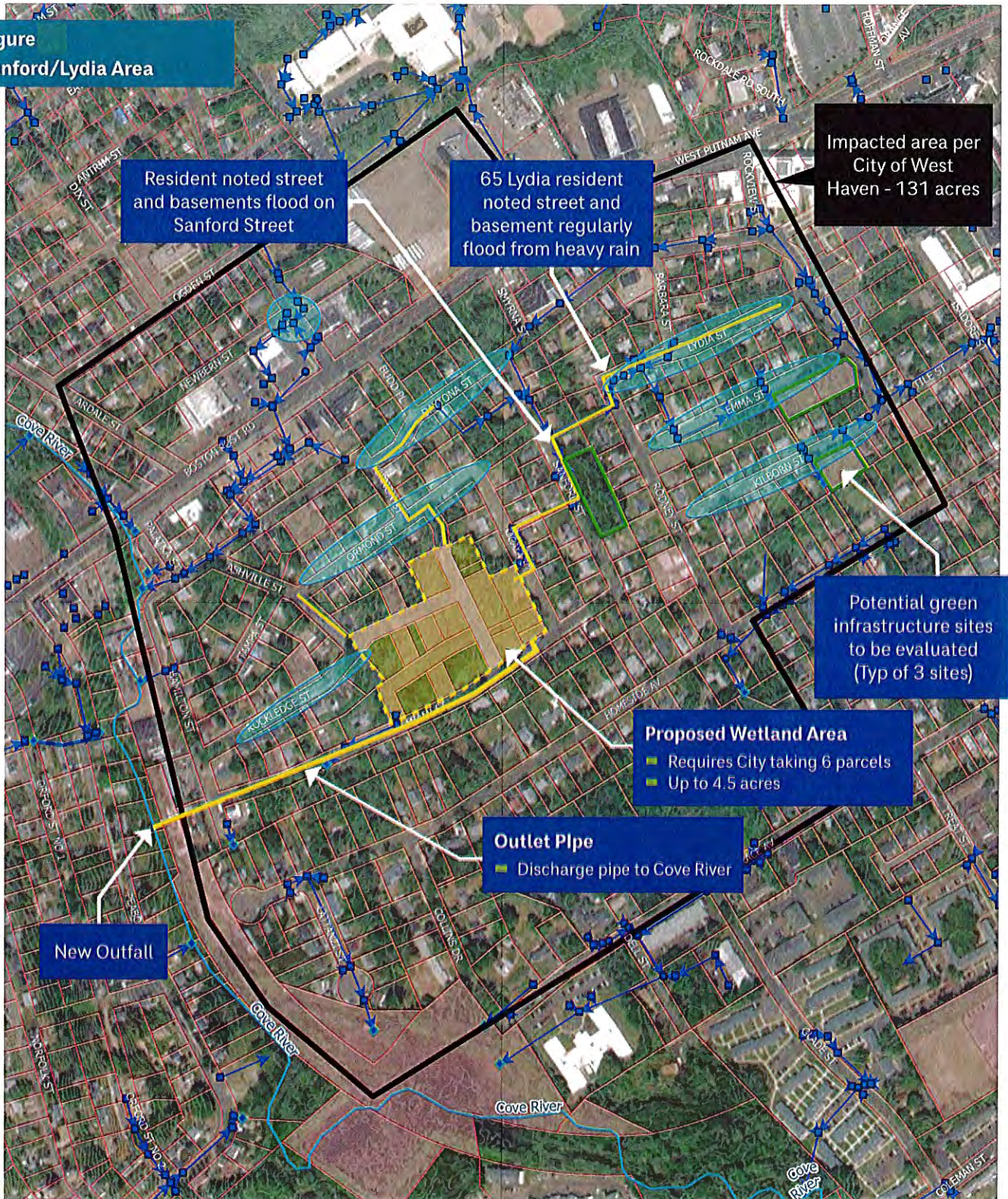
Compensation for services of ENGINEER described in this Exhibit A will be lump sum for \$609,000, to be invoiced monthly based on approximate percent complete.

5.0 SPECIAL PROVISIONS

OWNER has established the following special provisions and/or other considerations or requirements in respect of the Assignment:

See attached OWNER Grant Agreement.

**Figure
Sanford/Lydia Area**



Impacted area per City of West Haven - 131 acres

Resident noted street and basements flood on Sanford Street

65 Lydia resident noted street and basement regularly flood from heavy rain

Potential green infrastructure sites to be evaluated (Typ of 3 sites)

Proposed Wetland Area
 ■ Requires City taking 6 parcels
 ■ Up to 4.5 acres

Outlet Pipe
 ■ Discharge pipe to Cove River

New Outfall

Legend

- ◆ Outfalls
- Manholes
- Catch Basins and Inlets
- ➔ Gravity Main
- Culvert
- ▭ Parcels
- ▭ City Owned Parcels
- ▭ Impacted Area
- ▭ 2-Foot Contours
- Flooding Area

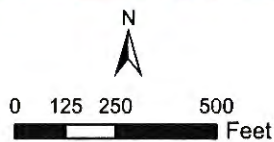


EXHIBIT B
Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
05/07/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. Boston MA Office 53 State Street Suite 2201 Boston MA 02109 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): 800-363-0105	
	E-MAIL ADDRESS:	
INSURED CDM Smith Inc. 75 State Street Suite 701 Boston MA 02109 USA	INSURER A: Underwriters At Lloyds London	15792
	INSURER B: Hartford Fire Insurance Co.	19682
	INSURER C: Twin City Fire Insurance Company	29459
	INSURER D: Hartford Accident & Indemnity Company	22357
	INSURER E: ACE Property & Casualty Insurance Co.	20699
	INSURER F: Evanston Insurance Company	35378

COVERAGES **CERTIFICATE NUMBER:** 570105615136 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			08CSEQU4161	01/01/2024	01/01/2025	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$15,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			08 UEN QU4162	01/01/2024	01/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
E	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION			XEUG28194687008	01/01/2024	01/01/2025	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A			08WNQU4160 AOS	01/01/2024	01/01/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000
C	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			08WBRQU4163 WI	01/01/2024	01/01/2025	E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-PD LICY LIMIT \$1,000,000
A	Architects & Engineers Professional			PSDEF2400033 Professional/Claims Made	01/01/2024	01/01/2025	Each Claim \$3,000,000 Aggregate \$3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: Project Name: City of West Haven - Sanford Street Basin Stormwater Study, Project Number: RFQ #2024-03, for Stormwater Infrastructure Assessment & Design City of West Haven, CT, Issued: Wednesday, January 24, 2024, Project 1: Assessing Nature-Based Solutions to Mitigate Flood Impacts along the Cove River, Project 2: Sanford Street Basin Stormwater Study, Project 3: Lake Street/ colonial Boulevard Area Flooding, Project Number: DCRF-2023-02-09, (Sanford Street Basin Flood Resilience Project Development).
 City of West Haven, Connecticut (State) is included as Additional Insured in accordance with the policy provisions of the General Liability policy.

CERTIFICATE HOLDER City of West Haven Attn: Dorinda Borer, Mayor 355 Main Street West Haven CT 06516 USA	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

Holder Identifier : A

570105615136

Certificate No :



AGENCY CUSTOMER ID: 10518329

LOC #:

ADDITIONAL REMARKS SCHEDULE

Page _ of _

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED CDM Smith Inc.	
POLICY NUMBER See Certificate Numbe 570105615136			
CARRIER See Certificate Numbe 570105615136	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance
01.01.24 - 01.01.25 Professional

Policy: PSDEF2400033

Beazley (Syndicates 2623/0623) - 25%
BRIT (Syndicate 2987) - 25%
Munitus (Syndicates 4242/457/4711/5555) - 12.5%
Re/Rn (Syndicate 1458) - 10%
Convex (Syndicate 1984) - 7.50%
Castel Underwriting (Syndicate 2525) - 5%

Professional Policy: 42CNP31339704
National Fire & Marine Insurance Company - 15%

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization for whom you have agreed in a written contract or agreement, prior to an "occurrence" or offense, that such person or organization on be added as an additional insured to your policy.	All locations as required by a written contract or agreement entered into prior to an "occurrence" or offense
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

EXHIBIT C

City of West Haven's Request for Qualifications RFQ #2024-03 Stormwater Infrastructure Assessment and Design

**CITY OF WEST HAVEN
REQUEST FOR QUALIFICATIONS**

RFQ# 2024-03

STORMWATER INFRASTRUCTURE ASSESSMENT AND DESIGN

The City of West Haven (here after referred to as, "the City") is soliciting Statements of Qualifications from qualified firm(s), or a team, for assistance in the development of a stormwater infrastructure assessment, studies, final design, and/or engineering/inspection services during construction.

The City seeks to identify qualified consultants who have previous experience in preparing a stormwater infrastructure assessment and the development of final design documents for recommendations. The consultant should be proficient in Connecticut state law, stormwater design and management, GIS data, and clear and user-friendly presentation of materials.

All respondents to this RFQ are subject to the instructions communicated in the RFQ document and respondents are cautioned to completely review the RFQ in its entirety and to follow instructions carefully. This work is funded via Connecticut Department of Energy and Environmental Protection (CT DEEP) – Climate Resilience Fund, National Oceanic and Atmospheric Administration (NOAA) and National Fish and Wildlife Foundation (NFWF) – National Coastal Resilience Fund and Urban Act. As such, this will require certain qualifications associated with said funding.

Responses to this RFQ shall be submitted to Tammy O'Connell, Procurement Specialist, City of West Haven, 355 Main Street, 3rd Fl. Purchasing Dept., West Haven, CT 06516. Responses are due no later than Wednesday, February 21, 2024 at 2:00pm. Respondents are required to submit four (4) copies of their submission with one (1) electronic copy. All submissions must be sealed and clearly marked RFQ# 2024-03 Stormwater Infrastructure Assessment and Design. No oral, telephonic, emailed, or faxed responses shall be considered. Any responses received after the above scheduled due date and time, will be rejected.

All questions regarding this Request for Proposals should be directed to Abdul Quadir, City Engineer, by e-mail at quadir@westhaven-ct.gov. **The RFI (Request For Information) deadline is Wednesday, February 7, 2024 at 1:00pm.** Questions submitted later than this deadline will not be considered. An addendum with questions and answers, if necessary, will be published on the City website by 3:00pm on Wednesday, February 14, 2024.

Tammy O'Connell
Procurement Specialist



City of West Haven

RFQ # 2024-03

Request for Qualifications (RFQ)

for

**Stormwater Infrastructure Assessment &
Design**

City of West Haven, CT

Issued: Wednesday, January 24, 2024

Responses Due: Wednesday, February 21, 2024 2:00pm

The City of West Haven (further referred to as “the City”) is soliciting Statements of Qualifications from qualified firm(s) or a team for assistance in the development of a stormwater infrastructure assessment, studies, final design, and/or engineering/inspection services during construction.

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Background

The City of West Haven has been a Phase II MS4 permitted municipality Circa 2007. With that permit designation the City has an obligation to educate our residents on stormwater pollution as well as inspect and manage the stormwater infrastructure within our jurisdiction. Currently home to over 54,000 residents, the City contains approximately 12 square miles. West Haven is experiencing significant rain events that far exceed the original design capacity of the City’s stormwater infrastructure. With the effects of climate change in mind, the City seeks to develop a proactive plan to maintain and update our overburdened stormwater infrastructure with a focus on nature-based solutions to address stormwater flooding and improve water quality.

Scope of Services

The stormwater infrastructure scope of services should include the following information and analysis. Alternative services and deliverables may be proposed on evidence of the need to meet the purpose of the RFQ. RFQ responses that do not include all these will not be considered.

Project 1: Assessing Nature-Based Solutions to Mitigate Flood Impacts along the Cove River

Provide an environmental engineering study of the Cove River basin, which is tidally-influenced. The Cove River originates in Orange and flows through West Haven before discharging into Long Island Sound at Sea Bluff Beach by Bradley Point. Dams along the river form the Maltby Lakes, reservoirs of the South Central Connecticut Regional Water Authority (RWA), and Phipps Lake. The study should evaluate both water quality and quantity, as large parts of the city flood from the Cove River during large storm events, including property erosion concerns from bodies of water that feed into the Cove River. The study shall include:

- Conducting alternatives analysis and targeted public engagement to identify appropriate nature-based solutions along the Cove River.
- Advancing efforts to enhance connectivity between headwaters and coast, between channel and floodplain, and to restore natural flow patterns, flood mitigation capabilities and habitats.
- Providing considerations for stormwater and drainage conveyance, watershed management, hazard mitigation, green stormwater infrastructure, stormwater control measures, and stormwater asset management.
- Providing engineering analysis of key stormwater features such as stream stabilization and restoration.
- Identifying climate vulnerabilities.
- Performing field investigations.
- Providing drainage system modeling and analysis.
- Identifying opportunities to collaborate with neighboring municipalities on stormwater projects.
- Analyzing replacement or rehabilitation benefits for high-risk stormwater systems.
- Evaluating solutions beyond the impacts of flooding, such as the overall environmental health of the river.

- Evaluating ways to reduce the flow of potentially contaminated runoff water from roads to protect marsh metabolism and the health of Long Island Sound.
- Providing recommendations for the Cove River basin to address stormwater flooding along the river by utilizing things such as retention areas and natural percolation to alleviate flooding issues while yielding substantial environmental benefit.
- Providing a summary report or technical memorandum with recommendations and concept designs to correct any deficiencies or concerns with the existing stormwater system.
- Ranking the recommendations by risk and other factors to prioritize projects by order of City's needs.
- Including cost estimates for various alternatives and recommend improvements.
- Assisting with grant applications.

Project 2: Sanford Street Basin Stormwater Study

This climate resilience study will be the first step in the design process to address the impacts of climate-related hazards within the Lydia/Sanford area, which is prone to flooding during heavy rain events. Develop preliminary designs for reducing flooding in the Sanford Street Basin, in the Allingtown District, including potentially new piping, culverts, structured wetland, and a new outfall path to the Cove River. The study will include:

- Conducting alternatives analysis and targeted public engagement to identify appropriate nature-based solutions in the Lydia/Sanford area.
- Evaluating ways to reduce the flow of potentially contaminated runoff water from roads to protect Cove River and downstream wetlands.
- Identifying climate vulnerabilities.
- Performing field investigations.
- Providing drainage system modeling, analysis, and preliminary design.
- Providing recommendations for the Lydia/Sanford area to address stormwater flooding by utilizing things such as retention areas and natural percolation to alleviate flooding issues while yielding substantial environmental benefit.
- Providing a summary report or technical memorandum with recommendations and Preliminary Design drawings to correct any deficiencies or concerns with the existing stormwater system.
- Including cost estimates for various alternatives and recommended improvements.
- Providing community outreach.
- Assisting with grant applications.
- Conducting a feasibility study for a stormwater authority.

Project 3: Lake Street/ Colonial Boulevard Area Flooding

This is phase 1 of the 4 phase project to relieve flooding in the area and reduce beach erosion. Phase 1 involves upgrading outfall pipes and groin on the beach to eliminate overflows and beach erosion. Existing outfalls of 24 inch and 48 inch will be upgraded along with two manholes. A study will be conducted to determine 25, 50 and 100 year storm flows to determine outfall pipes sizing. Consultant will determine the catchment area and rainfall intensities for various frequency storms to arrive at flows. This phase improvements will be limited to the outfalls only and other improvements required will be addressed in future phases, Services may include the following:

- Performing field investigations.
- Providing final design drawings and specifications suitable for public bidding.
- Including cost estimates for 30 percent, 60 percent and final design.
- Providing assistance during the bid phase of the project.
- Providing community outreach
- Providing engineering services during construction including construction inspection.

Future Stormwater Infrastructure Projects

Provide additional stormwater infrastructure study, design, and engineering services during construction as requested by the City with similar scope and budget to projects noted above.

Content and Format of Proposal Package

Firms submitting qualifications shall have no association with City staff that could be considered a conflict of interest. Any such relationship will subject the firm to immediate disqualification in consideration for this project. A selection committee will evaluate the submittals and may elect to select the most qualified firm based on the responses as submitted or elect to conduct interviews with multiple firms prior to recommending a firm.

The City is requesting four (4) copies and one (1) electronic copy. Submittals shall be on 8.5" x11" paper, side bound so they lay flat when opened. The submission shall be a maximum of 70pages front and back or 140 pages single-sided. Submittals shall include the following:

Project Approach:

The letter of interest provided in the submission shall include the following:

- The name and address of the prime consultant and the state in which it is incorporated and chiefly located.
- Evidence of State Licensing as a Professional Engineer.
- Provide supporting information on why your team is qualified and summarize why the City should select your firm.
- Identification of the project team, including the role and relevant work experience for key team members.
- A summary of the scope of services that shows an understanding of the City's needs and describes how those would be met.

Firm and Staff Qualifications:

The submission shall include a general description of the firm (prime and subconsultants) and its background as it relates to this project. Specific information regarding the firm and staff shall be submitted and include:

- Information regarding the firm's (including subconsultants, if applicable) previous experience with similar or related projects in Connecticut and the United States, including a brief description of these projects and project staffing.
- Three references including client name, address, contact person, telephone number, email, project start and end date as well as a project description. References should be for similar or related projects on which key staff that are proposed for this project have worked.

Anticipated Schedule:

- The submission shall provide a schedule and demonstrate how the submitting firm will manage its responsibilities and work scheduled to be performed, including work of and with City personnel.

Work Samples:

- The submission shall include up to three recent work samples successfully prepared by the prime consultant within the last 5 years. The work samples shall be submitted with the proposal and will not count toward the maximum page limit.

Submittal Process Details

Firm selection will be based on the project approach, firm/staff qualifications, anticipated schedule, and work samples.

The City of West Haven reserves the right to reject any responses to this RFQ that do not comply with the content and format of proposal requirements. The City can also conduct discussions with any or all respondents. The City accepts no financial responsibility for any costs or expenses incurred by any entity in responding to this RFQ. All submissions may be kept by the City and may be disclosed to third parties at the City's discretion. All submissions are public record, and subject to FOIA requests.

Questions and Clarifications

All questions shall be submitted to Abdul Quadir, City Engineer, via email (quadir@westhaven-ct.gov), no later than 1:00 p.m. on Day, February 7, 2024. Questions submitted later than this deadline will not be considered. An addendum with questions and answers, if necessary, will be published on the City website by 3:00 p.m. on Day, February 14, 2024.

Statement of Qualifications Submittal

The deadline for firms submitting qualifications is 2:00pm on Day, February 21, 2024. No submissions or supporting documents will be accepted after this deadline. Firms accept all risks for late delivery of Qualifications Packages, regardless of fault. The City takes no responsibility for submittals lost in transit or delivered late. Submittals must be delivered to:

**West Haven City Hall
355 Main St., 3rd Fl.
Attn: Tammy O'Connell, Procurement Specialist
West Haven, CT 06516**

Submittal packages should be enclosed in a sealed envelope marked **REQUEST FOR QUALIFICATIONS – STORMWATER INFRASTRUCTURE ASSESSMENT & DESIGN (RFQ # 2024-03)** and set to the attention of Tammy O'Connell.

Anticipated Schedule

- 02/21/2024: Submission deadline
- 02/27/2024-03/29/2024: Selection committee review of submittals/potential interviews
- 04/02/2024: Highest ranked firm notified
- 04/02/24-04/30/2024: Procurement
- 05/06/24: Project Kickoff

Selection Process

This RFQ provides information necessary to prepare and submit qualifications for consideration and ranking by the City. It is the intent of the City to appoint a selection committee to review the submitted Statements of Qualifications. This committee will review each qualification submittal and rank the submittal based on the criteria requirements specified within this RFQ. The City may invite firms for interviews, but this is not a required step in the selection process. At the conclusion of the interviews (if held), the selection committee will rank the firms based on the selection criteria and the interviews. The City will provide electronic notification to all firms regarding final selection by 04/30/2024.

Upon completion of the selection process, the highest ranked firm will be asked to submit a fee proposal to begin contract negotiations for a fair and reasonable price. By submitting its Statement of Qualifications in response to this RFQ, respondent accepts the evaluation process as outlined in the following section, acknowledges, and accepts that determination of the "most qualified" firm may require subjective judgments by the City.

Evaluation Criteria

Firms will not be considered unless the following minimum qualifications are met:

1. Firm(s) must be properly licensed with the State of CT Department of Consumer Protection for Professional Engineers and Land Surveyors; and
2. Firms(s) must employ at least one (1) Connecticut Licensed Professional Engineer in responsible charge of the work from this RFQ.

If an award is made, it is expected that the City's selection will be based off the following evaluations criteria:

1. Proposal package responsiveness, appearance, and presentation: Provide a readable, clear and straightforward project approach that addresses the needs of the City's climate change experiences,

limited resources, and need for future planning. (20%)

2. Overall Qualifications of the Project Manager and Project Team: Clear identification of the project manager and team personnel that will be assigned to the project. This section shall include the demonstrated project management and quality control methods employed by the team. (25%)
1. Project Approach and Project Understanding: Preference shall be afforded to those firms that, in the opinion of the City, will be able to adequately present a clear project plan and proposed approach towards the successful implementation of a stormwater management plan and stormwater utility fee. (35%)
2. Relevant Experience: Provide brief summaries of relevant project experience, expertise, and qualifications of the firm. Include relevant work experience for the project team and note the anticipated availability of each member. (20%)

Additional Information about this RFQ

Public Records

Upon receipt by the City, your Qualifications Package is considered a public record except for material that qualifies as "Trade Secret" information under relevant CT Statutes. Your Qualifications Package will be reviewed by City of West Haven staff, as well as members of the general public who may submit public record requests. To properly designate material as a trade secret under these circumstances, each firm must take the following precautions: (a) any trade secrets submitted by a firm should be submitted in a separate document marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Qualifications Package," and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the document.

In submitting a Qualifications Package, each firm agrees that the City may reveal any trade secret materials contained in such response to all staff involved in the selection process and to any outside consultant or other third parties who are hired to assist in the selection process. Furthermore, each firm agrees to indemnify and hold harmless the City and each of its officers, employees and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the firm has designated as a trade secret. Any firm that designates its entire Qualifications Package as a trade secret may be disqualified from the selection process.

Conditions, Clarifications and Reservations

The City expects to select one firm or team for all projects or select separate firm for each project but reserves the right to request substitutions of subconsultants.

The City reserves the sole discretion and right to reject any and all responses received with respect to the RFQ and to cancel the RFQ process at any time prior to entering into a formal agreement. The City further reserves the right to request additional information or clarification of information provided in any response. The City also reserves the right, but is under no obligation, to waive technicalities and informalities. The City shall make the award as deemed in its best interest.

A response to this RFQ should not be construed as a contract, nor indicate a commitment of any kind. The RFQ does not commit the City to pay for costs incurred in the submission of a response to this RFQ or for any cost incurred prior to the execution of a final contract. No recommendations or conclusions from this RFQ process concerning an individual firm shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law or statutory law of Connecticut. Neither binding contract, obligation to negotiate, nor any other obligation shall be created on the part of the City unless the City and your firm execute a contract.

All proposal packages and materials submitted hereunder become the exclusive property of the City of West Haven.



CITY OF WEST HAVEN
355 Main St
 West Haven, Connecticut 06516

**DISCLOSURE &
 CERTIFICATION AFFIDAVIT**

EVERY SECTION MUST BE COMPLETED

For help completing this form contact Purchasing Director at 203-937-3624

Contractor/Vendor Name:	
Address:	
Telephone and/or Fax #:	
Email Address:	
Contact Person:	

For the purposes of this Disclosure and Certification Affidavit, the following definitions apply:

- (a) "Person" means one (1) or more individuals, partnerships, corporations, associations, or joint ventures.
- (b) "Contract" means any agreement or formal commitment entered into by the city to expend funds in return for work, labor, services, supplies, equipment, materials or any combination of the foregoing, or any lease, lease by way of concession, concession agreement, permit, or per agreement whereby the city leases, grants or demises property belonging to the city, or otherwise grants a right of privilege to occupy or to use said property of the city.
- (c) "City" means any official agency, board, authority, department office, or other subdivision of the City of West Haven.
- (d) "Affiliate Entity" means any entity listed in sections 9 or 10 below or any entity under common management with the Contractor.

State of	County of	
I,		being first duly sworn, hereby deposes and says that:
		(type or print your name above)
1.	I am over the age of 18 and understand the obligations of making statements under oath; I understand that the City of West Haven is relying on my representations herein.	
2a.	I am the corporate secretary or majority owner (including sole proprietorship) of	Insert Company Name above
2b.	Or I am an individual and my name is:	if an individual, insert your name above
3.	I am fully informed regarding the preparation and terms of the above referenced agreement (the "Agreement") and of all pertinent circumstances related thereto.	
4.	Please select the applicable representation(s) regarding taxes or, if none of the below are accurate, attach an explanation of the status of the relevant tax obligations to this Affidavit (mark an "X" in the appropriate box or "NA" if none apply).	
4a.	As required by Conn. Gen. Stat. §12-41, the Contractor (and each owner, partner, officer, authorized signatory or Affiliate Entity of the Contractor) has filed a list of taxable personal property with the City of West Haven for the most recent grand list and all taxes are	
4b.	The Contractor (including any owner, partner, officer or authorized signatory thereof) is not required to file a list of taxable personal property with the City of West Haven for the most recent grand list and does not owe any back taxes to the City of West Haven, either directly or through a lease or other agreement.	
4c.	The Contractor or an owner, partner, officer, representative, agent or Affiliate Entity of the Contractor either i) has a PILOT agreement with the City of West Haven or ii) owes back taxes and has executed an agreement with the City of West Haven to pay said back taxes in installment payments. Such agreement is attached and incorporated herein by reference and the payments under said agreement are not in default.	
5.	Other than as may be described in section 4 above, the Contractor (including any owner, partner, officer, other authorized signatory, or Affiliate Entity) does not have any outstanding monetary obligations to the City of West Haven.	
6.	Please select the applicable representation about the Contractor's business registration:	
6a.	Contractor is a Connecticut corporation, partnership, limited liability company or sole proprietorship and its Connecticut Secretary of the State Business ID #:	Insert State Registration # above
6b.	Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship but is registered to do business in the State of Connecticut. The Contractor's Connecticut Secretary of the State Business ID #:	Insert State Registration # above
6c.	Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship and is not registered to do business in the State of Connecticut. The Contractor is registered in the State of:	Please insert State name above
	Contractor has confirmed with the Connecticut Secretary of the State that the services it will provide pursuant to the Agreement do not constitute doing business in the State of Connecticut and no registration with the Connecticut Secretary of the State is required. Contractor does otherwise have the following State of Connecticut registrations, certificates or approvals relevant to the Agreement (if not applicable, state N/A).	

7. The following list is a list of the names of all persons affiliated with the business of the Contractor who are also affiliated with the City of West Haven. For purposes of this Affidavit, "affiliated with the business of the Contractor" includes any current or former employee (including officers) of the Contractor or any owner, board member or agent of the Contractor, or of any subsidiary or parent company of the Contractor, and "affiliated with the City of West Haven" means any employee, agent, public official, board member, commissioner or any other person serving in an official capacity for or on behalf of the City of West Haven. If none state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name	City Affiliation Role & Time Frame	Contractor Affiliation Role & Time Frame	DOB
1				
2				

8. The following list is a list of all contracts in which either the Contractor, any person affiliated with the business of the Contractor or an Affiliate Entity of the Contractor provides, or has provided, services or materials to the City within one (1) year prior to the date of this disclosure. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name of Contractor or Affiliate	Affiliation (if applicable)	Contract Number	DOB
1				
2				

9. The Contractor possesses an ownership interest in the following business organizations, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Organization Name	Address	Type of Ownership
1			
2			

10. The following persons and/or entities possess an ownership interest in the Contractor. If the Contractor is a corporation, list the names of each stockholder whose shares exceed twenty-five (25) percent of the outstanding stock. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name	Title	% of Ownership	DOB
1				
2				

11. If the Contractor conducts business under a trade name, the following additional information is required: the place where such entity is incorporated or is registered to conduct such business; and the address of its principal place of business, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	TRADE NAME	PLACE OF INCORPORATION/REGISTRY	PRINCIPAL PLACE OF BUSINESS
1			
2			

I hereby certify that I am duly authorized to sign this Affidavit and that the person who will sign the Agreement with the City on behalf of the Contractor will be duly authorized to execute the same. I hereby further certify that the statements set forth above are true and complete on the date hereof and that I, or another authorized individual of the Contractor, will promptly inform the City, in writing, if any of the information provided herein changes or is otherwise no longer accurate at any point during the execution of the above referenced Agreement. I understand that any incorrect information, omission of information or failure of the Contractor to update this information, as described in the foregoing sentence, may result in the immediate termination of any and all agreements the Contractor has with the City of West Haven and disqualification of the Contractor to further contract with the City.

Signature & Title of person completing this form:			
THIS FORM MUST BE NOTARIZED		NOTARY SEAL (if available)	
Signature of Notary:			
Subscribed and sworn to, before me on this:		Day of	20__
My Commission Expires:			

This form should be mailed or emailed to the purchasing department or included with a specific solicitation.

(This form shall be updated if the Agreement contemplated hereby is not executed within six months of the date hereof.)

PROPOSERS NON COLLUSION AFFIDAVIT FORM

The undersigned proposer, having fully informed himself/herself/itself regarding the accuracy of the statements made herein, certifies that:

- (1) The proposer developed the proposal independently and submitted it without collusion with, and without any agreement, understanding, communication or planned common course of action with, any other person or entity designed to limit independent competition;
- (2) The proposer, its employees and agents have not communicated the contents of the proposal to any person not an employee or agent of the proposer and will not communicate the proposal to any such person prior to the official opening of the proposal and award.
- (3) No elected or appointed official or other officer or employee of the City of West Haven is directly or indirectly interested in the proposer's proposal, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.

The undersigned proposer further certifies that this affidavit is executed for the purpose of full disclosure to the City of West Haven to consider its proposal and make an award in accordance therewith.

Legal Name of Bidder (signature)
Bidder's Representative, Duly Authorized

Name of Bidder's Authorized Representative

Title of Bidder's Authorized Representative

Subscribed and sworn to before me this _____ day of _____, 2022.

Notary Public
My Commission Expires:

EXHIBIT D

City of West Haven and Connecticut Department of Energy and Environmental Protection Agreement

PERSONAL SERVICE AGREEMENT / GRANT / CONTRACT
 Rev 08/01/2023 (DEEP Electronic Format)
 PROTECTION

DEEP Climate Resilience Fund
 (Sanford Street Basin Flood Resilience Project Development)

STATE OF CONNECTICUT
 DEPARTMENT OF ENERGY AND ENVIRONMENTAL

CHECK ONE:
 GRANT
 PERSONAL SERVICE AGREEMENT

1. THE STATE BUSINESS UNIT AND THE CONTRACTOR AS LISTED BELOW HEREBY ENTER INTO AN AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN AND/OR ATTACHED HERETO AND SUBJECT TO THE PROVISIONS OF SECTION 4-98 OF THE CONNECTICUT GENERAL STATUTES AS APPLICABLE.
2. ACCEPTANCE OF THIS CONTRACT IMPLIES CONFORMANCE WITH TERMS AND CONDITIONS SET FORTH BY THE OFFICE OF POLICY AND MANAGEMENT PERSONAL SERVICE AGREEMENT STANDARDS AND PROCEDURES.

(1) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> AMENDMENT	(2) IDENTIFICATION #s. P.S. 2024-106 P.O.
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CONTRACTOR	(3) CONTRACTOR NAME City of West Haven	(4) ARE YOU PRESENTLY A STATE EMPLOYEE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
	CONTRACTOR ADDRESS 355 Main Street, West Haven, CT 06516	CONTRACTOR FEIN/SSN 06-6002126

STATE AGENCY	(5) AGENCY NAME AND ADDRESS DEEP - Office of Climate Planning, 79 Elm Street, Hartford, CT 06106-5127	(6) Dept No. DEP43000
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CONTRACT PERIOD	(7) DATE (FROM) Execution	THROUGH (TO) Execution +18 Months	(8) INDICATE <input type="checkbox"/> MASTER AGREEMENT <input type="checkbox"/> CONTRACT AWARD NO. _____ <input checked="" type="checkbox"/> NEITHER
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(9) CONTRACTOR AGREES TO: (Include special provisions - Attach additional blank sheets if necessary.)

Performance: Do, conduct, perform or cause to be performed in a satisfactory and proper manner as determined by the Commissioner of Energy and Environmental Protection, all work described in Appendix A, which is attached hereto and made a part hereof.

Appendix A consists of nine (8) pages numbered A-1 through A-8 inclusive.

Page 1 of 11

Standard Terms and Conditions are contained in Pages 2 through 11 and are attached hereto and made a part hereof.

(10) PAYMENT TO BE MADE UNDER THE FOLLOWING SCHEDULE UPON RECEIPT OF PROPERLY EXECUTED AND APPROVED INVOICES.

Cost and Schedule of Payments is attached hereto as Appendix B, and made a part hereof. (Appendix B consists of one (1) page(s) numbered B-1 through B-1).

Total Payments Not to Exceed the Maximum Amount of **\$609,000.00**.
 BUDGET SUMMARY AND MILESTONE CHART (Appendix C, numbered C-1))

(11) OBLIGATED AMOUNT
609,000

(12) Amount	(13) Dept	(14) Fund	(15) SID	(16) Program	(17) Project	(18) Activity	(19) Bud Ref	(20) Agency CF 1	(21) Agency CF 2	(22) Account
609,000	DEP43111	12052	43661	66099	DEPA00031200407	155005				55050

An individual entering into a Personal Service Agreement with the State of Connecticut is contracting under a "work-for-hire" arrangement. As such, the individual is an independent contractor, and does not satisfy the characteristics of an employee under the common law rules for determining the employer/employee relationship of Internal Revenue Code Section 3121 (d) (2). Individuals performing services as independent contractors are not employees of the State of Connecticut and are responsible themselves for payment of all State and local income taxes, federal income taxes and Federal Insurance Contribution Act (FICA) taxes.

ACCEPTANCES AND APPROVALS		(23) STATUTORY AUTHORITY CGS Sec. 4-8 as amended; CGS Sec. 22a-6(a)(2) as amended CGS Sec. 7-148(c) as amended (mun. auth.)
(24) CONTRACTOR	DocuSigned by: <i>Dorinda Borer</i> ED SIGNATURE)	TITLE Dorinda Borer, Mayor DATE 2/7/2024
(25) AGENCY	DocuSigned by: <i>Katherine S. Dykes</i>	TITLE Katherine S. Dykes, Commissioner, DEEP DATE 2/11/2024
(26) ATTORNEY	FD6276B5423547D...	Jeffrey Zeman Digitally signed by Jeffrey Zeman Date: 2024.02.14 16:01:37 -05'00' DATE

DISTRIBUTION: CONTRACTOR AGENCY FUNDS AVAILABLE: _____

STANDARD TERMS AND CONDITIONS

(Rev.8/01/23)

I. Definitions:

- (a) State. The State of Connecticut, including the Department of Energy and Environmental Protection and any office, department, board, council, commission, institution or other agency of the State.
- (b) Commissioner. The Commissioner of Energy and Environmental Protection or the Commissioner's designated agent.
- (c) Parties. The Department of Energy and Environmental Protection (DEEP or Agency) and the Contractor.
- (d) Contractor Parties. Contractor Parties shall be defined as a Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity. To the extent that any Contractor Party is to participate or Perform in any way, directly or indirectly in connection with the Contract, any reference in the Contract to the "Contractor" shall also be deemed to include "Contractor Parties", as if such reference had originally specifically included "Contractor Parties" since it is the Parties' intent for the terms "Contractor Parties" to be vested with the same respective rights and obligations as the terms "Contractor."
- (e) Contract. This agreement, as of its Effective Date, between the Contractor and the State for any or all goods or services as more particularly described in Appendix A.
- (f) Execution. This contract shall be fully executed when it has been signed by authorized representatives of the parties, and if it is for an amount of Twenty-five thousand dollars (\$25,000.00) or more, by the authorized representative of the state Attorney General's office.
- (g) Exhibits. All attachments, appendices or exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
- (h) Records. For the purposes of this Contract, records are defined as all working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
- (i) Confidential Information. Confidential Information shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
- (j) Confidential Information Breach. Confidential Information Breach shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
- (k) Claim. Claim shall mean, all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
2. Audit Requirements for Recipients of State Financial Assistance. For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to the Agency for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.
3. Whistleblowing. This Contract is subject to C.G.S. § 4-61dd if the amount of this Contract is a "large state contract" as that term is defined in C.G.S. § 4-61dd(k)(1). In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars (\$5,000) for each offense, up to a maximum of twenty per cent (20%) of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and

distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the relevant sections of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

4. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.
5. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
6. Termination.
 - (a) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.
 - (b) Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
 - (c) The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
 - (d) Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
 - (e) The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.
 - (f) For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
 - (g) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.

(h) Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.

7. Tangible Personal Property.

(a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
- (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
- (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
- (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
- (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.

(b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, which controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

(c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

8. Indemnification.

(a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

(b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.

(c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.

(d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

(e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall cause the State to be named as an additional insured on the policy and shall provide (1) a certificate of insurance, (2) the declaration page and (3) the additional insured endorsement to the policy to the State and the Agency all in an electronic format acceptable to the State prior to the Effective Date of the Contract evidencing that the State is an additional insured. The Contractor shall not begin Performance until the delivery of these three documents to the Agency. Contractor shall provide an annual electronic update of the three documents to the Agency and the State on or before each anniversary of the Effective Date during the Contract term. State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that State is contributorily negligent.

(f) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

9. Sovereign Immunity. The parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.
10. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.
11. Audit and Inspection of Plants, Places of Business and Records.
 - (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
 - (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
 - (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
 - (d) The Contractor will pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract's Setoff provision.
 - (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
 - (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
 - (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.
12. Campaign Contribution Restriction. For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represent that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.
13. Confidential Information. The Agency will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the Agency receives. However, all materials associated with the Bid and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the Contractor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Bid, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL," the Agency will endeavor to keep said information confidential to the extent permitted by law. The Agency, however, has no obligation to initiate,

prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the Agency or the State have any liability for the disclosure of any documents or information in its possession which the Agency believes are required to be disclosed pursuant to the FOIA or other requirements of law.

14. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Agency or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
 - (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - (3) A process for reviewing policies and security measures at least annually;
 - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
 - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Agency and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Agency, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of Covered Entity.

15. Executive Orders and Other Enactments.

- (a) All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the Client Agency's authority to require compliance with the Enactments.
- (b) This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
- (c) This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

16. Non-Discrimination.

- (a) For purposes of this Section, the following terms are defined as follows:
 - (1) "Commission" means the Commission on Human Rights and Opportunities;
 - (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
 - (3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- (b)(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 the 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; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, 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 C.G.S. §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to C.G.S. §§ 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 C.G.S. § 46a-56. If the contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency projects.
- (c) 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 may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and in every subcontract entered into in order to fulfill any obligation of

a municipal public works contract or 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. 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 C.G.S. §46a-56, as amended; 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.

- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to C.G.S. § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and C.G.S. § 46a-56.
- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. 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 C.G.S. § 46a-56 as amended; 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.
- (i) Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box:
17. **Antitrust Provision.** Contractor hereby irrevocably assigns to the State of Connecticut all rights, title and interest in and to all Claims associated with this Contract that Contractor now has or may or will have and that arise under the antitrust laws of the United States, 15 USC Section 1, *et seq.* and the antitrust laws of the State of Connecticut, Connecticut General Statute § 35-24, *et seq.*, including but not limited to any and all Claims for overcharges. This assignment shall become valid and effective immediately upon the accrual of a Claim without any further action or acknowledgment by the parties.
18. **State Liability.** The State of Connecticut shall assume no liability for payment for services under the terms of this agreement until the contractor is notified that this agreement has been accepted by the contracting agency and, if applicable, approved by the Office of Policy and Management (OPM) or the Department of Administrative Services (DAS) and by the Attorney General of the State of Connecticut.
19. **Distribution of Materials.** The Contractor shall obtain written approval from the Commissioner prior to the distribution or publication of any materials prepared under the terms of this Contract. Such approval shall not be unreasonably withheld.
20. **Change in Principal Project Staff.** Any changes in the principal project staff must be requested in writing and approved in writing by the Commissioner at the Commissioner's sole discretion. In the event of any unapproved change in principal project staff, the Commissioner may, in the Commissioner's sole discretion, terminate this Contract.
21. **Further Assurances.** The Parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.
22. **Recording and Documentation of Receipts and Expenditures.** Accounting procedures must provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and of unexpended balances. Controls must be established which are

adequate to ensure that expenditures under this Contract are for allowable purposes and that documentation is readily available to verify that such charges are accurate.

23. Assignability. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Commissioner thereto: provided, however, that claims for money due or to become due the Contractor from the Commissioner under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commissioner.
24. Third Party Participation. The Contractor may make sub-awards, using either its own competitive selection process or the values established in the state's competitive selection process as outlined in DAS General Letter 71, whichever is more restrictive, to conduct any of the tasks in the Scope of Work contained in Appendix A. The Contractor shall advise the Commissioner of the proposed sub-awardee and the amount allocated, at least two (2) weeks prior to the making of such awards. The Commissioner reserves the right to disapprove such awards if they appear to be inconsistent with the program activities to be conducted under this grant. As required by Sec. 46a-68j-23 of the Connecticut Regulations of State Agencies the Contractor must make a good faith effort, based upon the availability of minority business enterprises in the labor market area, to award a reasonable proportion of all subcontracts to such enterprises. When minority business enterprises are selected, the Contractor shall provide DEEP with a copy of the Affidavit for Certification of Subcontractors as Minority Business Enterprises (MBE) along with a copy of the purchase order or contract engaging the Subcontractor. The Contractor shall be the sole point of contact concerning the management of the Contract, including performance and payment issues. The Contractor is solely and completely responsible for adherence by any subcontractor to all the applicable provisions of the Contract.
25. Set Aside. State agencies are subject to the requirements of CGS sec. 4a-60g. Unless otherwise specified by the invitation to bid, general contractors intending to subcontract any portion of work under this Contract shall subcontract 25% of the total contract value to small contractors certified by the Department of Administrative Services (DAS) and are further required to subcontract 25% of that 25% to minority and women small contractors certified as minority business enterprises by DAS. Selected general contractors that are certified by DAS as small contractors, minority business enterprises, or both are excused from this requirement but must comply with CGS sec. 4a-60g(e) and complete a minimum of 30% of the work by dollar value with their own workforces and ensure at least 50% of the work overall by dollar value is completed by contractors or subcontractors certified as small contractors or minority business enterprises by DAS.
26. Procurement of Materials and Supplies. The Contractor may use its own procurement procedures which reflect applicable State and local law, rules and regulations provided that procurement of tangible personal property having a useful life of more than one year and an acquisition cost of one thousand dollars (\$1,000.00) or more per unit be approved by the Commissioner before acquisition.
27. Americans with Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. The DEEP may cancel the Contract if the Contractor fails to comply with the Act.
28. Affirmative Action and Sexual Harassment Policies. The Contractor agrees to comply with the Departments Affirmative Action and Sexual Harassment Policies available on DEEP's web site. Hard copies of the policy statements are available upon request at DEEP.
29. Breach. If either Party breaches the Contract in any respect, the non-breaching Party shall provide written notice of the breach to the breaching Party and afford the breaching Party an opportunity to cure within ten (10) days from the date that the breaching Party receives the notice. In the case of a Contractor breach, any other time period which the Agency sets forth in the notice shall trump the ten (10) days. The right to cure period shall be extended if the non-breaching Party is satisfied that the breaching Party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching Party in writing prior to the Termination date; no further action shall be required of any Party to effect the Termination as of the stated date. If the notice does not set forth an effective Contract Termination date; then the non-breaching Party may Terminate the Contract by giving the breaching Party no less than twenty-four (24) hours' prior written notice. If the Agency believes that the Contractor has not performed according to the Contract, the Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that the Agency notifies the Contractor in writing prior to the date that the payment would have been due.
30. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
31. Contractor Guarantee. The Contractor shall: perform the Contract in accordance with the specifications and terms and conditions of the Scope of Work, furnish adequate protection from damage for all work and to repair any damage of any kind, for which he or his workmen are responsible, to the premises or equipment, to his own work or to the work of other contractors; pay for all permits, licenses, and fees, and to give all notices and comply with all laws, ordinances, rules and regulations of the city and the State.
32. Force Majeure. The Parties shall not be excused from their obligation to perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. A Force Majeure event materially affects the cost of the Goods or Services or the time schedule for performance and is outside the control nor caused by the Parties. In the case of any such exception,

the nonperforming Party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.

33. Entirety of Contract. The Contract is the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the Parties, whether written or oral. The Contract has been entered into after full investigation, neither Party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
34. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.
35. Large State Contract Representation for Contractor Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:
 - (1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;
 - (2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and
 - (3) That the Contractor is submitting bids or proposals without fraud or collusion with any person.
36. Large State Contract Representation for Official or Employee of State Agency Pursuant to section 4-252 of the Connecticut General Statutes and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State agency official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.
37. Iran Energy Investment Certification.
 - (a) Pursuant to section 4-252a of the Connecticut General Statutes, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.
 - (b) If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this section then the Contractor shall not be deemed to be in breach of the Contract or in violation of this section. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the State of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State agency or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.
38. Consulting Agreements Representation. Pursuant to section 4a-81 of the Connecticut General Statutes, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in section 53a-157b of the Connecticut General Statutes, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below or in an attachment to this Contract. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of section 4a-81 of the Connecticut General Statutes.

Consultant's Name and Title	Name of Firm (if applicable)
Start Date	End Date
	Cost

The basic term of the consulting agreement are: _____

Description of Services Provided: _____

Is the consultant a former State employee or former public official? YES NO

If YES: _____
Name of Former State Agency Termination Date of Employment

39. Access to Contract and State Data The Contractor shall provide to the Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning the Contract and the Agency that are in the possession or control of the Contractor upon demand and shall provide the data to the Agency in a format prescribed by the Agency and the State Auditors of Public Accounts at no additional cost.

40. Compliance with Consumer Data Privacy and Online Monitoring.
Pursuant to section 4 of Public Act 23-16 of the Connecticut General Assembly, Contractor shall at all times comply with all applicable provisions of sections 42-515 to 42-525, inclusive, of the Connecticut General Statutes, as the same may be revised or modified.

APPENDIX A
SCOPE OF WORK

Project Number: DCRF-2023-02-09
(Sanford Street Basin Flood Resilience Project Development)

Purpose: The purpose of this Climate Resilience Fund (CRF) Grant agreement is, in furtherance of recommendations from the Governor’s Council on Climate Change (GC3) to provide funds to the **City of West Haven**, hereinafter referred to the “Contractor” for activities described herein.

Description: The Contractor agrees to conduct a project titled: Sanford Street Basin Flood Resilience Project Development (“Project”) as further described below.

1. Deliverables Following the Execution of this Contract, **the Contractor shall perform the following tasks:**

a) Preliminary Project Design and Studies

- i)** The Contractor shall conduct studies to develop preliminary-level designs (“Project Design”) for reducing stormwater flooding in the Sanford Street Basin area in the Allingtown District of the City of West Haven, as illustrated in **Appendix H**.
- ii)** Upon completion of the studies identified in 1.(a) i), the Contractor shall provide to DEEP a Project Design for its review and approval. The Project Design shall comply with all applicable local, state, and federal regulatory requirements that would be necessary for construction of the designed project.
- iii)** The Project Design shall incorporate climate change conditions through at least 2050, as referenced in the January 2021 Governor’s Council on Climate Change report and Contractor shall discuss with DEEP and DEEP’s authorized representatives as needed to ensure future climate change conditions are appropriately incorporated into the Project Design.
- iv)** The Project Design also shall incorporate, where appropriate, nature-based solutions as defined in Governor Lamont’s Executive Order 21-3, Section 9 C, which states “For purposes of this order shall include but not be limited to green infrastructure as defined by the Clean Water Act (33 U.S.C. § 1362(27)), natural infrastructure and nature-based infrastructure as defined by the National Oceanic and Atmospheric Administration (“NOAA”) in NAO 216-117, nature-based solutions as promulgated by FEMA in their Building Resilient Infrastructure in Communities program, and climate-smart agriculture and forestry strategies as promulgated by the U.S. Department of Agriculture (“USDA”) and for flood prevention, climate resilience and erosion control systems as defined by Public Act 21-115, gray infrastructure, and non-structural, project solutions.”

- v) The Project Design shall incorporate, to the extent feasible, feedback from community residents and stakeholders that was collected during required engagement activities detailed in section 1.(d).
- vi) The Project Design shall incorporate, to the extent feasible, the Permittable, Equitable, Realistic, Safe, Innovative, Scientific, Transferable, and Sustainable (PERSISTS) decision-support framework. The Project Design also shall incorporate requirements established in the 2023 DEEP stormwater design manual update, available from DEEP, as a required minimum standard, including any errata or addenda from DEEP. The Project Design, when incorporating climate change and associated future conditions, may exceed minimum design standard as necessary.
- vii) If the Contractor determines that the Project Design, and associated studies, affects or is affected by a state-owned roadway or CTDOT-owned infrastructure, property, and/or asset, the Contractor shall engage and consult with CTDOT no later than 90 days before the expiration of this Contract.
- viii) Authorized expenses for conducting the section 1.(a) i), studies to develop Project Design shall include: site studies and selection, project scoping activities, feasibility analyses, field studies, environmental and engineering studies and analyses, hydrologic and hydraulic studies and analyses, developing, assessing, and/or analyzing alternatives, and, as necessary as determined by DEEP, any related modeling and analyses needed for Project Design.
- ix) The period of performance of this grant is 18 months from the date of Contract execution. The Contractor shall follow the schedule detailed in the milestone chart in **Appendix C**. Deadlines are subject to change upon review and approval by the Commissioner.

b) Match and Implementation Funding Assessment:

The Contractor shall assess funding opportunities and mechanisms which may provide locally derived match and other funding for implementation and/or construction of the resilience project. Such assessment shall be submitted to DEEP as part of the Final Report described in Paragraph 1(d). Potential mechanisms for assessment include, but are not limited to:

- i) The formation of a stormwater authority pursuant to C.G.S. § 22a-498;
- ii) The formation of a municipal or joint municipal (two or more municipalities) flood prevention, climate resilience, and erosion control board pursuant to Part II of Chapter 477 of the General Statutes;
- iii) Establishing a district for a flood, prevention, climate resilience and erosion control system pursuant to C.G.S. § 7-326 and 7-328

- iv) Establishing a Climate Change and Coastal Resiliency Reserve Fund pursuant to C.G.S. § 7-159d;
- v) State, federal, and private grant opportunities that may provide matching funds for the above funding mechanism; and
- vi) Any other potential funding mechanism that DEEP may request.

c) Federal resilience grant application:

- i) The Contractor shall ensure they are tailoring Project Design work products to identified grant opportunities, including, but not limited to the Federal Emergency Management Agency (FEMA)'s Building Resilient Infrastructure and Communities (BRIC) program; FEMA Hazard Mitigation Grant Program (HMGP); FEMA Flood Mitigation Assistance Program (HMA); National Fish and Wildlife Foundation (NFWF) National Coastal Resilience Fund (NCRF); NFWF Long Island Sound Futures Fund (LISFF); National Oceanic and Atmospheric Administration (NOAA) Transformational Habitat Restoration and Coastal Resilience Grants; Clean Water Fund (CWF) Reserve for Construction of Green Infrastructure; CWF Reserve for Construction of Resiliency Projects, or as further identified through grant programs at other relevant federal agencies, include the US Department of Agriculture (USDA), the US Environmental Protection Agency (EPA), the US Department of Transportation (DOT), the Department of Energy (DOE), the Department of Housing and Urban Development (HUD) and the US Army Corps of Engineers (USACE). Successful applications to federal competitions are intended to fund future phases of the Project Design, including implementation and construction.
- ii) The Contractor shall develop a draft project narrative for targeted competitions and submit this draft to DEEP as one of the required deliverables listed in **Section 2 (d)**.
- iii) The Contractor may, as an authorized expense, develop the following:
 - (1) **Benefit Cost Analysis:** A Benefit Cost Analysis (BCA) is an eligible expense under the terms of this contract. Any BCA conducted for a project using these funds shall conform to FEMA methodology in order to ensure eligibility in applying for FEMA funds for construction/implementation, even if the initial targeted federal grant competition is not through FEMA.
 - (2) **Detailed cost estimate:** A detailed cost estimate is an eligible expense under the terms of this Contract. The cost estimate methodology shall conform to the requirements of the targeted federal resilience grant competition.

d) Required community and stakeholder engagement

- i) The Contractor shall hold at least two (2) public meetings to support the development of Project Design prior to finalization of the design. At least one (1) meeting shall

communicate the results to residents in the project area. The Project Design and related studies shall incorporate to the extent possible comments received at such public meetings and other forms of feedback from residents and stakeholders in the project area.

- ii) The Contractor shall ensure all necessary stakeholder groups are invited to participate in engagement efforts, including directly impacted residents and businesses, and other interested community representatives. The Contractor shall submit to DEEP in quarterly reports the list of participants at engagement efforts.
- iii) The scheduling and location of all such meetings shall be such that they maximize inclusive community engagement. Engagement shall be conducted using as many methods designed to effectively reach underrepresented and vulnerable populations as possible, including scheduling meeting times outside of work hours, offering transportation reimbursement and other incentives, translation services, and other opportunities to engage if meeting attendance is not possible.
- iv) Subject to invoicing and DEEP approval, authorized prudent and reasonable expenses for community and stakeholder engagement shall include the following: flyers, presentation materials; stipends and incentives for participants in accordance with equitable engagement practices, language translation and interpretation services, facility rental for meetings, community liaisons as defined in the 2022 DEEP CRF Program Description Notice of Call for Applications, (a copy of which is on file with DEEP); and costs associated with providing childcare, transportation, and refreshments at public engagement meetings.

2. Project Reporting: All materials submitted, including quarterly reports, final reports, and deliverables, may be posted on the DEEP website at DEEP's sole discretion.

- a) **Quarterly Reports:** The Contractor shall use the guidelines in **Appendix D, Quarterly Report Format**. The Contractor shall provide summaries of the Project status to the DEEP Project Manager once **every 3 months**, in accordance with the schedule in **Appendix D**, during the time in which this Contract is in effect.
- b) **Final Reporting:** Before the expiration date of this Contract, the Contractor shall submit to the DEEP Project Manager the reports listed below. DEEP will not pay for any costs incurred by the Contractor after the expiration date of the Contract to complete these reports:
 - i) **Final Deliverables:** The Contractor shall use requirements in **Appendix E** for providing a final report executive summary and other required final deliverables
 - ii) **Final Financial Report:** See details in **Task 3**.
- c) **Climate Change Inclusion:** No sooner than 90 days before the expiration of this Contract, the Contractor shall submit to the DEEP Project Manager a draft summary of

the Project Design that identifies what standard of rainfall it is designed for and how it accounts for future climate change conditions as referenced in the January 2021 Governor's Council on Climate Change report for DEEP review and approval. Contractor shall respond within 30 days to any DEEP comments and incorporate any DEEP feedback into the final Project Design.

- d) Final Summary and Study Deliverables:** At the end of the period of performance of this grant, the contractor shall provide DEEP with:
- i)** A copy of the final Project Design and related activities funded by the grant;
 - ii)** A copy of a draft project narrative for any federal grant application(s) intended to fund implementation of the project;
 - iii)** A separate executive summary highlighting the process and lessons learned as detailed in **Appendix E**;
 - iv)** A presentation slide(s) in PowerPoint format that communicates accomplishments and lessons learned as detailed in **Appendix E**, and;
 - v)** A copy of the implementation funding assessment as detailed in **Task 1(b)**.
- 3. Budget and Invoice/Request for Payments and Final Financial Report:** The contractor shall adhere to the budget identified in **Appendix C** of this contract. The Contractor shall submit invoices using the attached format in **Appendix G**. These invoices must be submitted to the DEEP Project Manager and include all required documentation to enable a timely review by the DEEP Project Manager. DEEP will release payments following receipt, review, and approval by the Commissioner of properly executed invoices. Partial payments may be requested in writing by the Contractor and include documentation as to why a partial payment is warranted, but releases of such payments is at the sole discretion of the DEEP Project Manager. DEEP may withhold payments if Contractor does not exhibit adequate compliance and performance according to terms of the Contract Agreement.

Within 30 days of the expiration date of this Contract, the Contractor shall submit a **Final Financial Report** to the DEEP Project Manager, with supporting documentation sufficient to demonstrate expenditures identified in the project proposal. The preferred format is attached as **Appendix F**. DEEP will not pay for any costs incurred by the Contractor after the expiration date of the contract.

- 4. Prohibited Reimbursements:** Unless specifically authorized by DEEP in its sole and absolute discretion, allowable costs under this Contract shall not include:
- a)** Advertising, except reasonable costs incurred in issuing notices of public meetings shall be allowable;
 - b)** Alcoholic beverages;
 - c)** Alterations and renovations to existing facilities;
 - d)** Bad debts;
 - e)** Fundraising;
 - f)** Insurance;

- g) Interest;
- h) Membership dues;
- i) Land or building acquisition;
- j) Litigation expenses;
- k) Lobbying;
- l) Maintenance and repair costs;
- m) Rental or lease of facilities or equipment, except reasonable costs incurred in hosting public meetings shall be allowable;
- n) Overtime premiums;
- o) Travel costs;
- p) Any costs related to construction or implementation, including permitting fees
- q) Other costs not necessary to complete the above-described Project deliverables;

5. Submission of Materials: For the purposes of this Contract, all correspondence, summaries, reports, products, and extension requests shall be submitted to the DEEP Project Manager:

Sarah Watson:
sarah.watson@ct.gov

All **invoices** must include the PO #, PSA #, Project Title, DEEP Bureau/Division name, amount dates and description of services covered by the invoice, and shall be submitted to:

DEEP - Bureau of Central Services
Clean Water & Capital Contract Administration Unit
Financial Management Division
79 Elm Street
Hartford, CT 06106-5127
DEEP.ContractAdmin@ct.gov

6. Amendments / Extensions: Formal written amendment of the Contract is required for extensions to the final date of the Contract period and to terms and conditions specifically stated in the original Contract and any prior amendments, including but not limited to:

- 1. Revisions to the maximum contract payment;
- 2. The total unit cost of service;
- 3. The Contract's objectives, services, or plan;
- 4. Completion of objectives and services; and
- 5. Any other contract revisions determined material by DEEP

If it is anticipated that the Project cannot be completed as scheduled, a no-cost extension must be requested in writing no later than **90 days** prior to the expiration date of the contract. Said extension request shall include a description of what work has been completed to date, shall document the reason for the extension request, and shall include a revised work schedule and project completion date. If deemed acceptable, approval will be received in the form of a contract amendment.

7. **Acknowledgement of Funding:** Any publication or sign produced or distributed, or any publicity conducted in association with this Contract must provide credit to the DEEP Climate Resilience Fund as follows: "Funding provided by the Climate Resilience Fund administered by the Connecticut Department of Energy and Environmental Protection (DEEP)."
8. **Ownership:** All materials, software, maps, reports, and other products produced through the grant program shall be considered in the public domain and thus available. To the extent possible, a copy of any data product produced using this grant funding must be submitted to the state as part of the deliverables and will be made available publicly. All materials created through this opportunity and as a result of this award shall credit DEEP and the DEEP Climate Resilience Fund. The Contractor shall include in all subcontracts funded by this grant contract provisions requiring subcontractors to provide such materials to the State at no charge upon request.
9. **Publication of Materials:** The Contractor must obtain written approval from the State prior to distribution or publication of any printed material prepared under the terms of this Contract which uses the name or seal of the State of Connecticut, its agencies, or its officials or employees. Unless specifically authorized in writing by the State, on a case by case basis, Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, its officials, agencies, or employees or the seal of the State of Connecticut or its agencies: (1) in any advertising, publicity, promotion; or (2) to express or to imply any endorsement of Contractor's products or services; or (3) to use the name of the State of Connecticut, its officials agencies, or employees or the seal of the State of Connecticut or its agencies in any other manner (whether or not similar to uses prohibited by (1) and (2) above), except only to manufacture and deliver in accordance with this Agreement such items as are hereby contracted for by the State. In no event may the Contractor use the State Seal in any way without the express written consent of the Secretary of State.

10. ADA Publication Statement:

For all public notices printed in newspapers, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action and Equal Opportunity Employer that is committed to complying with the Americans with Disabilities Act. To request an accommodation contact us at (860) 418-5910 or deep.accommodations@ct.gov

If there is not a meeting or event associated with the material(s) being published, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Please contact us at (860) 418-5910 or deep.accommodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint.

If the material(s) being published have a meeting or event associated with them, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Please contact us at (860) 418-5910 or deep.accommodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint. Any person needing a hearing accommodation may call the State of Connecticut relay number – 711. Requests for accommodations must be made at least two weeks prior to any agency hearing, program or event.

For videos that will be published on the DEEP website, the following ADA and Title VI statement and the following line should be included on the DVD cover and the title page of the video:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action and Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. To request an accommodation contact us at (860) 418-5910 or deep.accommodations@ct.gov. This video with closed captioning is available at www.ct.gov/deep.

APPENDIX B
BUDGET SUMMARY AND SCHEDULE OF PAYMENTS
Project Number: DCRF-2023-02-09
(Sanford Street Basin Flood Resilience Project Development)

Schedule of Payments

The maximum amount payable under this Contract is **Six-Hundred Nine Thousand Dollars (\$609,000.00)**. The payments by the Commissioner shall allow for use of funds to meet allowable financial obligations incurred in conjunction with this Project, during the term of this Contract, and shall be scheduled as follows provided that the total sum of all payments shall not exceed the maximum Contract amount noted above. Project costs in excess of the maximum Contract amount shall not be borne by the State. All payments by the Commissioner are subject to the receipt and approval by DEEP of applicable detailed invoices with any required supportive documentation. Such payments shall be in accordance with the following schedule:

- a. The Contractor shall be reimbursed for all eligible Project costs following CT DEEP's receipt and approval of Request for Payment, up to 90% of the Grant award. The final 10% will be reimbursed after all deliverables have been received, reviewed, and approved by DEEP. All payments to the Contractor are subject to review and approval by the Commissioner, at her sole discretion.
- b. The Contractor shall submit a Request for Payment no more frequently than one request per month. Payments shall be paid on a reimbursement basis upon the completion of an activity or set of activities performed by the Contractor. All Requests for Payments shall include detailed support documentation for all activities performed which the Contractor is seeking reimbursement. Said support documentation shall include detailed itemized paid invoices of all sub-contractors said Contractor is seeking reimbursement.
- c. DEEP shall process and release the final reimbursement payment which shall include all retainage for the project, following completion of the Project to the Commissioner's satisfaction, review and approval of the Final Report, Final Financial Report, and associated documentation demonstrating that all the elements of Appendix A have been met.
- d. The total sum of all payments shall not exceed the maximum contract amount noted above. Should the total Project costs be less than the amount of payments made, any remaining funds must be refunded by the Contractor to the Department of Energy and Environmental Protection in a check payable to the "Treasurer- State of Connecticut" within 90 days of the Contract expiration date.

APPENDIX C
BUDGET SUMMARY AND MILESTONE CHART
Project Number: DCRF-2023-02-09
(Sanford Street Basin Flood Resilience Project Development)

Budget Summary:

Salaries *	NA
Fringe	NA
Total Salary & Fringe	NA
Travel	NA
Participant Support Costs	\$20,000.00
Subawards	NA
Contractual Services	\$588,500.00
Materials and Supplies	\$500.00
Total Other Direct	\$609,000.00
Indirect	NA
Total Budgets:	\$609,000.00

Milestones:

The Contractor shall follow the schedule of tasks and milestones in the following chart such that tasks are complete no later than the latest quarter marked for each task. The Contractor shall notify DEEP in the event of any significant deviation from this milestone chart. The Contractor shall include updates on each task in quarterly reporting. If a task is not to be conducted in an identified quarter for reporting, the Contractor does not need to include that in that quarterly report.

Primary Tasks	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	5th Qtr	6th Qtr
Sanford Street Basin Flood Resilience Project Development						
Procurement/bidding of vendors (See Appx. A, Sec. 1 a i)	X					
Community Meeting 1 (See Appx A, Sec. 1 d)		X				
Field Work/Data Collection (See Appx. A, Sec. 1 a i)		X				
Analysis (See Appx. A, Sec. 1 a i)			X			
Final Report Generated (Sec Appx A, Sec. 1 a ii)					X	
Community Meeting 2 (See Appx A, Sec. 1 d)					X	
Federal Grant Submission (See Appx. A, Sec. 1 c ii)						X
West Haven Stormwater Authority Feasibility Study						
Procurement/bidding of vendor (See Appx A, Sec. 1 b i)	X					
Data collection (See Appx A, Sec. 1 b i)		X				
Analysis and Report completed (See Appx A, Sec. 1 b i)		X		X		
Community Meeting 3 to review Stormwater Study results and receive resident feedback (See Appx A, Sec. 1 b and d)				X		

**APPENDIX D
QUARTERLY REPORT FORMAT
Project Number: DCRF-2023-02-09
(Sanford Street Basin Flood Resilience Project Development)**

Quarterly Reports: Following the execution of this contract, the Contractor is responsible for providing summaries of the project status to the DEEP Project Manager once **every 3 months** during the time in which this contract is in effect, in accordance with the schedule below. The Contractor bears the sole responsibility for submitting the Quarterly Reports on time.

Quarterly reports shall include the following:

- Progress made during the reporting period;
- Any significant deviations from proposed milestone chart in **Appendix C**;
- Any significant changes to project staff.
- Additional pertinent information including, when appropriate, analysis and explanation of cost overruns, unanticipated events/consequences, etc.
- Additional documentation as requested by DEEP
- Quarterly reports not to exceed 2 full pages.

Quarterly reports **shall be e-mailed to** the DEEP Project Manager, and shall include and be organized in accordance with the following:

Report on work performed during:	Report due on:
September 1 – November 30	December 15
December 1 – February 28 or 29	March 15
March 1 – May 31	June 15
June 1 – August 31	September 15

APPENDIX E
FINAL DELIVERABLES FORMAT
Project Number: DCRF-2023-02-09
(Sanford Street Basin Flood Resilience Project Development)

- 1. Final Report Executive Summary:** The Contractor shall submit to the DEEP Project Manager a Final Report Executive Summary that does not exceed 5 pages, satisfactory to the Commissioner, demonstrating that all the elements of **Appendix A** have been met, including but not limited to the following:
 - a) Climate Problem and Community Impacts Overview (not to exceed 250 words)
 - b) Proposed Solution(s)
 - c) Community Engagement Efforts and how community feedback was incorporated into the final project outcome
 - d) Engagement and Inclusion of Vulnerable Populations/Environmental Justice Community residents
 - e) How the project incorporates climate change into the design
 - f) How the project incorporates nature-based solutions and associated co-benefits
 - g) How the project connects to CIRCA's PERSISTS decision-support framework
 - h) Lessons Learned and Transferable Lessons for other communities
 - i) Plans for next steps, including funding assessment outcomes and federal resilience grant applications for implementation

- 2) PowerPoint Slide(s):** The Contractor shall submit to the DEEP Project Manager no more than 3 PowerPoint slides that highlight the project accomplishments and lessons learned. These slides may be used by DEEP in future presentations, so please include relevant photographs or images.

- 3. Other required deliverables are:**
 - a) A copy of the funded activity
 - b) A copy of the implementation funding assessment
 - c) A copy of the draft project narrative for a federal grant application.

APPENDIX F

SAMPLE FINAL FINANCIAL REPORT

Contractor Name: _____

PSA #: _____

DESCRIPTION	Award Costs	Other (Matching) Costs (if applicable)	Total Costs
Salaries			
Fringe @ _____ %			
Travel			
Contractual (specify)			
Equipment			
Printing			
Materials & Supplies			
Other (specify)			
Totals			

DEEP Billing Information/Number		
DEEP Contract #	Payment/task #	P.O.#

Appendix G
INVOICE / REQUEST FOR PAYMENT
DEEP Climate Resilience Fund Grant
 Connecticut Department of Energy & Environmental Protection
(Shaded areas to be completed by DEEP)

Recipient Name: City of West Haven
 Address: 355 Main Street, West Haven, CT 06516
 FEIN#: 06-6002126
 Project I.D: DCRF-2023-02-09
 Project Title: Sanford Street Basin Flood Resilience Project Development

Review Date	Staff	Initials
	Bus. Off.	
	Proj. Mgr.	
	NPS Mgr.	
	Supervisor	

Required Form

To Be Completed By Recipient:

Date of Invoice: _____ Invoice # _____ Check if Final Payment:

Payment # _____ Quarterly Report # _____ *(must be included on the first page of related documentation)*

Contract Amount

1. Previous Account Balance: \$ _____ \$ _____

2. Amount Requested This Payment \$ _____ Check if Partial Payment (Explain)

Description: _____

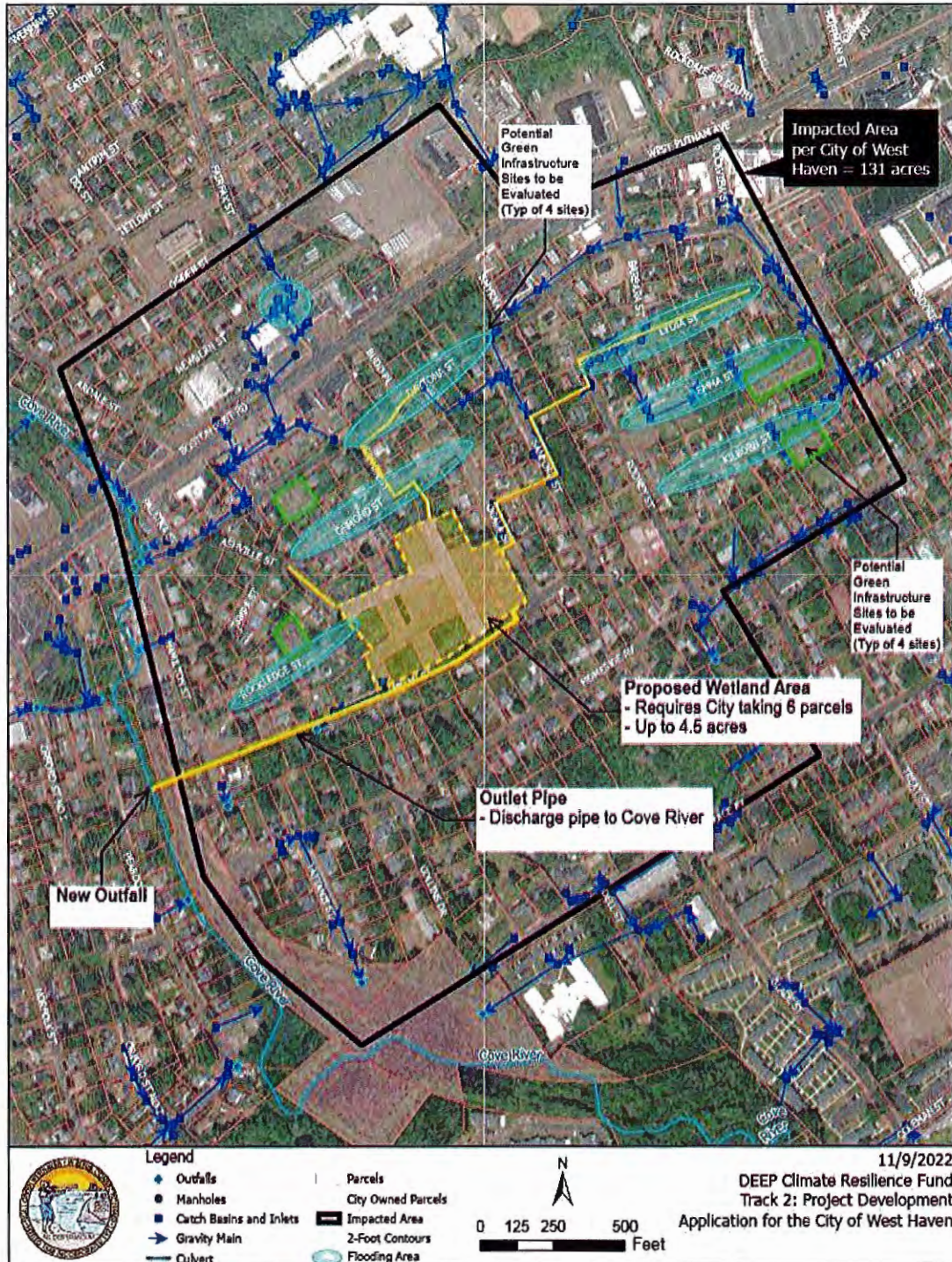
3. Remaining Balance following this Payment (#1 minus #2): \$ _____

Recipient certifies that funds were expended on allowed activities and purposes in accordance with the Contract. Recipient has submitted required documentation and agrees to produce, on request, further documentation and/or source documents used to prepare this payment request. **To expedite the review and approval process, include all required documentation and note the task # on the first page.**

Amount	Account	Fund	Dept.	Program	SID	Bud Ref	Project	Activity

DEEP Approval: _____ Date _____

APPENDIX H
MAP OF PROJECT AREA
 Project Number: DCRF-2023-02-09
 (Sanford Street Basin Flood Resilience Project Development)



AGREEMENT BETWEEN OWNER AND ENGINEER

THIS IS AN AGREEMENT made effective on _____, 2024 between City of West Haven, Connecticut ("OWNER") and CDM Smith Inc. ("ENGINEER").

OWNER's Project is generally identified as follows: Lake Street Outfall Replacement (the "Project").

OWNER and ENGINEER, in consideration of their mutual covenants herein, agree in respect of the performance or furnishing of services by ENGINEER to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below.

1. SCOPE OF SERVICES

1.1 ENGINEER agrees to perform, or cause to be performed, for OWNER services as described in Exhibit A (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.

2. TIMES FOR RENDERING SERVICES

2.1 Specific time periods and/or specific dates for the performance of ENGINEER's Services are set forth in Exhibit A.

2.2 If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.3 If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.

2.4 Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services. If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ~~ENGINEER shall be entitled to equitable adjustment of the schedule and of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation.~~

3. OWNER'S RESPONSIBILITIES

OWNER shall:

3.1 Pay the ENGINEER in accordance with the terms of this Agreement.

shall be negotiated by both parties

shall be renegotiated by both parties

- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.
- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Be responsible for all requirements and instructions that it furnishes to ENGINEER, and for the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any relevant, material defect or nonconformance in ENGINEER's Services or in the work of any Contractor employed by Owner on the Project.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

4. PAYMENTS TO ENGINEER FOR SERVICES

4.1 Methods of Payment for Services of ENGINEER.

4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A. The amount of any excise, VAT, or gross receipts tax that may be imposed shall be added to the compensation shown in Exhibit A. If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional taxes in addition to the compensation to which Engineer is entitled.

4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Payments are due within 30 days of receipt of invoice.

4.1.3 ~~If OWNER fails to make any payment~~ **If OWNER fails to process payment in the ordinary course of business** due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

4.1.4 OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

5. GENERAL CONDITIONS

5.1 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

5.2 Technical Accuracy

Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.

5.3 Opinions of Probable Construction Cost

Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.4 Reliance on Owner Provided Information

ENGINEER may use and rely on such requirements, programs, instructions, reports, data, and information provided by the OWNER in performing or furnishing services under this Agreement. ENGINEER's scope of work does not include verifying OWNER Provided Information for accuracy or completeness. OWNER may request an independent review of OWNER Provided Information by ENGINEER pursuant to a mutually agreed amendment to this Agreement. ENGINEER shall be entitled to an adjustment in price and schedule to the extent that any corrective action in ENGINEER's Services arises out of inaccurate OWNER Provided Information.

In the case where the ENGINEER's scope includes taking a preliminary or conceptual design that was prepared by another consultant for the OWNER and further developing that design to the level where it is appropriate to be issued for construction or bidding, ENGINEER shall not be responsible for latent errors or mistakes that are incorporated in that preliminary or conceptual design. Except where ENGINEER's scope explicitly includes a duty to validate or verify the preliminary or conceptual design or the underlying data and calculations, and then except only to the extent of the duty expressed in the scope, ENGINEER shall be entitled to rely on the preliminary or conceptual design as it appears in the documents provided by OWNER.

5.5 Compliance with Laws and Regulations, and Policies and Procedures

5.5.1 Engineer and Owner shall comply with applicable Laws and Regulations.

- 5.5.2 This Agreement is based on Laws and Regulations procedures as of the Effective Date. Changes after the Effective Date to Laws and Regulations may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- 5.5.3 Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- 5.5.4 Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- 5.5.5 Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- 5.5.6 Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- 5.5.7 Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- 5.5.8 Engineer's services do not include providing legal advice or representation.
- 5.5.9 Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- 5.5.10 While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

5.6 Termination

The obligation to provide further services under this Agreement may be terminated:

- 5.6.1 The obligation to provide further services under this Agreement may be terminated for cause:

- A. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- B. by Engineer:
 - a) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern.
 - c) Engineer shall have no liability to Owner on account of such termination.
- C. Notwithstanding the foregoing, this Agreement will not terminate for cause if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure ~~within no more than 30 days of receipt thereof, provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.~~ ^{. period}

5.6.2 The obligation to provide further services under this Agreement may be terminated for convenience, by Owner effective upon Engineer's receipt of notice from Owner.

5.6.3 Effective Date of Termination: The terminating party under Paragraph 5.5.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.6.4 Payments Upon Termination:

- A. In the event of any termination under Paragraph 5.5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 5.6.
- ~~B. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 5.5.4.a, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs.~~

Engineer to provide owner with a copy of any and all documents and instruments created regarding the project.

5.7 Use of Documents

- 5.7.1 All Documents are instruments of service, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- 5.7.2 If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- 5.7.3 Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.
- 5.7.4 OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Upon receipt of full payment due and owing for all Services, ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and related uses of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; (4) such limited license to OWNER shall not create any rights in third parties.
- 5.7.5 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.8 Controlling Law

This Agreement is to be governed by the Laws and Regulations of the State of Connecticut.

5.9 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement

however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.10 ~~Limitation of Liability~~ **No used.**

~~In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or \$50,000, whichever is greater.~~

5.11 Successors and Assigns

5.11.1 OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.10.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.11.2 Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.11.3 Unless expressly provided otherwise in this Agreement:

- A. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Constructor, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.
- B. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.12 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.13 Severability

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and

binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.14 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

as agreed to by both parties

5.15 Environmental Site Conditions

5.15.1 It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

5.15.2 If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

5.15.3 OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

5.16 Insurance

ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property.

5.17 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.18 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.19 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER shall be reimbursed by OWNER for all costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event.

5.20 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.21 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.22 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.23 Coordination with Other Documents

It is the intention of the parties that if the ENGINEER's Services include design then the Standard General Conditions will be used as the General Conditions for the Project and that all amendments thereof and supplements thereto will be generally consistent therewith. Except as otherwise defined herein, the terms which have an initial capital letter in this Agreement and are defined in the Standard General Conditions will be used in this Agreement as defined in the Standard General Conditions. The term "defective" will be used in this Agreement as defined in the Standard General Conditions.

5.24 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.25 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within 45 days, then either party may give written notice within 10 days thereafter that it elects to proceed with non-binding mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is not invoked by the parties or that the mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

6. DEFINITIONS

Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

6.2 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to: (1) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq, ("CERCLA"); (2) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (3) the Resource Conservation and Recovery Act, 42

U.S.C. §§6901 et seq. ("RCRA"); (4) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (5) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (6) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (7) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.3 Construction Cost – •

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

6.4 Constructor

Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

6.5 Contractor

The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

6.6 Documents

As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.

6.7 ENGINEER's Subcontractor.

A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.

6.8 Reimbursable Expenses.

The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit .

6.9 Resident Project Representative

The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B,

"Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B").

6.10 Standard General Conditions

The Standard General Conditions of the Construction Contract of the Engineers Joint Contract Documents Committee.

6.11 Total Project Costs

The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

6.12 Work

The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.

7. EXHIBITS AND SPECIAL PROVISIONS

7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

Exhibit A - Engineer's Services, Owner's Responsibilities, Time for Performance, Method of Payment, and Special Provisions.

Exhibit B - Duties, Responsibilities and Limitations of Authority of the Resident Project Representative.

Exhibit C - Certificate of Insurance

Exhibit D - City of West Haven's Request for Qualifications RFQ #2024-03 Stormwater Infrastructure Assessment and Design

Exhibit E - City of West Haven and Connecticut Department of Energy and Environmental Protection Agreement

Signature page follows.

This Agreement and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

ENGINEER:

Name: Dorinda Borer

Name: Joseph L. Laliberte, P.E.

Title: Mayor

Title: Senior Vice President

Date:

Date:

Address for giving notices:
City of West Haven
355 Main Street
West Haven, Connecticut 06516

Address for giving notices:
CDM Smith Inc.
101 East River Drive, Suite 1A
East Hartford, Connecticut 06108

Funds are available for the services herein.

Account No. _____

Date _____

Director of Finance

This contract is approved as to correctness of form.

Date _____

Corporation Counsel

EXHIBIT A

**Engineer's Services, Owner's Responsibilities,
Time for Performance, Method of Payment,
and Special Provisions**

**EXHIBIT A
TO AGREEMENT BETWEEN
OWNER AND ENGINEER
Scope of Work**

This is an exhibit attached to and made a part of the Agreement dated _____, 2024, between City of West Haven, Connecticut (OWNER) and CDM Smith Inc. (ENGINEER) for professional services.

1.0 ENGINEER'S SERVICES

Overview

This is Phase 1 of the 4 Phase project to relieve flooding in the area and reduce beach erosion. Phase 1 involves upgrading outfall pipes and groin on the beach to eliminate overflows and beach erosion. The existing outfalls of 24-inch and 48-inch will be upgraded along with two manholes. A study will be conducted to determine 25-, 50-, and 100-year storm flows to determine outfall pipe sizing. ENGINEER will determine the catchment area and rainfall intensities for various frequency storms to arrive at flows. Improvements in Phase 1 will be limited to the outfalls only and other required improvements will be addressed in future phases.

Scope of Work

During Tropical Storm Elsa, the beach near the intersection of Lake Street and Ocean Avenue experienced flooding and there was severe loss of sand on the beach. A drain manhole on the beach was lifted and the corrugated metal outfall pipe was noted to be in poor condition. The initial task will be to evaluate the Lake Street / Colonial Drive area drainage basin to make sure the sizing of the replacement pipe/manholes/outfalls from the intersection of Lake Street and Ocean Avenue to the two outfalls on the beach is appropriate followed by final design and services during construction.

TASK 1 Lake Street / Colonial Drive Area Modeling and Evaluation

ENGINEER will delineate the watershed tributary to the final design project area (Task 2) using the City's GIS topography. ENGINEER will collect, review, and analyze existing data, including available plans, aerial photography, and topographic mapping for the project area. ENGINEER will hire a subcontractor to survey the drainage system, including the manhole rim and the influent/effluent pipe inverts for up to 12 structures, as well as a profile of the beach shore in the vicinity of the outfall. ENGINEER will hire a subcontractor to perform CCTV of the drainage system for one day and provide full-time oversight, during which time a field investigation of the drainage systems will be done concurrent with the CCTV. The CCTV will primarily be used to confirm the connectivity of the drainage system and identify buried structures from the Colonial Boulevard inlets to the outfalls. ENGINEER will hire a subcontractor to perform one day of subsurface explorations and provide full time oversight and laboratory testing. An updated connectivity map and a summary of the pipe condition will be included in the Technical Memorandum.

Based on the OWNER's GIS and the survey data, ENGINEER will develop a simplified hydraulic model of the existing storm drainage system in EPA's Storm Water Management Model (SWMM). Tropical Storm Elsa will be run through the existing conditions model to check reported flooding. Using the existing conditions model, ENGINEER will generate discharges through the outfalls for the 25-, 50-, and 100-year storm flows to determine outfall pipe sizing. These design event discharges will be used in developing outlet protection alternatives.

ENGINEER will work with the City to select appropriate design conditions incorporating climate resiliency (i.e. potentially 100-year storm with factor for climate resiliency) for the storm drainage system. The alternatives analysis will include up to four options for end of pipe treatment to stabilize the beach near the outfall and minimize sand loss. Alternatives may include lengthening the outlet into Long Island Sound, the construction of an appropriately sized rip-rap apron, the construction of a preformed scour hole, the construction of an appropriately sized, protective swale, or shortening or lengthening the outfall discharge location. Design criteria, including tailwater considerations and rip-rap sizing, will be based on guidance from the CT DOT Drainage Manual chapter on Outlet Protection.

ENGINEER will facilitate up to two public meetings to solicit feedback from the community. Meeting attendees will be solicited for feedback regarding their experiences within the City of West Haven related to flooding and other climate related risks. One meeting will be held at the beginning of the project to identify/confirm areas with climate vulnerabilities and one meeting will be held after the alternatives analysis to obtain public input on the alternatives and the recommended plan and proposed project to proceed with final design (Task 2).

For the meetings, ENGINEER will prepare an agenda, PowerPoint presentation, meeting documents/figures and draft meeting minutes. This task also includes preparation of project status documents for public distribution and development of public outreach documents.

The results of the CCTV review, modeling, alternatives analysis, and cost estimate will be summarized in a draft Technical Memorandum, which will be submitted to the OWNER for review. Once the OWNER has reviewed the draft technical memorandum, ENGINEER will incorporate comments into the final Technical Memorandum and submit it to the City.

Task 2 Final Design Upgrading Outfall Pipes and Groin on the Beach

ENGINEER will provide the final design to upgrade outfall pipes and groin on the beach to abate overflows and beach erosion. Existing outfalls of 24-inch and 48-inch will be upgraded along with two manholes.

ENGINEER will prepare 24"x36" drawings for the recommendations. The drawings will detail the outfall replacement pipe(s); drainage structures/manholes; groin/beach improvements; and any other pertinent construction information. Contract drawings will also include cover sheet, locus plan, legend and general notes and detail sheets. Contract drawings will be submitted to the City for review at 60 and 90 percent completion. The contract documents will incorporate all final comments and the final deliverables will be submitted to the OWNER for bidding purposes.

Contract Specifications – ENGINEER will develop technical specifications for applicable work. The specification will include applicable front-end section (instructions to bidder, bid form, general conditions, supplemental general conditions), detailed technical specifications covering every item to be furnished by the contractor.

Permitting activities and inquiries will be performed by a subcontractor. The following permits and inquiries are anticipated for this project:

Local:

- Site Plan and Erosion & Sedimentation Plan
- Flood Development Permit
- Local Coastal Site Plan Review

State:

- Pre-application meeting with CT DEEP
- National Diversity Database Review – Submit inquiry letter. Assumes no follow-on investigation (project is not located in a CT DEEP Area of State or Listed Species).
- State Historic Preservation Office (SHPO) Review – Archaeology Phase 1. Submit inquiry letter. (Assumes no archaeologically sensitive areas within the project area, so follow-on investigations)
- CT DEEP Structures, Dredging & Fill & Section 401 WQC Application
- Flood Management Certification
- Wetlands Delineation
- Stormwater Pollution Prevention Plan (SWPPP)

Federal:

- Water Quality Certification – USACE Preconstruction Notification for Repair Project under GP2 (Coastal) or GP6 (Coastal)

Subcontractor will prepare and send inquiry letters for the items listed above, and will prepare the listed permit applications and provide documentation. Based on available information, it is assumed that there are no wetlands (per City GIS) and no direct or indirect impacts to wetlands, so no Inland Wetlands and Watercourse (IWWC) or Planning and Zoning Commission (PZC) permits or meetings are required. It is also assumed that there are not archaeological sensitive areas within the project limits. Permit application costs are not included, and the City will pay for all permit applications separately, as needed.

Task 3 Bidding

ENGINEER shall provide bidding related services, including attending pre-bid meeting, preparing bid addendum (if necessary), and reviewing bid results. An electronic file of the final bid documents will be provided in PDF format to be distributed to prospective bidders electronically. Three sets of hard copies of plans and specifications will be submitted to the OWNER.

Task 4 Engineering Services During Construction

ENGINEER proposes to provide general construction engineering and administration services for this project, as follows:

- Project Management - Coordinating all correspondence between the contractor, OWNER, and ENGINEER internal parties.
- Design Engineering - Direct involvement of design engineers knowledgeable of the specific design intent will be available for the entire construction process. The design engineer responsible for the overall design document will assist the construction services staff in resolving conflicts/disputes clarification that arise from the contractor, subcontractor, or the OWNER during the construction phase.
- Shop Drawing Review
- Request for Information (RFI) Services and Proposed Change Order review
- Record Drawings – ENGINEER will review the Contractor’s Record Drawings for conformance with the as-built conditions and return any necessary comments or edits to the Contractor for further documenting.
- Document Control – Administrative staff will log all correspondence, records, related documents into a document management software program to track responses.

ENGINEER will provide onsite Resident Project Representative (RPR) services, including the following:

- day-to-day observation of site activity,
- confirming the contractor builds the work in accordance with the plans and specifications,
- verifying installed bid quantities,
- monitoring all required field testing and traffic management,
- coordinating with OWNER’s staff,
- attending scheduled coordination meetings,
- producing daily and monthly reports,
- reviewing and processing Contractor pay requests,
- reviewing project schedules,
- reviewing, negotiating, and processing change orders.

This task includes providing an RPR over the course of the anticipated 2.5 months of active construction. Extension of the general contractor’s schedule beyond 2.5 months of active construction will require an amendment to this agreement.

2.0 OWNER’S RESPONSIBILITIES

2.1 None noted.

3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's services as set forth in Article 2 of said Agreement are as follows:

TASK 1 Lake Street / Colonial Drive Basin Stormwater Study

ENGINEER will complete the scope of services within six months of receiving notice to proceed (NTP). Final report and drawings will be provided within one month of receiving final comments from the OWNER.

TASK 2 Final Design

ENGINEER will complete the draft Final Design Documents within six months of receiving NTP. Final Design Documents will be provided within one month of receiving final comments from the OWNER. The bid ready set will depend on permit approval by outside agencies with overall schedule dependent on how long those reviews/approvals from others take.

Permit timeline may vary. The following are assumed:

- NDDB Review: 4-6 weeks (assuming Letter of Approval is received and no follow-on investigation required)
- COP Permit - Submitted After Receipt of NDDB Letter and Receipt of 60% design drawings
- 401 Water Quality Cert - Submitted Concurrent with COP Permit
- USACE PCN - Submitted Concurrent with COP Permit
- Flood Management Cert: Submitted concurrent with COP Permit

TASK 3 Bidding

ENGINEER will complete bid phase services during the anticipated two month bid period and award process.

TASK 4 Engineering Services During Construction

ENGINEER will provide engineering services during construction, including inspection as noted above, during the five month construction phase with an anticipated 2.5 month period of active construction.

4.0 METHOD OF PAYMENT

The method of payment for Services rendered by ENGINEER shall be as set forth below:

Compensation for services of ENGINEER described in this Exhibit A will be lump sum by task, to be invoices monthly based on approximate percent complete.

Task	Description	Amount	Method of Payment
1	Lake/Colonial Basin Stormwater Study	\$85,500	Lump Sum
2	Final Design	\$103,800	Lump Sum
3	Bidding	\$6,000	Lump Sum
4	Engineering Services During Construction	\$108,000	Lump Sum
TOTAL		\$303,300	

5.0 SPECIAL PROVISIONS

OWNER has established the following special provisions and/or other considerations or requirements in respect of the Assignment:

N/A

EXHIBIT B

Duties, Responsibilities and Limitations of Authority of the Resident Project Representative

**EXHIBIT B TO AGREEMENT
BETWEEN
OWNER AND ENGINEER**

**DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY
OF THE RESIDENT PROJECT REPRESENTATIVE**

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on _____, 2024 between City of West Haven, Connecticut (OWNER) and CDM Smith Inc. (ENGINEER) for providing professional services.

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing progress and quality of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, as a result of such observations of Contractor's work, supervise, direct, or have control over any Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by any Contractor, for safety precautions and programs incident to the work of any Contractor, for any failure of any Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's Agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. *Schedules:* Review the progress schedule, schedule of Shop Drawing submittals schedule of values, and other schedules prepared by Contractor and consult with ENGINEER concerning their acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings (but not Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.
3. *Safety Compliance:* Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.

4. *Liaison:*

- a. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Construction Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
- b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

5. *Shop Drawings and Samples:*

- a. Record date of receipt of Shop Drawings and Samples.
- b. Receive Samples that are furnished at the site by Contractor, and notify ENGINEER of availability of Samples for examination.
- c. Advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.

6. *Review of Work, Defective Work, Inspections, Tests and Start-ups:*

- a. Report to ENGINEER whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.
- b. Inform ENGINEER of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.
- d. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- e. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
- f. Accompany visiting inspectors representing public or other agencies having jurisdiction over the work, record the results of these inspections and report to ENGINEER.

7. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

8. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

9. *Records:*

- a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, copies of Construction Contract Documents including all Work Change, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, approved Shop Drawing submittals and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, Subcontractors present at the Site weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- c. Record names, addresses, e-mail addresses, websites and telephone numbers of all Contractors, Subcontractors and major suppliers of materials and equipment.

10. *Reports:*

- a. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Change Directives, obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.
- d. Report immediately to ENGINEER and OWNER the occurrence of any accident.

11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed and materials and equipment delivered at the site but not incorporated in the Work.

12. *Certificates, Maintenance and Operation Manuals:* During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

13. *Completion:*

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- b. Observe whether Contractor has had performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the work, including but not limited to those to be performed by public agencies having jurisdiction over the work.
- c. Conduct a final inspection in the company of ENGINEER, OWNER and Contractor and prepare a final list of items to be completed or corrected.

- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

C. Limitations of Authority by RPR

Resident Project Representative:

1. Shall not authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or any Constructor.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

EXHIBIT C
Certificate of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
05/08/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER
Aon Risk Services Northeast, Inc.
Boston MA Office
53 State Street
Suite 2201
Boston MA 02109 USA

CONTACT NAME:
PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): 800-363-0105
E-MAIL ADDRESS:

INSURED
CDM Smith Inc.
75 State Street Suite 701
Boston MA 02109 USA

Table with columns INSURER(S) AFFORDING COVERAGE and NAIC #. Includes entries for Underwriters At Lloyds London, Hartford Fire Insurance Co., Twin City Fire Insurance Company, Hartford Accident & Indemnity Company, ACE Property & Casualty Insurance Co., and Evanston Insurance Company.

COVERAGES CERTIFICATE NUMBER: 570105642483 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS,

Limits shown are as requested

Main table with columns: INSR LTR, TYPE OF INSURANCE, ADDL INSD, SUBR WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include Commercial General Liability, Automobile Liability, Umbrella Liab, Workers Compensation and Employers' Liability, and Architects & Engineers Professional.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Project Name: City of West Haven - Lake Street Outfall Replacement, RFQ # 2024-03, Stormwater Infrastructure Assessment & Design.

CERTIFICATE HOLDER
City of West Haven
Attn: Dorinda Borer, Mayor
355 Main Street
West Haven CT 06516 USA

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE
Aon Risk Services Northeast Inc

Holder Identifier :

570105642483

Certificate No :





ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED CDM Smith Inc.	
POLICY NUMBER See Certificate Numbe 570105642483			
CARRIER See Certificate Numbe 570105642483	NAIC CODE	EFFECTIVE DATE:	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance
 01.01.24 - 01.01.25 Professional

Policy: PSDEF2400033

Beazley (Syndicates 2623/0623) - 25%
 BRIT (Syndicate 2987) - 25%
 Munitus (Syndicates 4242/457/4711/5555) - 12.5%
 Re/Rn (Syndicate 1458) - 10%
 Convex (Syndicate 1984) - 7.50%
 Castel Underwriting (Syndicate 2525) - 5%

Professional Policy: 42CNP31339704
 National Fire & Marine Insurance Company - 15%

EXHIBIT D

City of West Haven's Request for Qualifications RFQ #2024-03 Stormwater Infrastructure Assessment and Design

**CITY OF WEST HAVEN
REQUEST FOR QUALIFICATIONS**

RFQ# 2024-03

STORMWATER INFRASTRUCTURE ASSESSMENT AND DESIGN

The City of West Haven (here after referred to as, "the City") is soliciting Statements of Qualifications from qualified firm(s), or a team, for assistance in the development of a stormwater infrastructure assessment, studies, final design, and/or engineering/inspection services during construction.

The City seeks to identify qualified consultants who have previous experience in preparing a stormwater infrastructure assessment and the development of final design documents for recommendations. The consultant should be proficient in Connecticut state law, stormwater design and management, GIS data, and clear and user-friendly presentation of materials.

All respondents to this RFQ are subject to the instructions communicated in the RFQ document and respondents are cautioned to completely review the RFQ in its entirety and to follow instructions carefully. This work is funded via Connecticut Department of Energy and Environmental Protection (CT DEEP) – Climate Resilience Fund, National Oceanic and Atmospheric Administration (NOAA) and National Fish and Wildlife Foundation (NFWF) – National Coastal Resilience Fund and Urban Act. As such, this will require certain qualifications associated with said funding.

Responses to this RFQ shall be submitted to Tammy O'Connell, Procurement Specialist, City of West Haven, 355 Main Street, 3rd Fl. Purchasing Dept., West Haven, CT 06516. Responses are due no later than Wednesday, February 21, 2024 at 2:00pm. Respondents are required to submit four (4) copies of their submission with one (1) electronic copy. All submissions must be sealed and clearly marked RFQ# 2024-03 Stormwater Infrastructure Assessment and Design. No oral, telephonic, emailed, or faxed responses shall be considered. Any responses received after the above scheduled due date and time, will be rejected.

All questions regarding this Request for Proposals should be directed to Abdul Quadir, City Engineer, by e-mail at quadir@westhaven-ct.gov. **The RFI (Request For Information) deadline is Wednesday, February 7, 2024 at 1:00pm.** Questions submitted later than this deadline will not be considered. An addendum with questions and answers, if necessary, will be published on the City website by 3:00pm on Wednesday, February 14, 2024.

Tammy O'Connell
Procurement Specialist



City of West Haven

RFQ # 2024-03

Request for Qualifications (RFQ)

for

**Stormwater Infrastructure Assessment &
Design**

City of West Haven, CT

Issued: Wednesday, January 24, 2024

Responses Due: Wednesday, February 21, 2024 2:00pm

The City of West Haven (further referred to as “the City”) is soliciting Statements of Qualifications from qualified firm(s) or a team for assistance in the development of a stormwater infrastructure assessment, studies, final design, and/or engineering/inspection services during construction.

The City seeks to identify qualified consultants who have previous experience in preparing a stormwater infrastructure assessment and the development of final design documents for recommendations. The consultant should be proficient in Connecticut state law, stormwater design and management, GIS data, and clear and user-friendly presentation of materials.

All respondents to this RFQ are subject to the instructions communicated in this document and are cautioned to completely review the entire RFQ and follow instructions carefully. This work is funded via Connecticut Department of Energy and Environmental Protection (CT DEEP) - Climate Resilience Fund, National Oceanic and Atmospheric Administration and National Fish and Wildlife Foundation (NFWF) - National Coastal Resilience Fund, Urban Act, and as such has certain qualifications associated with the funding.

Background

The City of West Haven has been a Phase II MS4 permitted municipality Circa 2007. With that permit designation the City has an obligation to educate our residents on stormwater pollution as well as inspect and manage the stormwater infrastructure within our jurisdiction. Currently home to over 54,000 residents, the City contains approximately 12 square miles. West Haven is experiencing significant rain events that far exceed the original design capacity of the City’s stormwater infrastructure. With the effects of climate change in mind, the City seeks to develop a proactive plan to maintain and update our overburdened stormwater infrastructure with a focus on nature-based solutions to address stormwater flooding and improve water quality.

Scope of Services

The stormwater infrastructure scope of services should include the following information and analysis. Alternative services and deliverables may be proposed on evidence of the need to meet the purpose of the RFQ. RFQ responses that do not include all these will not be considered.

Project 1: Assessing Nature-Based Solutions to Mitigate Flood Impacts along the Cove River

Provide an environmental engineering study of the Cove River basin, which is tidally-influenced. The Cove River originates in Orange and flows through West Haven before discharging into Long Island Sound at Sea Bluff Beach by Bradley Point. Dams along the river form the Maltby Lakes, reservoirs of the South Central Connecticut Regional Water Authority (RWA), and Phipps Lake. The study should evaluate both water quality and quantity, as large parts of the city flood from the Cove River during large storm events, including property erosion concerns from bodies of water that feed into the Cove River. The study shall include:

- Conducting alternatives analysis and targeted public engagement to identify appropriate nature-based solutions along the Cove River.
- Advancing efforts to enhance connectivity between headwaters and coast, between channel and floodplain, and to restore natural flow patterns, flood mitigation capabilities and habitats.
- Providing considerations for stormwater and drainage conveyance, watershed management, hazard mitigation, green stormwater infrastructure, stormwater control measures, and stormwater asset management.
- Providing engineering analysis of key stormwater features such as stream stabilization and restoration.
- Identifying climate vulnerabilities.
- Performing field investigations.
- Providing drainage system modeling and analysis.
- Identifying opportunities to collaborate with neighboring municipalities on stormwater projects.
- Analyzing replacement or rehabilitation benefits for high-risk stormwater systems.
- Evaluating solutions beyond the impacts of flooding, such as the overall environmental health of the river.

- Evaluating ways to reduce the flow of potentially contaminated runoff water from roads to protect marsh metabolism and the health of Long Island Sound.
- Providing recommendations for the Cove River basin to address stormwater flooding along the river by utilizing things such as retention areas and natural percolation to alleviate flooding issues while yielding substantial environmental benefit.
- Providing a summary report or technical memorandum with recommendations and concept designs to correct any deficiencies or concerns with the existing stormwater system.
- Ranking the recommendations by risk and other factors to prioritize projects by order of City's needs.
- Including cost estimates for various alternatives and recommend improvements.
- Assisting with grant applications.

Project 2: Sanford Street Basin Stormwater Study

This climate resilience study will be the first step in the design process to address the impacts of climate-related hazards within the Lydia/Sanford area, which is prone to flooding during heavy rain events. Develop preliminary designs for reducing flooding in the Sanford Street Basin, in the Allintown District, including potentially new piping, culverts, structured wetland, and a new outfall path to the Cove River. The study will include:

- Conducting alternatives analysis and targeted public engagement to identify appropriate nature-based solutions in the Lydia/Sanford area.
- Evaluating ways to reduce the flow of potentially contaminated runoff water from roads to protect Cove River and downstream wetlands.
- Identifying climate vulnerabilities.
- Performing field investigations.
- Providing drainage system modeling, analysis, and preliminary design.
- Providing recommendations for the Lydia/Sanford area to address stormwater flooding by utilizing things such as retention areas and natural percolation to alleviate flooding issues while yielding substantial environmental benefit.
- Providing a summary report or technical memorandum with recommendations and Preliminary Design drawings to correct any deficiencies or concerns with the existing stormwater system.
- Including cost estimates for various alternatives and recommended improvements.
- Providing community outreach.
- Assisting with grant applications.
- Conducting a feasibility study for a stormwater authority.

Project 3: Lake Street/ Colonial Bulevard Area Flooding

This is phase1 of the 4 phase project to relieve flooding in the area and reduce beach erosion. Phase 1 involves upgrading outfall pipes and groin on the beach to eliminate overflows and beach erosion. Existing outfalls of 24inch and 48 inch will be upgraded along with two manholes . A study will be conducted to determine 25,50 and 100 year storm flows to determineoutfall pipes sizing. Consultant will determine the catchment area and rainfall intensities for various frequency storms to arrive at flows. This phase improvements will be limited to the outfalls only and other improvements required will be addressed in future phases, Services may include the following:

- Performing field investigations.
- Providing final design drawings and specifications suitable for public bidding.
- Including cost estimates for 30 percent, 60 percent and final design.
- Providing assistance during the bid phase of the project.
- Providing community outreach
- Providing engineering services during construction including construction inspection.

Future Stormwater Infrastructure Projects

Provide additional stormwater infrastructure study, design, and engineering services during construction as requested by the City with similar scope and budget to projects noted above.

Content and Format of Proposal Package

Firms submitting qualifications shall have no association with City staff that could be considered a conflict of interest. Any such relationship will subject the firm to immediate disqualification in consideration for this project. A selection committee will evaluate the submittals and may elect to select the most qualified firm based on the responses as submitted or elect to conduct interviews with multiple firms prior to recommending a firm.

The City is requesting four (4) copies and one (1) electronic copy. Submittals shall be on 8.5" x11" paper, side bound so they lay flat when opened. The submission shall be a maximum of 70pages front and back or 140 pages single-sided. Submittals shall include the following:

Project Approach:

The letter of interest provided in the submission shall include the following:

- The name and address of the prime consultant and the state in which it is incorporated and chiefly located.
- Evidence of State Licensing as a Professional Engineer.
- Provide supporting information on why your team is qualified and summarize why the City should select your firm.
- Identification of the project team, including the role and relevant work experience for key team members.
- A summary of the scope of services that shows an understanding of the City's needs and describes how those would be met.

Firm and Staff Qualifications:

The submission shall include a general description of the firm (prime and subconsultants) and its background as it relates to this project. Specific information regarding the firm and staff shall be submitted and include:

- Information regarding the firm's (including subconsultants, if applicable) previous experience with similar or related projects in Connecticut and the United States, including a brief description of these projects and project staffing.
- Three references including client name, address, contact person, telephone number, email, project start and end date as well as a project description. References should be for similar or related projects on which key staff that are proposed for this project have worked.

Anticipated Schedule:

- The submission shall provide a schedule and demonstrate how the submitting firm will manage its responsibilities and work scheduled to be performed, including work of and with City personnel.

Work Samples:

- The submission shall include up to three recent work samples successfully prepared by the prime consultant within the last 5 years. The work samples shall be submitted with the proposal and will not count toward the maximum page limit.

Submittal Process Details

Firm selection will be based on the project approach, firm/staff qualifications, anticipated schedule, and work samples.

The City of West Haven reserves the right to reject any responses to this RFQ that do not comply with the content and format of proposal requirements. The City can also conduct discussions with any or all respondents. The City accepts no financial responsibility for any costs or expenses incurred by any entity in responding to this RFQ. All submissions may be kept by the City and may be disclosed to third parties at the City's discretion. All submissions are public record, and subject to FOIA requests.

Questions and Clarifications

All questions shall be submitted to Abdul Quadir, City Engineer, via email (quadir@westhaven-ct.gov), no later than 1:00 p.m. on Day, February 7, 2024. Questions submitted later than this deadline will not be considered. An addendum with questions and answers, if necessary, will be published on the City website by 3:00 p.m. on Day, February 14, 2024.

Statement of Qualifications Submittal

The deadline for firms submitting qualifications is 2:00pm on Day, February 21, 2024. No submissions or supporting documents will be accepted after this deadline. Firms accept all risks for late delivery of Qualifications Packages, regardless of fault. The City takes no responsibility for submittals lost in transit or delivered late. Submittals must be delivered to:

West Haven City Hall
355 Main St., 3rd Fl.
Attn: Tammy O'Connell, Procurement Specialist
West Haven, CT 06516

Submittal packages should be enclosed in a sealed envelope marked **REQUEST FOR QUALIFICATIONS – STORMWATER INFRASTRUCTURE ASSESSMENT & DESIGN (RFQ # 2024-03)** and set to the attention of Tammy O'Connell.

Anticipated Schedule

- 02/21/2024: Submission deadline
- 02/27/2024-03/29/2024: Selection committee review of submittals/potential interviews
- 04/02/2024: Highest ranked firm notified
- 04/02/24-04/30/2024: Procurement
- 05/06/24: Project Kickoff

Selection Process

This RFQ provides information necessary to prepare and submit qualifications for consideration and ranking by the City. It is the intent of the City to appoint a selection committee to review the submitted Statements of Qualifications. This committee will review each qualification submittal and rank the submittal based on the criteria requirements specified within this RFQ. The City may invite firms for interviews, but this is not a required step in the selection process. At the conclusion of the interviews (if held), the selection committee will rank the firms based on the selection criteria and the interviews. The City will provide electronic notification to all firms regarding final selection by 04/30/2024.

Upon completion of the selection process, the highest ranked firm will be asked to submit a fee proposal to begin contract negotiations for a fair and reasonable price. By submitting its Statement of Qualifications in response to this RFQ, respondent accepts the evaluation process as outlined in the following section, acknowledges, and accepts that determination of the "most qualified" firm may require subjective judgments by the City.

Evaluation Criteria

Firms will not be considered unless the following minimum qualifications are met:

1. Firm(s) must be properly licensed with the State of CT Department of Consumer Protection for Professional Engineers and Land Surveyors; and
2. Firms(s) must employ at least one (1) Connecticut Licensed Professional Engineer in responsible charge of the work from this RFQ.

If an award is made, it is expected that the City's selection will be based off the following evaluations criteria:

1. Proposal package responsiveness, appearance, and presentation: Provide a readable, clear and straightforward project approach that addresses the needs of the City's climate change experiences,

limited resources, and need for future planning. (20%)

2. Overall Qualifications of the Project Manager and Project Team: Clear identification of the project manager and team personnel that will be assigned to the project. This section shall include the demonstrated project management and quality control methods employed by the team. (25%)
1. Project Approach and Project Understanding: Preference shall be afforded to those firms that, in the opinion of the City, will be able to adequately present a clear project plan and proposed approach towards the successful implementation of a stormwater management plan and stormwater utility fee. (35%)
2. Relevant Experience: Provide brief summaries of relevant project experience, expertise, and qualifications of the firm. Include relevant work experience for the project team and note the anticipated availability of each member. (20%)

Additional Information about this RFQ

Public Records

Upon receipt by the City, your Qualifications Package is considered a public record except for material that qualifies as "Trade Secret" information under relevant CT Statutes. Your Qualifications Package will be reviewed by City of West Haven staff, as well as members of the general public who may submit public record requests. To properly designate material as a trade secret under these circumstances, each firm must take the following precautions: (a) any trade secrets submitted by a firm should be submitted in a separate document marked "Trade Secret - Confidential and Proprietary Information - Do Not Disclose Except for the Purpose of Evaluating this Qualifications Package," and (b) the same trade secret/confidentiality designation should be stamped on each page of the trade secret materials contained in the document.

In submitting a Qualifications Package, each firm agrees that the City may reveal any trade secret materials contained in such response to all staff involved in the selection process and to any outside consultant or other third parties who are hired to assist in the selection process. Furthermore, each firm agrees to indemnify and hold harmless the City and each of its officers, employees and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the firm has designated as a trade secret. Any firm that designates its entire Qualifications Package as a trade secret may be disqualified from the selection process.

Conditions, Clarifications and Reservations

The City expects to select one firm or team for all projects or select separate firm for each project but reserves the right to request substitutions of subconsultants.

The City reserves the sole discretion and right to reject any and all responses received with respect to the RFQ and to cancel the RFQ process at any time prior to entering into a formal agreement. The City further reserves the right to request additional information or clarification of information provided in any response. The City also reserves the right, but is under no obligation, to waive technicalities and informalities. The City shall make the award as deemed in its best interest.

A response to this RFQ should not be construed as a contract, nor indicate a commitment of any kind. The RFQ does not commit the City to pay for costs incurred in the submission of a response to this RFQ or for any cost incurred prior to the execution of a final contract. No recommendations or conclusions from this RFQ process concerning an individual firm shall constitute a right (property or otherwise) under the Constitution of the United States or under the Constitution, case law or statutory law of Connecticut. Neither binding contract, obligation to negotiate, nor any other obligation shall be created on the part of the City unless the City and your firm execute a contract.

All proposal packages and materials submitted hereunder become the exclusive property of the City of West Haven.



CITY OF WEST HAVEN
355 Main St
 West Haven, Connecticut 06516

**DISCLOSURE &
 CERTIFICATION AFFIDAVIT**

EVERY SECTION MUST BE COMPLETED

For help completing this form contact Purchasing Director at 203-937-3624

Contractor/Vendor Name:	
Address:	
Telephone and/or Fax #:	
Email Address:	
Contact Person:	

For the purposes of this Disclosure and Certification Affidavit, the following definitions apply:

- (a) "Person" means one (1) or more individuals, partnerships, corporations, associations, or joint ventures.
- (b) "Contract" means any agreement or formal commitment entered into by the city to expend funds in return for work, labor, services, supplies, equipment, materials or any combination of the foregoing, or any lease, lease by way of concession, concession agreement, permit, or per agreement whereby the city leases, grants or demises property belonging to the city, or otherwise grants a right of privilege to occupy or to use said property of the city.
- (c) "City" means any official agency, board, authority, department office, or other subdivision of the City of West Haven.
- (d) "Affiliate Entity" means any entity listed in sections 9 or 10 below or any entity under common management with the Contractor.

State of		County of	
I,	(type or print your name above)		being first duly sworn, hereby deposes and says that:
1.	I am over the age of 18 and understand the obligations of making statements under oath; I understand that the City of West Haven is relying on my representations herein.		
2a.	I am the corporate secretary or majority owner (including sole proprietorship) of	Insert Company Name above	
2b.	Or I am an individual and my name is:	if an individual, insert your name above	
3.	I am fully informed regarding the preparation and terms of the above referenced agreement (the "Agreement") and of all pertinent circumstances related thereto.		
4.	Please select the applicable representation(s) regarding taxes or, if none of the below are accurate, attach an explanation of the status of the relevant tax obligations to this Affidavit (mark an "X" in the appropriate box or "NA" if none apply).		
4a.	As required by Conn. Gen. Stat. §12-41, the Contractor (and each owner, partner, officer, authorized signatory or Affiliate Entity of the Contractor) has filed a list of taxable personal property with the City of West Haven for the most recent grand list and all taxes are		
4b.	The Contractor (including any owner, partner, officer or authorized signatory thereof) is not required to file a list of taxable personal property with the City of West Haven for the most recent grand list and does not owe any back taxes to the City of West Haven, either directly or through a lease or other agreement.		
4c.	The Contractor or an owner, partner, officer, representative, agent or Affiliate Entity of the Contractor either i) has a PILOT agreement with the City of West Haven or ii) owes back taxes and has executed an agreement with the City of West Haven to pay said back taxes in installment payments. Such agreement is attached and incorporated herein by reference and the payments under said agreement are not in default.		
5.	Other than as may be described in section 4 above, the Contractor (including any owner, partner, officer, other authorized signatory, or Affiliate Entity) does not have any outstanding monetary obligations to the City of West Haven.		
6.	Please select the applicable representation about the Contractor's business registration:		
6a.	Contractor is a Connecticut corporation, partnership, limited liability company or sole proprietorship and its Connecticut Secretary of the State Business ID #:	Insert State Registration # above	
6b.	Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship but is registered to do business in the State of Connecticut. The Contractor's Connecticut Secretary of the State Business ID #:	Insert State Registration # above	
6c.	Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship and is not registered to do business in the State of Connecticut. The Contractor is registered in the State of:	Please insert State name above	
	Contractor has confirmed with the Connecticut Secretary of the State that the services it will provide pursuant to the Agreement do not constitute doing business in the State of Connecticut and no registration with the Connecticut Secretary of the State is required. Contractor does otherwise have the following State of Connecticut registrations, certificates or approvals relevant to the Agreement (if not applicable, state N/A).		

7. The following list is a list of the names of **all** persons affiliated with the business of the Contractor who are also affiliated with the City of West Haven. For purposes of this Affidavit, "affiliated with the business of the Contractor" includes any current or former employee (including officers) of the Contractor or any owner, board member or agent of the Contractor, or of any subsidiary or parent company of the Contractor, and "affiliated with the City of West Haven" means any employee, agent, public official, board member, commissioner or any other person serving in an official capacity for or on behalf of the City of West Haven. If none state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name	City Affiliation Role & Time Frame	Contractor Affiliation Role & Time Frame	DOB
1				
2				

8. The following list is a list of all contracts in which either the Contractor, any person affiliated with the business of the Contractor or an Affiliate Entity of the Contractor provides, or has provided, services or materials to the City within one (1) year prior to the date of this disclosure. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name of Contractor or Affiliate	Affiliation (if applicable)	Contract Number	DOB
1				
2				

9. The Contractor possesses an ownership interest in the following business organizations, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Organization Name	Address	Type of Ownership
1			
2			

10. The following persons and/or entities possess an ownership interest in the Contractor. If the Contractor is a corporation, list the names of each stockholder whose shares exceed twenty-five (25) percent of the outstanding stock. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name	Title	% of Ownership	DOB
1				
2				

11. If the Contractor conducts business under a trade name, the following additional information is required: the place where such entity is incorporated or is registered to conduct such business; and the address of its principal place of business, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	TRADE NAME	PLACE OF INCORPORATION/REGISTRY	PRINCIPAL PLACE OF BUSINESS
1			
2			

I hereby certify that I am duly authorized to sign this Affidavit and that the person who will sign the Agreement with the City on behalf of the Contractor will be duly authorized to execute the same. I hereby further certify that the statements set forth above are true and complete on the date hereof and that I, or another authorized individual of the Contractor, will promptly inform the City, in writing, if any of the information provided herein changes or is otherwise no longer accurate at any point during the execution of the above referenced Agreement. I understand that any incorrect information, omission of information or failure of the Contractor to update this information, as described in the foregoing sentence, may result in the immediate termination of any and all agreements the Contractor has with the City of West Haven and disqualification of the Contractor to further contract with the City.

Signature & Title of person completing this form:			
THIS FORM MUST BE NOTARIZED		NOTARY SEAL (if available)	
Signature of Notary:			
Subscribed and sworn to, before me on this:		Day of	20
My Commission Expires:			

This form should be mailed or emailed to the purchasing department or included with a specific solicitation.

(This form shall be updated if the Agreement contemplated hereby is not executed within six months of the date hereof.)

PROPOSERS NON COLLUSION AFFIDAVIT FORM

The undersigned proposer, having fully informed himself/herself/itself regarding the accuracy of the statements made herein, certifies that:

- (1) The proposer developed the proposal independently and submitted it without collusion with, and without any agreement, understanding, communication or planned common course of action with, any other person or entity designed to limit independent competition;
- (2) The proposer, its employees and agents have not communicated the contents of the proposal to any person not an employee or agent of the proposer and will not communicate the proposal to any such person prior to the official opening of the proposal and award.
- (3) No elected or appointed official or other officer or employee of the City of West Haven is directly or indirectly interested in the proposer's proposal, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.

The undersigned proposer further certifies that this affidavit is executed for the purpose of full disclosure to the City of West Haven to consider its proposal and make an award in accordance therewith.

Legal Name of Bidder

(signature)
Bidder's Representative, Duly Authorized

Name of Bidder's Authorized Representative

Title of Bidder's Authorized Representative

Subscribed and sworn to before me this _____ day of _____, 2022.

Notary Public
My Commission Expires:

EXHIBIT E

City of West Haven and Connecticut Department of Energy and Environmental Protection Agreement

PERSONAL SERVICE AGREEMENT / GRANT / CONTRACT

City of West Haven
(Stream Bed and Beach Restoration)

STATE OF CONNECTICUT
DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION

Rev. 06/01/2023 (DEEP Electronic Format)

CHECK ONE:
 GRANT
 PERSONAL SERVICE AGREEMENT

- THE STATE BUSINESS UNIT AND THE CONTRACTOR AS LISTED BELOW HEREBY ENTER INTO AN AGREEMENT SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN AND/OR ATTACHED HERETO AND SUBJECT TO THE PROVISIONS OF SECTION 4-98 OF THE CONNECTICUT GENERAL STATUTES AS APPLICABLE.
- ACCEPTANCE OF THIS CONTRACT IMPLIES CONFORMANCE WITH TERMS AND CONDITIONS SET FORTH BY THE OFFICE OF POLICY AND MANAGEMENT PERSONAL SERVICE AGREEMENT STANDARDS AND PROCEDURES.

(1) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> AMENDMENT	(2) IDENTIFICATION #. P.S. 2024-016 P.O.
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CONTRACTOR	(3) CONTRACTOR NAME City of West Haven	(4) ARE YOU PRESENTLY A STATE EMPLOYEE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
	CONTRACTOR ADDRESS 355 Main Street, West Haven, CT. 06516	CONTRACTOR FEIN/SSN 06-6002126

STATE AGENCY	(5) AGENCY NAME AND ADDRESS DEEP - Bureau of Central Services, 79 Elm Street, Hartford, CT 06106-5127	(6) Dept No. DEP43000
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CONTRACT PERIOD	(7) DATE (FROM) Execution	THROUGH (TO) Execution + 3 years	(8) INDICATE <input type="checkbox"/> MASTER AGREEMENT <input type="checkbox"/> CONTRACT AWARD NO. _____ <input checked="" type="checkbox"/> NEITHER
-----------------	------------------------------	-------------------------------------	---

(9) CONTRACTOR AGREES TO: (Include special provisions - Attach additional blank sheets if necessary.)

1. Performance: Do, conduct, perform or cause to be performed in a satisfactory and proper manner as determined by the Commissioner of Energy and Environmental Protection, all work described in Appendix A, which is attached hereto and made a part hereof.

Appendix A consists of 5 pages numbered A-1 through A-5 inclusive.

Standard Terms and Conditions are contained in Pages 2 through 6 and are attached hereto and made a part hereof.

(10) PAYMENT TO BE MADE UNDER THE FOLLOWING SCHEDULE UPON RECEIPT OF PROPERLY EXECUTED AND APPROVED INVOICES.

Cost and Schedule of Payments is attached hereto as Appendix B, and made a part hereof. (Appendix B consists of 1 page numbered B-1).

Total Payments Not to Exceed the Maximum Amount of \$1,250,000.00.

(11) OBLIGATED AMOUNT
\$1,250,000

(12) Amount	(13) Dept	(14) Fund	(15) SID	(16) Program	(17) Project	(18) Activity	(19) Bud Ref	(20) Agency CF 1	(21) Agency CF 2	(22) Account
\$1,250,000	DEP43310	13019	41239	66099	DEPA00030203313	155005				55050

An individual entering into a Personal Service Agreement with the State of Connecticut is contracting under a "work-for-hire" arrangement. As such, the individual is an independent contractor, and does not satisfy the characteristics of an employee under the common law rules for determining the employer/employee relationship of Internal Revenue Code Section 3121 (d) (2). Individuals performing services as independent contractors are not employees of the State of Connecticut and are responsible themselves for payment of all State and local income taxes, federal income taxes and Federal Insurance Contribution Act (FICA) taxes.

ACCEPTANCES AND APPROVALS	(23) STATUTORY AUTHORITY CGS Sec. 4-8 as amended; CGS Sec. 22a-6(a)(2) as amended CGS Sec. 7-148(c) as amended (mun. auth.)
(24) CONTRACTOR (OWNER OR AUTHORIZED SIGNATURE) <i>Dorinda Borer</i>	TITLE Dorinda Borer, Mayor DATE 2/13/2024
(25) AGENCY (AUTHORIZED SIGNATURE) <i>Katherine S. Dykes</i>	TITLE Katherine S. Dykes, Commissioner DATE 2/13/2024
(26) ATTORNEY GENERAL (APPROVED AS TO FORM)	DATE

DISTRIBUTION: CONTRACTOR AGENCY FUNDS AVAILABLE: _____

STANDARD TERMS AND CONDITIONS (Rev.08/01/23)

1. **Definitions:**
 - a. **State.** The State of Connecticut, including the Department of Energy and Environmental Protection and any office, department, board, council, commission, institution or other agency of the State.
 - b. **Commissioner.** The Commissioner of Energy and Environmental Protection or the Commissioner's designated agent.
 - c. **Parties.** The Department of Energy and Environmental Protection (DEEP or Agency) and the Contractor.
 - d. **Contractor Parties.** Contractor Parties shall be defined as a Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity. To the extent that any Contractor Party is to participate or Perform in any way, directly or indirectly in connection with the Contract, any reference in the Contract to the "Contractor" shall also be deemed to include "Contractor Parties", as if such reference had originally specifically included "Contractor Parties" since it is the Parties' intent for the terms "Contractor Parties" to be vested with the same respective rights and obligations as the terms "Contractor."
 - e. **Contract.** This agreement, as of its Effective Date, between the Contractor and the State for any or all goods or services as more particularly described in Appendix A.
 - f. **Execution.** This contract shall be fully executed when it has been signed by authorized representatives of the parties, and if it is for an amount of Twenty-five thousand dollars (\$25,000.00) or more, by the authorized representative of the state Attorney General's office.
 - g. **Exhibits.** All attachments, appendices or exhibits referred to in and attached to this Contract are incorporated in this Contract by such reference and shall be deemed to be a part of it as if they had been fully set forth in it.
 - h. **Records.** For the purposes of this Contract, records are defined as all working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.
 - i. **Confidential Information.** Confidential Information shall mean any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
 - j. **Confidential Information Breach.** Confidential Information Breach shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
 - k. **Claim.** Claim shall mean, all actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmaturing, contingent, known or unknown, at law or in equity, in any forum.
2. **Audit Requirements for Recipients of State Financial Assistance.** For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to the Agency for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.
3. **Forum and Choice of Law.** The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
4. **Termination.**
 - a. Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may Terminate the Contract whenever the Agency makes a written determination that such Termination is in the best interests of the State. The Agency shall notify the Contractor in writing of Termination pursuant to this section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance under the Contract prior to such date.

- b. Notwithstanding any provisions in this Contract, the Agency, through a duly authorized employee, may, after making a written determination that the Contractor has breached the Contract, Terminate the Contract in accordance with the provisions in the Breach section of this Contract.
- c. The Agency shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Agency for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Agency, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the Agency all Records. The Records are deemed to be the property of the Agency and the Contractor shall deliver them to the Agency no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from the Agency for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- d. Upon receipt of a written notice of Termination from the Agency, the Contractor shall cease operations as the Agency directs in the notice, and take all actions that are necessary or appropriate, or that the Agency may reasonably direct, for the protection, and preservation of the Goods and any other property. Except for any work which the Agency directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- e. The Agency shall, within forty-five (45) days of the effective date of Termination, reimburse the Contractor for its Performance rendered and accepted by the Agency, in addition to all actual and reasonable costs incurred after Termination in completing those portions of the Performance which the notice required the Contractor to complete. However, the Contractor is not entitled to receive and the Agency is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Agency, the Contractor shall assign to the Agency, or any replacement contractor which the Agency designates, all subcontracts, purchase orders and other commitments, deliver to the Agency all Records and other information pertaining to its Performance, and remove from State premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Agency may request.
- f. For breach or violation of any of the provisions in the section concerning Representations and Warranties, the Agency may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- g. Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements, and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- h. Termination of the Contract pursuant to this section shall not be deemed to be a breach of contract by the Agency.
5. Tangible Personal Property.
- a. The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
1. For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
 2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 3. The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected.
 4. The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- b. For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, which controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- c. The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.
6. Indemnification.
- a. The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to

the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.

b. The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.

c. The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.

d. The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

e. The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall cause the State to be named as an additional insured on the policy and shall provide (1) a certificate of insurance, (2) the declaration page and (3) the additional insured endorsement to the policy to the State and the Agency all in an electronic format acceptable to the State prior to the Effective Date of the Contract evidencing that the State is an additional insured. The Contractor shall not begin Performance until the delivery of these three documents to the Agency. Contractor shall provide an annual electronic update of the three documents to the Agency and the State on or before each anniversary of the Effective Date during the Contract term. State shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that State is contributorily negligent.

f. This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

7. Sovereign Immunity. The parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise, or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

8. Confidential Information. The Agency will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the Agency receives. However, all materials associated with the Bid and the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the Contractor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Bid, the Records and the specifications, conflicts or is in any way inconsistent with this section, this section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as "CONFIDENTIAL," the Agency will endeavor to keep said information confidential to the extent permitted by law. The Agency, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the Agency or the State have any liability for the disclosure of any documents or information in its possession which the Agency believes are required to be disclosed pursuant to the FOIA or other requirements of law.

9. Protection of Confidential Information.

a. Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

b. Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Agency or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
3. A process for reviewing policies and security measures at least annually;
4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
5. Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.

c. The Contractor and Contractor Parties shall notify the Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Agency and

the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractor's costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Agency, any State of Connecticut entity or any affected individuals.

d. The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.

e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of Covered Entity.

10. Executive Orders and Other Enactments.

a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the Client Agency's authority to require compliance with the Enactments.

b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.

c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

11. Antitrust Provision. Contractor hereby irrevocably assigns to the State of Connecticut all rights, title and interest in and to all Claims associated with this Contract that Contractor now has or may or will have and that arise under the antitrust laws of the United States, 15 USC Section 1, *et seq.* and the antitrust laws of the State of Connecticut, Connecticut General Statute § 35-24, *et seq.*, including but not limited to any and all Claims for overcharges. This assignment shall become valid and effective immediately upon the accrual of a Claim without any further action or acknowledgment by the parties.

12. State Liability. The State of Connecticut shall assume no liability for payment for services under the terms of this agreement until the contractor is notified that this agreement has been accepted by the contracting agency and, if applicable, approved by the Office of Policy and Management (OPM) or the Department of Administrative Services (DAS) and by the Attorney General of the State of Connecticut.

13. Distribution of Materials. The Contractor shall obtain written approval from the Commissioner prior to the distribution or publication of any materials prepared under the terms of this Contract. Such approval shall not be unreasonably withheld.

14. Change in Principal Project Staff. Any changes in the principal project staff must be requested in writing and approved in writing by the Commissioner at the Commissioner's sole discretion. In the event of any unapproved change in principal project staff, the Commissioner may, in the Commissioner's sole discretion, terminate this Contract.

15. Further Assurances. The Parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.

16. Recording and Documentation of Receipts and Expenditures. Accounting procedures must provide for accurate and timely recording of receipt of funds by source, expenditures made from such funds, and of unexpended balances. Controls must be established which are adequate to ensure that expenditures under this Contract are for allowable purposes and that documentation is readily available to verify that such charges are accurate.

17. Assignability. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Commissioner thereto: provided, however, that claims for money due or to become due the Contractor from the Commissioner under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commissioner.

18. Third Party Participation. The Contractor may make sub-awards, using either its own competitive selection process or the values established in the state's competitive selection process as outlined in DAS General Letter 71, whichever is more restrictive, to conduct any of the tasks in the Scope of Work contained in Appendix A. The Contractor shall advise the Commissioner of the proposed sub-awardee and the amount allocated, at least two (2) weeks prior to the making of such awards. The Commissioner reserves the right to disapprove such awards if they appear to be inconsistent with the program activities to be conducted under this grant. As required by Sec. 46a-68j-23 of the Connecticut Regulations of State Agencies the Contractor must make a good faith effort, based upon the availability of minority business enterprises in the labor market area, to award a reasonable proportion of all subcontracts to such enterprises. When minority business enterprises are selected, the Contractor shall provide DEEP with a copy of the Affidavit for Certification of Subcontractors as Minority Business Enterprises (MBE) along with a copy of the purchase order or contract engaging the Subcontractor. The Contractor

shall be the sole point of contact concerning the management of the Contract, including performance and payment issues. The Contractor is solely and completely responsible for adherence by any subcontractor to all the applicable provisions of the Contract.

19. Set Aside. State agencies are subject to the requirements of CGS sec. 4a-60g. Unless otherwise specified by the invitation to bid, general contractors intending to subcontract any portion of work under this Contract shall subcontract 25% of the total contract value to small contractors certified by the Department of Administrative Services (DAS) and are further required to subcontract 25% of that 25% to minority and women small contractors certified as minority business enterprises by DAS. Selected general contractors that are certified by DAS as small contractors, minority business enterprises, or both are excused from this requirement but must comply with CGS sec. 4a-60g(e) and complete a minimum of 30% of the work by dollar value with their own workforces and ensure at least 50% of the work overall by dollar value is completed by contractors or subcontractors certified as small contractors or minority business enterprises by DAS.

20. Procurement of Materials and Supplies. The Contractor may use its own procurement procedures which reflect applicable State and local law, rules and regulations provided that procurement of tangible personal property having a useful life of more than one year and an acquisition cost of one thousand dollars (\$1,000.00) or more per unit be approved by the Commissioner before acquisition.

21. Americans with Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("Act"), to the extent applicable, during the term of the Contract. The DEEP may cancel the Contract if the Contractor fails to comply with the Act.

22. Affirmative Action and Sexual Harassment Policies. The Contractor agrees to comply with the Departments Affirmative Action and Sexual Harassment Policies available on DEEP's web site. Hard copies of the policy statements are available upon request at DEEP.

23. Breach. If either Party breaches the Contract in any respect, the non-breaching Party shall provide written notice of the breach to the breaching Party and afford the breaching Party an opportunity to cure within ten (10) days from the date that the breaching Party receives the notice. In the case of a Contractor breach, any other time period which the Agency sets forth in the notice shall trump the ten (10) days. The right to cure period shall be extended if the non-breaching Party is satisfied that the breaching Party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. The notice may include an effective Contract Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching Party in writing prior to the Termination date; no further action shall be required of any Party to effect the Termination as of the stated date. If the notice does not set forth an effective Contract Termination date; then the non-breaching Party may Terminate the Contract by giving the breaching Party no less than twenty-four (24) hours' prior written notice. If the Agency believes that the Contractor has not performed according to the Contract, the Agency may withhold payment in whole or in part pending resolution of the Performance issue, provided that the Agency notifies the Contractor in writing prior to the date that the payment would have been due.

24. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.

25. Contractor Guarantee. The Contractor shall: perform the Contract in accordance with the specifications and terms and conditions of the Scope of Work, furnish adequate protection from damage for all work and to repair any damage of any kind, for which he or his workmen are responsible, to the premises or equipment, to his own work or to the work of other contractors; pay for all permits, licenses, and fees, and to give all notices and comply with all laws, ordinances, rules and regulations of the city and the State.

26. Force Majeure. The Parties shall not be excused from their obligation to perform in accordance with the Contract except in the case of Force Majeure events and as otherwise provided for in the Contract. A Force Majeure event materially affects the cost of the Goods or Services or the time schedule for performance and is outside the control nor caused by the Parties. In the case of any such exception, the nonperforming Party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.

27. Entirety of Contract. The Contract is the entire agreement between the Parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the Parties, whether written or oral. The Contract has been entered into after full investigation, neither Party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.

28. Interpretation. The Contract contains numerous references to statutes and regulations. For purposes of interpretation, conflict resolution and otherwise, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.

29. Compliance with Consumer Data Privacy and Online Monitoring. Pursuant to section 4 of Public Act 23-16 of the Connecticut General Assembly, Contractor shall at all times comply with all applicable provisions of sections 42-515 to 42-525, inclusive, of the Connecticut General Statutes, as the same may be revised or modified.

APPENDIX A
SCOPE OF WORK

Purpose: To provide an Urban Act Grant pursuant to § 4-66c of the Connecticut General Statutes, administered by the Department of Energy and Environmental Protection (DEEP), which authorizes funding for this Urban Act Grant Program to the City of West Haven (“Contractor”) for the purpose of replacing two existing beachfront outfall pipes, rebuilding a rock groin, and replacing two large manholes located at the intersection of Lake Street and Ocean Avenue in West Haven (“Project”). The Project will increase the capacity of the outfall pipes to discharge stormwater, thereby reducing beach erosion and roadway flooding. This Project serves as Phase 1 of a larger 4-phase project focused on beach and stream bed restoration in critical locations on the City of West Haven’s shoreline.

Description: The Project referenced shall be titled: “**Stream Bed and Beach Restoration.**”

1. Deliverables: The Contractor shall:

A. Plan & Schedule. Within six (6) weeks of Contract execution, prepare and submit to DEEP for approval a workplan and schedule. The Contractor shall comply with the schedule approved by DEEP.

B. Design. Within three (3) months of Contract execution, develop technical engineering design plans that shall include, but are not limited to the following: (i) the type of outfall pipes being installed (i.e, diameter, length, material, etc.); (ii) the location of the outfall pipes, rock groin, and manholes to be replaced; (iii) details relating to connection to municipal sewer or water line; (iv) any associated excavation, grading, resurfacing and/or landscaping work for the Project; (v) any erosion control measures utilized; and (vi) any associated drainage improvements. Contractor shall submit the final design plans to DEEP for approval. All work performed shall be consistent with the DEEP-approved technical design plans.

C. Outfall Pipe Replacement.

- a. Complete engineering and permit requirements for the removal and replacement of two (2) outfall pipes.
- b. Remove the existing 18” diameter outfall pipe located on the rock groin. Replace the 18” diameter outfall pipe in accordance with the technical design plans identified in subsection 1.B.
- c. Remove the existing 48” diameter outfall pipe located on the rock groin. Replace the 48” diameter outfall pipe in accordance with the technical design plans identified in subsection 1.B.

D. Rock Groin.

- a. Assess the condition of the existing rock groin. Replace and rebuild the existing rock groin as necessary to accommodate the new outfall pipes as replaced in subsection 1.C.

E. Manhole Replacement.

- a. Replace the two (2) concrete manholes located in the Project area.

F. Project Area Maintenance & Restoration. The Contractor shall secure the surrounding area during the work performed in conjunction with this Project. The Contractor shall conduct any cleanup as required to restore the Project area back to its pre-project conditions. The Contractor shall ensure that the work related to this Project is of a nature that will minimize maintenance and ensure public safety.

G. General Provisions:

- a. The Contractor shall ensure that this Project complies with all local, state and federal requirements.
- b. The Contractor shall supervise the preparation of the sites related to this Project.
- c. The Contractor shall make improvements to the Project area in accordance with the technically design plans developed.
- d. The Contractor shall supervise and is responsible for all subcontractors or vendors employed by the Contractor for this Project.
- e. The Contractor is responsible for developing and obtaining all applicable permits prior to construction in accordance with Section 7 below. All permits shall be available to DEEP upon request.
- f. The Contractor shall supply all materials and equipment required for the Project.
- g. The Contractor shall make landscape improvements to any disturbed area. Grant funds may not be used to purchase any plant/vegetation that is on the State of Connecticut invasive plant list.
- h. The Contractor shall ensure that all wastes, materials, and/or contaminated water generated from the proposed Project are properly evaluated and if determined hazardous, are disposed of in accordance with all applicable federal, state, and local laws and regulations. If the proposed Project involves renovation or demolition of a structure, the Contractor shall retain a qualified consultant to perform an asbestos, lead paint, and hazardous materials survey to identify any materials in the structure that are required by law to be handled in a manner other than as ordinary C&D waste. The Contractor shall make said survey available to DEEP upon request. Asphalt millings shall not be used as fill material unless approved by the Commissioner. Additional information about the proper management of waste is available upon request at DEEP.
- i. All work related to this Project shall be completed by the expiration date of this Contract.

2. Budget: This Urban Act Grant, in the total amount of \$1,250,000.00 was authorized in accordance with § 4-66c of the Connecticut General Statutes, and was allocated at the June 30, 2023, Bond Commission (Item #35). The Contractor shall adhere to the budget which is included in this Contract on Appendix B. Allowable costs under this grant shall include all

necessary engineering services, bid costs, permitting fees, and other technical assistance necessary to accomplish the above deliverables, provided such costs are incurred after the execution of this Contract. Project costs in excess of the maximum payable amount under this Contract shall not be borne by the State.

3. Acknowledgement of Funding: Any publication or sign produced or distributed, or any publicity conducted in association with this Contract must provide credit to the State of Connecticut as follows: "Funding provided by the State of Connecticut Urban Act Grant administered by the Connecticut Department of Energy and Environmental Protection (DEEP)." The Contractor shall erect a permanent plaque or sign on the Project area acknowledging that said Project is a public recreational area and that said Project received a grant from the State of Connecticut administered through the Department of Energy and Environmental Protection. The aesthetics of the said sign shall be determined by the Contractor.

4. Publication of Materials: The Contractor must obtain written approval from DEEP prior to distribution or publication of any printed material prepared under the terms of this Contract.

Unless specifically authorized in writing by the State, on a case by case basis, Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, its officials, agencies, or employees or the seal of the State of Connecticut or its agencies: (1) in any advertising, publicity, promotion; or (2) to express or to imply any endorsement of Contractor's products or services; or (3) to use the name of the State of Connecticut, its officials agencies, or employees or the seal of the State of Connecticut or its agencies in any other manner (whether or not similar to uses prohibited by (1) and (2) above), except only to manufacture and deliver in accordance with this Agreement such items as are hereby contracted for by the State. In no event may the Contractor use the State Seal in any way without the express written consent of the Secretary of State.

5. ADA Publication Statement:

For all public notices printed in newspapers, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the Americans with Disabilities Act. To request an accommodation contact us at (860) 418-5910 or deep.accommodations@ct.gov

If there is not a meeting or event associated with the material(s) being published, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Please contact us at (860) 418-5910 or deep.accommodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint.

If the material(s) being published have a meeting or event associated with them, the following ADA and Title VI Publication Statement should be used:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action/Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. Please contact us at (860) 418-5910 or deep.accommodations@ct.gov if you: have a disability and need a communication aid or service; have limited proficiency in English and may need information in another language; or if you wish to file an ADA or Title VI discrimination complaint. Any person needing a hearing accommodation may call the State of Connecticut relay number - 711. Requests for accommodations must be made at least two weeks prior to any agency hearing, program or event.

For videos that will be published on the DEEP website, the following ADA and Title VI statement and the following line should be included on the DVD cover and the title page of the video:

The Connecticut Department of Energy and Environmental Protection is an Affirmative Action and Equal Opportunity Employer that is committed to complying with the requirements of the Americans with Disabilities Act. To request an accommodation contact us at (860) 418-5910 or deep.accommodations@ct.gov.

This video with closed captioning is available at www.ct.gov/deep.

- 6. Submission of Materials:** For the purposes of this Contract, all correspondence, summaries, reports, products and extension requests shall be emailed to:

Bureau of Central Services
Clean Water and Contract Administration
Financial Management Division
79 Elm Street
Hartford, CT 06106
DEEP.ContractAdmin@ct.gov

All **invoices** must include the PO #, PSA #, Project Title, DEEP Bureau/Division name, amount dates and description of services covered by the invoice and submitted to:

Bureau of Central Services
Clean Water and Contract Administration
Financial Management Division
79 Elm Street
Hartford, CT 06106
DEEP.ContractAdmin@ct.gov

- 7. Permits:** No work shall commence until all required local, state and federal permits and approvals have been obtained by the Contractor. The execution of this Contract in no way constitutes the approval by the Agency or any other State Department of any permit needed by the Contractor to complete the Project as outlined above. The execution of this Contract affords the Contractor no preferential treatment when seeking approval of any such permits.

- 8. Easements:** The Contractor shall ensure that all necessary easements and/or rights-of-way are obtained and shall submit to DEEP a legal opinion indicating that such easements and/or rights-of-way have either been obtained or are not required.
- 9. Ownership:** The Contractor represents that it has ownership of the property in the form of fee simple, free from any lien or claim that would prevent such land or buildings from being retained or utilized for the use or uses outlined above.
- 10. Project Summaries:** Following Execution of this Contract, the Contractor shall provide summaries of project status to DEEP – Financial Management Division once every six months during the time in which this Contract is in effect. Such summaries shall include a brief description (1 or more pages) indicating the work completed to date, any challenges and explanation of how issues were resolved and the anticipated project completion date if different from the current Contract expiration date.
- 11. Extensions/Amendments:** Formal written amendment of the Contract is required for extensions to the final date of the Contract period and changes to terms and conditions specifically stated in the original Contract and any prior amendments, including but not limited to:
 - a. revisions to the maximum Contract payment,
 - b. the total unit cost of service,
 - c. the contract's objectives, services, or plan,
 - d. completion of objectives or services, and
 - e. any other Contract revisions determined material by DEEP.

If it is anticipated that the Project cannot be completed as scheduled, a no-cost extension must be requested in writing no later than 60 days prior to the expiration date of the contract. Said extension request shall include a description of what work has been completed to date, shall document the reason for the extension request, and shall include a revised work schedule and project completion date. If deemed acceptable, approval will be received in the form of a contract amendment.

- 12. Final Report:** Within 30 days of the expiration date of this Contract, the Contractor shall submit to DEEP – Financial Management Division a Final Report including documentation, satisfactory to the Commissioner, demonstrating that all the elements of Appendix A have been met.
- 13. Final Financial Report:** Within 30 days of the expiration date of this Contract, the Contractor shall submit a Final Financial Report to DEEP – Financial Management Division with supporting documentation sufficient to demonstrate expenditures identified in the Project proposal.

APPENDIX B
SCHEDULE OF PAYMENTS

The maximum amount payable under this Contract is one million two hundred fifty thousand dollars (\$1,250,000.00).

The payments by the Commissioner shall allow for use of funds to meet allowable financial obligations incurred in conjunction with this Project, prior to expiration of this Contract, and shall be scheduled as follows provided that the total sum of all payments shall not exceed the maximum Contract amount noted above.

- a. Funds shall be paid to the Contractor for the reimbursement of expenditures, contingent upon receipt by DEEP of detailed invoices with any required supportive documentation. Invoices shall be submitted not more frequently than monthly. All payments to the Contractor are subject to review and approval by the Commissioner, at her sole discretion.
- b. If no reimbursement request is submitted within a six-month period, the Contractor is required to submit a project status report.
- c. The final payment shall be reimbursed following completion of the Project to the Commissioner's satisfaction, review and approval of a Final Report and associated documentation demonstrating that all the elements of Appendix A have been met. Payment shall be processed contingent upon receipt of detailed invoices with any required supportive documentation, subject to review and approval by DEEP.
- d. The total sum of all payments shall not exceed the maximum contract amount noted above. Should the total Project costs be less than the amount of payments made, any remaining funds must be refunded by the Contractor to the Department of Energy and Environmental Protection by a check payable to the "Treasurer – State of Connecticut" within 90 days of the Contract expiration date.

APPENDIX C

Department of Financial Services Project Billing Form

(To be used when requesting reimbursement)

STEAP – URBAN – SPECIAL GRANTS

1. Project Name: Stream Bed and Beach Restoration
2. Project Number: DEPA00030203313 Contract No: 2024-016
3. Name of Municipality: West Haven
4. Type of Request: Partial Final
5. Reimbursement Request #:
6. Period Covered:

Vendor	Invoice Number	Date	Amount	Purpose

Expenses: **TOTAL: \$**

Forced Account Labor (Municipal Forces) (For a grant requiring a matching component)	
In-Kind Donation (Materials) (For a grant requiring a matching component)	
In-Kind Donation (Labor) (For a grant requiring a matching component)	
Total Amount Eligible for Reimbursement	

Description of Materials and/or Labor Submitted for Reimbursement:

Certification: I certify that to the best of my knowledge and belief, the billed cost of disbursement are in accord with the terms of the personal service agreement/grant contract. I certify that an inspection of the site has been performed and that all of the work is in accord with the terms of the grant.

Municipal Agent

Date

State of Connecticut- Department of Energy and Environmental Protection

(6-month Progress Report)

Urban Act/STEAP/ARPA

Title of Project

Project Summary #1

Grantee/Contractor Name:

Project Name: Stream Bed and Beach Restoration

Contract No: 2024-016

Project ID: DEPA00030203313

Contract Value: \$1,250,000.00

Contract End Date:

Reporting Period: _____, 2023 through _____, 2024

Supporting Narrative – Progress on Planned Activities

1. A brief description of work completed to date and anticipated project completion date if different from the current Contract expiration date;

Department of Financial Services: Final Grant Report (Required prior to final payment)

1. Project Name: Stream Bed and Beach Restoration
2. Contract Number: 2024-016
3. DEEP Project Number: DEPA00030203313
4. Name of Grant Recipient: West Haven
5. Date of Contract (AG execution date):
6. Amount of Award: \$1,250,000.00

Please respond to the following questions using up to three pages total. Your responses should focus specifically on the funded project or acquisition.

1. What happened: Referring to your original grant request, what were your major accomplishments? What impact did this grant have in your community? What is the one most significant story you can tell about the work funded by this grant?
2. What did you learn: What did you learn as a result of this grant? What were the unexpected obstacles or results, either positive or negative?
3. What happens next: What are your future plans for sustaining this program or project?
4. Project Effects: How did your project accomplish your goals or State goals, as specified in local or State planning documents (e.g., the [SCORP](#), the [Green Plan](#), municipal Plan of Conservation and Development, or municipal recreation or open space plans).
5. Accounting – Final Financial Report: Please include a final budget for the grant period, which shows how the grant funds were spent and how the matching funds were spent.
6. Feedback: Do you have any suggestions about how our grant process could better serve you?
7. Photos: Please provide us with at least three photographs of your completed project or acquisition. Please submit each photograph as a JPEG.

Final Reports are due to DEEP within 90 days of project completion or contract end date, whichever is sooner. Grant recipients must have a Final Report for all completed projects in order to be considered for future grant funding.

Reports can be submitted electronically to:
Bureau of Central Services
Clean Water and Contract Administration
Financial Management Division
79 Elm Street
Hartford, CT 06106
DEEP.ContractAdmin@ct.gov



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract Name	Stormwater Infrastructure Assessment & Design			
City Agency	Public Works			
Vendor Utilized	SLR			
Address	99 Realty Drive			
City, State, Zip	Cheshire, CT 06410			
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2024-03] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	Grant National Fish and Wildlife Grant and City Matching			
Quantity	1.00	Price Per:	Total Purchase Price	\$506,000
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.	SLR International Corporation has been chosen by the City of West Haven to perform the work on SOLICITATION# 2024-03 Stormwater Infrastructure Assessment & Design for Project 1: Assessing Nature-Based Solutions to Mitigate Flood Impacts along the Cove River.			
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst Michael Gormany, Finance Director			

City of West Haven

355 Main Street
West Haven, Connecticut 06516
(203) 937-3620



Dorinda Borer
Mayor

Michael Gormany
Director of Finance

May 1, 2024

SLR International Corporation
99 Realty Drive
Cheshire, CT 06410
Attn: James Murac

Dear Mr. Murac,

SLR International Corporation has been chosen by the City of West Haven to perform the work on **SOLICITATION# 2024-03 Stormwater Infrastructure Assessment & Design** for Project 1: Assessing Nature-Based Solutions to Mitigate Flood Impacts along the Cove River.

On behalf of the City of West Haven, I want to thank you for the time and effort that you devoted to crafting your proposal. We look forward to working with you!

Best Regards,

Tammy O'Connell

Tammy O'Connell
Procurement Specialist
City of West Haven
toconnell@westhaven-ct.gov
203-937-3529

Assessing Nature-Based Solutions to Mitigate Flood Impacts along the Cove River

The proposed project will identify and advance appropriate conservation and restoration activities along the non-tidal reaches of Cove River to mitigate flood impacts to vulnerable populations and critical facilities, protect natural areas, improve ecosystem health, and increase community engagement with the river. The project area extends approximately 3 miles along the Cove River channel, from Main Street to just north of Fresh Meadow Road. Evaluation of restoration activities will be limited to the area of the main Cove River channel and will not extend to tributaries, contributing stormwater sewer systems, or other watershed areas.

Task 1: Quality Assurance Project Plan Preparation

- 1.1 QAPP Preparation – SLR International Corporation (SLR) will prepare a Quality Assurance Project Plan (QAPP) consistent with Environmental Protection Agency (EPA) guidelines that identifies the protocol for data collection methodologies identified in Tasks 3, 4, and 5 as well as a description of how data will inform the site design. SLR will provide a draft and final QAPP. The EPA approval process for the QAPP is anticipated to take 4 to 6 months, and no data collection work can proceed until approval is granted.

Task 2: Project Management

- 2.1 Project Management – SLR will manage the project schedule, labor, and expenses. Project management will consist of internal staff management, timely submittal of deliverables, and regular meetings and coordination with West Haven staff. SLR anticipates performing Project Management services throughout the 18-month schedule beginning upon receiving a written notice to proceed.
- 2.2 Project Coordination Meetings – SLR anticipates participating in monthly conference calls and/or virtual video meetings with West Haven staff throughout the 18-month project period.
- 2.3 Coordination with Parallel Projects – SLR will coordinate with the Sanford Street basin flood study, which is expected to result in recommendations that may impact the Cove River. We anticipate spending no more than 1 hour per month over the 18-month project period on this subtask.
- 2.4 Grant Management and Reporting – SLR will provide written monthly progress updates to West Haven to assist the City with grant reporting. Progress updates will provide a percent-complete and a brief summary of work completed for each project task.

Task 3: Public and Stakeholder Engagement

- 3.1 Public Engagement Plan – SLR will develop an Engagement Plan laying out a strategy for gathering input, increasing awareness of climate change risks and opportunities, and building community investment and interest. The strategy will target property owners, stakeholder groups, neighboring municipalities, and the general public.
- 3.2 Preliminary Outreach to Property Owners – SLR will prepare outreach letters to owners of parcels within or adjacent to restoration activity sites. SLR will provide content to West Haven electronically for the City to mail or otherwise distribute to property owners on official City letterhead/correspondence templates. Mailings will request photographs,



dates, times, rainfall, high water mark information, or other useful data relating to the recent flood events from property owners in the watershed.

- 3.3 Stakeholder Identification, Outreach, and Focus Groups – SLR will work with the City to identify stakeholders such as state and federal agencies, regional environmental nonprofits, local businesses, community organizations, and others.

SLR will conduct one-on-one interviews or small focus group meetings with stakeholders and stakeholder groups. SLR will conduct up to six 1.5-hour interviews or focus groups. No more than two of these events will be held in-person, with the remaining held on virtual platforms.

- 3.4 Public Engagement – SLR will engage members of the public through participatory events throughout the project. Activities will consist of the following:

- Development of a project-specific email address such as CoveRiver@SLRconsulting.com to facilitate direct communication with members of the public
- Development of a project website (using the ESRI *Story Map* platform) to provide information and collect input over the course of the project
- One in-person or virtual workshop (1.5 hours in duration) early in the project to inform the public and collect input into known challenges related to flooding, water quality, access, and other relevant topics related to Cove River
- One guided field trip or site visit (2 hours in duration) to each of the five restoration activity sites to review challenges and discuss potential restoration alternatives
- One pop-up booth at a community event (up to 4 hours) to inform the public about the project and to collect input into known challenges and potential restoration alternatives.
- One in-person design workshop (2 hours in duration) to solicit community participation in development of site-specific designs
- One in-person or virtual workshop (1.5 hours in duration) near the end of the project to present designs for priority activities and collect feedback for minor changes

SLR will prepare language and graphics for event publicity, and West Haven will publicize events through social media platforms, the City's website, and other platforms. West Haven will be responsible for securing event locations.

SLR will collaborate with West Haven to explore opportunities to increase attendance at events by providing support such as refreshments, childcare, and translation and interpretation. We are including a budget of up to \$5,000 to cover these expenses and expect the City to cover expenses needed beyond those budgeted.

Additional stakeholder or public engagement activities may be conducted, as needed, through Task 10: Additional Services Contingent.

Task 4: Corridor Existing Conditions Assessment

SLR will assess the non-tidal portions of Cove River to identify existing challenges (maintenance, erosion, aggradation, debris, flooding, etc.), improve understanding of corridor dynamics, and identify opportunities for restoration activities. SLR is aware of the five locations of interest previously identified by the City, which include City-owned properties as well as other properties for which the City is pursuing establishment of easements or outright acquisition. They are as follows:



City of West Haven, Connecticut
Assessing Nature-Based Solutions to Mitigate Flood Impacts Along the Cove River

1. Ardale Street: At 100 and 111 Ardale Street
2. Upstream of Route 1: On 855 US-1 property
3. Downstream of Route 1: Between Route 1 and Randolph Street
4. Cove River Forest area: Wetland north of Greta Street and Coleman Street
5. Lower Lake Phipps: South of Hood Terrace

SLR will pay particular attention to these sites while undergoing a comprehensive corridor evaluation to identify any other interrelated or nonrelated areas of interest.

- 4.1 Review of Existing Resources – SLR will collect and review available data and resource information on file with West Haven, state agencies, and other sources. This information may include past studies, watershed history, information regarding abutting property owners, threatened or endangered species, existing archaeological or historical reports, mapping of the project area, aerial photographs, natural resource information, geologic data and mapping, hydrologic data and analysis, fisheries data, and Federal Emergency Management Agency (FEMA) studies and modeling. Prior studies of the river and watershed, if available, will also be reviewed.
- 4.2 GIS Evaluation – SLR will compile publicly available datasets – such as the Connecticut Institute for Resilience & Climate Adaptation (CIRCA) Climate Change Vulnerability Index and FEMA Digital Flood Insurance Rate Maps (FIRM) – as well as the results of the public engagement efforts to conduct an initial Geographic Information System (GIS) evaluation of the Cove River corridor. The evaluation will identify features along the Cove River main channel such as known locations of flooding, flood extents, repetitive loss properties, critical facilities, and infrastructure. This mapping exercise will guide fieldwork.

SLR expects City of West Haven staff to provide available GIS data, including the following:

- Stormwater catch basins, manholes, outfalls, and pipes
 - Water and wastewater pipes
 - Property lines, street lines, underground utility locations, and other key structures and infrastructure
 - All other available base mapping data layers (contours, parcels, impervious, buildings, etc.)
 - FEMA Flood Insurance Study (FIS) and FIRM and available modeling documentation
- 4.3 Field Assessment – SLR will conduct a field assessment that includes a visual evaluation of features such as the following:
 - **Geomorphology**: Channel characteristics and dimensions, areas of significant erosion and deposition, and soil classification.
 - **Debris**: Significant sources of organic and inorganic debris as well as accumulation areas.
 - **Natural Resources Evaluation and Ecological Characterization**: Terrestrial and aquatic resources through field investigation and the National Diversity Data Base Index, National Wetlands Inventory, and Connecticut Department of Energy & Environmental Protection Critical Habitat mapping.
 - **Crossing Structures**: Structure type, dimensions, condition, hydraulic characteristics, and impacts on flow and wildlife passage. SLR will photodocument each crossing.



- Stormwater Infrastructure: SLR will document drainage outfall locations, and photodocument outfalls. Evaluation of stormwater infrastructure is outside the scope of this task.
- Dams and Impoundments: Approximate sizes and conditions, impacts on flow and wildlife passage. We anticipate evaluating up to five impoundment structures, including two on Upper Lake Phipps; Phipps Lake is outside the scope of this assessment and will not be evaluated.

This task will include windshield surveys of the river corridor as well as in-the-river assessments performed by SLR staff. SLR will work with West Haven to inform property owners of the work prior to accessing private properties to enter the river. SLR expects West Haven to provide contact information for property owners.

Inspection of underground piped sections of the river and survey of the river will not be conducted as part of this subtask. If TV inspection of underground conduits is found to be necessary based upon the above evaluations, it can be performed as part of Task 10: Additional Services Contingent.

Task 4 Deliverables

- GIS Database and Map of Existing Conditions
- Memorandum Describing Existing Conditions

Task 5: Field Survey

- 5.1 Cross Section Survey – Conduct “wet section” and overbank survey at selected locations along the channel, including thalweg, active channel edges, bankfull channel edges, other geomorphic features, aboveground utilities and structures, and other infrastructure as relevant. The exact location of the cross sections will be determined based on observations of the channel and other findings of the Task 4 Corridor Existing Conditions Assessment. At a minimum, we expect to undertake duplication of FEMA locations (lettered sections A through L), at least one additional location within each of the five areas of concern previously identified by the City, plus 10 to 15 additional locations in between. Based on our current knowledge of the corridor, we anticipate a total of up to 35 cross sections will be necessary along the channel corridor.

Additional cross sections may be surveyed if needed through Task 10: Additional Services Contingent.

Task 5 Deliverables

- Topographic/bathymetric survey

Task 6: Hydrologic and Hydraulic Analysis

- 6.1 Hydrologic Analysis – Use the United States Department of Agriculture (USDA) TR-20 methodology to develop a model of the non-tidal portion of Cove River to establish existing conditions flows at critical locations in the study area. This will involve the assessment of the contributing watershed relative to land use, the hydrologic properties of the soils, the development of flow paths, and the development of time of concentration (Tc) values.
- 6.2 Future Flows Hydrologic Analysis – Use projected future changes in extreme rainfall quantities to model future flow conditions. SLR will work with West Haven staff to select projections for use in the modeling. We expect to model up to two future flow conditions.



- 6.3 Existing Conditions Hydraulic Modeling – A preliminary hydraulic assessment will be performed using the flows obtained above as part of Task 6.1. The hydraulic assessment will use the U.S. Army Corps of Engineers Hydrologic Engineering Center *River Analysis System* (HEC-RAS) software to develop a hydraulic model to simulate flood flows and low flows along the Cove River. The model will be created using light detection and ranging (LIDAR) topography in the overland areas and cross section data collected in Task 5 for channel and in-water geometry. Roughness values and bridge geometry will be input based upon engineering judgement and field conditions as identified by the existing conditions assessment. Cross sections will be placed to match the FEMA cross section locations, where possible, with additional sections as necessary to facilitate the model’s potential use for future FEMA submittal as part of the map revisions process.
- 6.4 Model Calibration and Verification – The results of the hydraulic modeling will be compared against the existing FEMA FIRM as well as those reports, photos, and measurements of flooding provided by property owners as gathered during the public outreach process.

Task 6 Deliverables

- Hydrologic and Hydraulic Models of Existing Conditions
- Hydrologic Analysis of Future Conditions

Task 7: Alternatives Analysis

SLR will conduct an Alternatives Analysis to identify appropriate restoration activities along the Cove River.

- 7.1 Existing Model Review Meeting – The final modeling will be presented to City staff at a virtual meeting to review the detailed results and confirm the findings with those knowledgeable of the flooding characteristics of Cove River.
- 7.2 Develop Evaluation Metrics – Metrics for evaluating the relative benefits of each alternative, focusing on community resilience and fish and wildlife benefit, will be identified based on National Fish and Wildlife Foundation (NFWF) project metrics; input from municipal staff, stakeholders, and the public; and consultant expertise. Metrics may include the following:
- Flood risk reduction
 - Habitat restoration
 - Public access
 - Nonpoint-source pollution
 - Hydraulic and habitat connectivity laterally and longitudinally along the river
 - Use of nature-based solutions
 - Ability to withstand or adapt to projected climate change impacts
 - Level of support from municipal staff, stakeholders, and the public
 - Project cost and long-term maintenance needs
 - Permitting and feasibility considerations
- 7.3 Planning-Level Alternatives Development – SLR will evaluate a range of options for flood mitigation and habitat restoration along the river. Up to five alternatives, as well as a “do nothing” alternative, will be evaluated; at least one nature-based alternative will be evaluated. Alternatives may include the following:



- Removal of invasive plants and debris
- Modifications to the channel such as restoration of form or process
- Modifications within the river corridor
- Modification or replacement of culverts or bridges
- Removal or relocation of structures, buildings, walls, or channel encroachments
- Floodplain enhancement, restoration, or creation
- Flood bench creation
- Creation of floodplain wetlands, pools, and ponds
- Floodwater attenuation/storage
- Dam modification or removal
- Construction or enhancement of levees, dikes, and berms
- Sediment/debris management
- Property buyouts or relocations
- Combinations of the above

7.4 Hydrologic Modeling of Alternatives – As appropriate, some alternatives will be evaluated using USDA TR-20 methodology to determine whether the alternative results in changes to flow upstream or downstream of the alternative location.

7.5 Hydraulic and Future-Flow Hydrologic Modeling of Alternatives – As appropriate, some alternatives will be evaluated using HEC-RAS modeling to determine whether the alternative results in a reduction in flood depth and the lateral extent of flooding. Modeling results will be developed in RAS Mapper to show flood depth and extent that allows viewers to easily understand the flood reduction benefits of each alternative. Alternatives located downstream of other alternatives found, through Task 7.3, to result in changes to flow will also be modeled under those adjusted flows. Alternatives will also be modeled under future-flow conditions, using the Cove River hydrological model to model projected precipitation changes as described in Task 6.2.

7.6 Alternatives Scoring – The five alternatives and the “do nothing” alternative will be evaluated against the metrics described in Task 7.1 as well as factors including the following:

- Timeframe: Can the alternative be pursued in the near future?
- Funding Sources: Are there known funding sources available to support the project?
- Corridor-Long Benefits: Are certain alternatives better to implement first?
- City Priorities: Does the alternative complement existing City plans or initiatives?

A summary memorandum will be prepared for each alternative that includes resilience benefits, habitat benefits, improvements to public access, planning-level cost estimates, expected permitting requirements, and barriers to implementation. These memoranda will be compiled into the final report in Task 9.

Task 7 Deliverables

- List of evaluation metrics
- Memo for each of up to five alternatives plus a “do nothing” alternative
- Scored alternatives using the evaluation metrics

Task 8: Concept Designs

8.1 Concept Designs – Develop concept designs and conceptual-level sketches of up to three alternatives identified as priorities through the Alternatives Scoring task. This will



include a plan view of the improvements along with a typical cross section or detail, as necessary. Concepts may include the following:

- Proposed site dimensional layout and grading
- Site elevations and cross sections
- Infrastructure locations and changes
- Vegetative restoration plantings
- Public access paths and structures

8.2 Estimated Quantities and Cost Opinion – Prepare preliminary estimates of quantities and construction materials for the purpose of generating a probable opinion of construction costs for each concept design. The opinion will be preliminary due to the nature of the designs to this point.

Task 8 Deliverables

- Concept Designs
- Cost Opinions

Task 9: Final Report

9.1 Report – SLR will prepare a final report detailing the project methodology and process, summarizing engagement, and presenting final products. The final report will compile the summary memoranda for each alternative developed in Task 7 and list next steps for the City to advance concept designs as well as other alternatives identified, including information on potential funding sources. Lessons learned will be included to inform efforts in other communities to pursue similar urban river corridor restoration projects.

9.2 Corridor Master Plan – SLR will prepare a “Master Plan” laying out proposed restoration and resilience activities for West Haven to undertake along the Cove River. The master plan will be supported by a map of proposed activities.

Task 9 Deliverables

- Final Report
- Corridor Master Plan and Map

Task 10: Additional Services Contingent

This contingency task is established to provide West Haven with flexibility to cover additional work requested by the City. An allowance of \$18,000, inclusive of labor and direct costs, is allocated for these contingency purposes, to be billed on a time-and-materials basis.

Prior to beginning any work under this task, SLR will discuss needs with City staff, identify one or more services to be provided, and confirm those activities with City staff prior to taking action. The set and extent of services provided will be limited by the budget allocated to this task in the agreed-upon fee proposal; SLR will discuss specific details with the City.

10.1 Additional Services – SLR will provide additional services as requested, with details to be determined based on outcomes of the tasks presented above. Available services may include but are not necessarily limited to the following:

TV Inspection – Solicit competitive proposals for and retain services for TV inspection of portions of Cove River that are underground in piped conduit (not including private drainage systems that discharge into Cove River).



Drone Flight – Secure necessary permissions and fly a drone to take photos and video of the project area.

Additional Survey – Survey additional topography, bathymetric cross sections, or infrastructure along Cove River.

Additional Concepts or Concept Revisions – Prepare additional concept designs or revise designs prepared as part of Task 8 based on community and City feedback.

Additional Renderings – Develop renderings of additional perspectives or alternatives for completed concept designs.

Grant Writing Assistance – Identify and prepare materials for specific grants to advance alternatives identified as part of this project.

Additional Outreach – Conduct additional stakeholder or public outreach activities.

Policy, Regulatory, or Operational Recommendations – Review existing policies, regulations, and procedures to identify adjustments that would support flood mitigation and habitat restoration along the Cove River.

Invasives Mapping – Map the location of invasive vegetation within a portion of the Cove River.

Supplementary Budget for Existing Tasks – Additional hours or fee for Tasks 1 through 9 may be funded through this contingent.

Exclusions and Limitations

The following work items are not included in this scope of work:

1. Cultural resource assessments
2. Regulatory permitting consultation, application development, or payment of permit application fees
3. Engineering design, utility relocation design, construction-phase services, or design documents other than those described above
4. Utility test pits
5. Geotechnical borings or subsurface exploration
6. Delineation of inland or tidal wetlands
7. Research or delineation of easements
8. Utility service lateral research
9. Flagging or police protection
10. Hazardous waste assessments
11. Evaluations for state or federally listed flora and fauna

Should any of the above items or any additional services be required, they may be provided on an hourly basis or for an agreed-upon lump sum fee unless included within the Task 10 Contingent allowance.



Implementation Timeline and Milestones

We propose the following timeline for achieving project milestones:

Task	Time Period
Task 1: QAPP Preparation	August 2024 – November 2024
Task 2: Project Management	Throughout
Task 3: Public and Stakeholder Engagement	3.1 Public Engagement Plan: August 2024 Other Engagement Throughout
Task 4: Corridor Existing Conditions Assessment	November 2024 – February 2025
Task 5: Field Survey	February 2025 – March 2025
Task 6: Hydrologic and Hydraulic Analysis	March 2025 – May 2025
Task 7: Alternatives Analysis	May 2025 – July 2025
Task 8: Concept Designs	August 2025 – October 2025
Task 9: Final Report	October 2025 – December 2025

Fee

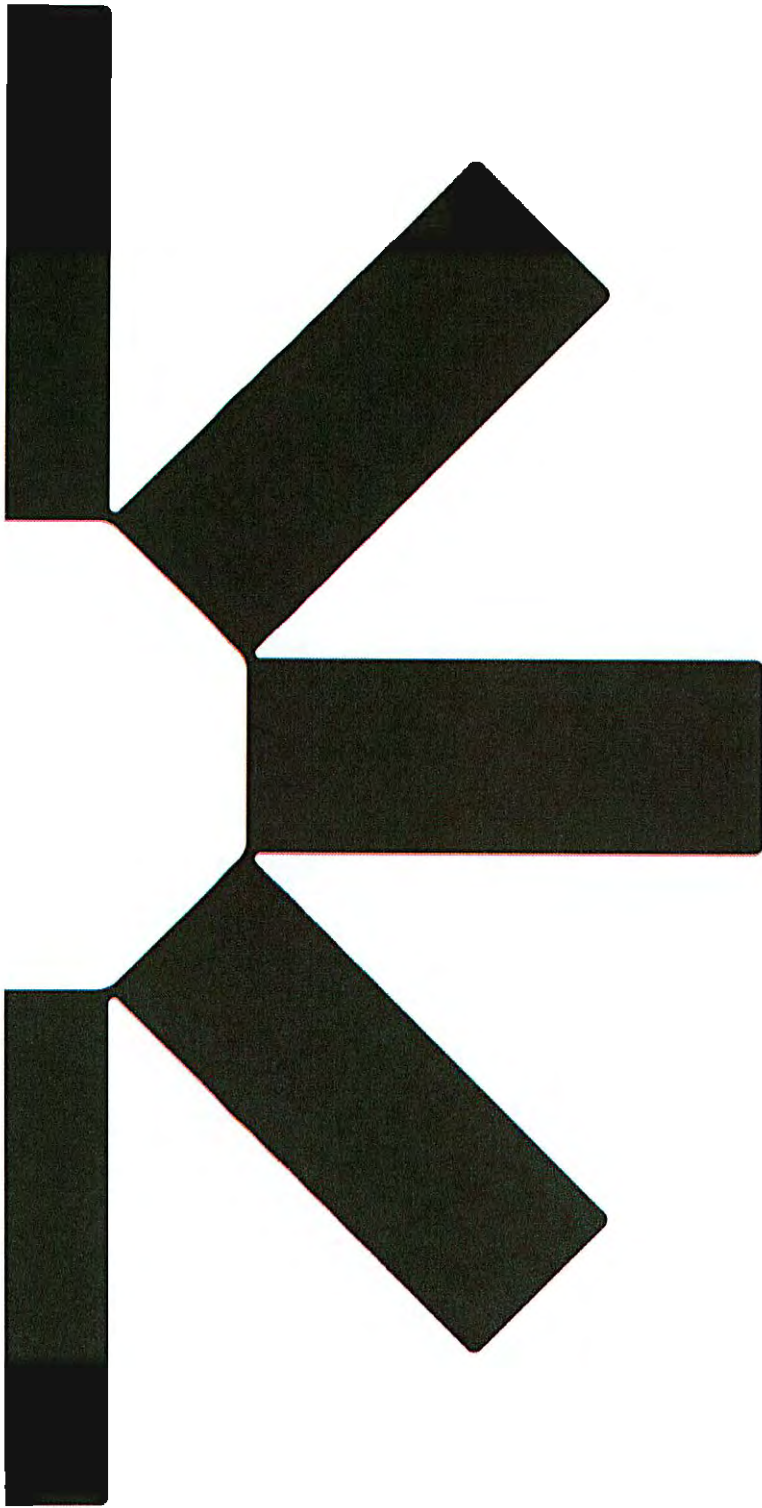
We will complete the tasks described herein for the following lump sum fees:

TASK	Hours	Total Task Fee
1. QAPP Preparation	94	\$18,120
2. Project Management	230	\$49,680
3. Public and Stakeholder Engagement	376	\$73,960
4. Corridor Existing Conditions Assessment	280	\$55,960
5. Field Survey	256	\$65,680
6. Hydrologic and Hydraulic Analysis	282	\$58,210
7. Alternatives Analysis	398	\$77,080
8. Concept Designs	210	\$46,820
9. Final Report	193	\$37,490
10. Additional Services Contingent*	N/A	\$18,000
Engagement Expenses**	N/A	\$5,000
TOTAL	2,319	\$506,000

* Additional Services Contingent will be charged on a time-and-materials basis.

** Engagement expenses include materials production (printing, binding, and mounting) and other engagement costs (such as refreshments, translation and interpretation, and participation incentives). Engagement expenses will be charged as incurred.





Making Sustainability Happen

SLR INTERNATIONAL CORPORATION STANDARD TERMS AND CONDITIONS

This Agreement, which shall include any attachments hereto, is by and between SLR International Corporation ("SLR" or "We") and the party that is the signatory to the Proposal or Engagement Letter that these terms and conditions are attached to ("Client" or "You") (each a "Party" and together the "Parties") and is entered into effective the date of the last signature hereto ("Effective Date"). The signing of this Agreement by the Client and SLR authorizes SLR to carry out and complete the Services as described in the Proposal or Engagement Letter that these terms and conditions are attached to) in consideration of the mutual covenants set forth in this Agreement.

1. SCOPE OF SERVICES: SLR will provide as-requested services ("Services"). Services will be performed pursuant to the Proposal Engagement Letter that these terms and conditions are attached to or the Engagement Letter that terms and conditions are attached to, which shall be incorporated herein and made part of the Agreement. You authorize us to act on instructions, consistent with the agreed scope of Services, which are given in any manner, if we reasonably believe that You or a person with authority to act on your behalf has given those instructions. Any conflicting terms and conditions of purchasing associated with a Purchase Order will be disregarded and the terms and conditions of this Agreement shall prevail.

2. FEE FOR SERVICES: SLR's fee for the Services shall be provided either on a time and materials or fixed fee basis, as established in the Proposal or Engagement Letter that these terms and conditions are attached to. SLR's applicable rates will be listed in the attached Rate Schedule or the Engagement Letter that these terms and conditions are attached to. SLR may adjust its rates from time to time, provided however, that Client shall be provided at least thirty days advance written notice of such adjustment. The Client's obligation to pay for the Services performed under this Agreement is in no way contingent upon Client's ability to obtain financing, zoning, approval of governmental or regulatory agencies, favorable judgment of lawsuit, or upon Client's successful completion of the Project.

3. EXTRA SERVICES: SLR may also perform consulting tasks in addition to the Services ("Extra Services" or "Changes"), subject to the Parties' mutual written agreement and the terms of this Agreement.

4. PAYMENT TERMS: SLR will, on a monthly basis, or upon the completion of the Services, or as otherwise described in the Proposal or Engagement Letter that these terms and conditions are attached to, submit invoice(s) for the un-billed portion of Services actually completed. Client agrees to pay the invoiced amounts within thirty (30) days from the date of the invoice. Any payment that is not received by SLR within said 30 days shall be considered delinquent. SLR reserves the right to include a late payment charge, at a rate of 1 percent per month, for each month an invoice is delinquent. Failure to charge late payment charges will not affect SLR's right and ability to do so going forward. SLR may suspend or terminate any and all of the Services, if payment of any invoiced amount not reasonably in dispute is not received by SLR within 60 days from the date of SLR's invoice. Such suspension of services is done without waiving any other claim against Client and without incurring any liability to Client for such suspension due to Client's breach of payment terms. Termination shall not relieve Client of its obligation to pay amounts incurred up to termination.

5. TERM: The Term of this Agreement shall commence on the Effective Date and shall continue until terminated by one of the Parties in accordance with these terms, or until work under the Proposal or Engagement Letter that these terms and conditions are attached to.

6. SLR RESPONSIBILITIES

(a) Standard of Performance: SLR will perform the Services using that degree of skill and care ordinarily exercised under similar conditions by reputable members of the profession practicing in the same or similar locality at the time of performance. SLR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing the Services.

(b) Except where the Proposal or Engagement Letter that these terms and conditions are attached to specifically includes provision of such advice or consideration, the obligations of SLR under this Agreement do not include a duty to advise or undertake any investigation to determine regulatory compliance, the actual or possible presence of pollution, asbestos containing materials, infestation, actual or possible presence of protected or invasive species, or contamination at the Client's site(s) or as to the risks of such matters having occurred, being present or occurring in the future nor shall SLR have any duty to consider such matters as influencing any aspect of the Services to be performed by SLR under this Agreement.

(c) Where the Proposal includes a site or environmental assessment, audit, review or investigation which includes the interpretation, interpolation or extrapolation of data from discrete sampling and/or observation locations and/or discrete times, the Client accepts and agrees that these data may not represent actual conditions at other such locations or at other times and that SLR's conclusions and recommendations based on such data are statements of professional opinion and not statements of fact. Although SLR will carry out such Services and provide its conclusions and recommendations with reasonable skill, care and diligence, it accepts no liability if the actual conditions at other locations or at other times are different from those described in SLR's conclusions or recommendations.

(d) If the Proposal or Engagement Letter that these terms and conditions are attached to includes construction observation or observation of explorations, then, on the basis of site observations performed, SLR will keep the Client informed as to the progress and quality of the work and shall endeavor to guard the Client against defects and deficiencies in the work and confirm that the work is proceeding in accordance with the contract documents. SLR shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures or have safety precautions and programs in connection with the work since these are the contractor's responsibility. Observations provided by SLR are solely for the benefit of the Client.

7. CLIENT RESPONSIBILITIES

(a) The Client shall ensure that its employees, agents, other consultants, and contractors act reasonably and give such assistance and co-operation as shall reasonably be required by SLR in the performance of the Services.

(b) The Client shall ensure that its decisions, instructions, consents, or approvals on or to all matters properly requiring such shall be given in such reasonable time so as not to delay or disrupt the performance of the Services by SLR.

(c) Client shall arrange for access to and make all provisions for SLR to enter upon public and private property as required for SLR to perform the Services. SLR will assist Client in obtaining access, if requested by Client and is part of the Proposal or Engagement Letter that these terms and conditions are attached to. Client, at its expense, shall furnish approvals and permits from all governmental authorities having jurisdiction over the Client's project and such approval and consents from others as may be necessary for completion of the Services, unless otherwise arranged for in writing with SLR.

(d) Client is responsible for informing SLR of the locations of any underground structures or utilities. Client will provide all necessary and relevant data and information, including underground services, structures or artificial obstructions and details of the services to be performed by any contractors or consultants, and shall ensure such data is accurate and complete. SLR shall be entitled to rely on such information and will not be responsible for any damage to underground services, structures or obstructions or for any damage, claims, expenses or loss arising as a result of such excavating, boring, probing or the like below existing ground level, unless the locations of the underground services, structures or artificial obstructions on Site are accurately shown on the Client furnished drawings or plans. SLR will not be responsible for inadvertent damage to underground structures or utilities that were not made known to SLR prior to the start of obtrusive activities such as digging or drilling.

(e) The Client acknowledges that it has a duty of care with respect to the health and safety of SLR's employees while they are on the Client's premises or on sites controlled by the Client and confirms it will comply with all applicable health and safety legislation. The Client acknowledges SLR's right to stop work under any circumstances where SLR or its employees consider commencing or continuing their activities would either be unsafe or pose an unacceptable risk to themselves or others. In such circumstances the Parties will engage as soon as is practicable to agree a resolution to allow work to resume.

(f) Client agrees to advise SLR upon execution of this Agreement of any hazardous substance or material or any other condition, known or that reasonably should be known by Client, existing in, on, or near the site that presents or may present a potential danger to human health, the environment, or SLR's equipment. Client agrees to notify SLR immediately of new, different, or additional information, as it becomes available to the Client. Client shall also, upon execution of this Agreement, provide SLR with copies of any written emergency response procedures for the site as well as information about any safety or other hazards at the site, and a copy of any written health and safety program that may exist for the site.

8. FORCE MAJEURE: Neither Party to this Agreement shall be liable to the other Party for delays in performing the Services that may result from strikes, riots, war, acts of terrorism, acts of governmental authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either Party ("Force Majeure"). Occurrence of a Force Majeure event does not relieve Client of its payment obligations for Services previously rendered hereunder.

9. HAZARDOUS SUBSTANCES: If state or federally regulated hazardous, toxic or dangerous wastes as defined by state or federal regulations (hereinafter "Wastes") are encountered at the site, and if these Wastes require handling, transportation or disposal at an off-site facility, SLR may assist in advising the Client of the Client's options. However, SLR will not "arrange" (as defined in 42 U.S.C. 9607) for disposal of, accept title to, sign manifests for, take control of, or be deemed a "generator" of any Wastes. Client shall defend, indemnify and hold SLR harmless from any claims, damages, fines and fees, litigation or expenses, arising out of or in any way related to the presence of Wastes on or beneath the site where the Services are to be performed, or the handling, transportation and disposal of any Wastes" in the course of SLR's performance of this Agreement, including any repair, cleanup or detoxification thereof, or preparation and implementation of any removal, remedial, response, closure or other plan with respect thereto (regardless of whether undertaken due to governmental action). This indemnity of SLR is intended to operate as an agreement pursuant to, but not limited to, Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. Section 9607(e), to hold harmless, defend and indemnify SLR from liability in accordance with this section.

10. NO WARRANTY, NO THIRD-PARTY BENEFICIARIES: NO WARRANTY, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY THIS AGREEMENT OR BY OUR ORAL OR WRITTEN REPORTS PROVIDED PURSUANT TO THIS AGREEMENT. It is recognized that the Services performed by SLR are for the benefit of the Client and no other entity. There are no collateral warranties made hereunder and there are no third-party beneficiaries to this Agreement. Client's sole remedy for SLR's failure to meet the Standard of care shall be SLR's re-performance of the deficient Services at no additional cost to You.

11. INTELLECTUAL PROPERTY RIGHTS AND DELIVERABLES: All hard paper copies of deliverables, including, and limited to, any and all reports, drawings, plans, and specifications prepared by SLR hereunder shall be delivered to Client upon final payment for SLR 's Services. Deliverables may not be used or reused by Client, its employees, agents, or subcontractors in any extension of the Services or on any other project or any other use without the prior written consent of SLR, and any such use shall be at Client's own risk. All originals of such deliverables shall remain in possession of and the property of SLR. Copies of any electronic media of originals of any of SLR 's deliverables, such as designs, specifications, calculations, CAD documents, etc., shall not be made available unless a specific agreement is made to the contrary in the Proposal. All the drawings, plans,

specifications, and deliverables prepared by SLR are instruments of SLR's service, and SLR shall be deemed the author of them and will retain all common law, statutory, and other reserved rights, including copyright, to them.

12. TAXES: Any charges payable under this Agreement are exclusive of any applicable taxes, tariff surcharges or other like amounts assessed by any governmental entity arising as a result of the provision of the Services by the SLR to the Client under this Agreement and such shall be payable by the Client to the SLR in addition to all other charges payable hereunder. Notwithstanding the foregoing, each Party is responsible for the payment of all taxes assessed on its own business operations, such as income or franchise taxes.

13. ASSIGNMENT: Neither SLR nor Client shall assign this Agreement (except Accounts Receivable) without the prior consent of the other Party, which shall not be unreasonably withheld. SLR may, however, employ any other Party or entity it deems necessary or proper for any part of the work required to be performed by SLR under the terms of this Agreement. Notwithstanding the foregoing, either Party may assign this Agreement to a successor in interest or affiliate upon notice to the other party.

14. INDEMNITY: Each Party shall indemnify the other Party, its officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are found to be caused by a negligent act, error, or omission of the indemnifying Party in the performance of services under this Agreement. Each Party has an affirmative obligation to notify the other Party of any claims of injury or damage subject to this indemnity. Such indemnity shall exclude damages to the extent they arise as a result of any grossly negligent actions or omissions, willful or reckless misconduct, or fraud by the indemnified Party or its employees, officers, owners, directors or agents. Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto which arises during the course of performance hereunder, for any and all loss or damage, which loss or damage is covered by valid and collectible insurance policies, to the extent that such loss or damage is recoverable under such policies.

15. DISPUTES: (a) If any dispute, difference or claim arises out of or in connection with this Agreement (including any question regarding its existence, validity or termination) a representative from SLR and a representative of the Client with authority to settle the dispute will, within seven days of a written request from one Party to the other, meet in good faith to resolve the dispute or difference. (b) If agreement in respect of the dispute or disagreement cannot be reached at such meeting or within such time period after the meeting agreed by the Parties, then such dispute or difference shall be addressed through mediation. Within a reasonable time, the Parties shall seek the assistance of a Mediator agreed by the Parties and shall share the costs thereof. (c) If no settlement has been reached within three months of the first appointment of a Mediator or such other date as agreed between the Parties, the mediation shall be deemed to have been unsuccessful and the dispute may be resolved by appropriate litigation, subject to the choice of law, jurisdiction, and venue provisions contained herein. (d) Any claim of whatever nature brought by Client against SLR shall be brought not later than two years after the date of substantial completion of SLR's services hereunder or the expiration of the appropriate statute of limitations, whichever is earlier. (e) In the event of litigation under this Agreement, the prevailing Party shall be entitled to reasonable attorneys' and experts' fees and other costs and expenses incurred directly or indirectly at trial, or appeal. Neither Party shall be entitled to the recovery of expert or attorneys' fees, or their respective costs or expenses, as a result of mediation of a dispute.

16. LIMIT OF LIABILITY: The entire liability of SLR and SLR's agents, representatives and employees shall be limited to the total amount actually paid to SLR by the Client for Services performed under the Proposal or Engagement Letter that these terms and conditions are attached to and pursuant to which the claim arose.

17. CONSEQUENTIAL DAMAGES: In no event shall either Party to this Agreement be liable for any lost profits or revenue; loss of use or opportunity; loss of good will; costs of substitute facilities; cost of capital; or for any special, consequential, indirect, or punitive damages.

18. CONFIDENTIALITY AND PROTECTION OF DATA: Any proprietary data provided by either Party to the other will be kept strictly confidential, will only be accessible to selected staff, and will only be used for the performance of each Party's obligations hereunder. In addition, each Party will comply with its obligations under applicable data protection legislation in the jurisdiction in which it operates. If no such legislation exists, SLR confirms it will comply with the requirements of the UK Data Protection Act 2018 in respect of any personal data provided to it by the Client and reserves the right to seek confirmation of the data protection procedures the Client will apply to personal data provided by SLR. A previously signed nondisclosure agreement between the parties may be made a part hereof by written amendment.

19. INDEPENDENT CONTRACTOR: SLR is an independent contractor. Neither SLR nor its employees, agents or subcontractors are to be construed as the agents, servants, partners, joint venturers, or employees of Client or to have authority to act for or on behalf of the Client. Without limiting the generality of the foregoing, nothing in this Agreement shall authorize SLR to make any contract, agreement, warranty, or representation on behalf of Client or to incur any debt or other obligation in Client's name.

20. NON-WAIVER: The failure of any Party to enforce its rights under any provision of this Agreement shall not be construed to be a waiver of such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach.

21. ENTIRE AGREEMENT, ORDER OF PRECEDENCE, SURVIVAL: This Agreement constitutes the entire agreement between Client and SLR regarding the Services and supersedes all prior or contemporaneous oral or written representations or agreements. This Agreement shall not be modified except by a document signed by both Parties and in writing. In the event of any inconsistency between any of the documentation which makes up this Agreement, the Agreement shall be interpreted in the following order of priority: (1) the Proposal or Engagement Letter that these terms and conditions are attached to, together with agreed amendments or modifications thereto; (2) this Agreement, as amended by the Parties. All

obligations arising prior to the termination of this Agreement (including without limitation the provisions of Section 11) and all provisions of this Agreement allocating responsibility or liability between Client and SLR shall survive the completion of Services hereunder and the termination of this Agreement.

22. COMPLIANCE WITH BRIBERY ACT: Client must hereby agree that it: shall comply with the U.S. Foreign Corrupt Practices Act (the "FCPA"), and (because the parent company of SLR is headquartered in the United Kingdom) the UK Bribery Act 2010 (the "Bribery Act") and shall procure that no persons associated with the Client (including an employee, sub-contractor or agent or other third Party working on behalf of the Client or any Group Company) ("Associated Person") shall commit any offense that would violate either the FCPA or the Bribery Act or any act which would constitute a Bribery Offense (as defined in the Bribery Act); (b) has in place, and shall maintain until termination of this Agreement, adequate procedures designed to prevent any Associated Person from committing a violation of the FCPA or a Bribery Offense; (c) shall not do or permit anything to be done which would cause SLR or any of SLR's employees, sub-contractors or agents to commit a violation of the FCPA or a Bribery Offense or incur any liability in relation to the FCPA or the Bribery Act; and (d) shall notify SLR immediately in writing if it becomes aware or has reason to believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Client's obligations under this clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Client's obligations.

23. NON-EXCLUSIVITY: Client understands and acknowledges that SLR has other business interests in addition to the Services to be performed under this Agreement, and, subject to any applicable restrictions on the use of Client provided information, SLR shall not be prevented or barred from rendering services of any nature for or on behalf of any other person, firm, corporation or entity.

24. SUCCESSOR INTERESTS: The covenants, conditions and terms of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the Parties hereto.

25. TERMINATION OR SUSPENSION: Either Party may terminate this Agreement upon ten (10) days written notice to the other. Either Party may terminate this Agreement in the event of a material breach by the other Party but only if said breach is through no fault of the terminating Party and said breach is not corrected before expiration of a reasonable cure period. The Client may at any time by not less than two (2) weeks' notice require SLR to suspend the performance of all or any part of the Services for a specified or unspecified period. On notice of suspension of all or any part of the Services SLR shall cease such suspended Services in an orderly and economical manner compatible with a possible order to restart. If this Agreement is suspended or terminated for any reason, Client shall pay SLR for all Services and Extra Services previously authorized and performed up through the termination date. If Client requests a restart of the Services following a suspension of greater than ninety days, SLR may charge the Client a reasonable restart fee. Lump sum fees, if applicable, quoted in this Agreement shall remain valid for a period of twelve (12) months from the Effective Date, unless otherwise agreed in writing. Thereafter, they may be adjusted in accordance with SLR's current rate structure. Hourly personnel rates may be adjusted on an annual basis.

26. CHOICE OF LAW: The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Washington, without giving effect to its conflict of laws principles, and any litigation hereunder shall be brought in the state or federal courts located within the State of Washington.

27. COUNTERPARTS: This Agreement may be executed in counterparts (and by electronic means, e.g., DocuSign), each of which shall be deemed an original, but all of which together will constitute one and the same instrument.



Office of the Finance Director

City of West Haven
 355 Main Street
 West Haven, Connecticut 06516

MARB Contract Form

Contract Name	Community Gardens and Urban Farm Project			
City Agency				
Vendor Utilized	Westcott and Mapes, Inc			
Address	142 Temple Street			
City, State, Zip	New Haven, CT 06510			
Procurement Process	<input type="checkbox"/> Bid/RFP [] <input type="checkbox"/> State Contract [Enter State Contract #] <input checked="" type="checkbox"/> Cooperative Agreement [SCRCOG List] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	American Rescue Plan Act (ARPA)			
Quantity	1.00	Price Per:		Total Purchase Price \$59,400
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.)	<p>Design services for the City of West Haven Open Space Passive Recreation Community Garden and Urban Farm Project at 100 Plainfield Avenue in West Haven, Connecticut.</p> <p>The vendor was selected off the South Central Regional Council of Governments vendor list.</p>			
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst Michael Gormany, Finance Director			



May 13, 2024

Mr. Ken Carney
ARPA Chairman
City of West Haven
355 Main Street
West Haven, CT 06516
c/o Leo Kelly-Tree Warden

SENT VIA E-MAIL: LKelly@westhaven-ct.gov

RE: Design Services
City of West Haven Open Space Passive Recreation
Community Garden and Urban Farm Project
100 Plainfield Avenue
West Haven, CT
W&M # 24-072-00

Dear Mr. Carney:

Westcott and Mapes, Inc. (W&M) is pleased to submit this proposal for design services for the City of West Haven Open Space Passive Recreation Community Garden and Urban Farm Project at 100 Plainfield Avenue in West Haven, Connecticut.

PROJECT UNDERSTANDING

It is our understanding that the City of West Haven has an approximate 42-acre tract of undeveloped land located in between Plainfield Avenue and Forest Road in West Haven. The property address is 100 Plainfield Road. The city has pursued funding to develop a portion, the westerly half+/-, of this land into a community garden and urban farm project. Some of the project components include a fenced in, raised bed community garden, a vehicular entrance and parking area, informational/directional kiosk, farm area access drive, farm plots with water service spigots, a woodland seating area, and a walking trail. The project will closely resemble the "Community Gardens and Urban Farms 100 Plainfield Avenue, West Haven, Connecticut, Conceptual Site Plan" sheet SP.1 dated 4/3/24 prepared by Westcott and Mapes, Inc. and Environmental Land Solutions, LLC. In general, the City of West Haven is seeking our services to design and prepare documents for the public bidding for the construction of the project.

SCOPE OF SERVICES

Land Surveying and Wetland Flagging Phase

Perform a Limited Topographic Survey of the project site to be used as the base mapping for the design. The survey area encompasses the western portion of the tract of land, approximately 18 acres.

The topographic information will include accurate contours at one foot elevation intervals, ground surface material descriptions, significant ground features including, but not limited to visible surface utilities, edge of water courses (if applicable), lines of vegetation, structures, parking, walks, driveways, poles, roads, signs, fences, walls, hedges, etc. Contours will be performed by aerial photogrammetry, supplemented with on-ground field survey where needed.

The westerly edge of the wetlands, approximately 1,200 lineal feet, will be flagged by a registered soil scientist, field located and mapped atop the survey.

The property boundary lines, within the limits of the project, will be shown to Class D accuracy based on deeds, GIS, assessor maps, previous surveys, or other records.

The survey will include visible utilities structures such as storm and sanitary sewer manholes, pipe system information such as pipe size, pipe type and invert data (if accessible) and/or will be based on provided reference mapping. Additional utility information such as water, gas, telephone, electric, communication cables, etc. will also be shown if applicable, based on field observations, prior field mark-outs by others and/or supplied reference mapping.

All work will be completed under the supervision of a Land Surveyor licensed in the State of Connecticut. All topographic work will be performed in accordance with Connecticut A-2/T-2 accuracy requirements based upon the "Minimum Standards for Surveys and Maps in the State of Connecticut". The boundary information will be performed to Class D accuracy. The setting of property corners is not included in this proposal.

Design Development and Municipal Approvals Phase

Westcott and Mapes, Inc. and its Landscape Architect subconsultant has performed two field investigations, and on-site field meetings, with the City of West Haven's Tree Warden.

The design team has prepared a Conceptual Site Plan depicting the proposed project components atop a photographic aerial background map and will provide photographic examples of similar in-operation community gardens as well as photographic examples of some project components.

We will meet with City Officials and/or project committee to review and discuss the Conceptual Site Plan and the project elements. We will advance the plan to the design development stage, including revising the materials per discussion and incorporating the specific selected project components.

Prepare the Permitting Plan set to include such materials or combination of materials as an accurate dimensional site plan identifying all project elements, including the parking lot layout, community garden area, ADA accessible features, walkways/walking paths, farm plots, farm access drive, and woodland seating area. Prepare a grading plan identifying the existing and proposed contours with applicable spot elevations and proper ADA grades in those areas intended for accessibility. Prepare an enlargement plan, if applicable, for those areas of fine detailed grades. Prepare a planting and/or landscape plan identifying the specific plants and trees

for the surrounding areas (outside of the garden and farm areas) to create a suitable landscaped appearance, encourage pollination, provide vegetative screening if applicable and a suitable entrance appearance. Prepare an erosion and sediment control plan, narrative, and details to protect the existing environment during construction operations. Prepare a water service plan, with details, to supply the community garden and the farm plots with water service. Prepare/provide basic examples and/or details for the raised planter beds, the walkways and pathways, the parking lot surface section, ADA parking and signage, the farm access drive, critter and deer fencing, the kiosk, and potential arbor or pergola feature, a storage shed, and/or open-air shelter. Prepare a plan set cover sheet with project title, drawings list, location map and general notes.

Prepare municipal applications (if applicable) and make submissions to the Inland Wetlands and Water Courses Agency and/or the city Planning and Zoning Commission, if applicable. Prepare a color presentation plan; and attend and present at up to three (3) municipal meetings, if required.

Bid Documents and Bid Phase

Correspond with the Regional Water Authority regarding the requirements for providing and detailing the domestic water service for the property such as the service wet tap, the meter vault, and the service pipe, and correspond with the appropriate municipal staff regarding the hose bibs/spigots, and the winterization procedures.

Formalize and refine the above design plans, and details, for bidding and construction purposes.

Coordinate with the City of West Haven's purchasing director/director of procurement and/or ARPA Chairman regarding the standard front-end contractual specifications.

Prepare the technical specifications for the purpose of the City's advertising, contractor bidding and construction.

Coordinate with the ARPA Chairman the contract dates including but not limited to the pre-bid walkthrough date, the RFI period, the bid due date and the bid award date.

Prepare and provide an electronic version and paper copies of the bid package plans and specifications to the City of West Haven.

Coordinate and conduct an on-site pre-bid walkthrough.

Provide clarifications and responses to bidder questions, RFI's, and inquiries with preparation of addenda.

Review the bids and bidder qualifications.

Design Services 4
City of West Haven Community Garden
and Urban Farm Project, 100 Plainfield Ave.

May 13, 2024
W&M 24-072-00

COMPENSATION/TERMS AND CONDITIONS

We propose to perform the above defined scope of services on an hourly basis, according to the following hourly rates for the applicable staff:

Westcott and Mapes, Inc. Standard Hourly Rates:

Vice President of Engineering	\$185
Staff Engineer	\$115
Senior Land Surveyor	\$155
Land Surveyor	\$130
AutoCAD Technician	\$ 85
Intern Staff Engineer	\$ 60

In addition to the Westcott and Mapes, Inc. standard hourly rates, our subconsultant fees will be represented as an independent lump sum line item on our invoices as per the completed task.

Our not to exceed fees, including our subconsultant fees, for the preceding scope of services are as follows:

Land Surveying and Wetland Flagging Phase	\$ 20,200.00
Design Development and Municipal Approvals Phase	\$ 21,300.00
Bid Documents and Bid Phase	<u>\$ 17,900.00</u>
Project Total	\$ 59,400.00

The above standard hourly rates shall remain in effect through June 30, 2024.

THE STANDARD TERMS AND CONDITIONS ARE AN INTEGRAL PART OF THIS PROPOSAL AND ARE ATTACHED FOR YOUR REVIEW. INVOICES FOR WORK PERFORMED WILL BE SUBMITTED ON A MONTHLY BASIS AND ARE DUE AND PAYABLE WITHIN 30 DAYS.

If you are in agreement with the terms of this proposal, please sign one copy and return it to our office.

The signed proposal will serve as our notice to proceed. If you have any questions, please do not hesitate to contact us.

We look forward to working with you on this project.



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract Name	Bond Resolution Planning, Design and Rehab of Sewer Pipes		
City Agency	Public Works		
Vendor Utilized			
Address			
City, State, Zip			
Procurement Process	<input type="checkbox"/> Bid/RFP [] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input checked="" type="checkbox"/> Other Source [Bond Resolution Submission]		
Quote No('s) if applicable			
Source of Funds			
Quantity	Price Per:	Total Purchase Price	\$1,125,000.00
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.	Bond resolution related to the planning, design and rehab of sewer pipes and manholes; related to the Dawson Avenue Area Contract.		
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst Michael Gormany, Finance Director		

AN ORDINANCE APPROPRIATING \$1,125,000 FOR THE COSTS ASSOCIATED WITH THE PLANNING, DESIGN AND REHABILITATION OF SEWER PIPES AND MANHOLES RELATED TO THE DAWSON AVENUE AREA CONTRACT 4 IN THE WEST SHORE PORTION OF THE CITY AND AUTHORIZING THE ISSUANCE OF \$1,125,000 BONDS OF THE CITY TO MEET SAID APPROPRIATION AND PENDING THE ISSUANCE THEREOF THE MAKING OF TEMPORARY BORROWINGS FOR SUCH PURPOSE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST HAVEN:

Section 1. The sum of \$1,125,000 is hereby appropriated for costs associated with the planning, design and rehabilitation of sewer pipe and manholes related to the Dawson Avenue Area Contract 4 in the West Shore portion of the City, and for architectural, design, engineering, hydraulic, site acquisition, development, demolition and disposal, environmental studies, surveying, infrastructure improvements, paving, material, utility charges, data systems, furniture and fixtures, equipment, testing, insurance, training, administrative, advertising, printing, legal, other consultant fees, and any appurtenances related to the project, as well as the cost of the establishment and maintenance of any reserve pursuant to Chapter 109, Chapter 117 and other chapters of the General Statutes of Connecticut (the "Connecticut Statutes"), as amended (the "Project"). Said appropriation shall be inclusive of any and all Federal and State grants-in-aid thereof.

Section 2. To meet said appropriation, \$1,125,000 bonds or other obligations of the City plus an additional amount for all necessary and appropriate financing costs not in excess of three percent of the cost of the Project, or so much thereof as maybe necessary for said purpose (the "Bonds"), may be issued, maturing not later than the twentieth year after their date, or such later date as may be allowed by law. The Bonds may be issued in one or more series as shall be determined by the Mayor, City Treasurer, and the Director of Finance (collectively, the "Bond Committee"), and the amount of Bonds of each series to be issued shall be fixed by a majority of the Bond Committee. The Bonds shall be issued in an amount upto the City's share of the cost of the Project determined after considering the estimated amount of any State and Federal grants in aid for the Project, or the actual amount thereof if such amount is ascertainable, and the anticipated times of receipt thereof, provided that the total amount of Bonds to be issued shall not be less than an amount which will provide funds sufficient, with other funds available for such purpose, to pay the principal of and the interest on all outstanding temporary borrowings issued in anticipation of the receipt of the proceeds of said Bonds, and any administrative, printing and legal costs of issuing the Bonds as determined by a majority of the Bond Committee. The Bonds shall be in the denomination of \$1,000 or a whole multiple thereof, be issued in bearer form or in fully registered form, be executed in the name and on behalf of the City by the manual or facsimile signatures of a majority of the Bond Committee, bear the City seal or a facsimile thereof, be certified by a bank or trust company designated by a majority of the Bond Committee, which bank or trust company may be designated the registrar and transfer agent, be payable at a bank or trust company designated by a majority of the Bond Committee and be approved as to their legality by the City's bond counsel. The Bonds shall bear such rate or rates of interest as shall be determined by a majority of the Bond Committee. The Bonds shall be general obligations of the City and shall comply with all requirements of law, including any

debt limit, relating to the authorization or issuance of such Bonds. The Bonds may also be secured as to both principal and interest, to the extent permitted by law, by a pledge of certain revenues or benefit assessments or both. The aggregate principal amount of the Bonds, installments of principal, redemption provisions, if any, the date, time of issue and sale and other terms, details and particulars of such Bonds, including any repayment agreements or memoranda of understanding, or whether any of the Bonds will be issued as taxable bonds, shall be determined by a majority of the Bond Committee, in accordance with the requirements of the Connecticut Statutes.

Section 3. In connection with the issuance of any bonds or notes authorized herein (collectively, the "Obligations"), the City, as determined by a majority of the Bond Committee, may exercise any power delegated to municipalities pursuant to the Connecticut Statutes, including the authority to establish credit facilities and to enter into agreements managing interest rate risk. The City, as determined by a majority of the Bond Committee, shall have all appropriate powers under the Connecticut Statutes, including Chapter 748 (Registered Public Obligations Act), Chapter 446k (Water Pollution Control) and Chapter 109 (Municipal Bond Issues), to issue, sell and deliver the Obligations and, further, shall have the full power and authority to do all that is required under the Internal Revenue Code of 1986, as amended, and other applicable laws and regulations of the United States, to provide for issuance of the Obligations in tax exempt form and to meet all requirements which are or may become necessary in and subsequent to the issuance and delivery of the Obligations in order that the interest on the Obligations be and remain exempt from Federal income taxes, including, without limitation, to covenant and agree to restriction on investment yield of bond proceeds, rebate of arbitrage earnings, and expenditure of proceeds within required time limitations. In order to meet the capital cash flow expenditure needs of the City, a majority of the Bond Committee is authorized to collectively allocate and reallocate expenditures incurred for the Project to any bonds or notes of the City outstanding as of the date of such allocation, and the bonds or notes to which such expenditures have been allocated shall be deemed to have been issued for such purpose, including the bonds and notes herein authorized

Section 4. Said Bonds shall be sold in a competitive offering or by negotiation as determined by a majority of the Bond Committee. If sold at competitive offering, the Bonds shall be sold by a majority of the Bond Committee at not less than par and accrued interest on the basis of the lowest net or true interest cost to the City, by sealed proposals, auction, or other comparative method. If the Bonds are sold by negotiation, the purchase contract shall be signed by a majority of the Bond Committee. With respect to the receipt of original issuance premium or bid premium upon the sale of the bonds or notes herein authorized, the City is authorized, but not required, to apply original issuance premium and bid premium, if applicable, to fund future debt service payments on the City's bonds and notes or to fund any purpose for which bonds of the City are authorized to be issued, and such application shall reduce the amount of authorized and unissued bonds for the purpose to which the premium was applied, in the amount so applied.

Section 5. Said Bonds may be secured by the City's property taxes, including interest, penalties and related charges, pursuant to Chapter 111 and other chapters of the Connecticut Statutes, and, if deemed necessary or appropriate and in the City's best interest by a majority of the Bond Committee, the Bond Committee, on behalf of the City, is hereby authorized: (i) to establish a property tax intercept procedure and a debt service payment fund pursuant to Chapter 117 of the Connecticut Statutes, §7-560 et seq., and other Chapters of the Connecticut Statutes, on such terms as a majority of the Bond Committee deem necessary or

appropriate, and (ii) to take all further actions which a majority of the Bond Committee deem necessary or appropriate to so secure the Bonds or which are contemplated by law. A majority of the Bond Committee, if they determine it to be advisable, necessary or appropriate, is authorized, on behalf of the City, to enter into an indenture of trust and/or a supplemental indenture of trust to any existing indenture of the City (collectively, the "Indenture") with a bank or trust company located within or without the State of Connecticut (the "Trustee"), and to covenant: (i) if the Bonds are issued pursuant to such Indenture that all or a portion of the City's property taxes shall be paid to the Trustee and be held in trust for the benefit of the holders of the Bonds as provided in Chapter 117 and other Chapters of the Connecticut Statutes, and (ii) the terms on which any payments or reserves securing the payment of the Bonds will be paid, and the terms of any reserve or other fund for the benefit of the holders of the Bonds; and, in any event, to amend or supplement the Indenture containing such terms and conditions as a majority of the Bond Committee shall determine to be necessary or advisable and in the best interest of the City, the execution thereof to be conclusive evidence of such determination.

Section 6. The issue of the Obligations aforesaid and of all other bonds or notes of the City heretofore authorized but not yet issued, as of the effective date of this Ordinance, would not cause the indebtedness of the City to exceed any debt limit calculated in accordance with law.

Section 7. The City is authorized to make temporary borrowings in anticipation of the receipt of the proceeds of any series of said Bonds or any anticipated amounts of State and Federal grants in aid for the Project. Notes evidencing such borrowings shall be signed by the manual or facsimile signatures of a majority of the Bond Committee, have the seal of the City or a facsimile thereof affixed, be payable at a bank or trust company designated by a majority of the Bond Committee, be certified by a bank or trust company designated by a majority of the Bond Committee, pursuant to Section 7-373 of the Connecticut Statutes, and be approved as to their legality by the City's bond counsel. Notes shall be sold in competitive offering or by negotiation as determined by a majority of the Bond Committee. If sold in a competitive offering, the notes shall be sold by a majority of the Bond Committee at not less than par and accrued interest on the basis of the lowest net or true interest cost to the City, by sealed proposals, auction or other comparative method. If the notes are sold by negotiation, the purchase contract shall be signed by a majority of the Bond Committee. The notes shall be issued with maturity dates which comply with the provisions of the Connecticut Statutes that govern the issuance of such notes. The notes shall be general obligations of the City and shall comply with all requirements of law, including any debt limit, relating to the authorization or issuance of such notes. The net interest cost on such notes, including renewals thereof, and the expense of preparing, issuing and marketing them, to the extent paid from the proceeds of such renewals or said Bonds, shall be included as a cost of the Project. Upon the sale of said Bonds the proceeds thereof, to the extent required, shall be applied forthwith to the payment of the principal of and the interest on any such temporary borrowings then outstanding or shall be deposited with a bank or trust company in trust for such purpose. The City is also authorized to issue notes in anticipation of the receipt of grants, if applicable, and a majority of the Bond Committee shall determine the terms and conditions of such issuance.

Section 8. For the Project, \$1,125,000 of interim funding obligations and project loan obligations or any other obligations of the City evidencing an obligation to repay any portion of the costs of the Project determined by the State of Connecticut Department of Energy and Environmental Protection, Public Health or other department as applicable to be eligible for funding under Section 22a 475 et seq. of the Connecticut General Statutes, as the same may be

amended from time to time (the "Clean Water Fund Program") plus an additional amount for all necessary and appropriate financing costs not in excess of three percent of the cost of the Project, or so much thereof as may be necessary for said purpose (the "Clean Water Fund Obligations"), may be issued, maturing not later than the twentieth year after their date, or such later date as may be allowed by law. The Clean Water Fund Obligations may be issued in one or more series as shall be determined by the Bond Committee, and the amount of Clean Water Fund Obligations of each series to be issued shall be fixed by a majority of the Bond Committee. The Clean Water Fund Obligations shall be issued in an amount up to the City's share of the cost of the Project determined after considering the estimated amount of any State and Federal grants in aid for the Project, or the actual amount thereof if such amount is ascertainable, and the anticipated times of receipt thereof. The issuance of the Clean Water Fund Obligations and of all other bonds or notes of the City heretofore authorized but not yet issued, as of the effective date of this Ordinance, would not cause the indebtedness of the City to exceed any debt limit calculated in accordance with law. The Clean Water Fund Obligations shall be executed in the name and on behalf of the City by the manual or facsimile signatures of a majority of the Bond Committee, bear the City seal or a facsimile thereof. The Clean Water Fund Obligations may be general obligations of the City and shall comply with all requirements of law, including any debt limit, relating to the authorization or issuance of such Clean Water Fund Obligations. The Clean Water Fund Obligations may also be secured as to both principal and interest, to the extent permitted by law, by a pledge of certain revenues or benefit assessments or both. The aggregate principal amount of the Clean Water Fund Obligations, installments of principal, redemption provisions, if any, the date, time of issue and sale and other terms, details and particulars of such Clean Water Fund Obligations, including the rate or rates of interest, any repayment agreements or memoranda of understanding, shall be determined by a majority of the Bond Committee, in accordance with the requirements of the Connecticut Statutes; and

(b) any combination of Obligations and Clean Water Fund Obligations for the Project as set forth in the preceding sections may be issued, provided that the total, aggregate principal amount thereof issued, and including the amount of any grant funding obtained, shall not exceed \$1,125,000 plus an amount needed for necessary and appropriate financing costs related to the Project.

Section 9. Resolution of Official Intent to Reimburse Expenditures with Borrowings. The City hereby expresses its official intent pursuant to §1.150-2 of the Federal Income Tax Regulations, Title 26 (the "Regulations"), to reimburse expenditures paid 60 days prior to and after the date of passage of this Ordinance in the maximum amount and for the Project described above with the proceeds of bonds, notes, or other obligations authorized to be issued by the City. Such obligations shall be issued to reimburse such expenditures not later than 18 months after the later of the date of the expenditure or the substantial completion of the project, or such later date the Regulations may authorize. The City hereby certifies that the intention to reimburse as expressed herein is based upon its reasonable expectations as of this date. The Director of Finance or his designee is authorized to pay project expenses in accordance herewith pending the issuance of reimbursement obligations, and to amend this declaration.

Section 10. The Director of Finance is hereby authorized to exercise all powers conferred by section 3-20c of the Connecticut Statutes with respect to secondary market disclosure and to provide annual information and notices of material events as enumerated in Securities and Exchange Commission Exchange Act Rule 15c212, as amended, as may be

necessary, appropriate or desirable to effect the sale of the bonds, notes or other obligations authorized by this Ordinance.

Section 11. The Mayor, the Director of Finance and any other duly authorized City, Board of Education or WPCA official is authorized to seek grants and other contributions for the costs of the Project. Any such grants or contribution received prior to the issuance of any Obligations or Clean Water Fund Obligations authorized herein shall be applied to the costs of the Project or to pay at maturity the principal of any outstanding bond anticipation note, grant anticipation note or other temporary obligation issued pursuant this Ordinance and shall reduce the amount of Obligations or Clean Water Fund Obligations that can be issued pursuant to this Ordinance. If such grants and contributions are received after the issuance of any Bonds or Clean Water Fund Obligations, they shall be applied to pay either non-financed portions of the Project or debt service on the Bonds or Clean Water Fund Obligations provided such application does not adversely affect the tax-exempt status of the Bonds or Clean Water Fund Obligations.

Section 12. This Ordinance shall be effective immediately upon the Mayor's signature.

ENACTED BY THE CITY COUNCIL ON: May 28th, 2024
APPROVED BY THE MAYOR: [Signature] DATE: 5/28/24



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract Name	May V. Carrigan Boiler Project			
City Agency	Board of Education			
Vendor Utilized	F&F Mechanical Services			
Address	140 Corporate Drive			
City, State, Zip	Trumbull, CT 06611			
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2024-23] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	Bond Funds			
Quantity	1.00	Price Per:	Total Purchase Price	934,907.61
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.	The Contractor will provide the services, equipment and materials required for the boiler upgrades project at May V. Carrigan Intermediate School. The services include steam boiler replacement, re-piping of the entire building, as well as related services, equipment, and materials at the Property accordance with the Contract Documents, as defined in Article 5 of this Contract.			
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst			

CONTRACT FOR CARRIGAN SCHOOL BOILER UPGRADES AND RELATED WORK

THIS CONTRACT FOR CARRIGAN SCHOOL BOILER UPGRADES AND RELATED WORK ("Contract"), dated as of June 18, 2024, by and between the City of West Haven ("Owner") and F&F Mechanicals, LLC, a Connecticut limited liability company ("Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. Work.

Contractor will provide the services, equipment and materials required for the boiler upgrades project at May V. Carrigan Intermediate School in West Haven, Connecticut (the "Property") that includes steam boiler replacement, re-piping of the entire building, as well as related services, equipment and materials at the Property ("Work"), all in accordance with the Contract Documents, as defined in Article 5 of this Contract.

Article 2. Contract Time.

The Work will be completed in accordance with the schedule for lead time and on-site Work set forth in the Contract Documents, including, without limitation, Exhibit B attached hereto and made a part hereof, with all Work to be completed on or before October 15, 2024 ("Completion Date"), time being of the essence, subject to modifications in approved Change Orders, and subject to delays for matters beyond the reasonable control of Contractor. The Work will be considered completed when Owner issues a certification of Final Completion (as defined in Section 6.2(a) below) stating the Work has been completed in accordance with the Contract Documents, and the final, unconditional certificate of occupancy has been issued by the responsible government authority, if required by law. Before starting Work at the Property, Contractor will submit to Owner for Owner's review and approval a progress schedule indicating the starting and completion dates of various stages of the Work.

Article 3. Contract Price.

Owner will pay to Contractor an amount equal to Nine Hundred Thirty-Four Thousand Nine Hundred Seven and 61/100 Dollars (\$934,907.61) ("Contract Price") for completion of the Work in accordance with the Contract Documents ("Contract Price").

Article 4. Change Orders.

Any increase or decrease in the Contract Price, change in the Work or change in the Contract Time must be set forth in a change order signed by Owner and Contractor ("Change Order").

Article 5. Contract Documents.

The "Contract Documents" shall mean this Contract, Owner's Request for Proposal (Owner's RFP # 2024-23), which, together with all addenda thereto, Requests for Information and responses thereto, and plans, drawings and specifications for the Work, issued as part of such Request for Proposal, as well any and all addenda and amendments to such plans, drawings and specifications are collectively herein referred to as the "Request for Proposals," copies of which is on file with the Owner's Purchasing Department, 355 Main Street, West Haven, Connecticut 06516, which Request for Proposals is hereby incorporated by reference as though fully stated herein, as well as the exhibits attached hereto and hereby made a part hereof: Exhibit A (Contractor's Alternate Bid Form, dated May 28, 2024 submitted in response to the Request for Proposal, omitting all proposed Terms and Conditions, with this Contract providing the terms and conditions for the Work), Exhibit B (Work Schedule), and Exhibit C (Insurance Requirements), and any and all Change Orders. In the event of any conflict between or among the provisions of the Contract Documents, the order of precedence shall be:

1. The plans, drawings and specifications for the Work, including any modifications thereto made after the date of this Contract
2. The body of this Contract
3. Exhibit B
4. Exhibit C
5. The portions of the Request for Proposals other than the plans, drawings and specifications
7. Exhibit A

Change Orders shall have the priority of the other Contract Documents to which they relate.

Article 6. Payment Procedures.

6.1 Progress Payments. During the course of the Work, the Contractor shall be entitled to progress payments based upon the schedule of values for the Work completed to date as certified by the Owner's engineer, currently H.F. Lenz (the "Engineer"). The Contractor shall submit with its first application for payment a detailed schedule of values showing a breakdown of the Contract Price. The schedule of values will be reviewed by the Engineer and will either be accepted or returned to the Contractor with requested revisions. Once accepted, the Contractor's schedule of values shall provide a basis for reviewing the Contractor's applications for payment.

On or before the last day of the month - but no more often than once per month - the Contractor shall submit to the Engineer an application for payment in a form acceptable to the Engineer and the City. The application for payment will indicate

the total value of the Work completed to date, which will be determined by using the approved schedule of values. The amount of the requested payment will then be determined by deducting ~~ten percent (10%)~~ retainage and the previous amounts certified for payment from the total value of the completed Work. 5%

The Engineer will review the application for payment within ten (10) days of receipt. If the Engineer agrees that the application for payment accurately reflects the value of the Work completed to date, then the Engineer will certify to the City that the requested payment should be issued. If the Engineer does not agree that the application reflects the actual value of the completed Work, then the Engineer shall make adjustments to the application for payment and certify to the City the amount of the payment, if any, that it believes should be issued. The Engineer shall give the Contractor notice of the amount of the certified payment and, if the Engineer does not certify the application for payment for the full amount that the Contractor requested, then the notice shall state the reasons why the Contractor's application for payment was adjusted.

The Engineer may adjust the Contractor's applications for payment for any reason that it believes to be in the best interests of the City. The reasons that the Engineer may adjust the Contractor's application for payment include adjustments necessary to reflect the actual value of completed Work, adjustments necessary to cover the cost of any defective or incomplete Work and/or adjustments necessary to protect the City against any claims or potential claims that may be made against the City arising out of the Work.

Once an application for payment has been certified by the Engineer, payment shall be made to the Contractor within forty-five (45) days thereafter. No payment made under or in connection with this Contract shall be construed as an acceptance of defective, faulty or improper work or materials; nor shall it release the Contractor from its obligations under this Contract; nor shall entrance and use by the City constitute acceptance of the Work or any part thereof.

The Contractor shall make payment to all of its subcontractors for whose work it has received payment from the City within thirty (30) days of its receipt of payment from the City. The Contractor shall also include in all of its subcontracts a provision requiring its subcontractors to pay their sub-subcontractors within thirty (30) days of their receipt of payment from the Contractor.

6.2 Final Payment. Final payment of the balance of the Contract Price will be made in accordance with the following procedures:

- a. When Contractor considers the Work substantially complete, Contractor will notify Engineer in writing. Within a reasonable time thereafter, Engineer and Contractor will inspect the Work. Promptly after such inspection, Engineer will deliver to

Contractor a response to such notification agreeing or disagreeing (with reasons therefor) that the Work is substantially complete. If the Engineer disagrees that the Work is substantially complete, the Engineer shall promptly notify the Contractor of such disagreement and the reasons therefor. When Contractor has addressed the reasons for Engineer's disagreement that the Work is substantially complete, Contractor shall so notify Engineer and the above process shall be repeated until Engineer agrees that the Work is substantially complete. If the Engineer agrees that the Work is substantially complete, Engineer shall either (i) provide to Contractor a written punch list of the items that must be completed in order for the Work to reach final completion ("Final Completion") or (ii) deliver to Contractor a written statement that Final Completion has been reached because no punch list items remain to be completed.

- b. If Engineer delivers a written punch list to Contractor, then Contractor will deliver to Engineer a written notice that the Work is finally complete when Contractor believes that the punch list items have been completed. Then Engineer and Contractor will promptly inspect the Work for completion of the punch list items. Promptly after such inspection, Engineer will deliver to Contractor either (i) a written statement that Final Completion has been reached or (ii) another written punch list of the items that still must be completed in order for the Work to reach Final Completion for which event the punch list procedure described above will be repeated until all punch list items have been completed.
- c. When Final Completion has been reached and after Contractor has delivered to Owner all maintenance and operating instructions, schedules, guarantees, certificates of inspection, marked-up record documents and other documents, Contractor may make application for final payment following the procedure for progress payments. The application for final payment will be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to Owner and Lender) of all potential liens arising out of or filed in connection with the Work. Final payment will include a release of all retainage to Contractor.

Article 7. Interest.

Payments due and unpaid to Contractor will bear interest at the lesser of eighteen percent (18%) *per annum* or the maximum rate allowed by law.

Article 8. Contractor's Representation.

To induce Owner to enter into this Contract, Contractor makes the following representation:

Contractor has familiarized itself with the nature and extent of the Contract Documents, Work site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the Work. Contractor

is duly licensed to perform the Work as required by applicable state and local laws and regulations.

Article 9. Contractor's Responsibilities.

9.1. Performance. Contractor will perform the Work in accordance with the Contract Documents. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures for the Work.

9.2. Personnel. Contractor will provide competent, suitable personnel fully capable to perform the Work as required by the Contract Documents. Contractor will at all times maintain good discipline and order at the Property.

9.3. Furnished Items. Contractor will furnish and be fully responsible for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work, except as provided by Owner.

9.4. Materials. All materials and equipment will be of good quality and new. All materials and equipment will be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier.

9.5. Subcontractors. Contractor may not subcontract any of the Work without the prior written consent of Owner, which may be granted or withheld in Owner's sole and exclusive discretion. Contractor will be fully responsible to Owner for all acts and omissions of its subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents will create any contractual relationship between Owner and any such subcontractor, supplier or other person or organization, nor will it create any obligation on the part of Owner to pay any such subcontractor, supplier or other person or organization except as may otherwise be required by applicable laws and regulations. Contractor will give Owner the name, address and telephone number of each person that has a contract with Contractor to supply materials or labor for the Work.

9.6. Permits; Inspections. Contractor will obtain all permits and licenses required to be obtained for the Work and will pay for all such permits and licenses, except to the extent such permits and licenses are exempt from fees. Owner will assist Contractor, when necessary, in obtaining such permits and licenses. Contractor will arrange and coordinate all governmental inspections required for the Work. Contractor will give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work.

9.7. Taxes. Owner is exempt from State of Connecticut sales and use tax. The Contract Price does not include any sales, consumer, use or other similar taxes.

9.8. Use of Premises. Contractor will confine construction and installation equipment, the storage of materials and equipment, and the operations of workers to areas of the Property designated by Owner, and will not unreasonably encumber the Property with materials or equipment. Contractor will be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. During the progress of the Work, Contractor will keep the Property free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor will remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction and installation equipment and machinery, and surplus materials, and will leave the Property clean and ready for occupancy by Owner.

9.9. Record Documents. Contractor will maintain in a safe place at the Property for Owner's access one record copy of all drawings, specifications, addenda, written amendments, Change Orders, and the like, in good order and annotated to show all changes made during construction, which will be delivered to Owner upon the expiration or earlier termination of this Contract.

9.10. Safety. Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor will comply with all applicable laws and regulations relating to the safety of persons and/or property.

9.11. Continuing the Work. Contractor will carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner.

9.12. Damage to the Work. Contractor will repair or replace, at Contractor's sole expense, every portion of the Work that is damaged or destroyed prior to Final Completion, except to the extent such damage or destruction is caused by Owner.

9.13. Warranty. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents, will not be defective and will be fit for its intended purpose. If within one (1) year after the later of the date of Final Completion or completion of warranty work, or such longer period of time as may be prescribed by applicable laws or regulations or by the terms of any specific provision or applicable special guarantee in the Contract Documents, any Work is found to be defective, not fit for its intended purpose or otherwise not in accordance with the Contract Documents, Contractor will promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such Work, or if it has been rejected by Owner, remove it from the Property and replace it with Work that is not defective and is in compliance with the Contract Documents. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have such Work corrected or such Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. To the extent assignable, Contractor shall assign all manufacturers' warranties to Owner, effective upon expiration of the above-referenced warranty period.

9.14. Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor will defend, indemnify and hold harmless Owner and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions, from and against any and all losses, liabilities, costs, fees (including attorneys' fees), expenses, damages and economic detriment of any kind whatsoever that arises out of or relates to the performance or non-performance of the Work.

9.15 Related Work at Property. Owner may perform other work at the Property that is not part of the Work by Owner's own forces or may let other direct contracts therefor. Contractor will afford Owner's own forces, and any other contractor who is a party to such a direct contract, proper and safe access to the Property and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work. Contractor shall coordinate the Work with the work of the Owner and its contractors at the Property.

Article 10. Contractor's Insurance.

Contractor shall purchase and maintain the insurance policies required under Exhibit C attached hereto and made a part hereof, in accordance with the provisions of Exhibit C.

Article 11. Termination.

11.1 Termination by Owner for Contractor Breach. If Contractor breaches any of its obligations under this Contract, then Owner may give Contractor written notification identifying such breach. If Contractor has not cured such breach within seven (7) calendar days from its receipt of Owner's written notification, or if such breach cannot be cured within such seven (7) day period, then if Contractor either (i) does not begin cure within such seven (7) day period or (ii) fails to diligently prosecute cure to completion, Owner may terminate this Contract and take possession of the Work. Alternatively, instead of terminating the Contract, Owner may cure the breach and deduct the cost thereof from amounts otherwise owed to Contractor, with Contractor liable for any Owner costs in excess of amounts available for such deduction.

11.2 Termination by Contractor for Owner Breach. If Owner breaches any of its obligations under this Contract, then Contractor may give Owner written notification identifying such breach. If Owner has not cured such breach within seven (7) calendar days from its receipt of Contractor's written notification, or if such breach cannot be cured within such seven (7) day period, then if Owner either (i) does not begin cure within such seven (7) day period or (ii) fails to diligently prosecute cure to completion, Contractor may terminate this Contract.

11.3 Termination for Convenience by Owner. Owner may at any time, and for any reason or for no reason, terminate this Contract for convenience by written notice specifying the termination date, which date shall be not less than seven (7) days from the date such notice is given. In the event of such termination, Work shall be paid for

in such amount as shall compensate Contractor for the portion of the Work satisfactorily performed prior to termination, but such compensation shall not include unabsorbed home office overhead or lost profits. Such amount shall be fixed by Owner after consultation with Contractor.

Article 12. Miscellaneous.

12.1. Contractor may not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Owner, which may be granted or withheld in Owner's sole and exclusive discretion.

12.2. This Contract shall be binding upon the parties hereto and their respective successors and permitted assigns.

12.3. This Contract and all issues, disputes and matters arising out of it will be governed by and construed in accordance with the laws of the State of Connecticut, exclusive of its body of law governing conflicts of laws.

12.4. This Contract may be modified, amended, changed, or otherwise altered (except as otherwise specifically provided herein), in whole or in part, only by an agreement in writing duly authorized and executed by both parties hereto.

12.5. The waiver of any breach of any of the provisions of this Contract by either party hereto shall not constitute a continuing waiver or a waiver of any subsequent breach by such party, either of the same or of another provision of this Contract.

12.6. Time is of the essence in the performance of this Contract.

12.7. This Contract contains the entire agreement between the parties hereto, and no statement, promise, or inducement made by either party hereto that is not contained or referenced in this Contract shall be valid or binding upon the parties hereto.

12.8. The article and section headings, captions, and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Contract.

12.9. Invalidity of any of the provisions of this Contract or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Contract.

12.10. Contractor represents and warrants to Owner that Contractor's entering into this Contract and the performance of its obligations under this Contract have been duly authorized by necessary limited liability company action of Contractor and that all of its obligations under this Contract constitute legal, valid and binding obligations of Contractor, enforceable in accordance with their respective terms. Contractor further represents and warrants to Owner that there is no other agreement, instrument or document that prevents or interferes with Contractor's entering into and performing its

obligations under this Contract or that would be violated by Contractor's entering into and performing its obligations under this Contract.

12.11. Performance of the Work shall be subject to, and Contractor shall comply with, and shall cause all subcontractors to comply with, the requirements of Connecticut's Prevailing Wage law (Connecticut General Statutes Sections 31-53 and 31-53a), including payment of prevailing wages to all workers, laborers and mechanics engaged in the performance of the Work at the applicable prevailing wage rates. The Contractor shall maintain certified payroll reports throughout the performance of the Work.

12.12. This Contract may be executed in counterparts that, together, shall constitute one and the same original document. Facsimile and .pdf copies of signatures shall be deemed original signatures.

12.13. All references made and pronouns used in this Contract shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

12.14. As used in the Contract Documents, the terms "include(s)", "including" or words of similar meaning shall mean "without limitation."

12.15. In addition to the condition precedent set forth in Exhibit C regarding insurance, the following are conditions precedent to Owner's obligations this Contract:

(a) A W-9 form executed and delivered by Contractor to Owner that is acceptable to the Owner in its sole and exclusive discretion;

(b) A Disclosure and Certification Affidavit executed and delivered by Contractor to the City with information that is acceptable to Owner in its sole and exclusive discretion. Each invoice submitted by Contractor to Owner shall include a certification that the information contained in Contractor's Disclosure and Certification Affidavit executed in connection with entering into this Contract remains true and correct in all material respect; and

(c) Approval of this Contract by the West Haven Subcommittee of the Municipal Accountability Review Board of the State of Connecticut.

12.16. Exclusive jurisdiction for resolution of any disputes between Owner and Contractor shall be in Connecticut state court located in New Haven, Connecticut. Owner and Contractor agree that such court does not constitute an inconvenient forum.

12.17. Owner and Contractor waive any right to trial by jury for resolution of any dispute between Owner and Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.


OWNER

City of West Haven

By: 
Hon. Dorinda K. Borer, Mayor

CONTRACTOR

F&F Mechanical Service, LLC

By: 
Mario Nozzolini
Its Stanford Branch Mgr.

Address for giving notices:

Ken Carney
Chair
ARPA Committee
City of West Haven
355 Main Street
West Haven, CT 06516
KenCarney@whschools.org

Address for giving notices:

Frank Fanelli
F&F Mechanical Services, LLC
140 Corporate Drive
Trumbull, CT 06611
ffanelli@ffmechanical.com

Approved as to form:

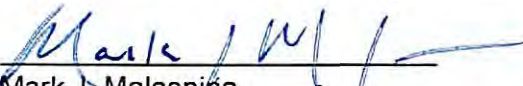

Mark J. Malaspina
Carmody Torrance Sandak & Hennessey LLP

EXHIBIT A
CONTRACTOR'S ALTERNATE BID FORM

See Contractor's Alternate Bid Form dated May 28, 2024, omitting proposed Terms and Conditions, a copy of which is attached hereto and made a part hereof. The terms and conditions for the Work are contained in this Contract. Contractor's proposed Terms and Conditions contained in Contractor's Alternate Bid Form are inapplicable and omitted from the attachment hereto.

CITY OF WEST HAVEN

RFP# 2024-23

Carrigan School Boiler Upgrades

Alternate

BID FORM

TOTAL BID PRICE (LUMP SUM): \$ 934,907.61
COMPANY NAME: F+F mechanical
CONTACT PERSON: Frank Femelli
ADDRESS: 140 Corporate Drive
PHONE NUMBER: 203 598-8712
EMAIL: Ffanelli@ffmechanical.com
SIGNATURE: Frank Femelli
DATE: May 28 2024



F+F Mechanical

**Carrigan Intermediate School Control Upgrade &
Boiler Change out Alternate
Proposal**

Date:
3/27/2024

Proposal Number:
PO1330

Prepared for:
West Haven Board of Education
Facilities Department A.P.
West Haven, CT 06516

Prepared by:
Frank Fanelli
203-323-3959
ffanelli@ffmechanical.com
AA/EOE



F+F Mechanical

Scope of Work:

With H.F Lenz Engineering Approval.

- Shut down boilers and drain system.
- Demo and dispose of existing boilers.
 - Disconnect flue, electrical, and associated piping.
- Demo and dispose all Return Piping in Boiler room.
- Furnish and install **(2)** new boilers and Burners
 - Smith Boilers 28HE Series Steam
 - High Efficiency
 - 4622 MBH Out Put
 - 138 Boiler Hores power
 - Natural Gas. Modulating Burner by Honeywell Control Package.
- Furnish and install new piping between new boilers and existing Steam Header. (30 Ft 5 inch welded Pipe schedule 40)
- Furnish and install new return piping From boiler to return Tank. (100 Ft of 2 inch Black pipe schedule 40.)
- Furnish and install new steam return line ground floor. (350 Ft or 1 1/2 Piping and Fitting Schedule 40.)
- Furnish and install new steam return line ground floor ceiling. (220 Ft 1 1/2 Piping and Fitting Schedule 40.)
- Furnish and install steam traps (30)
- Furnish and install Three new condensate Tanks with condensate pump.
- Furnish and install new piping around tank wired pumps.
- Furnish and install new return piping in tunnel. (200 Ft 2inch Piping and Fitting Schedule 40.)
- **ELECTRICAL**
- Provide new electrical feed between existing junction box in boiler room to new boiler.
- **Honeywell Controls**
- Provide a new up grade Honeywell Jace (9000.)
- Provide and install new controls in boiler room
- Provide start / stop , Schedule and monitor boilers.
- Control condasate tank pumps.
- Control safetys on boilers.
- Monitor alarism on boilers.
- Provide controls on problem room. (15) (steam valves and sensors) Honeywell
- All safety will send out e-mail alarms.
- Start up - Commissioning.
- **Billing**
- Prevailing Wage Rate

12



F+F Mechanical

- ~~• Retainage 10%~~
- AIA Billing
- Permit Fees
- **Not included**
- **Removal of any ASBESTOS IN TUNNEL.**



F+F Mechanical

PROPOSAL

F+F Mechanical Service, LLC.
140 Corporate Drive
Trumbull, CT 06611
Ph: 203-323-3959

Proposal Date: 3/27/2024
Proposal Number: P01330

Customer
West Haven Board of Education
Facilities Department A.P.
West Haven, CT 06516
Chris Everone

Location of Work
Carrigan Intermediate School
2 Tedow Street
West Haven, Connecticut 06516
Chris Everone

WE ARE PLEASED TO SUBMIT OUR PROPOSAL TO PERFORM THE FOLLOWING:

OUR PROPOSAL INCLUDES ALL ITEMS LISTED ON THE ATTACHED SCOPE OF WORK PAGE.

OUR PRICE FOR THIS PROPOSAL IS

.....\$934,907.61 applicable taxes not included.

Upon execution as provided below, this agreement, including the following pages attached hereto (collectively, the "Agreement"), shall become a binding and enforceable agreement against both parties hereto. Customer, by execution of this Agreement, acknowledges that it has reviewed and understands the attached terms and conditions and has the authority to enter into this Agreement.

F+F Mechanical Service, LLC.

Customer

Frank Faneili

Signature (Authorized Representative)

Signature (Authorized Representative)

Frank Faneili

Name (Print/ Type)

Name (Print/ Type)

203-323-3959

Phone

Title

3/27/2024

P01330

Date Proposal #

Date PO#



F+F Mechanical

Exclusions:

Payment and Performance Bond
Sales & Use Taxes
Engineering or Stamped Drawing
As Built Drawings
Temporary Heat or Cooling
Asbestos or Lead Abatement
Slab X-ray
Duct Cleaning
Concrete Work
Structural Engineering or Reinforcement
Ceiling Removal or Reinstallation
Movement/Protection of Furniture, Fixtures or Equipment
Roofing or Roof Protection
Excavation or Backfilling
Isolation, Draining, Refilling or Venting of any Piping Systems

EXHIBIT B

Work begins: Upon satisfaction of the conditions precedent set forth in Section 12.13 of the Contract.

Final Completion Date: October 15, 2024, time being of the essence.

EXHIBIT C
CONTRACTOR'S INSURANCE

Prior to the commencement of the Services, and as a condition of site access, the Contractor shall deliver to the City (referred to hereinafter as the "Owner") a valid and currently dated Certificate of Insurance ("COI").

The insurance coverage carried by the Contractor must be placed with and written by an insurance company admitted to do business in the State of Connecticut, and with a rating of A- or better by A.M. Best.

The insurance coverages carried by the Contractor (shown below) shall apply regardless of whether the operations, actions, derelictions or failures to act, from which any claim arises, are attributable to the Contractor, a subcontractor, a sub-subcontractor, or any consultant, officer, agent, employee or anyone directly or indirectly employed by any of them, including anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable state law. Failure of Contractor to provide a COI shall in no way limit or relieve Contractor of its duties and responsibilities in this Contract. All policies of insurance shall be written on an occurrence basis.

At a minimum, the COI shall indicate that the following coverages and limits are in place:

1. **Commercial General Liability – Minimum Limits Required:**
 - \$2,000,000 General Aggregate
 - \$2,000,000 Producers/Completed Operations Aggregate
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Personal and Advertising Injury
 - \$100,000 Fire Damage – Any One Fire
 - \$5,000 Medical Expense – Any One Person

 - The Owner (The City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** onto the CGL policy carried by the Contractor. The Additional Insured coverage afforded to the Owner shall apply on a **primary and non-contributory basis** and include **completed operations** coverages.

 - The CGL policy carried by the Contractor shall contain a **Waiver of Subrogation** clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven (and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions)).

2. Business Auto/Commercial Auto Insurance – Minimum Limits required:

- \$1,000,000 Liability
- The Owner (The City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** onto the Commercial Auto/Business Auto policy carried by the Contractor.
- The Business Auto/Commercial Auto policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven, and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

3. Workers Compensation/Employers Liability Insurance:

- Coverages and limits as required by law Connecticut State law
- Employers Liability Limits:
- \$500,000 each accident
- \$500,000 aggregate for injury by disease
- \$500,000 each employee for injury by disease
- The Workers' Compensation/Employers Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

4. Professional Liability Insurance – Minimum Limits required:

- \$2,000,000 per occurrence
- \$3,000,000 aggregate

5. Umbrella Liability/Excess Liability – Minimum Limits required:

- \$5,000,000 Each Occurrence
- \$5,000,000 General Aggregate
- Policy will provide excess coverage over the CGL, Business Auto and Workers' Compensation/Employer Liability policies carried by the organization.
- The Umbrella/Excess Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers,

officials, agents, employees and members of all of its boards and commissions).

No Limitation on Liability

With regard to any/all claims made against the Additional Insured by any employee of the Contractor, any subcontractor or anyone directly or indirectly employed by the Contractor or any subcontractor, or anyone for whose acts the Contractor or any subcontractor might be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

Cancellation, Renewal and Modification

The Contractor shall maintain in effect all insurance coverages required under this Contract at the Contractor's sole expense and with insurance companies acceptable to the Owner. The policies shall contain a provision that the coverage will not be cancelled or non-renewed until at least thirty (30) days' prior written notice has been given to the Owner.

CITY OF WEST HAVEN

RFP# 2024-23

Carrigan School Boiler Upgrades

Alternate

BID FORM

TOTAL BID PRICE (LUMP SUM): \$ 934,907.61

COMPANY NAME: F+F Mechanical

CONTACT PERSON: Frank Fanelli

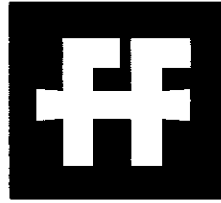
ADDRESS: 140 Corporate Drive

PHONE NUMBER: 203 598-8712

EMAIL: Ffanelli@ffmechanical.com

SIGNATURE: *Frank Fanelli*

DATE: May 28 2024



F+F Mechanical

Carrigan Intermediate School Control Upgrade & Boiler Change out Alternate Proposal

Date:

3/27/2024

Proposal Number:

P01330

Prepared for:

West Haven Board of Education
Facilities Department A.P.
West Haven, CT 06516

Prepared by:

Frank Fanelli
203-323-3959
ffanelli@ffmechanical.com
AA/EOE



F+F Mechanical

PROPOSAL

Proposal Date: 3/27/2024
Proposal Number: P01330

F+F Mechanical Service, LLC.
140 Corporate Drive
Trumbull, CT 06611
Ph: 203-323-3959

Customer
West Haven Board of Education
Facilities Department A.P.
West Haven, CT 06516
Chris Everone

Location of Work
Carrigan Intermediate School
2 Tetlow Street
West Haven, Connecticut 06516
Chris Everone

WE ARE PLEASED TO SUBMIT OUR PROPOSAL TO PERFORM THE FOLLOWING:

OUR PROPOSAL INCLUDES ALL ITEMS LISTED ON THE ATTACHED SCOPE OF WORK PAGE.
OUR PRICE FOR THIS PROPOSAL IS

.....\$934,907.61 applicable taxes not included.

Upon execution as provided below, this agreement, including the following pages attached hereto (collectively, the "Agreement"), shall become a binding and enforceable agreement against both parties hereto. Customer, by execution of this Agreement, acknowledges that it has reviewed and understands the attached terms and conditions and has the authority to enter into this Agreement.

F+F Mechanical Service, LLC.

Customer

Frank Fanelli

Signature (Authorized Representative)

Signature (Authorized Representative)

Frank Fanelli

Name (Print/ Type)

Name (Print/ Type)

203-323-3959

Phone

Title

3/27/2024

P01330

Date

Proposal #

Date

PO#



F+F Mechanical

Scope of Work:

With H.F Lenz Engineering Approval.

- Shut down boilers and drain system.
- Demo and dispose of existing boilers.
 - Disconnect flue, electrical, and associated piping.
- Demo and dispose all Return Piping in Boiler room.
- Furnish and install **(2)** new boilers and Burners
 - Smith Boilers 28HE Series Steam
 - High Efficiency
 - 4622 MBH Out Put
 - 138 Boiler Hores power
 - Natural Gas. Modulating Burner by Honeywell Control Package.
- Furnish and install new piping between new boilers and existing Steam Header. (30 Ft 5 inch welded Pipe schedule 40)
- Furnish and install new return piping From boiler to return Tank. (100 Ft of 2 inch Black pipe schedule 40.)
- Furnish and install new steam return line ground floor. (350 Ft or 1 1/2 Piping and Fitting Schedule 40.)
- Furnish and install new steam return line ground floor ceiling. (220 Ft 1 1/2 Piping and Fitting Schedule 40.)
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- Furnish and install new piping around tank wired pumps.
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- **Honeywell Controls**
- Provide a new up grade Honeywell Jace (9000.)
- Provide and install new controls in boiler room
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- Control condasate tank pumps.
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- Monitor alarasm on boilers.
- Provide controls on problem room. (15) (steam valves and sensors) Honeywell
- All safety will send out e-mail alarms.
- Start up - Commissioning.
- **Billing**
- Prevailing Wage Ratc



F+F Mechanical

- Retainage 10%
- AIA Billing
- Permit Fees
- **Not included**
- **Removal of any ASBESTOS IN TUNNEL.**



F+F Mechanical

Exclusions:

Payment and Performance Bond
Sales & Use Taxes
Engineering or Stamped Drawing
As Built Drawings
Temporary Heat or Cooling
Asbestos or Lead Abatement
Slab X-ray
Duct Cleaning
Concrete Work
Structural Engineering or Reinforcement
Ceiling Removal or Reinstallation
Movement/Protection of Furniture, Fixtures or Equipment
Roofing or Roof Protection
Excavation or Backfilling
Isolation, Draining, Refilling or Venting of any Piping Systems



F+F Mechanical

TERMS & CONDITIONS

- a. Customer shall permit F+F Mechanical Service, LLC (hereafter F+F) reasonable, free and timely access to all areas and equipment, and allow F+F Mechanical to stop and start the equipment as necessary to perform required services. All planned work under this Agreement will be performed during F+F's normal working hours of Monday through Friday 7:00am – 3:30pm.
- b. Parking for service vehicles performing the work will be made available on site by the Customer at no additional cost to F+F.
- c. At no time, will F+F be liable for any expenses incurred or required in removing, replacing or refinishing any of the building structure, architectural features, furnishings or furniture, necessary to execute the work covered under this Agreement.
- d. F+F warrants that the workmanship hereunder shall be free from defects for ninety (90) days from date of installation. If any replacement part or item or piece of equipment proves defective, F+F will extend to Customer the benefits of any warranty F+F has received from the manufacturer. Removal and reinstallation of any equipment or materials repaired or replaced under a manufacturer's warranty will be at Customer's expense and at the current hourly rates. F+F reserves the right to refuse warranty work if Customer account is delinquent. F+F MAKES NO OTHER WARRANTIES, EXCEPT AS DESCRIBED HEREIN, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- e. The warranties and services provided herein assume that Customer operates the systems and equipment in accordance with the manufacturer's recommendations. This includes having proper maintenance performed. Further, all warranties made by F+F are voided as a result of any vandalism, modifications, or repairs not performed by F+F.
- f. Unless F+F explicitly provides HVAC or plumbing design services as part of this agreement, F+F will not be responsible for design deficiencies of the HVAC or Plumbing systems, including, but not limited to: air flow, air distribution, water flow, drainage, system imbalances, etc.
- g. F+F will not be responsible for any damage or loss resulting from data communication failures, electrical failures, or electrical design deficiencies.
- h. To the fullest extent permitted by law, Customer shall indemnify, defend, and hold harmless F+F, and their respective affiliates, officers, directors, employees and agents ("Indemnified Parties") from and against all claims, damages, demands, losses, expenses, fines, causes of action, suits and other liabilities, including all costs, reasonable attorneys' fees, consequential damages, and punitive damages ("Damages"), arising out of or resulting from the active or passive act or omission of Customer or 3rd Party contractor or vendor of Customer, whether any such claim, damage, demand, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or damage or destruction of tangible property, including the loss of use resulting therefrom, economic losses, claims of Customer's clients or tenants, or otherwise; except this indemnification obligation shall exclude liability for bodily injury or property damage arising from the negligence of F+F and/or the Indemnified Parties. Notwithstanding the foregoing, if F+F and/or the Indemnified Parties are found to be negligent, the maximum allowable Damages shall be limited to the contractual value of this agreement. This indemnification shall survive the completion of the Work or the



F+F Mechanical

termination of the Contract. Further, in no event shall F+F have any liability for loss of profits, loss of business, direct, indirect, incidental, consequential, special, punitive, increased operating or maintenance expenses, or exemplary damages even if F+F has been advised of the possibility of such damages. In furtherance and not in limitation of the foregoing, F+F shall not be liable in respect of any decisions made by Customer as a result of F+F's services. Any action, regardless of form, against F+F relating to this Agreement, or the breach thereof, must be commenced within one (1) year from the date of the work.

- i. F+F's obligation under this proposal and any subsequent contract does not include the identification, abatement, cleaning or removal of any toxic or hazardous substances, wastes or materials, including mold. In the event such substances, wastes and materials are encountered, F+F Mechanical's sole obligation will be to notify the Customer of their existence. F+F shall have the right thereafter to suspend its work until such substances, wastes or materials and the resultant hazards are removed.
- j. F+F Mechanical expressly disclaims any and all responsibility and liability for the indoor air quality of the Customer's facility, including without limitation injury or illness to occupants of the facility or third parties, arising out of or in connection with F+F's work under this agreement.
- k. Customer will promptly pay invoices within 30 days of receipt. Should a payment become more than thirty (30) days delinquent, F+F may stop all work under this Agreement without notice and/or cancel this Agreement, and the entire Agreement amount shall become due and payable immediately on demand. Monthly interest of 1.5% shall be charged on any past due amounts. If Customer is paying by credit card, a 4% fee will be added.
- l. If there are any changes or alteration to, deviation from this Agreement involving or requiring extra work, then the added cost of such work will become an extra charge (fixed price amount to be negotiated or on a time-and-materials basis at Contractor's rates then in effect) over the sum stated in this Agreement. Such extra work may require an extension of time to the completion date of the work covered under this Agreement, including any changes, alterations or deviations.
- m. F+F will not be liable for delays or failure to obligate due to fire, flood, strike, lockout, freezing, extreme temperature, terrorist events, epidemics, pandemics, unavailability of material, riots, acts of God, or any other causes beyond its reasonable control. In the event F+F is required to respond to a Customer's call to repair damage caused by floods, fire, elements, lightning, riots, strikes, civil disturbances of any kind, the Customer shall reimburse F+F for the expense of making such calls at the current billing rates.
- n. If F+F has provided Customer with a completion date or equipment lead time, it is an estimate based upon the best information available at the time. Completion date and lead times are subject to change based on materials and parts availability, and other factors beyond F+F's control. Under no circumstances shall F+F be liable for any costs associated with such delays.
- o. This Order represents the entire agreement between the parties hereto with respect to the matters covered herein. No other previous agreements, representations, proposals, bid, warranties, or other matters, oral or written, shall be deemed to bind to parties hereto.
- p. In the event either party commences legal action against the other, in order to enforce its rights under this agreement, the successful party shall be entitled to all court costs and reasonable attorney's fees. This Agreement shall be construed under and governed by the laws of the State of Connecticut.
- q. Customer shall be responsible for all taxes applicable to the services provided and/or materials furnished



F+F Mechanical

under this Agreement.

- r. The individual signing the Agreement is duly authorized to bind the Customer to all terms and conditions contained herein.
- s. This proposal is valid for 15 days from the proposal date. After 15 days F+F reserves the right to adjust the price based upon equipment , materials or subcontractor costs increases.
- t. All materials or equipment that F+F removes under this Agreement shall become the property of F+F.

CONTRACT FOR CARRIGAN SCHOOL BOILER UPGRADES AND RELATED WORK

THIS CONTRACT FOR CARRIGAN SCHOOL BOILER UPGRADES AND RELATED WORK ("Contract"), dated as of June [REDACTED], 2024, by and between the City of West Haven ("Owner") and F&F Mechanicals, LLC, a Connecticut limited liability company ("Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. Work.

Contractor will provide the services, equipment and materials required for the boiler upgrades project at May V. Carrigan Intermediate School in West Haven, Connecticut (the "Property") that includes steam boiler replacement, re-piping of the entire building, as well as related services, equipment and materials at the Property ("Work"), all in accordance with the Contract Documents, as defined in Article 5 of this Contract.

Article 2. Contract Time.

The Work will be completed in accordance with the schedule for lead time and on-site Work set forth in the Contract Documents, including, without limitation, Exhibit B attached hereto and made a part hereof, with all Work to be completed on or before October 15, 2024 ("Completion Date"), time being of the essence, subject to modifications in approved Change Orders, and subject to delays for matters beyond the reasonable control of Contractor. The Work will be considered completed when Owner issues a certification of Final Completion (as defined in Section 6.2(a) below) stating the Work has been completed in accordance with the Contract Documents, and the final, unconditional certificate of occupancy has been issued by the responsible government authority, if required by law. Before starting Work at the Property, Contractor will submit to Owner for Owner's review and approval a progress schedule indicating the starting and completion dates of various stages of the Work.

Article 3. Contract Price.

Owner will pay to Contractor an amount equal to Nine Hundred Thirty-Four Thousand Nine Hundred Seven and 61/100 Dollars (\$934,907.61) ("Contract Price") for completion of the Work in accordance with the Contract Documents ("Contract Price").

Article 4. Change Orders.

Any increase or decrease in the Contract Price, change in the Work or change in the Contract Time must be set forth in a change order signed by Owner and Contractor ("Change Order").

Article 5. Contract Documents.

The "Contract Documents" shall mean this Contract, Owner's Request for Proposal (Owner's RFP # 2024-23), which, together with all addenda thereto, Requests for Information and responses thereto, and plans, drawings and specifications for the Work, issued as part of such Request for Proposal, as well any and all addenda and amendments to such plans, drawings and specifications are collectively herein referred to as the "Request for Proposals," copies of which is on file with the Owner's Purchasing Department, 355 Main Street, West Haven, Connecticut 06516, which Request for Proposals is hereby incorporated by reference as though fully stated herein, as well as the exhibits attached hereto and hereby made a part hereof: Exhibit A (Contractor's Alternate Bid Form, dated May 28, 2024 submitted in response to the Request for Proposal, omitting all proposed Terms and Conditions, with this Contract providing the terms and conditions for the Work), Exhibit B (Work Schedule), and Exhibit C (Insurance Requirements), and any and all Change Orders. In the event of any conflict between or among the provisions of the Contract Documents, the order of precedence shall be:

1. The plans, drawings and specifications for the Work, including any modifications thereto made after the date of this Contract
2. The body of this Contract
3. Exhibit B
4. Exhibit C
5. The portions of the Request for Proposals other than the plans, drawings and specifications
7. Exhibit A

Change Orders shall have the priority of the other Contract Documents to which they relate.

Article 6. Payment Procedures.

6.1 Progress Payments. During the course of the Work, the Contractor shall be entitled to progress payments based upon the schedule of values for the Work completed to date as certified by the Owner's engineer, currently H.F. Lenz (the "Engineer"). The Contractor shall submit with its first application for payment a detailed schedule of values showing a breakdown of the Contract Price. The schedule of values will be reviewed by the Engineer and will either be accepted or returned to the Contractor with requested revisions. Once accepted, the Contractor's schedule of values shall provide a basis for reviewing the Contractor's applications for payment.

On or before the last day of the month - but no more often than once per month - the Contractor shall submit to the Engineer an application for payment in a form acceptable to the Engineer and the City. The application for payment will indicate

the total value of the Work completed to date, which will be determined by using the approved schedule of values. The amount of the requested payment will then be determined by deducting ten percent (10%) retainage and the previous amounts certified for payment from the total value of the completed Work.

The Engineer will review the application for payment within ten (10) days of receipt. If the Engineer agrees that the application for payment accurately reflects the value of the Work completed to date, then the Engineer will certify to the City that the requested payment should be issued. If the Engineer does not agree that the application reflects the actual value of the completed Work, then the Engineer shall make adjustments to the application for payment and certify to the City the amount of the payment, if any, that it believes should be issued. The Engineer shall give the Contractor notice of the amount of the certified payment and, if the Engineer does not certify the application for payment for the full amount that the Contractor requested, then the notice shall state the reasons why the Contractor's application for payment was adjusted.

The Engineer may adjust the Contractor's applications for payment for any reason that it believes to be in the best interests of the City. The reasons that the Engineer may adjust the Contractor's application for payment include adjustments necessary to reflect the actual value of completed Work, adjustments necessary to cover the cost of any defective or incomplete Work and/or adjustments necessary to protect the City against any claims or potential claims that may be made against the City arising out of the Work.

Once an application for payment has been certified by the Engineer, payment shall be made to the Contractor within forty-five (45) days thereafter. No payment made under or in connection with this Contract shall be construed as an acceptance of defective, faulty or improper work or materials; nor shall it release the Contractor from its obligations under this Contract; nor shall entrance and use by the City constitute acceptance of the Work or any part thereof.

The Contractor shall make payment to all of its subcontractors for whose work it has received payment from the City within thirty (30) days of its receipt of payment from the City. The Contractor shall also include in all of its subcontracts a provision requiring its subcontractors to pay their sub-subcontractors within thirty (30) days of their receipt of payment from the Contractor.

6.2 Final Payment. Final payment of the balance of the Contract Price will be made in accordance with the following procedures:

- a. When Contractor considers the Work substantially complete, Contractor will notify Engineer in writing. Within a reasonable time thereafter, Engineer and Contractor will inspect the Work. Promptly after such inspection, Engineer will deliver to

Contractor a response to such notification agreeing or disagreeing (with reasons therefor) that the Work is substantially complete. If the Engineer disagrees that the Work is substantially complete, the Engineer shall promptly notify the Contractor of such disagreement and the reasons therefor. When Contractor has addressed the reasons for Engineer's disagreement that the Work is substantially complete, Contractor shall so notify Engineer and the above process shall be repeated until Engineer agrees that the Work is substantially complete. If the Engineer agrees that the Work is substantially complete, Engineer shall either (i) provide to Contractor a written punch list of the items that must be completed in order for the Work to reach final completion ("Final Completion") or (ii) deliver to Contractor a written statement that Final Completion has been reached because no punch list items remain to be completed.

- b. If Engineer delivers a written punch list to Contractor, then Contractor will deliver to Engineer a written notice that the Work is finally complete when Contractor believes that the punch list items have been completed. Then Engineer and Contractor will promptly inspect the Work for completion of the punch list items. Promptly after such inspection, Engineer will deliver to Contractor either (i) a written statement that Final Completion has been reached or (ii) another written punch list of the items that still must be completed in order for the Work to reach Final Completion for which event the punch list procedure described above will be repeated until all punch list items have been completed.
- c. When Final Completion has been reached and after Contractor has delivered to Owner all maintenance and operating instructions, schedules, guarantees, certificates of inspection, marked-up record documents and other documents, Contractor may make application for final payment following the procedure for progress payments. The application for final payment will be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to Owner and Lender) of all potential liens arising out of or filed in connection with the Work. Final payment will include a release of all retainage to Contractor.

Article 7. Interest.

Payments due and unpaid to Contractor will bear interest at the lesser of eighteen percent (18%) *per annum* or the maximum rate allowed by law.

Article 8. Contractor's Representation.

To induce Owner to enter into this Contract, Contractor makes the following representation:

Contractor has familiarized itself with the nature and extent of the Contract Documents, Work site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the Work. Contractor

is duly licensed to perform the Work as required by applicable state and local laws and regulations.

Article 9. Contractor's Responsibilities.

9.1. Performance. Contractor will perform the Work in accordance with the Contract Documents. Contractor will be solely responsible for the means, methods, techniques, sequences and procedures for the Work.

9.2. Personnel. Contractor will provide competent, suitable personnel fully capable to perform the Work as required by the Contract Documents. Contractor will at all times maintain good discipline and order at the Property.

9.3. Furnished Items. Contractor will furnish and be fully responsible for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work, except as provided by Owner.

9.4. Materials. All materials and equipment will be of good quality and new. All materials and equipment will be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier.

9.5. Subcontractors. Contractor may not subcontract any of the Work without the prior written consent of Owner, which may be granted or withheld in Owner's sole and exclusive discretion. Contractor will be fully responsible to Owner for all acts and omissions of its subcontractors, suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents will create any contractual relationship between Owner and any such subcontractor, supplier or other person or organization, nor will it create any obligation on the part of Owner to pay any such subcontractor, supplier or other person or organization except as may otherwise be required by applicable laws and regulations. Contractor will give Owner the name, address and telephone number of each person that has a contract with Contractor to supply materials or labor for the Work.

9.6. Permits; Inspections. Contractor will obtain all permits and licenses required to be obtained for the Work and will pay for all such permits and licenses, except to the extent such permits and licenses are exempt from fees. Owner will assist Contractor, when necessary, in obtaining such permits and licenses. Contractor will arrange and coordinate all governmental inspections required for the Work. Contractor will give all notices and comply with all laws and regulations applicable to furnishing and performance of the Work.

9.7. Taxes. Owner is exempt from State of Connecticut sales and use tax. The Contract Price does not include any sales, consumer, use or other similar taxes.

9.8. Use of Premises. Contractor will confine construction and installation equipment, the storage of materials and equipment, and the operations of workers to areas of the Property designated by Owner, and will not unreasonably encumber the Property with materials or equipment. Contractor will be fully responsible for any damage to the Property or areas contiguous thereto resulting from the performance of the Work. During the progress of the Work, Contractor will keep the Property free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor will remove all waste materials, rubbish and debris from and about the Property as well as all tools, appliances, construction and installation equipment and machinery, and surplus materials, and will leave the Property clean and ready for occupancy by Owner.

9.9. Record Documents. Contractor will maintain in a safe place at the Property for Owner's access one record copy of all drawings, specifications, addenda, written amendments, Change Orders, and the like, in good order and annotated to show all changes made during construction, which will be delivered to Owner upon the expiration or earlier termination of this Contract.

9.10. Safety. Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor will comply with all applicable laws and regulations relating to the safety of persons and/or property.

9.11. Continuing the Work. Contractor will carry on the Work and adhere to the progress schedule during all disputes or disagreements with Owner.

9.12. Damage to the Work. Contractor will repair or replace, at Contractor's sole expense, every portion of the Work that is damaged or destroyed prior to Final Completion, except to the extent such damage or destruction is caused by Owner.

9.13. Warranty. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents, will not be defective and will be fit for its intended purpose. If within one (1) year after the later of the date of Final Completion or completion of warranty work, or such longer period of time as may be prescribed by applicable laws or regulations or by the terms of any specific provision or applicable special guarantee in the Contract Documents, any Work is found to be defective, not fit for its intended purpose or otherwise not in accordance with the Contract Documents, Contractor will promptly, without cost to Owner and in accordance with Owner's written instructions, either correct such Work, or if it has been rejected by Owner, remove it from the Property and replace it with Work that is not defective and is in compliance with the Contract Documents. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have such Work corrected or such Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including fees and charges of engineers, architects, attorneys and other professionals) will be paid by Contractor. To the extent assignable, Contractor shall assign all manufacturers' warranties to Owner, effective upon expiration of the above-referenced warranty period.

9.14. Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor will defend, indemnify and hold harmless Owner and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions, from and against any and all losses, liabilities, costs, fees (including attorneys' fees), expenses, damages and economic detriment of any kind whatsoever that arises out of or relates to the performance or non-performance of the Work.

9.15 Related Work at Property. Owner may perform other work at the Property that is not part of the Work by Owner's own forces or may let other direct contracts therefor. Contractor will afford Owner's own forces, and any other contractor who is a party to such a direct contract, proper and safe access to the Property and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work. Contractor shall coordinate the Work with the work of the Owner and its contractors at the Property.

Article 10. Contractor's Insurance.

Contractor shall purchase and maintain the insurance policies required under Exhibit C attached hereto and made a part hereof, in accordance with the provisions of Exhibit C.

Article 11. Termination.

11.1 Termination by Owner for Contractor Breach. If Contractor breaches any of its obligations under this Contract, then Owner may give Contractor written notification identifying such breach. If Contractor has not cured such breach within seven (7) calendar days from its receipt of Owner's written notification, or if such breach cannot be cured within such seven (7) day period, then if Contractor either (i) does not begin cure within such seven (7) day period or (ii) fails to diligently prosecute cure to completion, Owner may terminate this Contract and take possession of the Work. Alternatively, instead of terminating the Contract, Owner may cure the breach and deduct the cost thereof from amounts otherwise owed to Contractor, with Contractor liable for any Owner costs in excess of amounts available for such deduction.

11.2 Termination by Contractor for Owner Breach. If Owner breaches any of its obligations under this Contract, then Contractor may give Owner written notification identifying such breach. If Owner has not cured such breach within seven (7) calendar days from its receipt of Contractor's written notification, or if such breach cannot be cured within such seven (7) day period, then if Owner either (i) does not begin cure within such seven (7) day period or (ii) fails to diligently prosecute cure to completion, Contractor may terminate this Contract.

11.3 Termination for Convenience by Owner. Owner may at any time, and for any reason or for no reason, terminate this Contract for convenience by written notice specifying the termination date, which date shall be not less than seven (7) days from the date such notice is given. In the event of such termination, Work shall be paid for

in such amount as shall compensate Contractor for the portion of the Work satisfactorily performed prior to termination, but such compensation shall not include unabsorbed home office overhead or lost profits. Such amount shall be fixed by Owner after consultation with Contractor.

Article 12. Miscellaneous.

12.1. Contractor may not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Owner, which may be granted or withheld in Owner's sole and exclusive discretion.

12.2. This Contract shall be binding upon the parties hereto and their respective successors and permitted assigns.

12.3. This Contract and all issues, disputes and matters arising out of it will be governed by and construed in accordance with the laws of the State of Connecticut, exclusive of its body of law governing conflicts of laws.

12.4. This Contract may be modified, amended, changed, or otherwise altered (except as otherwise specifically provided herein), in whole or in part, only by an agreement in writing duly authorized and executed by both parties hereto.

12.5. The waiver of any breach of any of the provisions of this Contract by either party hereto shall not constitute a continuing waiver or a waiver of any subsequent breach by such party, either of the same or of another provision of this Contract.

12.6. Time is of the essence in the performance of this Contract.

12.7. This Contract contains the entire agreement between the parties hereto, and no statement, promise, or inducement made by either party hereto that is not contained or referenced in this Contract shall be valid or binding upon the parties hereto.

12.8. The article and section headings, captions, and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Contract.

12.9. Invalidation of any of the provisions of this Contract or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of this Contract.

12.10. Contractor represents and warrants to Owner that Contractor's entering into this Contract and the performance of its obligations under this Contract have been duly authorized by necessary limited liability company action of Contractor and that all of its obligations under this Contract constitute legal, valid and binding obligations of Contractor, enforceable in accordance with their respective terms. Contractor further represents and warrants to Owner that there is no other agreement, instrument or document that prevents or interferes with Contractor's entering into and performing its

obligations under this Contract or that would be violated by Contractor's entering into and performing its obligations under this Contract.

12.11. Performance of the Work shall be subject to, and Contractor shall comply with, and shall cause all subcontractors to comply with, the requirements of Connecticut's Prevailing Wage law (Connecticut General Statutes Sections 31-53 and 31-53a), including payment of prevailing wages to all workers, laborers and mechanics engaged in the performance of the Work at the applicable prevailing wage rates. The Contractor shall maintain certified payroll reports throughout the performance of the Work.

12.12. This Contract may be executed in counterparts that, together, shall constitute one and the same original document. Facsimile and .pdf copies of signatures shall be deemed original signatures.

12.13. All references made and pronouns used in this Contract shall be construed in the singular or plural, and in such gender as the sense and circumstances require.

12.14. As used in the Contract Documents, the terms "include(s)", "including" or words of similar meaning shall mean "without limitation."

12.15. In addition to the condition precedent set forth in Exhibit C regarding insurance, the following are conditions precedent to Owner's obligations this Contract:

- (a) A W-9 form executed and delivered by Contractor to Owner that is acceptable to the Owner in its sole and exclusive discretion;
- (b) A Disclosure and Certification Affidavit executed and delivered by Contractor to the City with information that is acceptable to Owner in its sole and exclusive discretion. Each invoice submitted by Contractor to Owner shall include a certification that the information contained in Contractor's Disclosure and Certification Affidavit executed in connection with entering into this Contract remains true and correct in all material respect; and
- (c) Approval of this Contract by the West Haven Subcommittee of the Municipal Accountability Review Board of the State of Connecticut.


12.16. Exclusive jurisdiction for resolution of any disputes between Owner and Contractor shall be in Connecticut state court located in New Haven, Connecticut. Owner and Contractor agree that such court does not constitute an inconvenient forum.

12.17. Owner and Contractor waive any right to trial by jury for resolution of any dispute between Owner and Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written.

OWNER

City of West Haven

By: 
Hon. Dorinda K. Borer, Mayor

CONTRACTOR

F&F Mechanical Service, LLC

By: _____
Frank Fanelli
Its _____

Address for giving notices:

Ken Carney
Chair
ARPA Committee
City of West Haven
355 Main Street
West Haven, CT 06516
KenCarney@whschools.org

Address for giving notices:

Frank Fanelli
F&F Mechanical Services, LLC
140 Corporate Drive
Trumbull, CT 06611
ffanelli@ffmechanical.com

Approved as to form:

Mark J. Malaspina
Carmody Torrance Sandak & Hennessey LLP

EXHIBIT A
CONTRACTOR'S ALTERNATE BID FORM

See Contractor's Alternate Bid Form dated May 28, 2024, omitting proposed Terms and Conditions, a copy of which is attached hereto and made a part hereof. The terms and conditions for the Work are contained in this Contract. Contractor's proposed Terms and Conditions contained in Contractor's Alternate Bid Form are inapplicable and omitted from the attachment hereto.

CITY OF WEST HAVEN

RFP# 2024-23

Carrigan School Boiler Upgrades

Alternate

BID FORM

TOTAL BID PRICE (LUMP SUM): \$ 934,907.61
COMPANY NAME: F+F Mechanical
CONTACT PERSON: Frank Fanelli
ADDRESS: 140 Corporate Drive
PHONE NUMBER: 203 598-8712
EMAIL: Ffanelli@FFmechanical.com
SIGNATURE: Frank Fanelli
DATE: May 28 2024



F+F Mechanical

**Carrigan Intermediate School Control Upgrade &
Boiler Change out Alternate
Proposal**

Date:
3/27/2024

Proposal Number:
P01330

Prepared for:
West Haven Board of Education
Facilities Department A.P.
West Haven, CT 06516

Prepared by:
Frank Fanelli
203-323-3959
ffanelli@ffmechanical.com
AA/EOE



F+F Mechanical

Scope of Work:

With H.F Lenz Engineering Approval.

- Shut down boilers and drain system.
- Demo and dispose of existing boilers.
 - Disconnect flue, electrical, and associated piping.
- Demo and dispose all Return Piping in Boiler room.
- Furnish and install **(2)** new boilers and Burners
 - Smith Boilers 28HE Series Steam
 - High Efficiency
 - 4622 MBH Out Put
 - 138 Boiler Hores power
 - Natural Gas. Modulating Burner by Honeywell Control Package.
- Furnish and install new piping between new boilers and existing Steam Header. (30 Ft 5 inch welded Pipe schedule 40)
- Furnish and install new return piping From boiler to return Tank. (100 Ft of 2 inch Black pipe schedule 40.)
- Furnish and install new steam return line ground floor. (350 Ft or 1 1/2 Piping and Fitting Schedule 40.)
- Furnish and install new steam return line ground floor ceiling. (220 Ft 1 1/2 Piping and Fitting Schedule 40.)
- Furnish and install steam traps (30)
- Furnish and install Three new condensate Tanks with condensate pump.
- Furnish and install new piping around tank wired pumps.
- Furnish and install new return piping in tunnel. (200 Ft 2inch Piping and Fitting Schedule 40.)
- **ELECTRICAL**
- Provide new electrical feed between existing junction box in boiler room to new boiler.
- **Honeywell Controls**
- Provide a new up grade Honeywell Jace (9000.)
- Provide and install new controls in boiler room
- Provide start / stop , Schedule and monitor boilers.
- Control condasate tank pumps.
- Control safetys on boilers.
- Monitor alarsm on boilers.
- Provide controls on problem room. (15) (steam valves and sensors) Honeywell
- All safety will send out e-mail alarms.
- Start up - Commissioning.
- **Billing**
- Prevailing Wage Rate



F+F Mechanical

- Retainage 10%
- AIA Billing
- Permit Fees
- **Not included**
- **Removal of any ASBESTOS IN TUNNEL.**



F+F Mechanical

PROPOSAL

F+F Mechanical Service, LLC.
140 Corporate Drive
Trumbull, CT 06611
Ph: 203-323-3959

Proposal Date: 3/27/2024
Proposal Number: P01330

Customer
West Haven Board of Education
Facilities Department A.P.
West Haven, CT 06516
Chris Everone

Location of Work
Carrigan Intermediate School
2 Tetlow Street
West Haven, Connecticut 06516
Chris Everone

WE ARE PLEASED TO SUBMIT OUR PROPOSAL TO PERFORM THE FOLLOWING:

**OUR PROPOSAL INCLUDES ALL ITEMS LISTED ON THE ATTACHED SCOPE OF WORK PAGE.
OUR PRICE FOR THIS PROPOSAL IS**

.....\$934,907.61 applicable taxes not included.

Upon execution as provided below, this agreement, including the following pages attached hereto (collectively, the "Agreement"), shall become a binding and enforceable agreement against both parties hereto. Customer, by execution of this Agreement, acknowledges that it has reviewed and understands the attached terms and conditions and has the authority to enter into this Agreement.

F+F Mechanical Service, LLC.

Customer

Frank Fanelli

Signature (Authorized Representative)

Signature (Authorized Representative)

Frank Fanelli
Name (Print/ Type)

Name (Print/ Type)

203-323-3959

Phone

Title

3/27/2024

P01330

Date

Proposal #

Date

PO#



F+F Mechanical

Exclusions:

Payment and Performance Bond
Sales & Use Taxes
Engineering or Stamped Drawing
As Built Drawings
Temporary Heat or Cooling
Asbestos or Lead Abatement
Slab X-ray
Duct Cleaning
Concrete Work
Structural Engineering or Reinforcement
Ceiling Removal or Reinstallation
Movement/Protection of Furniture, Fixtures or Equipment
Roofing or Roof Protection
Excavation or Backfilling
Isolation, Draining, Refilling or Venting of any Piping Systems

EXHIBIT B

Work begins: Upon satisfaction of the conditions precedent set forth in Section 12.13 of the Contract.

Final Completion Date: October 15, 2024, time being of the essence.

EXHIBIT C

CONTRACTOR'S INSURANCE

Prior to the commencement of the Services, and as a condition of site access, the Contractor shall deliver to the City (referred to hereinafter as the "Owner") a valid and currently dated Certificate of Insurance ("COI").

The insurance coverage carried by the Contractor must be placed with and written by an insurance company admitted to do business in the State of Connecticut, and with a rating of A- or better by A.M. Best.

The insurance coverages carried by the Contractor (shown below) shall apply regardless of whether the operations, actions, derelictions or failures to act, from which any claim arises, are attributable to the Contractor, a subcontractor, a sub-subcontractor, or any consultant, officer, agent, employee or anyone directly or indirectly employed by any of them, including anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable state law. Failure of Contractor to provide a COI shall in no way limit or relieve Contractor of its duties and responsibilities in this Contract. All policies of insurance shall be written on an occurrence basis.

At a minimum, the COI shall indicate that the following coverages and limits are in place:

1. **Commercial General Liability – Minimum Limits Required:**

- \$2,000,000 General Aggregate
- \$2,000,000 Producers/Completed Operations Aggregate
- \$1,000,000 Each Occurrence
- \$1,000,000 Personal and Advertising Injury
- \$100,000 Fire Damage – Any One Fire
- \$5,000 Medical Expense – Any One Person

- The Owner (The City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** onto the CGL policy carried by the Contractor. The Additional Insured coverage afforded to the Owner shall apply on a **primary and non-contributory basis** and include **completed operations** coverages.

- The CGL policy carried by the Contractor shall contain a **Waiver of Subrogation** clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven (and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions)).

2. Business Auto/Commercial Auto Insurance – Minimum Limits required:

- \$1,000,000 Liability
- The Owner (The City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** onto the Commercial Auto/Business Auto policy carried by the Contractor.
- The Business Auto/Commercial Auto policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven, and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

3. Workers Compensation/Employers Liability Insurance:

- Coverages and limits as required by law Connecticut State law
- Employers Liability Limits:
- \$500,000 each accident
- \$500,000 aggregate for injury by disease
- \$500,000 each employee for injury by disease
- The Workers' Compensation/Employers Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

4. Professional Liability Insurance – Minimum Limits required:

- \$2,000,000 per occurrence
- \$3,000,000 aggregate

5. Umbrella Liability/Excess Liability – Minimum Limits required:

- \$5,000,000 Each Occurrence
- \$5,000,000 General Aggregate
- Policy will provide excess coverage over the CGL, Business Auto and Workers' Compensation/Employer Liability policies carried by the organization.
- The Umbrella/Excess Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers,

officials, agents, employees and members of all of its boards and commissions).

No Limitation on Liability

With regard to any/all claims made against the Additional Insured by any employee of the Contractor, any subcontractor or anyone directly or indirectly employed by the Contractor or any subcontractor, or anyone for whose acts the Contractor or any subcontractor might be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

Cancellation, Renewal and Modification

The Contractor shall maintain in effect all insurance coverages required under this Contract at the Contractor's sole expense and with insurance companies acceptable to the Owner. The policies shall contain a provision that the coverage will not be cancelled or non-renewed until at least thirty (30) days' prior written notice has been given to the Owner.

CITY OF WEST HAVEN

RFP# 2024-23

Carrigan School Boiler Upgrades

BID FORM

TOTAL BID PRICE (LUMP SUM): \$ 1,174,094.07

COMPANY NAME: F+F Mechanical

CONTACT PERSON: Frank Fanelli

ADDRESS: 140 Corporate Drive

PHONE NUMBER: 203-598-8712

EMAIL: ffanelli@ffmechanical.com

SIGNATURE: Frank Fanelli

DATE: May 28 2024



CITY OF WEST HAVEN
355 Main St
 West Haven, Connecticut 06516

**DISCLOSURE &
 CERTIFICATION AFFIDAVIT**

EVERY SECTION MUST BE COMPLETED

For help completing this form contact Purchasing Director at 203-937-3624

Contractor/Vendor Name:	F+F Mechanical Enterprise, Inc.
Address:	2 Dwight Street, North Haven, CT 06473
Telephone and/or Fax #:	203-239-7025 Fax: 203-239-7011
Email Address:	frank.ferrucci@ffmechanical.com
Contact Person:	Frank Ferrucci

For the purposes of this Disclosure and Certification Affidavit, the following definitions apply:

- (a) "Person" means one (1) or more individuals, partnerships, corporations, associations, or joint ventures
- (b) "Contract" means any agreement or formal commitment entered into by the city to expend funds in return for work, labor, services, supplies, equipment, materials or any combination of the foregoing, or any lease, lease by way of concession, concession agreement, permit, or per agreement whereby the city leases, grants or demises property belonging to the city, or otherwise grants a right of privilege to occupy or to use said property of the city
- (c) "City" means any official agency, board, authority, department office, or other subdivision of the City of West Haven.
- (d) "Affiliate Entity" means any entity listed in sections 9 or 10 below or any entity under common management with the Contractor.

State of	Connecticut	County of	New Haven
I,	Frank Ferrucci (type or print your name above)	being first duly sworn, hereby deposes and says that:	
1.	I am over the age of 18 and understand the obligations of making statements under oath; I understand that the City of West Haven is relying on my representations herein.		
2a.	I am the corporate secretary or majority owner (including sole proprietorship) of	F+F Mechanical Enterprise, Inc. Insert Company Name above	
2b.	Or I am an individual and my name is:	if an individual, insert your name above	
3.	I am fully informed regarding the preparation and terms of the above referenced agreement (the "Agreement") and of all pertinent circumstances related thereto.		
4.	Please select the applicable representation(s) regarding taxes or, if none of the below are accurate, attach an explanation of the status of the relevant tax obligations to this Affidavit (mark an "X" in the appropriate box or "NA" if none apply).		
4a.	n/a	As required by Conn. Gen. Stat. §12-41, the Contractor (and each owner, partner, officer, authorized signatory or Affiliate Entity of the Contractor) has filed a list of taxable personal property with the City of West Haven for the most recent grand list and all taxes are	
4b.	n/a	The Contractor (including any owner, partner, officer or authorized signatory thereof) is not required to file a list of taxable personal property with the City of West Haven for the most recent grand list and does not owe any back taxes to the City of West Haven, either directly or through a lease or other agreement.	
4c.	n/a	The Contractor or an owner, partner, officer, representative, agent or Affiliate Entity of the Contractor either i) has a PILOT agreement with the City of West Haven or ii) owes back taxes and has executed an agreement with the City of West Haven to pay said back taxes in installment payments. Such agreement is attached and incorporated herein by reference and the payments under said agreement are not in default.	
5.	x	Other than as may be described in section 4 above, the Contractor (including any owner, partner, officer, other authorized signatory, or Affiliate Entity) does not have any outstanding monetary obligations to the City of West Haven	
6.	Please select the applicable representation about the Contractor's business registration:		
6a.	x	Contractor is a Connecticut corporation, partnership, limited liability company or sole proprietorship and its Connecticut Secretary of the State Business ID #:	0605217 Insert State Registration # above
6b.		Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship but is registered to do business in the State of Connecticut. The Contractor's Connecticut Secretary of the State Business ID #:	Insert State Registration # above
6c.		Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship and is not registered to do business in the State of Connecticut. The Contractor is registered in the State of:	Please insert State name above
Contractor has confirmed with the Connecticut Secretary of the State that the services it will provide pursuant to the Agreement do not constitute doing business in the State of Connecticut and no registration with the Connecticut Secretary of the State is required. Contractor does otherwise have the following State of Connecticut registrations, certificates or approvals relevant to the Agreement (if not applicable, state N/A)			

7. The following list is a list of the names of all persons affiliated with the business of the Contractor who are also affiliated with the City of West Haven. For purposes of this Affidavit, "affiliated with the business of the Contractor" includes any current or former employee (including officers) of the Contractor or any owner, board member or agent of the Contractor, or of any subsidiary or parent company of the Contractor, and "affiliated with the City of West Haven" means any employee, agent, public official, board member, commissioner or any other person serving in an official capacity for or on behalf of the City of West Haven. If none state none. Use additional sheet if necessary (must be on company letterhead and notarized):

Name	City Affiliation Role & Time Frame	Contractor Affiliation Role & Time Frame	DOB
1 None			
2			

8. The following list is a list of all contracts in which either the Contractor, any person affiliated with the business of the Contractor or an Affiliate Entity of the Contractor provides, or has provided, services or materials to the City within one (1) year prior to the date of this disclosure. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

Name of Contractor or Affiliate	Affiliation (if applicable)	Contract Number	DOB
1 Johnson Community Center RTU Replacement		Bid # 2023-31	
2			

9. The Contractor possesses an ownership interest in the following business organizations, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

Organization Name	Address	Type of Ownership
1 F&F Mechanical Service	2 Dwight Street, North Haven, CT 06473	100% Ownership
2 J.P. Salmini Company Inc.	2 Dwight Street, North Haven, CT 06473	100% Ownership

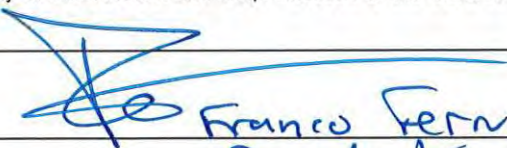
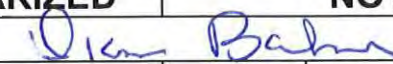
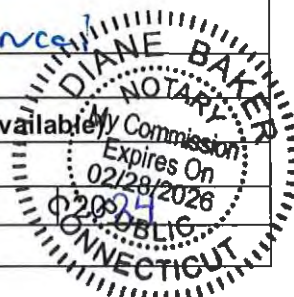
10. The following persons and/or entities possess an ownership interest in the Contractor. If the Contractor is a corporation, list the names of each stockholder whose shares exceed twenty-five (25) percent of the outstanding stock. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

Name	Title	% of Ownership	DOB
1 See Attached			
2			

11. If the Contractor conducts business under a trade name, the following additional information is required: the place where such entity is incorporated or is registered to conduct such business; and the address of its principal place of business, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

TRADE NAME	PLACE OF INCORPORATION/REGISTRY	PRINCIPAL PLACE OF BUSINESS
1 N/A		
2		

I hereby certify that I am duly authorized to sign this Affidavit and that the person who will sign the Agreement with the City on behalf of the Contractor will be duly authorized to execute the same. I hereby further certify that the statements set forth above are true and complete on the date hereof and that I, or another authorized individual of the Contractor, will promptly inform the City, in writing, if any of the information provided herein changes or is otherwise no longer accurate at any point during the execution of the above referenced Agreement. I understand that any incorrect information, omission of information or failure of the Contractor to update this information, as described in the foregoing sentence, may result in the immediate termination of any and all agreements the Contractor has with the City of West Haven and disqualification of the Contractor to further contract with the City.

Signature & Title of person completing this form:		 Franco Ferrera President	
THIS FORM MUST BE NOTARIZED		NOTARY SEAL (if available)	
Signature of Notary: 			
Subscribed and sworn to, before me on this: 24 th Day of May			
My Commission Expires: 02-28-2026			

This form should be mailed or emailed to the purchasing department or included with a specific solicitation.

(This form shall be updated if the Agreement contemplated hereby is not executed within six months of the date hereof.)



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract Name	West Haven High School Pool Exterior Improvements			
City Agency	Board of Education			
Vendor Utilized	W.J Mountford Co.			
Address	170 Commerce Way			
City, State, Zip	South Windsor, CT			
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2024-14] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	Elementary and Secondary School Emergency Relief (ESSER)			
Quantity	1.00	Price Per:	Total Purchase Price	\$1,353,000
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.	Exterior renovations at the West Haven High School pool. The work would involve hardscape and facade work including sidewalks, parking and landscaping, patio furniture and window, door replacement and additional work / project scope as listed in the addendums when advertised. There was also a mandatory walkthrough on the site for any questions and inspections.			
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst			

CITY OF WEST HAVEN

RFP# 2024-14

WEST HAVEN HIGH SCHOOL POOL - EXTERIOR IMPROVEMENTS

BID FORM

TOTAL BID PRICE (LUMP SUM): \$ 1,353,000⁰⁰

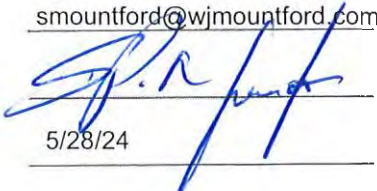
COMPANY NAME: W.J. Mountford Co.

CONTACT PERSON: Scott Mountford

ADDRESS: 170 Commerce Way, S. Windsor. CT

PHONE NUMBER: 860-291-9448

EMAIL: smountford@wjmountford.com

SIGNATURE: 

DATE: 5/28/24

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:

(Name, legal status and address)

W.J. Mountford Company
170 Commerce Way
South Windsor, CT 06074

OWNER:

(Name, legal status and address)

City of West Haven
355 Main Street
West Haven, CT 06516

SURETY:

(Name, legal status and principal place of business)

Nationwide Mutual Insurance Company
1100 Locust Street, Dept. 2006
Des Moines, IA 50391-2006
Mailing Address for Notices

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND AMOUNT: 5% Five Percent of Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)

West Haven High School Pool - Exterior Improvements - Project No. 2024-14

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 24th day of May, 2024.



(Witness)



(Witness)

W.J. Mountford Company

(Principal) (Seal)

By: 

(Title) Scott P. Mountford President

Nationwide Mutual Insurance Company

(Surety) (Seal)

By: 

(Title) Wendy Krystopa, Attorney-in-Fact



Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

Wendy Krystopa

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds and undertakings, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

UNLIMITED

Surety Bond Number: Bid Bond
Principal: W.J. Mountford Company
Obligee: City of West Haven

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company.

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require, and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company "

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 1st day of April, 2024.

[Handwritten signature of Antonio C. Albanese]

Antonio C. Albanese, Vice President of Nationwide Mutual Insurance Company

ACKNOWLEDGMENT

STATE OF NEW YORK COUNTY OF KINGS: ss

On this 1st day of April, 2024, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company



Sharon Leburda
Notary Public, State of New York
No. 01LA6427697
Qualified in Kings County
Commission Expires January 3, 2026

[Handwritten signature of Sharon Leburda]

Notary Public
My Commission Expires
January 3, 2026

CERTIFICATE

I, Lezlie F. Chimienti, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 24th day of May 2024

[Handwritten signature of Lezlie F. Chimienti]
Assistant Secretary

PROPOSERS NON COLLUSION AFFIDAVIT FORM

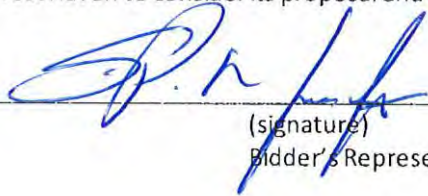
The undersigned proposer, having fully informed himself/herself/itself regarding the accuracy of the statements made herein, certifies that:

- (1) The proposer developed the proposal independently and submitted it without collusion with, and without any agreement, understanding, communication or planned common course of action with, any other person or entity designed to limit independent competition;
- (2) The proposer, its employees and agents have not communicated the contents of the proposal to any person not an employee or agent of the proposer and will not communicate the proposal to any such person prior to the official opening of the proposal and award.
- (3) No elected or appointed official or other officer or employee of the City of West Haven is directly or indirectly interested in the proposer's proposal, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.

The undersigned proposer further certifies that this affidavit is executed for the purpose of full disclosure to the City of West Haven to consider its proposal and make an award in accordance therewith.

W.J. Mountford Co.

Legal Name of Bidder



(signature)

Bidder's Representative, Duly Authorized

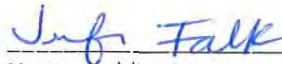
Scott P. Mountford

Name of Bidder's Authorized Representative

President

Title of Bidder's Authorized Representative

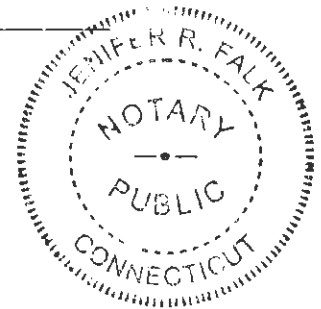
Subscribed and sworn to before me this 28th day of May, 2024, 2022.



Notary Public

My Commission Expires:

3/31/2026





CITY OF WEST HAVEN
355 Main St
 West Haven, Connecticut 06516

**DISCLOSURE &
 CERTIFICATION AFFIDAVIT**

EVERY SECTION MUST BE COMPLETED

For help completing this form contact Purchasing Director at 203-937-3624

Contractor/Vendor Name:	W.J. Mountford Co.
Address:	170 Commerce Way, South Windsor, CT 06074
Telephone and/or Fax #:	860-291-9448 860-289-6382
Email Address:	smountford@wjmountford.com
Contact Person:	Scott Mountford

For the purposes of this Disclosure and Certification Affidavit, the following definitions apply:

(a)	"Person" means one (1) or more individuals, partnerships, corporations, associations, or joint ventures.
(b)	"Contract" means any agreement or formal commitment entered into by the city to expend funds in return for work, labor, services, supplies, equipment, materials or any combination of the foregoing, or any lease, lease by way of concession, concession agreement, permit, or per agreement whereby the city leases, grants or demises property belonging to the city, or otherwise grants a right of privilege to occupy or to use said property of the city.
(c)	"City" means any official agency, board, authority, department office, or other subdivision of the City of West Haven.
(d)	"Affiliate Entity" means any entity listed in sections 9 or 10 below or any entity under common management with the Contractor.

State of	CT	County of	Hartford
I,	Scott P. Mountford (type or print your name above)	being first duly sworn, hereby deposes and says that:	
1.	I am over the age of 18 and understand the obligations of making statements under oath; I understand that the City of West Haven is relying on my representations herein.		
2a.	I am the corporate secretary or majority owner (including sole proprietorship) of	W.J. Mountford Co. Insert Company Name above	
2b.	Or I am an individual and my name is:	if an individual, insert your name above	
3.	I am fully informed regarding the preparation and terms of the above referenced agreement (the "Agreement") and of all pertinent circumstances related thereto.		
4.	Please select the applicable representation(s) regarding taxes or, if none of the below are accurate, attach an explanation of the status of the relevant tax obligations to this Affidavit (mark an "X" in the appropriate box or "NA" if none apply).		
4a.	As required by Conn. Gen. Stat. §12-41, the Contractor (and each owner, partner, officer, authorized signatory or Affiliate Entity of the Contractor) has filed a list of taxable personal property with the City of West Haven for the most recent grand list and all taxes are		
4b.	The Contractor (including any owner, partner, officer or authorized signatory thereof) is not required to file a list of taxable personal property with the City of West Haven for the most recent grand list and does not owe any back taxes to the City of West Haven, either directly or through a lease or other agreement.		
4c.	The Contractor or an owner, partner, officer, representative, agent or Affiliate Entity of the Contractor either i) has a PILOT agreement with the City of West Haven or ii) owes back taxes and has executed an agreement with the City of West Haven to pay said back taxes in installment payments. Such agreement is attached and incorporated herein by reference and the payments under said agreement are not in default.		
5.	Other than as may be described in section 4 above, the Contractor (including any owner, partner, officer, other authorized signatory, or Affiliate Entity) does not have any outstanding monetary obligations to the City of West Haven.		
6.	Please select the applicable representation about the Contractor's business registration:		
6a.	Contractor is a Connecticut corporation, partnership, limited liability company or sole proprietorship and its Connecticut Secretary of the State Business ID #:	MCO.0900574 Insert State Registration # above	
6b.	Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship but is registered to do business in the State of Connecticut. The Contractor's Connecticut Secretary of the State Business ID #:	Insert State Registration # above	
6c.	Contractor is a foreign corporation, partnership, limited liability company or sole proprietorship and is not registered to do business in the State of Connecticut. The Contractor is registered in the State of:	Please insert State name above	
Contractor has confirmed with the Connecticut Secretary of the State that the services it will provide pursuant to the Agreement do not constitute doing business in the State of Connecticut and no registration with the Connecticut Secretary of the State is required. Contractor does otherwise have the following State of Connecticut registrations, certificates or approvals relevant to the Agreement (if not applicable, state N/A).			

7. The following list is a list of the names of all persons affiliated with the business of the Contractor who are also affiliated with the City of West Haven. For purposes of this Affidavit, "affiliated with the business of the Contractor" includes any current or former employee (including officers) of the Contractor or any owner, board member or agent of the Contractor, or of any subsidiary or parent company of the Contractor, and "affiliated with the City of West Haven" means any employee, agent, public official, board member, commissioner or any other person serving in an official capacity for or on behalf of the City of West Haven. If none state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name	City Affiliation Role & Time Frame	Contractor Affiliation Role & Time Frame	DOB
1	None			
2				

8. The following list is a list of all contracts in which either the Contractor, any person affiliated with the business of the Contractor or an Affiliate Entity of the Contractor provides, or has provided, services or materials to the City within one (1) year prior to the date of this disclosure. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Name of Contractor or Affiliate	Affiliation (if applicable)	Contract Number	DOB
1	None			
2				

9. The Contractor possesses an ownership interest in the following business organizations, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	Organization Name	Address	Type of Ownership
1	None		
2			

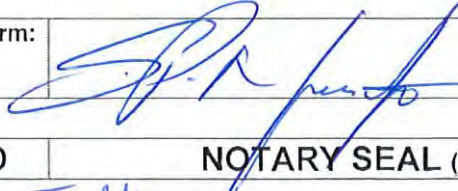
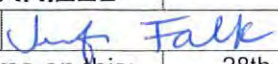
10. The following persons and/or entities possess an ownership interest in the Contractor. If the Contractor is a corporation, list the names of each stockholder whose shares exceed twenty-five (25) percent of the outstanding stock. If none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

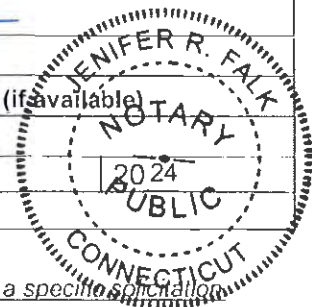
	Name	Title	% of Ownership	DOB
1	Scott P. Mountford	President	100%	9/1/1962
2				

11. If the Contractor conducts business under a trade name, the following additional information is required: the place where such entity is incorporated or is registered to conduct such business; and the address of its principal place of business, if none, state none. Use additional sheet if necessary (must be on company letterhead and notarized):

	TRADE NAME	PLACE OF INCORPORATION/REGISTRY	PRINCIPAL PLACE OF BUSINESS
1	None		
2			

I hereby certify that I am duly authorized to sign this Affidavit and that the person who will sign the Agreement with the City on behalf of the Contractor will be duly authorized to execute the same. I hereby further certify that the statements set forth above are true and complete on the date hereof and that I, or another authorized individual of the Contractor, will promptly inform the City, in writing, if any of the information provided herein changes or is otherwise no longer accurate at any point during the execution of the above referenced Agreement. I understand that any incorrect information, omission of information or failure of the Contractor to update this information, as described in the foregoing sentence, may result in the immediate termination of any and all agreements the Contractor has with the City of West Haven and disqualification of the Contractor to further contract with the City.

Signature & Title of person completing this form:				
THIS FORM MUST BE NOTARIZED		NOTARY SEAL (if available)		
Signature of Notary:				
Subscribed and sworn to, before me on this:		28th	Day of	May
My Commission Expires:		3/31/2026		



This form should be mailed or emailed to the purchasing department or included with a specific solicitation.

(This form shall be updated if the Agreement contemplated hereby is not executed within six months of the date hereof.)

AIA® Document A104® – 2017

Standard Abbreviated 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)

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

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

W.J. Mountford Co.
170 Commerce Way
South Windsor, Connecticut 06074
for the following Project:
(Name, location and detailed description)

West Haven High School Pool – Exterior Improvements
1 McDonough Plaza
West Haven, Connecticut 06516

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

Antinozzi Associates P.C.
271 Fairfield Avenue
Bridgeport, Connecticut 06604

This Project, funded with federal Elementary and Secondary School Emergency Relief ("ESSER") funds, entails exterior renovations at the West Haven High School pool and the related scope of work as set forth in this Agreement, as well as in Rider No. 1 to this Agreement (the "Rider").

The Owner and Contractor agree as follows.

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

TABLE OF ARTICLES

1	THE WORK OF THIS CONTRACT
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENT
5	DISPUTE RESOLUTION
6	ENUMERATION OF CONTRACT DOCUMENTS
7	GENERAL PROVISIONS
8	OWNER
9	CONTRACTOR
10	ARCHITECT
11	SUBCONTRACTORS
12	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
13	CHANGES IN THE WORK
14	TIME
15	PAYMENTS AND COMPLETION
16	PROTECTION OF PERSONS AND PROPERTY
17	INSURANCE AND BONDS
18	CORRECTION OF WORK
19	MISCELLANEOUS PROVISIONS
20	TERMINATION OF THE CONTRACT
21	CLAIMS AND DISPUTES

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.

See Rider.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

The date of this Agreement.

Init.

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User Notes:

(1448293964)

The date of satisfaction of all conditions precedent set forth in Section 15 of the Rider.

(Paragraph deleted)

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

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

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

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

Not later than () calendar days from the date of commencement of the Work.

By the following date: October 15, 2024, time being of the essence.

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

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

See Exhibit C to the Rider for detailed schedule.

ARTICLE 3 CONTRACT SUM

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

(Check the appropriate box.)

Stipulated Sum, in accordance with Section 3.2 below

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

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

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

§ 3.2 The Stipulated Sum shall be One Million Three Hundred Fifty-Three Thousand Dollars (\$1,353,000.00), subject to additions and deductions as provided in the Contract Documents.

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

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

§ 3.2.2 Unit prices, if any:

Init.

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

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

§ 3.2.3 Allowances, if any, included in the stipulated sum:
(Identify each allowance.)

Item	Price
------	-------

§ 3.3 Cost of the Work Plus Contractor's Fee

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

§ 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:

(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. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
(Insert specific provisions if the Contractor is to participate in any savings.)

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

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

§ 3.4.3.3 Unit Prices, if any:

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

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

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

(Identify each allowance.)

Init.

Item

Price

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

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

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

(Paragraphs deleted)

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

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

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

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the tenth 10th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than forty-five (45) days after the Architect's applicable certification. If an Application for Payment is received by the Architect after the date fixed above, payment of the amount certified by the Architect to be payable to the Contractor at such time shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold five percent (5%) of the payment otherwise due as retainage.

§ 4.1.5 Payments due and unpaid under the Contract shall bear 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.
(Insert rate of interest agreed upon, if any.)

1.00 % per month

§ 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

Init.

- .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 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 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Binding Dispute Resolution

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

(Check the appropriate box.)

[X] Litigation in a court of competent jurisdiction

[] Other *(Specify)*

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

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

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

§ 6.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ 6.1.4 The Specifications:

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

See Specifications referenced in Exhibit A to the Rider.

Section	Title	Date	Pages
---------	-------	------	-------

§ 6.1.5 The Drawings:

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

See Drawings referenced in Exhibit A to the Rider.

Init.

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

§ 6.1.6 The Addenda, if any:

See Addenda referenced in Exhibit A to the Rider.

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

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

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

- .1 Other Exhibits:
(Check all boxes that apply.)

(Paragraph deleted)

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

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

Rider

AIA Document A201-2017 General Terms and Conditions

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents, including the Exhibits attached to the Rider, form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a

Init.

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

The term "Work" means the construction and 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. 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 in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 7.6 Digital Data Use and Transmission

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

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

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

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format 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.)

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

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 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. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 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.

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

§ 8.2 Owner's Right to Stop the Work

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

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 15.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

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ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting the Work. 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.

§ 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.

§ 9.2 Supervision and Construction Procedures

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

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

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

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

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

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§ 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. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information 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.

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

Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

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

§ 9.13 Access to Work

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

§ 9.14 Royalties, Patents and Copyrights

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

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify 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 as described in the Contract Documents 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 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 or delayed.

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

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

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and recommend to Owner the amounts due the Contractor in Certificates for Payment.

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

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor will respond to requests for submittals by the Architect within five (5) days after Architect's requests. The Contractor will provide mock-ups as directed by the Architect within five (5) days after Architect's requests.

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

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

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten (10) 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

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Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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 the defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

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

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

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

ARTICLE 14 TIME

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

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

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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 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3.

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

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within fourteen (14) days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

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

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§ 15.3 Applications for Payment

§ 15.3.1 In accordance with the provisions of Section 4.1.3, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage as provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 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 progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

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

§ 15.3.4 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.

§ 15.4 Certificates for Payment

§ 15.4.1 The Architect will, within seven (7) 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 believes is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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. Additionally, the issuance of a Certificate for Payment shall not preclude Owner from objecting to or withholding some or all amounts in any Application for Payment.

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

Init.

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

§ 15.4.4 When the Contractor disputes the Architect's or Owner's decision regarding an Application for Payment under Section 15.4.2 or Section 15.4.3, in whole or in part, the Contractor may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, 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 a similar manner.

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

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

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the 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.

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§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation of the Architect's determination that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete 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.

§ 15.7.3 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

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, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall 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. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition. When the material or substance

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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.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 See Exhibit D to the Rider.

§ 17.1.2

(Paragraphs deleted)

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

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

(Table deleted)

(Paragraphs deleted)

§ 17.2 Owner's Insurance

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

(Table deleted)

(Paragraphs deleted)

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 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 the Contract Documents on the date of execution of the Contract.

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

ARTICLE 18 CORRECTION OF WORK

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

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

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. 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.

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, excluding that jurisdiction's choice of law rules.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Ken Carney, Chair
City of West Haven School Building Committee
355 Main Street
West Haven, Connecticut 06516

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

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Scott Mountford
W.J. Mountford Co.
170 Commerce Way
South Windsor, Connecticut 06074

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of thirty (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 thirty (30) days, the Contractor may, upon seven (7) additional days' notice to the Owner and the Architect, 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.

§ 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 reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven (7) days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or thirty (30) days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

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§ 21.2 Notice of Claims

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

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

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than ten (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 21.3.

§ 21.4 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.

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

§ 21.6 Continuing Contract Performance

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

§ 21.7 Waiver of Claims for Consequential Damages

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

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

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

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

OWNER *(Signature)*

City of West Haven

By: _____
Hon. Dorinda K. Borer
Its Mayor

Approved as to Form

Mark J. Malaspina
Carmody Torrance Sandak and Hennessey LLP

CONTRACTOR *(Signature)*

W.J. Mountford Co.
(Printed name and title)

By: _____
Scott Mountford
Its _____
Duly Authorized

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Additions and Deletions Report for **AIA® Document A104® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the day of in the year 2024

...

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

...

W.J. Mountford Co.
170 Commerce Way
South Windsor, Connecticut 06074

...

West Haven High School Pool – Exterior Improvements
1 McDonough Plaza
West Haven, Connecticut 06516

...

Antinozzi Associates P.C.
271 Fairfield Avenue
Bridgeport, Connecticut 06604

...

This Project, funded with federal Elementary and Secondary School Emergency Relief ("ESSER") funds, entails exterior renovations at the West Haven High School pool and the related scope of work as set forth in this Agreement, as well as in Rider No. 1 to this Agreement (the "Rider").

PAGE 2

EXHIBIT A – DETERMINATION OF THE COST OF THE WORK

...

See Rider.

PAGE 3

~~A date set forth in a notice to proceed issued by the Owner.~~ The date of satisfaction of all conditions precedent set forth in Section 15 of the Rider.

~~Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)~~

...

By the following date: October 15, 2024, time being of the essence.

...

See Exhibit C to the Rider for detailed schedule.

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

...

Stipulated Sum, in accordance with Section 3.2 below

...

§ 3.2 The Stipulated Sum shall be ~~(\$—One Million Three Hundred Fifty-Three Thousand Dollars (\$1,353,000.00)),~~ subject to additions and deductions as provided in the Contract Documents.

PAGE 5

~~§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)~~

...

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~tenth~~ 10th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than ~~the day of the month~~ forty-five (45) days after the Architect's applicable certification. If an Application for Payment is received by the Architect after the date fixed above, payment of the amount certified by the Architect to be payable to the Contractor at such time shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.

...

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold ~~retainage from five percent (5%) of the payment otherwise due as follows: retainage.~~ (Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

...

~~%—1.00 % per month~~

PAGE 6

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~ thirty (30) days after the issuance of the Architect's final Certificate for Payment, or as follows:

...

Arbitration pursuant to Section 21.6 of this Agreement

Litigation in a court of competent jurisdiction

...

See Specifications referenced in Exhibit A to the Rider.

...

See Drawings referenced in Exhibit A to the Rider.

PAGE 7

See Addenda referenced in Exhibit A to the Rider.

...

Exhibit A, Determination of the Cost of the Work.

...

Rider

AIA Document A201-2017 General Terms and Conditions

...

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

PAGE 9

§ 8.1.1 Prior to commencement of the Work, at the written request by 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. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

PAGE 10

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it the Work. 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.

...

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

PAGE 12

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

...

§ 10.2 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~~ withheld or delayed.

PAGE 13

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

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

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor will respond to requests for submittals by the Architect within five (5) days after Architect's requests. The Contractor will provide mock-ups as directed by the Architect within five (5) days after Architect's requests.

...

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten (10) 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.

PAGE 14

§ 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 the defective construction of a Separate Contractor.

...

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

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within ~~14~~ fourteen (14) days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

~~§ 15.3.1 At least ten days before the date established for each progress payment, In accordance with the provisions of Section 4.1.3, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work values.~~ The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage ~~if as provided for in the Contract Documents;~~ and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

...

§ 15.4.1 The Architect will, within seven (7) 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-believes~~ is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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. Additionally, the issuance of a Certificate for Payment shall not preclude Owner from objecting to or withholding some or all amounts in any Application for Payment.

§ 15.4.4 When ~~either party disputes the Architect's decision regarding a Certificate for Payment under the Contractor~~ disputes the Architect's or Owner's decision regarding an Application for Payment under Section 15.4.2 or Section 15.4.3, in whole or in part, that party the Contractor may submit a Claim in accordance with Article 21.

...

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, 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 a similar manner.

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance

with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation of the Architect's determination that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

PAGE 19

~~§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 17.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:~~

See Exhibit D to the Rider.

~~§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$) each occurrence, (\$) general aggregate, and (\$) aggregate for products completed operations hazard, providing coverage for claims including~~

- ~~1 — damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;~~
- ~~2 — personal and advertising injury;~~
- ~~3 — damages because of physical damage to or destruction of tangible property, including the loss of use of such property;~~
- ~~4 — bodily injury or property damage arising out of completed operations; and~~

~~5 — the Contractor's indemnity obligations under Section 9.15. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.~~

~~§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than (\$) 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. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.~~

~~§ 17.1.4 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 such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 17.1.5 Workers' Compensation at statutory limits.~~

~~§ 17.1.6 Employers' Liability with policy limits not less than (\$) each accident, (\$) each employee, and (\$) policy limit.~~

~~§ 17.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

~~§ 17.1.8 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

~~§ 17.1.9 Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.~~

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

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

~~§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 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 for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.~~

~~§ 17.1.13 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~

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

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

Coverage

Limits

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

~~§ 17.2.1 Owner's Liability Insurance~~

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

~~§ 17.2.2 Property Insurance~~

~~§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.~~

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

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

~~§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

~~§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

~~§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~

~~§ 17.2.2.7 Waiver of Subrogation~~

~~§ 17.2.2.7.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by this Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 17.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.~~

~~§ 17.2.2.7.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

~~§ 17.2.2.8 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 Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

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

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

Coverage

Limits

...

§ 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.1.7.3 in Exhibit A, Determination of the Cost of the Work expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one ~~(1)~~ year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. 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.

PAGE 20

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.~~

...

Ken Carney, Chair
City of West Haven School Building Committee
355 Main Street
West Haven, Connecticut 06516

PAGE 21

Scott Mountford
W.J. Mountford Co.
170 Commerce Way
South Windsor, Connecticut 06074

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten ~~(10)~~ days' prior notice to the other party.

...

If the Architect fails to certify payment as provided in Section 15.4.1 for a period of ~~30~~ thirty (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~~ thirty (30) days, the Contractor may, upon seven ~~(7)~~ additional days' notice to the Owner and the Architect, 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.

...

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven (7) days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

...

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or ~~30~~ thirty (30) days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

PAGE 22

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

...

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than ~~10~~ ten (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 21.3.

...

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

~~§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this 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.~~

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

~~§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, 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).~~
Waiver of Claims for Consequential Damages

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

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

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

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

OWNER (Signature)

CONTRACTOR (Signature)

City of West Haven

W.J. Mountford Co.
(Printed name and title)

By: _____
Hon. Dorinda K. Borer
Its Mayor

By: _____
Scott Mountford
Its
Duly Authorized

Approved as to Form

Mark J. Malaspina
Carmody Torrance Sandak and Hennessey LLP

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

~~§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, 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.~~

~~§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

§ 21.10 Continuing Contract Performance

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

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

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

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

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

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

Certification of Document's Authenticity

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I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:03:41 ET on 06/13/2024 under Order No. 4104243362 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

 **AIA® Document A201® – 2017****General Conditions of the Contract for Construction**

for the following PROJECT:

(Name and location or address)

West Haven High School Pool – Exterior Improvements
1 McDonough Plaza
West Haven, Connecticut 06516

THE OWNER:

(Name, legal status and address)

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

THE ARCHITECT:

(Name, legal status and address)

Antinozzi Associates P.C.
271 Fairfield Avenue
Bridgeport, Connecticut 06604

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME
9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK
13	MISCELLANEOUS PROVISIONS

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.

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, 4.2, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

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Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of
7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, 15.1.5

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, 15.1.6

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up
3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, 15.1.5

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, 4.2.4

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND
9

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract
1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder**15.4.4****CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance**15.1.4**

Contract, Definition of

1.1.2**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to
3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, 9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, 15.1.5, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1**CONTRACTOR****3**

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

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Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, 3.17
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, 15.1.5
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, 15.2.5

Failure of Payment
9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, 10.3

Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner
2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of
1.1.8

Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of
1.1.7

Insurance
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11

Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy
9.9.1

Insured loss, Adjustment and Settlement of
11.5

Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation
1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written
4.2.11, 4.2.12

Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes
8.3.1

Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4

Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1

Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, 10.3

Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,
15.4.1.1

Minor Changes in the Work
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

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MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

Owner's Right to Perform Construction and to Award Separate Contracts

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

Ownership and Use of Drawings, Specifications and Other Instruments of Service

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

Partial Occupancy or Use

9.6.6, 9.9

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

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Project, Definition of
 1.1.4
Project Representatives
 4.2.10
Property Insurance
 10.2.5, 11.2
Proposal Requirements
 1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
 1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
 4.2.6, 12.2.1
Releases and Waivers of Liens
 9.3.1, 9.10.2
Representations
 3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
 3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
 3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples
by Contractor
 3.12
Rights and Remedies
 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
 12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
 3.17
Rules and Notices for Arbitration
 15.4.1
Safety of Persons and Property
 10.2, 10.4
Safety Precautions and Programs
 3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
 3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
 9.2, 9.3.1
Schedules, Construction
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
 3.11, 3.12, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1
Site Inspections
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
 4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
 1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
 15.1.2, 15.4.1.1
Stopping the Work
 2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
 3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.3
Substances, Hazardous
10.3
Substantial Completion
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,
 15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
 5.2.3, 5.2.4
Substitution of Architect
 2.3.3
Substitutions of Materials
 3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2

Init.

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(1697986386)

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of
9.8.5, 9.10.2, 9.10.3

Surveys
1.1.7, 2.3.4

Suspension by the Owner for Convenience
14.3

Suspension of the Work
3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes
3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor
14.1, 15.1.7

Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7

Termination by the Owner for Convenience
14.4

Termination of the Architect
2.3.3

Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK
12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. 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. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and 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. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 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.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 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 only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, 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 suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by 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. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by 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 only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. 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.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been 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, except to the extent required by Section 6.1.3.

§ 2.5 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 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 the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 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.

§ 3.2.2 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 2.3.4, 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.

§ 3.2.3 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.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 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 under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 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.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 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.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 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 properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special 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 9.8.4.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for 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.

§ 3.7.2 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.

§ 3.7.3 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.

§ 3.7.4 Concealed or Unknown Conditions

If 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 (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 and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect 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 Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 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 Contract Sum but not 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 allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 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.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 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.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 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 that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 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 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 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.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents 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.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations 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.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect'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 Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 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's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 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. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 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. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. 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. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by 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 that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect 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 that 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.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 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 for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 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 construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 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 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, 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 consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine 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 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .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, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect 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.

§ 7.3.7 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.

§ 7.3.8 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 Architect. 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.

§ 7.3.9 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 Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

The Architect may 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

Init.

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

§ 8.2 Progress and Completion

§ 8.2.1 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.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

Init.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, 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 suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 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 encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven 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; or (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 of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; 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 as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 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 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and 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 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

Init.

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, 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 a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 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.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

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§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 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.

§ 9.8.2 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.

§ 9.8.3 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. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that 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.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the 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.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. 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 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 listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

Init.

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

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 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 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. 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 notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 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 10.3.1 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.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 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 reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 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.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 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; (2) the Architect and Architect's consultants; and (3) Separate Contractors, 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 those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement 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 and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before 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.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, 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 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. 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. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2.2 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.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 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 the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 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 or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .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.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written 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.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 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.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. 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.

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of 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 and enter into no further subcontracts and purchase orders.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 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.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a 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 Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker 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 Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, 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.

§ 15.2.8 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.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its 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 the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings 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 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. 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.

§ 15.4 Arbitration

§ 15.4.1 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 its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A 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 party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 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.

§ 15.4.3 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.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Additions and Deletions Report for

AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:40:04 ET on 06/13/2024.

PAGE 1

West Haven High School Pool – Exterior Improvements
1 McDonough Plaza
West Haven, Connecticut 06516

...

The City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

...

Antinozzi Associates P.C.
271 Fairfield Avenue
Bridgeport, Connecticut 06604

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 its associated Additions and Deletions Report and this certification at 09:40:04 ET on 06/13/2024 under Order No. 4104243362 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

**RIDER NO. 1 TO AGREEMENT (the “A104”) BETWEEN the CITY of WEST HAVEN
 (“OWNER”) AND W.J. MOUNTFORD CO. (“CONTRACTOR”) (AIA DOCUMENT A104-2017)
 DATED [REDACTED] 2024 (this “RIDER”)**

This Rider is attached to and made a part of the above-referenced Agreement. The following Exhibits are attached to and made a part of this Rider:

- **Exhibit A**, Scope of Work;
- **Exhibit B**, Listing of Contractor's Employees Assigned to Project;
- **Exhibit C**, Contractor’s Schedule for Performance;
- **Exhibit D**, Insurance Requirements; and
- **Exhibit E**, Federal Funding Requirements
-

Capitalized terms used but not defined in this Rider shall have the meaning given in the Agreement to which this Rider is attached and made a part of. References in this Rider to this Agreement mean such Agreement as amended by this Rider.

1. General/Document Hierarchy/Cross-References in A104. If any of the provisions of this Rider, including the Exhibits attached hereto and made a part hereof, conflict with or are otherwise inconsistent with the A104 to which this Rider is attached, the Specifications, and other Contract Documents, the more restrictive requirement and the higher standard, for the benefit of the Owner, as the case may be, shall prevail and be binding upon the Contractor. To the extent the A104 cross-references other AIA documents, such cross-referenced AIA documents shall be deemed to be to any agreement(s) that may be entered into between the Owner and any Contractor or Construction Manager for this Project, whether such agreements are AIA forms or otherwise. If any provisions of the Exhibits attached to and made a part of this Rider conflict with or are otherwise inconsistent with the provisions of the body of this Rider or with each other, the more restrictive requirement and the higher standard, for the benefit of the Owner, as the case may be, shall prevail and be binding upon the Contractor. If any of the provisions of the Contract Documents are inconsistent but there is no applicable stricter standard among them, the following priority of Contract Documents shall apply: First, this Rider; second, the Exhibits to this Rider; third, the A104; fourth, the Drawings; fifth, the Specifications; and sixth, the other Contract Documents.

2. Professional Services to be Rendered:

(a) **The Work of This Contract.** The following new § 1.1 is hereby added to the A104:

(i) New § 1.1: “**Contractor’s Responsibilities.** It is the intention of this Agreement that the Contractor shall provide for all necessary and appropriate construction services required for the construction and completion of the Project, in accordance with the Scope of Work, **Exhibit A** to the Rider, through and including Project closeout, whether specifically identified in this Agreement, and Construction Documents or the requirements reasonably implied or inferred therefrom. The schedule for the Scope of Work is set forth in **Exhibit C** to the Rider.”

(ii) New §1.2: **“Standard of Care.** The Contractor shall perform its services consistent with the professional skill and care ordinarily provided by Contractors practicing in the same or similar locality under the same or similar circumstances (the “Standard of Care”). The Contractor shall perform its services as expeditiously as is consistent with such professional skill and care, the orderly progress of the Project and the Standard of Care.”

3. Claims and Disputes.

(a) §21.11 of the A104 is hereby amended to include the following as the last sentence of the last paragraph thereof: “Notwithstanding the foregoing, no such waiver shall be applicable to indemnification requirements under § 5 of the Rider, or in the event of claims covered by insurance, to the extent such coverage is responsive and available.”

4. Dispute Resolution.

(a) § 5.1 of the A104 is hereby deleted in its entirety and replaced with the following new §5.1:

“Mediation shall be required and shall be before JAMS or like organization as may be agreed to by the parties. If mediation fails to resolve the parties’ dispute, either party may litigate the matter in any state or federal court located in the City of New Haven.

Contractor agrees that, to the extent necessary for, or in connection with, the resolution of any other claims involving Owner or the Project, Contractor, Contractor’s Consultants and any claims by or against either of them, may be joined in any separate arbitration or legal proceeding, upon Owner’s written request.”

(b) Exclusive jurisdiction for resolution of any disputes between Owner and Contractor shall be in Connecticut state court located in New Haven, Connecticut. Owner and Contractor agree that such court does not constitute an inconvenient forum.

(c) Owner and Contractor waive any right to trial by jury for resolution of any dispute between Owner and Contractor.

5. Indemnification. § 9.15.1 of the A104 is hereby deleted in its entirety and replaced with the following new §9.15.1: “To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions, the Architect, Architect’s consultants, and agents and employees from and against any/all claims, actions, damages, losses and expenses, including but not limited to attorney’s fees, for any actual or alleged injury to any person or persons, including death, or any damage to or destruction of property, arising out of or in connection with the Work.”

6. Termination of the Contract.

(a) A104 §20.1 is hereby deleted and replaced with the following new §20.1: “If the Architect fails to certify payment as provided in Section 15.4.1 for a period of thirty (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

thirty (30) days, the Contractor shall provide Owner with a written notice to cure. If the Owner fails to make payment of such sums properly due to the Contractor within fifteen (15) days of such written notice, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, 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."

(b) The following new § 20.4 is hereby added to the A104: "Termination, suspension or abandonment by the Owner shall not give rise to any cause of action or claim against the Owner for any damages of any nature whatsoever, or for extra compensation or loss of anticipated profits. The Contractor shall be entitled only to amounts due to it in accordance with this Article 20. Termination of this Agreement for any reason shall not release the Contractor from any of its obligations under this Agreement existing at the time of termination."

7. Progress Payments. The following new § 21.1.1 is hereby added to the A104: "If a dispute arises between the Owner and the Contractor with respect to the Contractor's compensation or any term of this Agreement, notwithstanding any provision of the A104, the Contractor shall continue to fully perform under this Agreement if the Owner makes timely payment of fees and reimbursements in accordance with the payment provisions of this Agreement. If the dispute relates to fees, the Contractor shall be obligated to continue to perform provided that the Owner pays those particular fees which are not the subject of the dispute."

8. Additional Provisions Regarding Compensation. A104 Article 3 is hereby modified, as follows:

(a) **Compensation for Supplemental and Additional Services.** The following new § 3.4.4 is hereby added to the A104: "A condition of compensation for such services is that the Contractor has advised the Owner in writing before such services are performed that they are beyond the scope of this Agreement, and such services have been specifically authorized by the Owner in writing to the Contractor in advance of their performance. The Contractor shall keep detailed records of all time spent by the Contractor's employees in performance of such services; provided that, notwithstanding anything to the contrary in the Agreement, and without limiting the Owner's other available rights and remedies at law or in equity, Contractor shall not be compensated for any services, including without limitation for Supplemental Services or Additional Services, arising out of Contractor's negligence or breach of any of its obligations under this Agreement."

9. Payment/Contractor's Records. The following new § 4.1.6 is hereby added to the A104:

(i) The Contractor shall submit monthly Applications for Payments to the Owner or upon some other time basis mutually agreed upon in writing. Each Application for Payment shall include a detailed statement of services for which compensation is sought and expenses for which reimbursement is sought, together with such other substantiation as the Architect or Owner shall require. Each Application for Payment shall include all items of Work sought by the Contractor for compensation and for expenditures incurred through the date of the Work covered by the Application for Payment. The Contractor shall submit its final Application for Payment no later than thirty (30) calendar days after final completion of the construction of the Project.

(ii) The Contractor shall maintain, and shall require its consultants to

maintain, accurate records, on an accounting basis acceptable to the Owner, of costs and expenses incurred by it and the exact hours worked by its personnel. On reasonable notice from the Owner, when applicable to services provided on an hourly basis or reimbursable expenses approved by the Owner, these records shall be available at the Contractor's office during business hours for audit and copying by the Owner. The Contractor shall retain these records for six (6) years after its receipt of final payment.

(iii) Each Application by the Contractor shall include a certification that the information contained in Contractor's Disclosure and Certification Affidavit executed in connection with entering into this Agreement remains true and correct in all material respects."

10. Personnel Assigned to Project. The following new § 19.7 is hereby added to the A104: "To the fullest extent reasonably necessary to achieve the timely and proper performance of the Contractor's obligations under this Agreement, the individuals listed in **Exhibit B** to the Rider shall devote their full time and effort to the Project while employed by the Contractor, and they may not be removed from the Project or replaced by the Contractor to the extent they continue to be in the employ of the Contractor, without the Owner's prior written consent, which consent shall not be unreasonably withheld or delayed. The Owner reserves the right to require the removal of any personnel of the Contractor involved with the Project if, in the reasonable judgment of the Owner in consultation with the Contractor, such individual's performance is deemed unsatisfactory. The Contractor shall investigate such request and shall submit to Owner, for Owner's consent, which consent shall not be unreasonably withheld or delayed, the name of an individual Contractor suggests as a replacement."

11. Rules of Interpretation. As used in the Contract Documents, the terms "include", "including", and words of similar meaning shall mean without limitation. As used in the Contract Documents, the singular shall include the plural and vice versa, and reference to any gender shall mean the applicable gender.

12. Insurance. The Contractor shall furnish and maintain the insurance coverages set forth in **Exhibit D** to this Rider in accordance with the requirements set forth therein. If the Contractor fails to furnish and maintain the insurance required herein, the Owner may purchase such insurance on behalf of the Contractor, and the Contractor shall promptly pay the cost thereof to the Owner and supply any information needed to obtain such insurance upon demand.

13. Compliance with Federal Funding Requirements. This Project is being funded using federal funds. This Agreement and the Contractor's obligations under this Agreement are subject to any and all applicable federal funding requirements. Without limiting the generality of the foregoing, **Exhibit E** hereto sets forth certain federal funding requirements for this Agreement and the Project.

14. Other Provisions.

(a) **Notices.** The following new §7.9.3 is hereby added to the A104: "All notices shall be in writing and shall be delivered personally, by recognized overnight courier service, or by registered or certified mail, return receipt requested at the respective address for notice for each party as set forth below. Notice shall be effective on the date of delivery, or if delivery is refused, on the date of attempted delivery. Either party may change its address for notices by notifying the other party in accordance with this Section. Addresses for notice are as follows:

Owner:

City of West Haven
355 Main Street
West Haven, CT 06516
Attn: Ken Carney, Chair, School Building Committee

Contractor:
W.J. Mountford Co.
170 Commerce Way
South Windsor, CT 06074
Attn: Scott Mountford

(b) **No Waiver.** The following new §19.8 is hereby added to the A104: “No waiver of default hereunder shall be construed as a waiver of any subsequent default.”

(c) **Counterparts.** The following new §19.9 is hereby added to the A104: “This Agreement, including the Rider attached hereto, may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signed copies of this Agreement may be faxed and e-mailed with the same force and effect as if the originally executed Agreement had been delivered.”

(d) **Compliance with Laws.** In addition to complying with the provisions of § 12 of this Rider, the Contractor shall comply with all laws, rules, regulations, codes and ordinances applicable to its obligations under this Agreement.

15. Conditions Precedent. The following are conditions precedent to the effectiveness of this Agreement:

- A. A W-9 form executed and delivered by Contractor to Owner that is acceptable to Owner in its sole and absolute discretion;
- B. A Disclosure and Certification Affidavit executed and delivered by Contractor to Owner with information that is acceptable to Owner in its sole and absolute discretion. Each invoice by Contractor to Owner shall include a certification that the information contained in Contractor’s Disclosure and Certification Affidavit executed in connection with entering into this Agreement and which remains true and correct in all material respects;
- C. Provision of the insurance certificates referenced in Exhibit D to this Rider; and
- D. Approval of this Agreement by the West Haven Subcommittee of the Municipal Accountability Review Board of the State of Connecticut.

16. Prevailing Wage. Performance of the Work shall be subject to, and Contractor shall comply with, and shall cause all subcontractors to comply with, the requirements of Connecticut’s Prevailing Wage law (Connecticut General Statutes Sections 31-53 and 31-53a) and the federal Davis Bacon Act, including payment of prevailing wages to all workers, laborers and mechanics engaged in the performance of the Work at the applicable prevailing wage rates. The Contractor shall maintain certified payroll reports throughout the performance of the Work as required by state and federal law.

THE TERMS AND CONDITIONS OF THIS RIDER NO. 1 ARE HEREBY AGREED TO AND ACCEPTED AS OF THE DATE FIRST WRITTEN ABOVE.

OWNER:
City of West Haven

CONTRACTOR:
W.J. Mountford Co.

By: _____
Hon. Dorinda K. Borer
Mayor

By: _____
Scott Mountford
Its _____
Duly Authorized

Approved as to form:

Mark J. Malaspina
Carmody Torrance Sandak & Hennessey LLP

EXHIBIT A

SCOPE OF WORK

The Work shall include:

1. The equipment, materials and services stated in Owner's RFP # 2024-14, as well as all other documents and materials issued thereunder or in connection therewith, including:
 - a. All Addenda (Addenda #'s 1-5 inclusive);
 - b. All Specifications and all Addenda thereto;
 - c. All Drawings and all Addenda thereto;
 - d. All Requests for Information (RFIs) and responses issued pursuant thereto; and
 - e. Contractor's bid form dated May 28, 2024.

The above referenced documents are on file at:

Purchasing Department
City of West Haven
355 Main Street
West Haven, Connecticut 06516

EXHIBIT B

THE CONTRACTOR'S PERSONNEL ASSIGNED TO THE PROJECT

Scott Mountford

EXHIBIT C

SCHEDULE OF THE CONTRACTOR'S PERFORMANCE

Start Date for the Work

The date of satisfaction of all conditions precedent set forth in Section 15 of this Rider.

Final Completion Date for the Work

October 15, 2024, time being of the essence.

EXHIBIT D
INSURANCE

Prior to the commencement of the work, and as a condition of site access, the Contractor (referred to hereinafter as the “*Contractor*”) shall deliver to the City of West Haven (referred to hereinafter as the “*Owner*”) a valid and currently dated Certificate of Insurance (“COI”).

The insurance coverage carried by the Contractor must be placed with and written by an insurance company admitted to do business in the State of Connecticut, and with a rating of A- or better by A.M. Best.

The insurance coverages carried by the Contractor (shown below) shall apply regardless of whether the operations, actions, derelictions or failures to act, from which any claim arises, are attributable to the Contractor, a subcontractor, a sub-subcontractor, or any consultant, officer, agent, employee or anyone directly or indirectly employed by any of them, including anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable state law. Failure of Contractor to provide a COI shall in no way limit or relieve Contractor of its duties and responsibilities in this Agreement. All policies of insurance shall be written on an occurrence basis.

At a minimum, the COI shall indicate that the following coverages and limits are in place:

1. **Commercial General Liability (“CGL”) -- Minimum Limits Required:**

- \$2,000,000 General Aggregate
- \$2,000,000 Producers/Completed Operations Aggregate
- \$1,000,000 Each Occurrence
- \$1,000,000 Personal and Advertising Injury
- \$100,000 Fire Damage – Any One Fire
- \$5,000 Medical Expense – Any One Person

- The Owner (The City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** on the CGL policy carried by the Contractor. The Additional Insured coverage afforded to the Owner shall apply on a **primary and non-contributory basis** and include **completed operations** coverages.
- The CGL policy carried by the Contractor shall contain a **Waiver of Subrogation** clause and the Contractor hereby agrees to waive the Contractor’s right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

1. Business Auto/Commercial Auto Insurance – Minimum Limits required:

- \$1,000,000 Liability
- The Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions) will be included as an **Additional Insured** on the Commercial Auto/Business Auto policy carried by the Contractor.
- The Business Auto/Commercial Auto policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

2. Workers Compensation/Employers Liability Insurance:

- Coverages and limits as required by Connecticut State law
- Employer's Liability Limits:
- \$500,000 each accident
- \$500,000 aggregate for injury by disease
- \$500,000 each employee for injury by disease
- The Workers' Compensation/Employers Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

3. Professional Liability Insurance-- Minimum Limits required:

- \$1,000,000 per occurrence
- \$1,000,000 aggregate

4. Umbrella Liability/Excess Liability-- Minimum Limits required:

- \$5,000,000 Each Occurrence
- \$5,000,000 General Aggregate
- Policy will provide excess coverage over the Commercial General Liability, Business Auto and Workers' Compensation/Employer Liability policies carried by the organization.
- The Umbrella/Excess Liability policy carried by the Contractor shall contain a Waiver of Subrogation clause and the Contractor hereby agrees to waive the Contractor's right of recovery against the Owner (the City of West Haven and all of its elected or appointed directors, officers, officials, agents, employees and members of all of its boards and commissions).

No Limitation on Liability

With regard to any/all claims made against the Additional Insured by any employee of the Contractor, any subcontractor, or anyone directly or indirectly employed by the Contractor or any subcontractor, or anyone for whose acts the Contractor or any subcontractor might be liable, the indemnification obligation shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation acts, disability benefits acts or other employee benefit acts.

Cancellation, Renewal and Modification

The Contractor shall maintain in effect all insurance coverages required under this agreement at the Contractor's sole expense and with insurance companies acceptable to the Owner. The policies shall contain a provision that the coverage will not be cancelled or non-renewed until at least thirty (30) days prior written notice has been given to the Owner.

EXHIBIT E

FEDERAL FUNDING REQUIREMENTS

For purposes of this Exhibit E, the term “contract” shall mean “Agreement”, the term “contractor” shall mean “Contractor”, and the term “Owner” shall mean the City of West Haven. For convenience, reference to any gender herein means the applicable gender. This contract is funded using ESSER funds. In meeting its obligations under this contract, contractor shall comply with all funding requirements of the federal government applicable to the use of ESSER funds in particular and federal funds in general.

Without limiting the generality of the foregoing, during the performance of this contract, the contractor will comply with the requirements of the federal:

- Clean Air Act
- Davis-Bacon Act
- Work Hours and Safety Standards Act.

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:

1. 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 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 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 the 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 as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by a 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 the 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 vendor. 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 the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor 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 may not charge the Owner directly or indirectly for any "Covered Telecom," as defined below. The federal government's System for Award Management (SAM) (<https://www.sam.gov>) lists certain "Excluded Parties" (as defined therein) who are excluded from receiving federal awards for "covered telecommunications equipment or services" referenced therein ("Covered Telecom"). Any procurements and resulting contracts prepared by the contractor for the Owner shall prohibit vendors from directly or indirectly charging the Owner for Covered Telecom.

Any and all procurements for construction services, goods or materials shall comply with the federal government's "Build America, Buy America" and "Buy American" requirements, if and to the extent applicable to the Project or any portion thereof.



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract	Hazardous Building Materials Consulting Services			
City Agency	Planning and Zoning			
Vendor Utilized	Fuss and O'Neil			
Address	146 Hartford Road			
City, State, Zip	Manchester, CT 06040			
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2023-48] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	US Dept of Agriculture-National Resource Conservation Service (USDA NRCS)			
Quantity	1.00	Price Per:	Total Purchase Price	\$94,273.00
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.	<p>Hazardous Building Materials Consulting Services Eight City-Owned Properties. In January of 2023, The City will used a formal bidding process to select a contractor to conduct abatement and demolition. The RFP has language the following language:</p> <p><u>The engineering/environmental consulting firm selected under this RFP may be asked to provide a fee and schedule to complete Demolition Contractor Oversight and Monitoring following the selection of a demolition and abatement contractor.</u></p> <p>Based on the underlined section of the original bid, Fuss ad O'Neil contract will be amended to include the cost of consulting services for oversight.</p> <p>In addition, Fuss and O'Neil is also a vendor on state contract 18PSX0153, which allows for Environmental Investigation, Remediation and Project Management Services.</p>			
Submitted by:	Kathy Chambers, Sr. Buyer, Procurement Analyst			

May 22, 2024, Revised June 6, 2024

Ms. Olivia Bissanti
Grant Writer
City of West Haven
355 Main Street, 3rd Floor
West Haven, Connecticut 06516

**RE: Hazardous Building Materials Consulting Services
Eight City-Owned Properties listed in our Specifications**
Fuss & O'Neill, Inc. Opportunity No. 20231071.A11

Dear Ms. Bissanti:

Fuss & O'Neill, Inc. (Fuss & O'Neill) is pleased to submit this proposal to provide hazardous building materials construction administration/project monitoring services at the various properties listed in our specifications in West Haven, CT (the "Site"). This proposal was developed for the exclusive use of City of West Haven (the "Client").

Our proposal is based on our evaluation of the project requirements and Fuss & O'Neill's ability to meet those requirements. Our proposal is under the State of Connecticut contract **18PSX0153**. As detailed in this proposal, Fuss & O'Neill's services will include the following:

- Hazardous Building Materials Construction Administration/Project Monitoring

Task 100 -Hazardous Building Materials Construction Administration/Project Monitoring

1. Pre-Construction

Fuss & O'Neill will attend a pre-construction meeting with the Client and the selected abatement contractors.

2. Pre-Abatement Services

Fuss & O'Neill will evaluate abatement contractor submittals. To accomplish this task, Fuss & O'Neill will review the abatement contractor's submittals and provide an action stamp with an itemized list of noted deficiencies.

3. Project Monitoring and Daily Documentation

Fuss & O'Neill will observe pre-cleaning, safety procedures, and negative pressure enclosure construction, three-stage decontamination unit, waste load-out, and air pressure differential systems. Fuss & O'Neill will also conduct a pre-abatement work area visual inspection.

Fuss & O'Neill will provide trained, experienced, and Connecticut-certified Asbestos Project Monitors to evaluate airborne fiber concentrations and verify adherence to technical specifications during abatement activities. If de

City of West Haven

May 22, 2024, Revised June 6, 2024

Page 2

viations are noted, Fuss & O'Neill's Project Monitor will notify the Construction Manager/Owner, who will have the authority to stop the abatement work any time it is determined conditions are not within the specification, or a health hazard might exist for other employees or building occupants, or the potential exists for contamination of the environment.

The Project Monitor's specific on-site duties will include:

- Document the asbestos abatement contractor is adhering to standard procedures identified in the technical specification during abatement work.
- Periodically collect and analyze on-site air samples by Phase Contrast Microscopy (PCM) to evaluate total airborne fiber concentrations in the work area, as well as areas adjacent to abatement activities.
- Routinely check regulated work area barriers for integrity, adherence to standard operating procedures, and ensure proper engineering control systems are in place. The monitoring frequency will be determined by Fuss & O'Neill.

4. Monitoring Summary Report

Upon project completion, we will prepare one monitoring summary report for all eight (8) properties, which will include the following:

- Introduction and summary of the project
- Final visual inspection form(s)
- Area air monitoring worksheet(s)
- Final air clearance report(s)
- Sample analysis laboratory reports
- Daily log sheets
- Pre-abatement, final checklists, and inspection reports for work areas
- Permits and notifications

We will request on the Client's behalf copies of the items listed below to the extent received from contractors within 45 days of the request. If these documents are not received within 45 days, they will not be included within the report.

- Abatement contractor certifications, licenses, medical, and training records
- Waste disposal records

Task 200 - Lab Samples-PCM and TEM Air Samples, PLM, and TEM-NOB Samples

Fuss & O'Neill will conduct a final visual inspection for areas of asbestos removal to ensure the scope of abatement work has been completed, and to provide a final visual inspection form once abatement is complete. Fuss & O'Neill will also conduct final clearance air sampling within the interior work area subsequent to the final visual inspection. We have included one TEM Air Samples (13 Samples) and 8 PCM Final air samples (56 Samples) including PCM Background air samples (176 Samples).

Collected air samples will be analyzed by PCM (or as required by TEM) and be compared to CTDPH re-occupancy standards. PCM samples will be analyzed on-site by the Project Monitor. TEM samples will be analyzed by EMSL Analytical, Inc.

Project Fees

We propose a budget be established for professional services in support of this effort as outlined below. Lump sum tasks will be billed monthly as a percentage complete while the hourly tasks will be billed on a time and materials basis and the budget would not be exceeded without expressed authorization.

Task	Basis	Estimated Fees
100 - Hazardous Building Materials Construction Administration/Project Monitoring	Lump Sum	\$89,506.00
200 - Lab Samples-PCM and TEM Air Samples, PLM, and TEM-NOB Samples	Lump Sum	\$4,767.00
Total		\$94,273.00

Hourly and additional services outside the final scope of services will be provided according to the current Rate Schedule in effect at the time services are provided. The Rate Schedule may be revised annually in January. A current copy is attached.

Fuss & O'Neill Inc. anticipates will take fifty-five (55) working days to complete all abatement and demolition including back filling all eight (8) properties.

Invoices will be sent on a monthly basis based on percentage completed each month and payment must be made in accordance with the General Terms and Conditions.

Fees are valid for 90 days and the project duration is assumed to be as shown above. If authorization or project schedule extends beyond these durations, Fuss & O'Neill reserves the right to renegotiate the fee.

Terms and Conditions

The attached General Terms and Conditions will apply to the services described above. This proposal shall be valid for a period of 90 calendar days from the date of issuance.

Agreement for Services

Receipt of a signed copy of the Authorization to Proceed enclosed with this proposal or issuance of a purchase order referencing this proposal will serve to authorize the work outlined in the Scope of Services.

City of West Haven
May 22, 2024, Revised June 6, 2024
Page 4

Initiation of Services

Services will commence upon receipt of the signed Authorization to Proceed.

Please contact us if you have any questions related to this proposal. We look forward to working with you.

Sincerely,



Carlos Texidor
Associate



Elizabeth Landry, P.E.
Vice President | Department Manager

CT/kr

Attachments: Authorization to Proceed
General Terms and Conditions
Rate Schedule

Authorization to Proceed

Mr. Carlos Texidor
 Associate
 Fuss & O'Neill, Inc.
 146 Hartford Road
 Manchester, CT 06040
 Email: ctexidor@fando.com

RE: Authorization to Proceed
Hazardous Building Materials Consulting Services
Eight City-Owned Properties listed in our Specifications
 Fuss & O'Neill Opportunity No. 20231071.A11
 Budget: **\$94,273**

Dear Mr. Texidor:

I hereby authorize Fuss & O'Neill, Inc. to proceed with the above-referenced project in accordance with the provided General Terms and Conditions and proposal dated May 22, 2024, revised on June 6, 2024

Printed Name	Date
Signature	Title

City of West Haven – please complete information below.

*Submit invoice as follows (✓ one →):	_____ Mail	_____ Email	_____ Online
Billing Contact:	Name:		
	Address:		
	Phone/Email:		
Accounts Payable Contact:	Name:		
	Address:		
	Phone/Email:		
Purchase Order Number:			

*** Indicate address, email address and website link if different than already provided.**

REQUEST FOR PROPOSALS

RFP# 2023-48

Engineering Consulting Services-Demolition Specifications & Bidding Assistance

The City of West Haven, hereafter referred to as the, “City” is accepting a scope of services, fee and schedule from qualified engineering/environmental consulting firms to complete the following activities under a US Department of Agriculture-Natural Resource Conservation Service (USDA NRCS) agreement covering eight (8) city-owned properties and single structures located at the following locations in the City of West Haven: 120 Brown Street, 158 Jones Street, 304 Peck Avenue, 330 Peck Avenue, 37 Third Ave. Ext, 39 Marshall Street, 42 Marshall Street & 52 Marion Street. The agreement exists between NRCS and West Haven. **This RFP would be for a contract with the City.**

- Prepare abatement and demolition specifications for Hazardous Building Materials (HBM) including asbestos, lead, and PCB containing materials as well as removal of universal wastes and other known hazardous materials.
- Review all documents provided by the City related to site conditions and hazardous building materials and recommend supplemental testing, if required.
- Ensure abatement, demolition, and site finishing specifications are compliant with the USDA’s demolition specification requirements (“Statement of Work, Residential Structure Demolition and Site Finishing”) and the use of USDA NRCS agreement funding.
- Identify the relevant permits, approvals and registrations required for the anticipated demolition, abatement, and site finishing work.
- Specifications must comply with City demolition requirements including pre-demo pest control and proper permitting.
- Assist with the preparation of public notices, if required.
- Provide an Engineer’s Opinion of Probable Cost Estimate for all anticipated demolition, abatement, and site finishing activities included in the specifications.
- Provide support to the City, including:
 - attending a pre-bid site walk through to familiarize interested contractors with the project area.
 - Respond to RFI’s (Requests for Information) from bidders.
 - Preparation of addenda, if required.
- Review bids with the City and assist in selecting a contractor.

The City will use a formal bidding process to select a contractor to conduct abatement and demolition. The engineering/environmental consulting firm selected under this RFP may be asked to provide a fee and schedule to complete Demolition Contractor Oversight and Monitoring following the selection of a demolition and abatement contractor.

Project Background/Overview

This project is funded through the United States Department of Agriculture's (USDA) Emergency Watershed Protection Program (EWPP). West Haven secured funding for this program after Super Storm Sandy in 2012, which caused significant flood damage. Properties included in this RFP were selected from a list of flood-impacted homes, and owners were approached to sell them through the EWPP Program. The City of West Haven now maintains ownership of the homes and, in accordance with the USDA EWPP agreement, is required to demolish any existing structures and return the parcel to its "natural" state. All included properties are deed restricted to encourage native regrowth and prohibit future construction. The overarching goal of EWPP is to reduce inland flooding impacts by increasing floodwater retention and groundwater recharge, while adding open space to the community.

Consultant Qualifications

Firms must be listed on the SCRCOG **On-Call Engineering Services List (RFQ #21-01)** to submit a proposal under this RFP. See: <https://scrcog.org/purchasing/on-call-services/>

Detailed Proposal

- Provide a written discussion in sufficient detail to demonstrate the Consultant's understanding of the scope and professional services being requested.
- Provide a detailed summary of the firm or individual's experience and history to show capability of providing services required.
- Identify key personnel, if applicable, to whom the firm will assign to perform services under this contract.
- Provide resumes of all key personnel.
- Provide a detailed, itemized scope of proposed services, fee, and schedule.
- Define the services and responsibilities you believe should be required of the City.
- Provide detailed rates for any extra work that the consultant recommends beyond basic services.

Submission

Responses to this RFP shall be submitted to the attention of Tammy O'Connell, Procurement Specialist, City of West Haven, Purchasing Dept., 355 Main Street, 3rd Fl., West Haven, CT 06516. **Proposals are due not later than Friday, January 5, 2023, at 2:00pm.** Respondents are required to submit two (2) hard copies of their sealed proposal, clearly labeled, **RFP# 2023-48 Engineering Consulting Services-Demolition Specifications & Bidding Assistance.** No oral, telephonic, emailed, or faxed responses will be considered. Any corrections, deletions, or additions to a response, will be rejected. The City reserves the right to reject any or all responses, and to waive any or all formalities in connection with this request. Any responses received after the above scheduled due date and time will be rejected.

A non-mandatory walk through will be held on Thursday, December 28, 2023, beginning at 11:00am at 120 Brown Street.

List of Available Documents

- Phase II Environmental Site Assessment, Old Field Creek Parcels, West Haven, CT PEP Inc., 2016
- Hazardous Building Materials Investigations
 - 120 Brown Street, 4/5/22 Thunderbird Environmental
 - 158 Jones St, 3/16/2022 Thunderbird Environmental
 - 304 Peck Avenue, 9/10/22 Thunderbird Environmental
 - 330 Peck Avenue, not available
 - 37 Third Ave. Ext, 3/16/2022 Thunderbird Environmental
 - 39 Marshall St 3/16/2022 Thunderbird Environmental
 - 42 Marshall St 3/16/2022 Thunderbird Environmental
 - 52 Marion St 3/16/2022 Thunderbird Environmental
- STATEMENT OF WORK, USDA NRCS RESIDENTIAL STRUCTURE DEMOLITION and SITE FINISHING, Connecticut 2023
- Other documents (prior shut off notices)

FOR ADDITIONAL DOCUMENTS:

https://drive.google.com/drive/folders/1X05jWfF8w_3qrRoiBLZomgBJaFUyd2_5?usp=sharing

END OF FORM OF PROPOSAL

Contract Summary

General Information

Contract Number 18PSX0153
Issue Date August 02, 2018
Organization State of CT - DAS Procurement
Status Active
Multi Contractor Contract Yes
Title Environmental Investigation, Remediation and Project Management Services
Description Environmental Investigation, Remediation and Project Management Services
Contract Administrator Kristin Allen
Email Address kristin.m.allen@ct.gov
Request Number
Solicitation Number
Enable Contract as Round Trip No
P-Card Accepted No
PO Dispatch Contractor

Commodity

Code	Description
22000000	Building and Construction Machinery and Accessories
77000000	Environmental Services

Contractors

Name AECOM Technical Services, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Stacy Schoen	teri.scalzo@aecom.com	8602635800
Name BL Companies Connecticut, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Katherine Rodo	krodo@blcompanies.com	203-630-1406
Name Loureiro Engineering Associates, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Kristen Dera		8607476181
Name Terracon Consultants, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Erik Armas	jill.labruna@terracon.com	8609297839
Name Arcadis U.S., Inc			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Brian Oblon		8605031500
Name Tighe & Bond, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Britt-Anya Bursell	MasterUsername@tighebond.com	4135621600
Name EA Engineering, Science and Technology, Inc., PBC			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Melissa Beauchemin		40173634401820
Name FUSS & ONEILL INC			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Kate Tornyai	marketing@fando.com	860-646-2469
Name HRP Associates Inc			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Alicia Washington		314-200-4720
Name Haley & Aldrich, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Chris Harriman		8602903139
Name GZA GeoEnvironmental, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Jonathan Andrews		8602868600
Name Langan Engineering & Environmental Services, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Kelle Quinn		2035625771
Name Weston & Sampson Engineers, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Kim Plourde		9785321900
Name TRC Environmental Corporation			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Jessica Peck		8602989692

Name Groundwater & Environmental Services, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Timothy Burke	kmoser@gesonline.com	8002206119

Name WSP USA Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	David Barnes	d.barnes@wsp.com	2039298555
Revised Main Contact	Michael Manolakas	michael.manolakas@wsp.com	2039298555

Name SLR International Corporation			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Julie Maru		2032711773

Name EnSafe Inc			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Heather Hill	contracts@ensafe.com	901-372-7962

Pricing Information

Contract Type	Migrated DAS Contract
Pricing Type	Fixed Price
Total Value Condition	Estimate
Total Value(USD)	20,000,000.00
Retainage Percent	0.00
Retainage Notes	
Initial Expended Value(USD)	0.00
Cumulative Encumbered/Expended Value(USD)	0.00
Total Paid(USD)	0.00
Remaining Balance(USD)	20,000,000.00
Value to Go(%)	100.00
Payment Terms	Net 45 Days
Payment Notes	
Delivery Terms	N/A: Not Applicable
Delivery Notes	
Other Notes	Legacy Commodity Code=13

Contract Period

Award Date	February 25, 2019
Effective Date	March 01, 2019
Amendment Effective Date	May 22, 2024
Expiration Date	February 28, 2026
Potential Final Expiration Date	February 28, 2029

Custom Fields

Amendment(s)	
Field Title	Field Description
Amendment 1	See Revised Langan Contact(s) Email addresses below: kquinn@langan.com jbarr@langan.com
Amendment 2	Effective March 30, 2021, the Contractor's name is hereby updated from Milone & MacBroom-Supplier ID0000010742 to SLR International Corporation- Supplier ID 0000204113 per assignment and assumption. All terms and conditions not otherwise affected by this amendment remain unchanged and in full force and effect.
Amendment 3	Weston & Sampson Engineering, Inc. address has changed to: 712 Brook St, Suite 103, Rocky Hill, CT 06067 Email: wester@wseinc.com Tel: 860-513-1473
Amendment 4	Revised contact information for WSP USA Inc. Michael Manolakas 203-929-8555, Direct: 475-882-1716, email: Michael.Manolakas@wsp.com WSP USA Inc. 4 Research Drive, Suite 204 Shelton, CT 06484
Amendment 5	See Contract Amendment 1 providing revised labor rates to Fuss and O'Neill, Inc. and Groundwater and Environmental Services, Inc. These contracts have been reposted in their entirety with Amendment 1 revisions.
Amendment 6	Repost of Contract to correct errors.
Amendment 7 Fuss and O'Neil revised Exhibit B1 pricing effective April 1, 2023	Amendment 7 Fuss and O'Neil revised Exhibit B1 pricing effective April 1, 2023
Amendment 8. This amendment corrects the Contract term dates for AECOM Technical Services, Inc. Contract term is March 1, 2019 through February 28, 2024.	Amendment 8. This amendment corrects the Contract term dates for AECOM Technical Services, Inc. Contract term is March 1, 2019 through February 28, 2024.
Amendment 10	Ensafe, Inc. Company information data field revision
Amendment 11	The contract has been reposted in its entirety incorporating the revised Exhibit B Price Schedules (Amendment 11) for Fuss and O'Neill.
Amendment 12	The contract has been reposted in its entirety incorporating the revised Exhibit B1 Price Schedules (Amendment 12) for Aecom.
Amendment 13	The contract has been reposted in its entirety incorporating the revised Exhibit B1 Price

	Schedules (Amendment 12) for WSP.
Amendment 14	The Contract is re-posted in it's entirety to document the extended Term of the Contract in accordance with Contract Amendment Number 9. The Contract Award cover page identifies the term extension as February 28, 2025.
Amendment 15: This Contract has been assigned to Kristin Allen, CT DAS Contract Specialist Email: kristin.m.allen@ct.gov	This Contract has been assigned to Kristin Allen, CT DAS Contract Specialist Email: kristin.m.allen@ct.gov
Amendment 16	The Contract is re-posted in it's entirety to document the extended Term of the Contract in accordance with Contract Amendment Number 16. The Contract Award cover page identifies the term extension as February 28, 2026.

Contract Additional Information

Field Title	Field Description
Agrees to Supply Political SubDivisions	Yes
Core Catalog Item Contract	No

Amendment

Field Title	Field Description
Amendment 9	This Contract is extended through February 28, 2025.

Contract Clauses

No Clause(s) found

Catalog Names

No catalog(s) found

Document(s)

Document Name	Upload Date
18PSX0153 CONTRACT AWARD with Amendments 5.22.24.pdf	May 22, 2024
Multiple Supplier Contract Summary.xlsx	April 07, 2021

Administrative Document(s)

No Documents Found

Authorization

State of CT - DAS Procurement	DAS Construction Services
Executive Branch	Children and Families, Dept. of
Connecticut State Library	Correction, Dept. of
Andover, Town of	Developmental Services North
Developmental Services West	Developmental Services Central
Early Childhood, Office of	Economic and Community Development
Education, Dept. of	Emergency Serv. & Public Protection
Energy & Environmental Protection	Housing, Dept. of
Insurance, Dept. of	Labor, Dept. of
Mental Health & Addiction Services	Military Department
Policy & Management, Office of	Public Health, Dept. of
Rehabilitation Services, Dept. of	Revenue Services, Dept. of
Social Services, Dept. of	Connecticut Library Consortium
Constitutional Office	Quasi Public State Agencies
DAS Property Acquisition	DAS Leasing
DAS Real Property Sales	Developmental Services, Dept. of
Developmental Services South	DDS Provider Contracts
DAS Property Management	Aging & Disability Services
Education & Services for the Blind	Agricultural Experiment Station
Agriculture, Dept. of	Auditors of Public Accounts
Charter Oak State College	Commission On Human Rights
Connecticut State University System	Consumer Council, Office of
Criminal Justice, Division of	Governmental Accountability
State Contracting Standards Board	Victim Advocate, Office of
Governor, Office of the	Higher Education, Dept. of
Insurance & Risk Management	Lieutenant Governor, Office of the
Medical Examiner, Office of Chief	Motor Vehicles, Dept. of
State Ethics, Office of	Capital Community College
Central Connecticut State Univ.	CT State Colleges & Universities
Eastern Connecticut State Univ.	Housatonic Community College
Quinebaug Valley Comm. College	Southern Connecticut State Univ.
Three Rivers Comm. College	University of Connecticut
UConn Health Center	Western Connecticut State Univ.
Comptroller, Office of State	Treasurer, Office of State
CT Teachers' Retirement Board	Transportation, Dept. of
DOT - Purchasing	Veterans' Affairs, Dept. of
Protection & Advocacy, Office of	Ansonia Housing Authority
Workforce Competitiveness Office Of	Gateway Community College
Manchester Community College	Middlesex Community College
Naugatuck Valley Comm. College	Northwestern CT Comm. College
Norwalk Community College	Tunxis Community College
Colleges & Universities	Secretary of the State
Connecticut Port Authority	Connecticut Lottery Corporation
Connecticut Science & Exploration	Connecticut Development Authority
Connecticut Green Bank	Regional Water Authority
Boards, Commissions and Councils	Developmental Disabilities
Connecticut Siting Council	Consumer Protection, Dept. of
CT Retirement Security Authority	Elections Enforcement Commission
Fire Prevention & Control	Firearms Permit Examiners, Board of

Freedom of Information Commission	Police Officer Standards & Training
Property Review Board	Psychiatric Security Review Board
Siting Council	State Academic Awards, Board for
State Board of Accountancy	State Marshal Commission
Workers' Compensation Commission	DAS Business Office
A-Z Corp	F8 Properties
RM Bradley	Simon Konover
Owens Services	LAZ Parking
DOT - Construction Contracts Unit	Office of the Attorney General
Legislative Branch	Not For Profits
Non-Executive Agency	Cities, Towns & Municipalities
Ansonia, City of	Ashford, Town of
Avon, Town of	Beacon Falls, Town Of
Berlin, Town of	Bethany Board of Education
Bethel, Town of	Bethany, Fire Marshall
Bethlehem, Town of	Bloomfield Public Schools
Branford, Town of	Bridgeport, City of
Bridgeport Economic Development Cor	Bridgeport Housing Authority
Bristol, City of	Brookfield, Town of
Brookfield Public Schools	Brookfield Water Pollution Control
Brooklyn Public Schools	Burlington, Town of
Canterbury Public Schools	Canton, Town of
Capital Region Development Auth.	Capitol Region Council Governments
Capitol Region Education Council	Cheshire, Town of
Chester, Town of	Clinton, Town Of
Colchester, Town of	Columbia, Town of
Coventry, Town of	Cromwell, Town of
Danbury, City of	Danbury Housing Authority
Darien, Town of	Derby, Town of
Durham, Town of	East Granby, Town of
East Haddam, Town of	East Hampton Board of Education
East Hartford, Town of	East Hartford Housing Authority
East Hartford Public Schools	East Haven, Town of
East Lyme, Public Schools	East Lyme, Town of
East Lyme, Public Works	Bethany, Town of
East Hampton, Town of	Enfield, Town of
Enfield Housing Authority	Farmington, Town of
Farmington Public Schools	Glastonbury, Town of
Glastonbury Housing Authority	Guilford, Town of
Guilford Public Schools	Hartford, City of
Hartford Energy Improvement Dist.	Greater Hartford Transit District
Hartford Housing Authority	Hartford Public School
Middletown, City of	Middletown Board of Education
Middletown Housing Authority	Norwalk, City of
Norwalk Public Schools	Norwalk Transit District
Norwich, City of	Norwich Community Development
Norwich Housing Authority	Preston, Town of
Preston Board of Education	Putnam, Town of
Putnam Public Schools	Somers, Town of
Somers Board of Education	South Windsor, Town of

South Windsor Board of Education
Southington, Town of
Stratford, Town of
Suffield, Town of
Torrington, City of
Bridgeport Transit Authority
Ledyard Public Schools
Vernon Housing Authority
Voluntown, Town of
Waterbury, City of
West Hartford, Town of
Westport, Town of
Wethersfield, Town of
Woodbridge, Town of
Ellington Public Schools
Housatonic Resources Recovery Auth.
Sherman Board of Education
Willimantic Housing Authority
East Windsor, Town of
Fairfield, Town of
Granby, Town of
Griswold, Town of
Groton, Town of
Hamden, Town of
Jewett City, Borough of
Lebanon, Town of
Madison, Town of
Mansfield, Town of
Meriden, City of
Middlefield, Town of
Monroe, Town of
Morris, Town of
New Britain, City of
New Fairfield, Town of
New Haven, City of
New Milford, Town of
Newtown, Town of
North Haven, Town of
Old Saybrook, Town of
Oxford, Town of
Plainville, Town of
Pomfret, Town of
Regional School District No. 1
Regional School District No. 8
Ridgefield, Town of
Roxbury, Town of
Southbury, Town of
Stafford, Town of
Stonington, Town of
Thompson, Town of

South Windsor Housing Authority
Southington Board of Education
Stratford Housing Authority
Suffield Public Schools
Torrington, Public School
Ledyard, Town of
Vernon, Town of
Vernon Board of Education
Voluntown Board of Education
Waterbury Housing Authority
West Hartford Nutrition Services
Westport Public Schools
Wethersfield Housing Authority
Woodbridge School District
Hampton Board of Education
Salem Board of Education
Wallingford Housing Authority
Winchester Public Schools
Essex, Town of
Franklin, Town of
Greenwich, Town of
Groton, City of
Haddam, Town of
Hebron, Town of
Killingly, Town of
Lyme, Town of
Manchester, Town of
Marlborough, Town of
Middlebury, Town of
Milford, City of
Montville, Town of
Naugatuck, Town of
New Canaan, Town of
New Hartford, Town of
New London, City of
Newington, Town of
North Branford, Town of
North Stonington, Town of
Orange, Town of
Plainfield, Town of
Plymouth, Town of
Portland, Town of
Regional School District No. 14
Regional School District No. 17
Rocky Hill, Town of
Simsbury, Town of
Sprague, Town of
Stamford, City of
Thomaston, Town of
Tolland, Town of

Barkhamsted, Town of
Waterford, Town of
Westbrook, Town of
Windham, Town of
Windsor, Town of
Woodstock, Town of
LEARN
Metropolitan District Commission
NE Transportation / CT Transit
Northeastern CT Transit District
Shelton Housing Authority
South East Area Transit District
CT Health and Ed. Facilities Auth.
Connecticut Innovations
Materials Innovation & Recycling
CET
CT Conference of Municipalities
Western CT Tourism District
Administrative Services
State Education Resource Center
Brooklyn, Town of
Ellington, Town of
Salem, Town of
Sherman, Town of
Winchester, Town of
Enfield Social Services
Middlefield Voluntary Fire Company
Portland Public Schools
Old Lyme, Town Of
W. Hartford Bloomfield Health Dist.
West Hartford Public Library
Sharon, Town Of
CHEFA
Avon Recreation & Parks Department
Oxford Public Schools
Middlebury Public Works
Connecticut General Assembly
Public Health Systems and Equity
Community Family Health and Prevent
Plymouth Housing Authority
Norwalk, City
Judicial Branch
CAFCA
Salisbury, Town of
Old Colony Beach Club Association
Deep River Housing Authority
Savin Rock Communities
Regional School District No. 15
CSDNB Board of Education
Seymour, Town of

Trumbull, Town of
West Haven, City of
Weston, Town of
Windsor Locks, Town of
Wolcott, Town of
CT Metro. Council of Governments
CT River Valley Council of Gov.
Naugatuck Valley Council of Gov.
Northeastern CT Council of Gov.
Northwest Hills Council of Gov.
So. Central CT Regional Water Auth.
Community Renewal Team
CT Housing Finance Authority
EASTCONN
Western CT Council of Governments
Connecticut Transit
Connecticut Airport Authority
Valley Association
Health Strategy, Office of
Bloomfield, Town of
Canterbury, Town of
Hampton, Town of
Shelton, Town of
Wallingford, Town of
Cheshire Public Works
Enfield Fleet Services
New Hartford Public Schools
Baltic Public Schools
Madison Public Works
West Hartford Fire Department
Windsor Locks Public Schools
Regional School District No. 5
Greater New Haven Transit District
CHESLA
Norwalk Redevelopment Agency
CHFA
DPH - Communications
DPH Facility Licensing
Derby Public Schools
ISAAC Charter School
MIRA
Probate Court Administrator, Office
MARC, Inc. of Manchester
Willington, Town of
Deep River, Town of
Groton Public Schools
Regional School District No. 12
Cheshire Public Schools
First District Water Dept., Norwalk
Connecticut Paid Leave Authority

Canton Public Schools
Bolton, Town of
Banking, Dept. of
United Community & Family Services
Derby Public Library
Shelton Economic Development Corp.
Town of Watertown
TOW - Public Works Department
New Haven Parking Authority
Easton, Redding & Region 9 Schools
Winsted Water Works
South Cntrl Regional Council of Gov
Middletown South Fire District
Estuary Transit District
Litchfield, Town of
DOT - Maintenance
Capital Workforce Partners
DPH - Newborn Screening
Kent, Town of
OCPD Assigned Counsel Unit
Healthcare Advocate, Office of the
Regional School District No. 18
Achievement First
Colebrook School
Hamden Housing Authority
Seymour Housing Authority
Capital for Change
Plainfield Public Schools
Lebanon Public Schools
Groton Housing Authority
North Haven Housing Authority
Journey Home
Barnum Museum, The
North Stonington Public Schools
Greenwich Public Schools
Milford Redevmt & Hsng Ptnrshp MRHP
Community Builders Inc, The
Ledge Light Health District
Five Points Arts
New Beginnings Family Academy
DOT - Planning
Morris Housing Authority
Torrington Housing Authority
Windham Region Transit District
Goodwin University
Manchester Housing Authority
Rocky Hill Housing Authority
Weston Public Schools
East Haven Public Schools
Essex Library Association

Eastern Regional Tourism District
Bolton Board of Education
Cromwell Public Schools
The Child & Family Guidance Center
Easton, Town of
TEAM Inc.
Access Health CT
Wolcott Board of Education
Area Coop Ed. Services (ACES)
Southeastern CT Council of Gov
Windham Public Schools
Regional School District No. 13
Beth-El Center
Prospect, Town of
Litchfield Public Works Department
Public Health Preparedness & L H A
CTECS
Somers Public Schools
Public Defender Services, Division
Litchfield Housing Authority
Norwich Free Academy
Stratford Public Schools
Colebrook, Town of
Killingly Public Schools
Monroe Public Schools
Wethersfield Public Schools
Naugatuck Public Schools
DOT - Rail, Office of
Woodbury, Town of
Thomaston Public Schools
Stamford Public Schools
Newington Public Schools
Ridgefield Public Schools
New Milford Board of Education
Freeman Center, The
New Opportunities Inc
Sterling, Town of
Thompson Housing Authority
Branford Public Schools
Portland Housing Authority
Litchfield County Housing Opporntny
Wilton, Town of
Mutual Housing Assoc. Greater Htfd
East Granby Public Schools
North Branford Board of Education
Enfield Public Schools
Cooperative Educational Service CES
Mark Twain House and Museum, The
Workforce Strategy, Office of
Scotland, Town of

DPH Enviro Health & Drinking Water
Public Health Workforce Development
Regional School District No. 10
Harriet Beecher Stowe Center
Elm City Montessori School
Griffin Hospital
Stamford Museum & Nature Center
Watertown Board of Education
Perception Programs
Windham Region No Freeze Project
Prospect Fire Department
CT Institute for the Blind Oak Hill
Boys & Girls Club of Greenwich
Bridges Healthcare Inc
Integrated Day Charter School
Regional School District No. 4
Montville Housing Authority
Greater Dwight Development Corp
Harwinton, Town of
CSDE - Child Nutrition
New London Housing Authority
Coventry Housing Authority
YWCA Hartford Region
Stamford Urban Redevelopment Commis
Montville Board of Education
New London Homeless Hospitality Cen
Killingworth, Town of
East Windsor Public Schools
Goodwin Univ Educational Services
Naugatuck Housing Authority
Winchester Housing Authority
OSC Procurement

Griswold Housing Authority
Thames River Community Service Inc
Stafford Public Schools
Regional School District No. 16
Watertown, Town of
Pomfret Community School
CT Housing Partners
MDA - MIRA Dissolution Authority
Ashford Housing Authority
New Reach Inc.
Community Solutions Inc
West Hartford Housing Authority
Redding, Town of
Sheldon Oak Central Inc
Elderly Housing Management Inc
Southeastern Ct Water Authority
New Samaritan Parkville
Southington Housing Authority
Windsor Housing Authority
Housing Authority
Estuary Council of Seniors Inc
CJIS-CT
Woodstock Public Schools
Bridgewater, Town of
DEEP - COUNCIL SOIL WATER CONSERVAT
Naugatuck Valley Health District
Preston Parks & Recreation
DPH Firearm Injury Prevention
North Central Conservation District
Bethel Housing Authority
Bristol Housing Authority



Office of the Finance Director

City of West Haven
 355 Main Street
 West Haven, Connecticut 06516

MARB Contract Form

Contract	Purchase of Police Vehicles			
City Agency	Police			
Vendor Utilized	Gengras Ford LLC			
Address	225 New Britain Avenue			
City, State, Zip	Plainville, CT 06062			
Procurement Process	<input type="checkbox"/> Bid/RFP <input checked="" type="checkbox"/> State Contract [19PSX0161] <input type="checkbox"/> Cooperative Purchase Agreement [Enter Source Name and Contract No] <input type="checkbox"/> State Contract <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source [Other Explanation]			
Quote No('s) if applicable				
Source of Funds	City bond funds and special duty funding			
Quantity	6.00	Price Per:	\$66,597.00	Total Purchase Price \$399,582.00
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.)	<p>The City of West Haven is utilizing State Contract 19PSX0161 to purchase six 2025 Ford Police Interceptor's (including outfitting). The City of West Haven included the purchase of the new vehicles in the fiscal year 2024 capital bonding plan (page 123 of adopted budget book).</p> <p>The sources of funds are bonding and special duty funds. The approved bond funds per vehicle were \$64,000. Based on the received quote versus City bonding, there is a difference of \$2,597.00. The additional \$2,597.00 will be absorbed though the Police Extra Duty account which has sufficient funding to cover the \$15,582.00</p>			



Gengras Ford LLC
 Vic Soli Fleet Manager
 Cell 203 671 9476
 225 New Britain Ave
 Plainville CT 06062
 www.gengras.com

Sargent Young
 West Haven Police Dept

June 3, 2024

Gengras Ford llc is Connecticut's leader in Ford Police fleet vehicles and is pleased to bid using the current State Contract 019-0161 pricing model, Our bid reads as follows.

We will supply new **INSTOCK** 2025 Ford Police Interceptor Utility with all the 2025 model year standard equipment, plus the following options.

- | | |
|--|-------------------------------------|
| *All Wheel Drive option group | * 3.3 Gas only engine |
| *10 Speed auto transmission | *16P Rear bumper protector |
| * 17T Rear cargo light | *18D Global door locks |
| *19K H8 AMG Battery | * 19V On demand rear view camera |
| *43D Courtesy lights disabled | *47A Engine idle management |
| *51R LED Drivers side spot light | *549 Heated side mirrors |
| *59B Fleet key system | *60R Noise suppression |
| *76R Reverse sensing | * 87R Back up camera in rear mirror |
| Vehicle cost before emergency equipment upgrades | \$44.391.00 |

- | | |
|---|--------------------|
| *Whelen Legacy 54 light bar | \$2.348.00 |
| *2 Whelen IONs red/blue in upper tail gate window | \$ 240.00 |
| * Whelen CORE emergency light/siren system | \$ 910.00 |
| * 2 Whelen IONs w/white reverse lights on exterior of hatch | \$ 223.00 |
| * Whelen core canport kit ford | \$ 43.00 |
| * Whelen core rotary dial control head | \$ 268.00 |
| *Whelen external siren amp (2 siren tones) | \$ 217.00 |
| *4 Whelen vertex light heads in taillights &H/lamps | \$ 384.00 |
| * Weather tech floor liners | \$ 124.00 |
| *2 Whelen IONs mounted in rear quarter windows | \$ 184.00 |
| * 2 Whelen 12 diode red/white dome light installed on inner tail gate & driver area | \$ 292.00 |
| *2 Whelen T ION series on lower tailgate | \$ 216.00 |
| * Setina PB4S0L push bumper w/4 warning lights | \$ 1243.00 |
| * Havis console w/armrest, cup holder&equipment brackets | \$ 615.00 |
| * Progard ½ Prisoner containment system W/RETRACTABLE BELTS | \$ 2.438.00 |
| *Santa Cruise Partition mounted long gun system | \$ 815.00 |
| * Vehicle Graphics | \$ 625.00 |
| *Window tint | \$ 120.00 |
| *Hint Computer mount | \$ 528.00 |
| *Trimco anti theft | \$ 225.00 |
| *5 G modem ANTENNA ONLY | \$ 298.00 |
| *Hardware kit for complete installation | \$ 240.00 |
| *All required labor for emergency equipment upfit | \$ 3.600.00 |
| *Additional labor for police video system install | \$ 550.00 |
| * Whelen Howler siren system | \$ 688.00 |
| * Getac K120G2-R Computer | \$ 3.557.00 |
| * Cradle Point IBR900 | \$ 1.215.00 |
| Total vehicle cost IN STOCK 2025 Interceptor w/3.3 gas and emergency warning equipment | \$66.597.00 |

Our Total bid for 6 units will be \$399.582.00

Vic Soli
 Fleet Manager
 Gengras Ford,Dodge
 203 671 9476 (cell)

FY23-24 BUDGET - CAPITAL REQUEST

Owner	Project Name	Description/Reason	Funding Source	FY24	FY25	FY26	FY27	FY28
Police	Traffic Control Signal Box	Traffic controls - (approx 6 intersections each year	Bonding	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
Police	Patrol Car Replacements	2007 Crown Vic (28-WN)	Bonding	\$ 64,000	\$ -	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2011 Crown Vic (29-WN)	Bonding	\$ 64,000	\$ -	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2011 Crown Vic (33-WN)	Bonding	\$ 64,000	\$ -	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2011 Crown Vic (34-WN)	Bonding	\$ 64,000	\$ -	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2011 Crown Vic (35-WN)	Bonding	\$ 64,000	\$ -	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	1999 Crown Vic (71-WN)	Bonding	\$ 64,000	\$ -	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2010 Crown Vic (94-WN)	Bonding	\$ -	\$ 71,000	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2010 Crown Vic (884-ZAO)	Bonding	\$ -	\$ 71,000	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2010 Crown Vic (965-ZAO)	Bonding	\$ -	\$ 71,000	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2010 Crown Vic (AL-53014)	Bonding	\$ -	\$ 71,000	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2010 Crown Vic (AL-53015)	Bonding	\$ -	\$ 71,000	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2010 Crown Vic (93-WN)	Bonding	\$ -	\$ 69,000	\$ -	\$ -	\$ -
Police	Patrol Car Replacements	2005 Mustang (64-WN)	Bonding	\$ -	\$ -	\$ 73,130	\$ -	\$ -
Police	Patrol Car Replacements	2006 E350 (26-WN)	Bonding	\$ -	\$ -	\$ 73,130	\$ -	\$ -
Police	Patrol Car Replacements	2004 Envoy (AC-54098)	Bonding	\$ -	\$ -	\$ 73,130	\$ -	\$ -
Police	Patrol Car Replacements	2014 Explorer (AT11704)	Bonding	\$ -	\$ -	\$ 73,130	\$ -	\$ -
Police	Patrol Car Replacements	2015 Explorer (BE16619)	Bonding	\$ -	\$ -	\$ 73,130	\$ -	\$ -
Police	Patrol Car Replacements	2016 Explorer (36-WN)	Bonding	\$ -	\$ -	\$ 71,070	\$ -	\$ -
Police	Patrol Car Replacements	2016 Explorer (37-WN)	Bonding	\$ -	\$ -	\$ -	\$ 75,324	\$ -
Police	Patrol Car Replacements	2016 Explorer (38-WN)	Bonding	\$ -	\$ -	\$ -	\$ 75,324	\$ -
Police	Patrol Car Replacements	2016 Explorer (39-WN)	Bonding	\$ -	\$ -	\$ -	\$ 75,324	\$ -
Police	Patrol Car Replacements	2016 Explorer (56-WN)	Bonding	\$ -	\$ -	\$ -	\$ 75,324	\$ -
Police	Patrol Car Replacements	2016 Explorer (57-WN)	Bonding	\$ -	\$ -	\$ -	\$ 75,324	\$ -
Police	Patrol Car Replacements	2016 Explorer (58-WN)	Bonding	\$ -	\$ -	\$ -	\$ 73,202	\$ -
Police	Patrol Car Replacements	201? Explorer (TBD-WN)	Bonding	\$ -	\$ -	\$ -	\$ -	\$ 77,584
Police	Patrol Car Replacements	201? Explorer (TBD-WN)	Bonding	\$ -	\$ -	\$ -	\$ -	\$ 77,584
Police	Patrol Car Replacements	201? Explorer (TBD-WN)	Bonding	\$ -	\$ -	\$ -	\$ -	\$ 77,584
Police	Patrol Car Replacements	201? Explorer (TBD-WN)	Bonding	\$ -	\$ -	\$ -	\$ -	\$ 77,584
Police	Patrol Car Replacements	201? Explorer (TBD-WN)	Bonding	\$ -	\$ -	\$ -	\$ -	\$ 77,584
Police	Patrol Car Replacements	201? Explorer (TBD-WN)	Bonding	\$ -	\$ -	\$ -	\$ -	\$ 75,398
Water Pollution Control	Treatment Plant	Biosolids Disposal (\$30M)	Outsource to 3rd Party	\$ -	\$ -	\$ -	\$ -	\$ -
Water Pollution Control	Outfall Reconstruction	End of Useful Life and Danger of Breaks	Bonding	\$ 250,000	\$ 1,250,000	\$ 8,750,000	\$ 7,250,000	\$ -
Water Pollution Control	Plant Hardening	Protection from 100 Year High Tides	Fema Grant	\$ 750,000	\$ 3,750,000	\$ 26,250,000	\$ 21,750,000	\$ -
Water Pollution Control	Consent Decree Order - EPA	Mandated Sewer Rehabilitation	Fema Grant	\$ -	\$ -	\$ -	\$ 375,000	\$ 1,250,000
Water Pollution Control	Sewer Rehabilitation	Ongoing Pump Station Upgrades	Clean Water Fund Grant	\$ 345,600	\$ 1,728,000	\$ 3,152,000	\$ 4,512,000	\$ 3,760,000
Water Pollution Control	Sewer Rehabilitation	Ongoing Pump Station Upgrades	Clean Water Fund Grant	\$ 86,400	\$ 432,000	\$ 788,000	\$ 1,128,000	\$ 940,000
Water Pollution Control	Sewer Rehabilitation	Ongoing Pump Station Upgrades	Clean Water Fund Grant	\$ 1,872,000	\$ 5,855,280	\$ 5,798,400	\$ 6,401,600	\$ 2,700,800
Water Pollution Control	Sewer Rehabilitation	Ongoing Pump Station Upgrades	Clean Water Fund Grant	\$ 468,000	\$ 1,463,820	\$ 1,449,600	\$ 1,600,400	\$ 675,200
Water Pollution Control	Sewer Rehabilitation	Ongoing Pump Station Upgrades	Town of Orange	\$ 660,000	\$ 1,380,900	\$ 252,000	\$ 348,000	\$ 174,000

Contract Summary

General Information

Contract Number 19PSX0161
Issue Date July 17, 2019
Organization State of CT - DAS Procurement
Status Active
Multi Contractor Contract Yes
Title Purchase of Cars and Light Duty Trucks
Description Purchase of Cars and Light Duty Trucks
Contract Administrator Madelyne Colon
Email Address Madelyne.Colon@ct.gov
Request Number
Solicitation Number
Enable Contract as Round Trip No
P-Card Accepted No
PO Dispatch Contractor

Commodity

Code	Description
21000000	Farming and Fishing and Forestry and Wildlife Machinery and Accessories

Contractors

Name Gengras Chrysler Dodge Jeep LLC			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Gordon Rapp		8607276302
Name Gengras Ford, LLC			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Gordon Rapp		8607276302
Name Crowley Chrysler Plymouth, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Gordon Rapp		8605400583
Name Stephen AutoMall Centre			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Donna Janazzo		8603021212
Name LOEHMANN BLASIOUS CHEVROLET INC.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	GENE REILLY		2037539261
Name Robert's Chrysler, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Peter Willis		2034309212
Name New Country Motor Cars, INC.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Tristan Kovatis		8607224819
Name Manchester Sports Center Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Craig Peters	craig.peters@manchesterhonda.com	8606453100---
Name Sullivan Automotive, Inc.			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Warren Ford	warren.ford@nwhcars.com	2035286674---
Name Northwest Hills Automotive LLC			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Warren Ford	warren.ford@nwhcars.com	2035286674
Name Northwest Hills Chrysler Jeep LLC			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Warren Ford	warren.ford@nwhcars.com	2035286674
Name TASCA AUTOMOTIVE GROUP CT HARTFORD			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	john breslin	jbreslin@tasca.com	860-796-2499
Name GHNH Inc			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Gordon Rapp	grapp@gengras.com	8607276302---
Name TASCA AUTOMOTIVE GROUP, INC			
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	First Name Last Name	jbreslin@tasca.com	111-222-3333

Name		MHQ, Inc.	
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Bryan Gilbert		5085732603

Name		US1 Chevrolet of Milford LLC	
Contact Type	Contact Name	Contact Email	Contact Phone
Main Contact	Suleyman Aydogan		5166603344

Pricing Information

Contract Type	Migrated DAS Contract
Pricing Type	Fixed Price
Total Value Condition	Estimate
Total Value(USD)	100,000,000.00
Retainage Percent	0.00
Retainage Notes	
Initial Expended Value(USD)	0.00
Cumulative Encumbered/Expended Value(USD)	0.00
Total Paid(USD)	0.00
Remaining Balance(USD)	100,000,000.00
Value to Go(%)	100.00
Payment Terms	Net 45 Days
Payment Notes	
Delivery Terms	Free On Board Destination
Delivery Notes	
Other Notes	Legacy Commodity Code=65

Contract Period

Award Date	October 01, 2019
Effective Date	October 01, 2019
Amendment Effective Date	February 16, 2024
Expiration Date	September 30, 2024
Potential Final Expiration Date	September 30, 2024

Custom Fields

Amendment	
Field Title	Field Description
Amendment 1	Supplement #6 is issued to post 2021 prices for some General Motors and Toyota vehicles. Future Supplements with additional 2021 pricing will follow when that pricing becomes available.
Amendment 2	Amendment 2 issued to post a revised Exhibit B with the correct codes for 2021 GM Tahoe and Suburban vehicles.
Amendment 3	This Amendment posts Price Schedule S8 with 2021 RAM Pricing.
Amendment 4	This Amendment posts Price Schedule S9 with added 2021 Chevrolet Bolt EV Pricing.
Amendment 5	This Amendment posts Price Schedule S10 with additional 2021 Ford Pricing.
Amendment 6	This Amendment posts Price Schedule S11 with 2021 Mercedes Benz Pricing.
Amendment 7	This Amendment posts Price Schedule S12 with updated 2021 Chrysler and Dodge Pricing.
Amendment 8	This Amendment posts Price Schedule S13 with updated 2021 Nissan Pricing.
Amendment 9	Amendment 9 issued to post a revised Exhibit B s14 with updated prices for some 2022 Ford vehicles.
Amendment 10	Amendment 10 issued to post a revised Exhibit B s15 with updated prices for some 2022 Ford Super Duty vehicles.
Amendment 11	Amendment 11 issued to post a revised Exhibit B s16 with price for 2021 Ford Police Responder.
Amendment 12	Amendment 12 includes the results of supplemental solicitation 21PSX0052 and is issued to post a revised Exhibit B s17 with price for 2021 Ford Escape PHEV models.
Amendment 13	Amendment 13 issued to post a revised Exhibit B s18 with updated codes for some 2022 Ford Transit Connect vehicles.
Amendment 14	Amendment 14 issued to post a revised Exhibit B s19 with updated prices for some 2022 General Motors vehicles.
Amendment 15	Amendment 15 issued to post a revised Exhibit B s20 with updated prices for some 2022 Nissan vehicles.
Amendment 16	This Amendment issued to post a revised Exhibit B s21 with updated prices for some 2022 General Motors (GM) vehicles.
Amendment 17	This Amendment issued to post a revised Exhibit B s22 with updated prices for 2022 Ford Explorer vehicles.
Amendment 18	This Amendment issued to post a revised Exhibit B s23 with updated prices for 2022 Ford F-150 vehicles.

Amendment 19	This Amendment issued to post a revised Exhibit B s24 with updated prices for 2022 Ford F-150 vehicles.
Amendment 20	This Amendment issued to post a revised Exhibit B s25 with updated prices for 2022 Ford Ranger vehicles.
Amendment 21	This Amendment issued to post a revised Exhibit B s26 with updated prices for 2022 Ford Transit and Escape vehicles.
Amendment 22	This Amendment issued to post a revised Exhibit B s27 with updated prices for 2022 Ford Ecosport and Edge vehicles.
Amendment 23	This Amendment issued to post a revised Exhibit B s28 with updated prices for 2023 Ford Econoline vehicles.
Amendment 24	This Amendment issued to post a revised Exhibit B s29 with updated prices for 2023 Ford F650 and F750 vehicles.
Amendment 25	This Amendment issued to post a revised Exhibit B s30 with several 2022 Dodge prices.
Amendment 26	This Amendment issued to correct a GM model code and to post revised Exhibit B s31.
Amendment 27	This Amendment issued to add a 2022 Dodge price and to post revised Exhibit B s32.
Amendment 28	This Amendment issued to add 2022 RAM 1500 Classic prices and to post revised Exhibit B s33.
Amendment 29	This Amendment issued to post revised Exhibit B s34.
Amendment 30	This Amendment issued to add 2022 Ford Expedition prices and to post revised Exhibit B s35.
Amendment 31	This Amendment adds the results of Supplemental Solicitation 21PSX0165 and Exhibit B s36.
Amendment 32	Amendment 32 has been issued to update the Contract Administrator to Madelyne Colon (03.29.22)
Amendment 33	Amendment 33 has been issued to reflect Supplement 7 to the contract and Supplement 37 to the Exhibit B Price Schedule to reflect 2023 pricing on some General Motors and Ford vehicles.
Amendment 34	Amendment 34 has been issued to reflect Supplement 8 to the contract and Supplement 38 to the Exhibit B Price Schedule to reflect 2023 pricing on Ford F-150 vehicles.
Amendment 35	Amendment 35 has been issued to reflect Supplement 9 to the contract and Supplement 39 to the Exhibit B Price Schedule to reflect 2023 pricing on Ford F-150 Lightning, Ford Explorer, and Ford Ranger 08.19.22 (Maddy)
Amendment 36	Amendment 36 has been issued to reflect Supplement 10 to the contract and Supplement 40

	to the Exhibit B Price Schedule to reflect 2023 pricing on Ford Transit Connect, Ford Edge, and Ford Expedition 08.30.22 (Maddy)
Amendment 37	Amendment 37 has been issued to reflect Supplement 11 to the contract and Supplement 41 to the Exhibit B Price Schedule to reflect 2023 pricing on Chevrolet Malibu and Equinox 08.31.22 (Maddy)
Amendment 38	Amendment 38 has been issued to reflect Supplement 12 to the contract and Supplement 42 to the Exhibit B Price Schedule to reflect 2023 pricing on Dodge Charter, Dodge Durango, and Ram 09.07.22 (Maddy)
Amendment 39	Amendment 39 has been issued to reflect Supplement 13 to the contract and Supplement 43 to the Exhibit B Price Schedule to reflect 2023 pricing on Ford Escape vehicles 09.23.22 (Maddy)
Amendment 40	Amendment 40 has been issued to reflect Supplement 14 to the contract and Supplement 44 to the Exhibit B Price Schedule to reflect 2023 pricing on Ford Mustang Mach E vehicles 09.30.22 (Maddy)
Amendment 41	Amendment 41 has been issued to reflect Supplement 15 in the contract and Supplement 45 to the Exhibit B Price Schedule to reflect 2023 pricing for Ford Mustang vehicles 10.07.22 (Maddy)
Amendment 42	Amendment 42 has been issued to reflect Supplement 16 in the contract and Supplement 46 to the Exhibit B Price Schedule to reflect 2023 and 2024 pricing for Ford 250 through 550, Econoline, and some Nissan vehicles (11.2.22 Maddy)
Amendment 43	Amendment 43 has been issued to reflect Supplement 17 in the contract and Supplement 47 to the Exhibit B Price Schedule to reflect 2024 pricing for Ford F650-750 vehicles (11.15.22 Maddy)
Amendment 44	Amendment 44 has been issued to reflect Supplement 18 of the contract and Supplement 48 to the Exhibit B Price Schedule to reflect 2023 pricing for Chevrolet Suburban vehicles (11.29.22 Maddy)
Amendment 45	Amendment 45 has been issued to reflect Supplement 19 to the contract and Supplement 49 to the Exhibit B Price Schedule to reflect 2023 pricing for GMC Yukon (01.05.2023 Maddy)
Amendment 46	Amendment 46 has been issued to reflect Supplement 20 to the contract and Supplement 50 to the Exhibit B Price Schedule to reflect 2023 pricing on some Ram, Jeep, Chrysler, and Mercedes vehicles (Maddy 01.31.23)
Amendment 47	Amendment 47 has been issued to reflect the update on the model names from Dodge Durango

	Police to Dodge Durango Pursuit and Dodge Charger Police to Dodge Charger Pursuit (Maddy 02.14.23)
Amendment 48	Amendment 48 has been issued to reflect supplement 21 in correction by adding US1 Chevrolet of Milford LLC that was awarded in supplemental bid 21PSX0165 for contract 19PSX0161 Chevrolet Bolt EUV model. (Maddy 04.18.2023)
Amendment 49	Amendment 49 has been issued to reflect supplement 22 to reflect new expiration date from September 30, 2023 to September 30,2024. (Maddy 05.18.2023)
Amendment 50 and 51	Amendment 50&51 has been issued to update Exhibit B S50 and S51.
Amendment 52	Amendment 52 has been issued to reflect supplement 23 to update the Exhibit B Price Schedule 6.2.2023. (Marisol 6.2.23)
Amendment 53	Amendment 53 has been issued to reflect supplement 24 of the contract to post an updated Exhibit B Price Schedule highlighted in blue for 2024 pricing for Ram, Dodge, Chevrolet, and GMC vehicles. (Maddy 07.12.23)
Amendment 54	Amendment 54 has been issued to reflect supplement 25 of the contract to post an updated Exhibit B Price Schedule highlighted in blue for 2024 Pacifica Touring-L vehicle (Maddy 07.13.23)
Amendment 55	Amendment 55 has been issued to reflect supplement 26 of the contract and post an updated Exhibit B Price Schedule highlighted in blue for 2024 Ford vehicles (Maddy 08.01.23)
Amendment 56	Amendment 56 has been issued to reflect supplement 27 to the contract and post an updated Exhibit B Price Schedule for Ford Mustang, Chevy Blazer, Chevy Express Van 2500 & 3500, and GMC Savana. (Maddy 08.14.23)
Amendment 57	Amendment 57 has been issued to reflect supplement 28 to the contract and post an updated Exhibit B Price Schedule for Nissan Altima, Pathfinder, and Murano vehicles. (Maddy 09.29.23)
Amendment 58	Amendment 58 has been issued to reflect supplement 29 to the contract and to update Exhibit B Price Schedule for F150 pricing and vehicle code change for 2024, pricing for Transit Cargo and Transit Pass vehicles (Maddy 10.04.23)
Amendment 59	Amendment 59 has been issued to reflect supplement 30 to the contract and to update Exhibit B Price Schedule for 2024 Tahoe's and Suburban vehicles. (Maddy 10.17.23)
Amendment 60	Amendment 60 has been issued to reflect supplement 31 to the contract for acceptance of

	2025 pricing for all vehicles on contract effective October 25, 2023 through December 31, 2023 (Maddy 10.25.23)
Amendment 61	Amendment 61 has been issued to reflect supplement 32 of the contract for 2024 pricing for the following vehicles Ford Lightning, Explorer, Ram Cab Chassis, and Promaster Cargo Vans highlighted in blue. 2025 Ford Medium Duty and Econoline vehicles highlighted in yellow. (Maddy 11.16.23)
Amendment 62	Amendment 62 has been issued to reflect supplement 33 of the contract for 2024 pricing for Chevrolet Colorado vehicles highlighted in blue. (Maddy 11.28.23)
Amendment 63	Amendment 63 has been issued to reflect supplement 34 of the contract for 2024 pricing for Ram 1500 Classic Model vehicles highlighted in blue. Removal of Gengras Chevrolet as a vendor on contract, this change does not affect any other Gengras Motor Group dealership on contract. (Maddy 01.03.23)
Amendment 64	Amendment 64 has been issued to reflect supplement 34 of the contract for 2024 Ford Transit Vans highlighted in blue (Maddy 02.16.24)

Contract Additional Information

Field Title	Field Description
Agrees to Supply Political SubDivisions	Yes
Core Catalog Item Contract	No

Contract Clauses

No Clause(s) found

Catalog Names

No catalog(s) found

Document(s)

Document Name	Upload Date
019_0161 CONTRACT DOCUMENTS s35.pdf	February 16, 2024
019_0161 Exhibit B Price Schedule S63 02.16.24.xlsx	February 16, 2024
Multiple Supplier Contract Summary 01.03.24.xlsx	January 03, 2024

Administrative Document(s)

No Documents Found

Authorization

State of CT - DAS Procurement	DAS Construction Services
Executive Branch	Children and Families, Dept. of
Connecticut State Library	Correction, Dept. of
Andover, Town of	Developmental Services North
Developmental Services West	Developmental Services Central
Early Childhood, Office of	Economic and Community Development
Education, Dept. of	Emergency Serv. & Public Protection
Energy & Environmental Protection	Housing, Dept. of
Insurance, Dept. of	Labor, Dept. of
Mental Health & Addiction Services	Military Department
Policy & Management, Office of	Public Health, Dept. of
Rehabilitation Services, Dept. of	Revenue Services, Dept. of
Social Services, Dept. of	Connecticut Library Consortium
Constitutional Office	Quasi Public State Agencies
DAS Property Acquisition	DAS Leasing
DAS Real Property Sales	Developmental Services, Dept. of
Developmental Services South	DDS Provider Contracts
DAS Property Management	Aging & Disability Services
Education & Services for the Blind	Agricultural Experiment Station
Agriculture, Dept. of	Auditors of Public Accounts
Charter Oak State College	Commission On Human Rights
Connecticut State University System	Consumer Council, Office of
Criminal Justice, Division of	Governmental Accountability
State Contracting Standards Board	Victim Advocate, Office of
Governor, Office of the	Higher Education, Dept. of
Insurance & Risk Management	Lieutenant Governor, Office of the
Medical Examiner, Office of Chief	Motor Vehicles, Dept. of
State Ethics, Office of	Capital Community College
Central Connecticut State Univ.	CT State Colleges & Universities
Eastern Connecticut State Univ.	Housatonic Community College
Quinebaug Valley Comm. College	Southern Connecticut State Univ.
Three Rivers Comm. College	University of Connecticut
UConn Health Center	Western Connecticut State Univ.
Comptroller, Office of State	Treasurer, Office of State
CT Teachers' Retirement Board	Transportation, Dept. of
DOT - Purchasing	Veterans' Affairs, Dept. of
Protection & Advocacy, Office of	Ansonia Housing Authority
Workforce Competitiveness Office Of	Gateway Community College
Manchester Community College	Middlesex Community College
Naugatuck Valley Comm. College	Northwestern CT Comm. College
Norwalk Community College	Tunxis Community College
Colleges & Universities	Secretary of the State
Connecticut Port Authority	Connecticut Lottery Corporation
Connecticut Science & Exploration	Connecticut Development Authority
Connecticut Green Bank	Regional Water Authority
Boards, Commissions and Councils	Developmental Disabilities
Connecticut Siting Council	Consumer Protection, Dept. of
CT Retirement Security Authority	Elections Enforcement Commission
Fire Prevention & Control	Firearms Permit Examiners, Board of

Freedom of Information Commission	Police Officer Standards & Training
Property Review Board	Psychiatric Security Review Board
Siting Council	State Academic Awards, Board for
State Board of Accountancy	State Marshal Commission
Workers' Compensation Commission	DAS Business Office
A-Z Corp	F8 Properties
RM Bradley	Simon Konover
Owens Services	LAZ Parking
DOT - Construction Contracts Unit	Office of the Attorney General
Legislative Branch	Not For Profits
Non-Executive Agency	Cities, Towns & Municipalities
Ansonia, City of	Ashford, Town of
Avon, Town of	Beacon Falls, Town Of
Berlin, Town of	Bethany Board of Education
Bethel, Town of	Bethany, Fire Marshall
Bethlehem, Town of	Bloomfield Public Schools
Branford, Town of	Bridgeport, City of
Bridgeport Economic Development Cor	Bridgeport Housing Authority
Bristol, City of	Brookfield, Town of
Brookfield Public Schools	Brookfield Water Pollution Control
Brooklyn Public Schools	Burlington, Town of
Canterbury Public Schools	Canton, Town of
Capital Region Development Auth.	Capitol Region Council Governments
Capitol Region Education Council	Cheshire, Town of
Chester, Town of	Clinton, Town Of
Colchester, Town of	Columbia, Town of
Coventry, Town of	Cromwell, Town of
Danbury, City of	Danbury Housing Authority
Darien, Town of	Derby, Town of
Durham, Town of	East Granby, Town of
East Haddam, Town of	East Hampton Board of Education
East Hartford, Town of	East Hartford Housing Authority
East Hartford Public Schools	East Haven, Town of
East Lyme, Public Schools	East Lyme, Town of
East Lyme, Public Works	Bethany, Town of
East Hampton, Town of	Enfield, Town of
Enfield Housing Authority	Farmington, Town of
Farmington Public Schools	Glastonbury, Town of
Glastonbury Housing Authority	Guilford, Town of
Guilford Public Schools	Hartford, City of
Hartford Energy Improvement Dist.	Greater Hartford Transit District
Hartford Housing Authority	Hartford Public School
Middletown, City of	Middletown Board of Education
Middletown Housing Authority	Norwalk, City of
Norwalk Public Schools	Norwalk Transit District
Norwich, City of	Norwich Community Development
Norwich Housing Authority	Preston, Town of
Preston Board of Education	Putnam, Town of
Putnam Public Schools	Somers, Town of
Somers Board of Education	South Windsor, Town of

South Windsor Board of Education
Southington, Town of
Stratford, Town of
Suffield, Town of
Torrington, City of
Bridgeport Transit Authority
Ledyard Public Schools
Vernon Housing Authority
Voluntown, Town of
Waterbury, City of
West Hartford, Town of
Westport, Town of
Wethersfield, Town of
Woodbridge, Town of
Ellington Public Schools
Housatonic Resources Recovery Auth.
Sherman Board of Education
Willimantic Housing Authority
East Windsor, Town of
Fairfield, Town of
Granby, Town of
Griswold, Town of
Groton, Town of
Hamden, Town of
Jewett City, Borough of
Lebanon, Town of
Madison, Town of
Mansfield, Town of
Meriden, City of
Middlefield, Town of
Monroe, Town of
Morris, Town of
New Britain, City of
New Fairfield, Town of
New Haven, City of
New Milford, Town of
Newtown, Town of
North Haven, Town of
Old Saybrook, Town of
Oxford, Town of
Plainville, Town of
Pomfret, Town of
Regional School District No. 1
Regional School District No. 8
Ridgefield, Town of
Roxbury, Town of
Southbury, Town of
Stafford, Town of
Stonington, Town of
Thompson, Town of

South Windsor Housing Authority
Southington Board of Education
Stratford Housing Authority
Suffield Public Schools
Torrington, Public School
Ledyard, Town of
Vernon, Town of
Vernon Board of Education
Voluntown Board of Education
Waterbury Housing Authority
West Hartford Nutrition Services
Westport Public Schools
Wethersfield Housing Authority
Woodbridge School District
Hampton Board of Education
Salem Board of Education
Wallingford Housing Authority
Winchester Public Schools
Essex, Town of
Franklin, Town of
Greenwich, Town of
Groton, City of
Haddam, Town of
Hebron, Town of
Killingly, Town of
Lyme, Town of
Manchester, Town of
Marlborough, Town of
Middlebury, Town of
Milford, City of
Montville, Town of
Naugatuck, Town of
New Canaan, Town of
New Hartford, Town of
New London, City of
Newington, Town of
North Branford, Town of
North Stonington, Town of
Orange, Town of
Plainfield, Town of
Plymouth, Town of
Portland, Town of
Regional School District No. 14
Regional School District No. 17
Rocky Hill, Town of
Simsbury, Town of
Sprague, Town of
Stamford, City of
Thomaston, Town of
Tolland, Town of

Barkhamsted, Town of
Waterford, Town of
Westbrook, Town of
Windham, Town of
Windsor, Town of
Woodstock, Town of
LEARN
Metropolitan District Commission
NE Transportation / CT Transit
Northeastern CT Transit District
Shelton Housing Authority
South East Area Transit District
CT Health and Ed. Facilities Auth.
Connecticut Innovations
Materials Innovation & Recycling
CET
CT Conference of Municipalities
Western CT Tourism District
Administrative Services
State Education Resource Center
Brooklyn, Town of
Ellington, Town of
Salem, Town of
Sherman, Town of
Winchester, Town of
Enfield Social Services
Middlefield Voluntary Fire Company
Portland Public Schools
Old Lyme, Town Of
W. Hartford Bloomfield Health Dist.
West Hartford Public Library
Sharon, Town Of
CHEFA
Avon Recreation & Parks Department
Oxford Public Schools
Middlebury Public Works
Connecticut General Assembly
Public Health Systems and Equity
Community Family Health and Prevent
Plymouth Housing Authority
Norwalk, City
Judicial Branch
CAFCA
Salisbury, Town of
Old Colony Beach Club Association
Deep River Housing Authority
Savin Rock Communities
Regional School District No. 15
CSDNB Board of Education
Seymour, Town of

Trumbull, Town of
West Haven, City of
Weston, Town of
Windsor Locks, Town of
Wolcott, Town of
CT Metro. Council of Governments
CT River Valley Council of Gov.
Naugatuck Valley Council of Gov.
Northeastern CT Council of Gov.
Northwest Hills Council of Gov.
So. Central CT Regional Water Auth.
Community Renewal Team
CT Housing Finance Authority
EASTCONN
Western CT Council of Governments
Connecticut Transit
Connecticut Airport Authority
Valley Association
Health Strategy, Office of
Bloomfield, Town of
Canterbury, Town of
Hampton, Town of
Shelton, Town of
Wallingford, Town of
Cheshire Public Works
Enfield Fleet Services
New Hartford Public Schools
Baltic Public Schools
Madison Public Works
West Hartford Fire Department
Windsor Locks Public Schools
Regional School District No. 5
Greater New Haven Transit District
CHESLA
Norwalk Redevelopment Agency
CHFA
DPH - Communications
DPH Facility Licensing
Derby Public Schools
ISAAC Charter School
MIRA
Probate Court Administrator, Office
MARC, Inc. of Manchester
Willington, Town of
Deep River, Town of
Groton Public Schools
Regional School District No. 12
Cheshire Public Schools
First District Water Dept., Norwalk
Connecticut Paid Leave Authority

Canton Public Schools
Bolton, Town of
Banking, Dept. of
United Community & Family Services
Derby Public Library
Shelton Economic Development Corp.
Town of Watertown
TOW - Public Works Department
New Haven Parking Authority
Easton, Redding & Region 9 Schools
Winsted Water Works
South Cntrl Regional Council of Gov
Middletown South Fire District
Estuary Transit District
Litchfield, Town of
DOT - Maintenance
Capital Workforce Partners
DPH - Newborn Screening
Kent, Town of
OCPD Assigned Counsel Unit
Healthcare Advocate, Office of the
Regional School District No. 18
Achievement First
Colebrook School
Hamden Housing Authority
Seymour Housing Authority
Capital for Change
Plainfield Public Schools
Lebanon Public Schools
Groton Housing Authority
North Haven Housing Authority
Journey Home
Barnum Museum, The
North Stonington Public Schools
Greenwich Public Schools
Milford Redevmt & Hsng Ptnrshp MRHP
Community Builders Inc, The
Ledge Light Health District
Five Points Arts
New Beginnings Family Academy
DOT - Planning
Morris Housing Authority
Torrington Housing Authority
Windham Region Transit District
Goodwin University
Manchester Housing Authority
Rocky Hill Housing Authority
Weston Public Schools
East Haven Public Schools
Essex Library Association

Eastern Regional Tourism District
Bolton Board of Education
Cromwell Public Schools
The Child & Family Guidance Center
Easton, Town of
TEAM Inc.
Access Health CT
Wolcott Board of Education
Area Coop Ed. Services (ACES)
Southeastern CT Council of Gov
Windham Public Schools
Regional School District No. 13
Beth-El Center
Prospect, Town of
Litchfield Public Works Department
Public Health Preparedness & L H A
CTECS
Somers Public Schools
Public Defender Services, Division
Litchfield Housing Authority
Norwich Free Academy
Stratford Public Schools
Colebrook, Town of
Killingly Public Schools
Monroe Public Schools
Wethersfield Public Schools
Naugatuck Public Schools
DOT - Rail, Office of
Woodbury, Town of
Thomaston Public Schools
Stamford Public Schools
Newington Public Schools
Ridgefield Public Schools
New Milford Board of Education
Freeman Center, The
New Opportunities Inc
Sterling, Town of
Thompson Housing Authority
Branford Public Schools
Portland Housing Authority
Litchfield County Housing Opporntny
Wilton, Town of
Mutual Housing Assoc. Greater Htfd
East Granby Public Schools
North Branford Board of Education
Enfield Public Schools
Cooperative Educational Service CES
Mark Twain House and Museum, The
Workforce Strategy, Office of
Scotland, Town of

DPH Enviro Health & Drinking Water
Public Health Workforce Development
Regional School District No. 10
Harriet Beecher Stowe Center
Elm City Montessori School
Griffin Hospital
Stamford Museum & Nature Center
Watertown Board of Education
Perception Programs
Windham Region No Freeze Project
Prospect Fire Department
CT Institute for the Blind Oak Hill
Boys & Girls Club of Greenwich
Bridges Healthcare Inc
Integrated Day Charter School
Regional School District No. 4
Montville Housing Authority
Greater Dwight Development Corp
Harwinton, Town of
CSDE - Child Nutrition
New London Housing Authority
Coventry Housing Authority
YWCA Hartford Region
Stamford Urban Redevelopment Commis
Montville Board of Education
New London Homeless Hospitality Cen
Killingworth, Town of
East Windsor Public Schools
Goodwin Univ Educational Services
Naugatuck Housing Authority
Winchester Housing Authority

Griswold Housing Authority
Thames River Community Service Inc
Stafford Public Schools
Regional School District No. 16
Watertown, Town of
Pomfret Community School
CT Housing Partners
MDA - MIRA Dissolution Authority
Ashford Housing Authority
New Reach Inc.
Community Solutions Inc
West Hartford Housing Authority
Redding, Town of
Sheldon Oak Central Inc
Elderly Housing Management Inc
Southeastern Ct Water Authority
New Samaritan Parkville
Southington Housing Authority
Windsor Housing Authority
Housing Authority
Estuary Council of Seniors Inc
CJIS-CT
Woodstock Public Schools
Bridgewater, Town of
DEEP - COUNCIL SOIL WATER CONSERVAT
Naugatuck Valley Health District
Preston Parks & Recreation
DPH Firearm Injury Prevention
North Central Conservation District
Bethel Housing Authority



Office of the Finance Director

City of West Haven
355 Main Street
West Haven, Connecticut 06516

MARB Contract Form

Contract Name	Purchase of two Motorcycles				
City Agency	Police Services				
Vendor Utilized	Mikes Famous Harley-Davidson				
Address	951 Bank Street				
City, State, Zip	New London, CT 06320				
Procurement Process	<input checked="" type="checkbox"/> Bid/RFP [2024-31] <input type="checkbox"/> State Contract [Enter State Contract #] <input type="checkbox"/> Cooperative Agreement [Enter Source Name and Contract No] <input type="checkbox"/> Sole Source <input type="checkbox"/> Other Source []				
Quote No('s) if applicable					
Source of Funds	Bonds				
Quantity	2.00	Price Per:	\$30,473.74	Total Purchase Price	\$60,947.48
Purpose of Transaction (Please give a detailed explanation for the purpose of the transaction. This should not be one / two sentences.	Purchase of two police motorcycles for WHPD.				
Submitted by [Name and Title]	Kathy Chambers, Sr. Buyer, Procurement Analyst Michael Gormany, Finance Director				

BILL OF SALE / INVOICE



NORTHERN REACH INC. DBA
 MIKE'S FAMOUS HARLEY-DAVIDSON
 951 BANK ST
 NEW LONDON, CT 06320
 PHONE: (860) 574-9200 FAX: (860) 445-4513

DATE: 5/30/2024 SALESPERSON: _____ DEALER NUMBER: N2636

BUYER INFORMATION		DESCRIPTION OF PURCHASE				
BUYER NAME WEST HAVEN POLICE DEPART'	CO-BUYER NAME	YEAR 2024	MAKE HD	COLOR BLK/WHT	MILEAGE	MODEL FLHTP
BUYER ADDRESS 200 SAWMILL RD WEST HAVEN, CT 06516	CO-BUYER ADDRESS	STOCK #	KEY CODE		VIN #	
BUYER PHONE (203) 837-3926	CO-BUYER PHONE	LIENHOLDER				

DESCRIPTION OF TRADE					SALES AGREEMENT	
Bill of Sale of Vehicle Taken In Trade						
MAKE	YEAR	MILEAGE	MODEL	VIN #	BASE PRICE:	18,926.00
MAKE	YEAR	MILEAGE	MODEL	VIN #	CONVEYANCE:	399.00
For value received, I hereby grant, bargain, sell and deliver unto and further certify that I am 18 years of age or older, that said property is my sole and absolute property and is free and clear of all liens and encumbrances of a nature whatsoever, except: \$ 0.00 due to _____ I the undersigned, state that the mileage as shown is the actual mileage which the vehicle has been driven Signed _____					ACCESSORIES:	10,298.74
					LABOR:	N/A
					EXTENDED SERVICE PLAN:	N/A
					GAP PROTECTION:	N/A
					DEBT PROTECTION:	N/A
					PREPAID MAINTENANCE:	N/A
					THEFT / PAINT PROTECTION:	N/A
					PROPERTY / LIABILITY:	N/A
					VSI:	N/A
					RECONDITIONING:	N/A
					FREIGHT & SET-UP:	850.00
					OTHER:	N/A
					SUBTOTAL:	30,473.74
					SALES TAX:	N/A
					TRADE-IN FEE:	N/A
					REGISTRATION FEES:	N/A
					TOTAL:	30,473.74
					DOWN PAYMENT:	N/A
					TRADE-IN ALLOWANCE:	N/A
					TRADE-IN PAYOFF:	N/A
					BALANCE DUE:	30,473.74

AS IS (ONLY TO BE SIGNED IF VEHICLE IS BEING SOLD AS IS)

THIS VEHICLE IS SOLD "AS IS". THIS MEANS THAT YOU WILL LOSE YOUR IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS WE MUST KEEP THEM, EVEN IF WE SELL "AS IS"

TO PROTECT YOURSELF,

ASK US

1. TO PUT ALL PROMISES INTO WRITING, AND
2. IF WE OFFER A WARRANTY ON THIS VEHICLE"

Signed _____

- CUSTOMER RESPONSIBLE FOR OWN TAX / TAG.
- ALLOW US TO USE YOUR PICTURE IN ADVERTISING
- USED UNITS SOLD COSMETICALLY AS-IS.
- EVERYTHING THAT HAS BEEN PROMISED IN THIS DEAL IS WRITTEN ON THIS BILL OF SALE.

The terms and conditions on this bill of sale comprise the entire agreement pertaining to this purchase. No other agreement of any kind, verbal understanding or promise whatsoever will be recognized. Failure or refusal of the purchaser to complete this agreement for any reason may result in all or part of the cash deposit being forfeited as liquidated damages. The purchaser certifies he/she is of legal age and hereby accepts and acknowledges receipt of a copy of this bill of sale.

TYLOR PFLUGBEIL
 BUSINESS MANAGER

5/30/2024
 BUYER SIGNATURE _____ DATE

DEALER AUTHORIZED ACCEPTANCE _____

CO-BUYER SIGNATURE _____ DATE

6/14/24
3:58 pm

MIKE S FAMOUS HARLEY-DAVIDSON
Deal Accessory List

Deal Number: 16056
Contract Date: 5/30/24
Delivery Date: 5/30/24
Salesperson:

VIN/Serial:
Model:
Make:
Date Expected:

Ref#:
Year:
Color:
Date In:

Customer: 58314
WEST HAVEN POLICE DEPARTMENT
200 SAWMILL RD
WEST HAVEN, CT 06516

Phone
Fax

Work: (203) 837-3926 Ext

Status	Item Number	Vendor	Description	Qty.	Bin Loc 1	Bin Loc 2	Install?	Ext List	Total
	2080-0808	DRGSPC	LED REPLACEMENT 881 BULB	1.00			Y	87.95	87.95
	2106-0581	DRGSPC	SWITCH ON/OFF BLACK HD	1.00			Y	39.95	39.95
	53000712DH	HD	KIT,T-PAK,POCE,W/EMER LTG	1.00	M4-T3		Y	2,151.19	2,151.19
	53184-07	HD	T-PAK X	1.00			Y	29.31	29.31
	53196-08	HD	POLICE T-P ADAPTER PLATE	1.00			Y	122.95	122.95
	65989-97E	HD	BATTERY,17.5AH,SEALED	1.00	B34-T2		Y	164.95	164.95
	88000137	HD	KIT-EMERGENCY LIGHT,TOUR-	1.00			Y	104.79	104.79
	88000170	HD	KIT-MNTG,FOG LT TOURING W	1.00	S29-T6		Y	59.95	59.95
	88000274	HD	KIT,LTG,SIDE MARKER,RED	1.00			Y	357.95	357.95
	88000275	HD	KIT,LTG,SIDE MARKER,BLUE	1.00			Y	357.95	357.95
	88000277	HD	KIT,LTG TOUR PACK EMER,1	3.00			Y	929.85	929.85
	88000279	HD	KIT,LTG,POLICE SPLICE BOX	1.00			Y	54.95	54.95
	88000286	HD	KIT,LTG,TOUR PACK EMER,3	3.00			Y	494.85	494.85
	88000288	HD	KIT,LTG,LIGHT ARRAY	1.00			Y	956.95	956.95
	89201092	HD	HARNESS SPKR INTRCNCT,STA	2.00	S30-T7		Y	126.30	126.30
	89202610	HD	KIT HARN/WRG,PWR INP,POCE	1.00			Y	23.95	23.95
	76001039	HD	KIT,INFOT,POCE AUD,W/SVCE	1.00			Y	1,278.42	1,278.42
	PREPAID LABOR		INSTALL POLICE	20.00			Y	2,956.53	2,956.53

THIS IS NOT AN INVOICE

6/14/24
3:56 pm

MIKE'S FAMOUS HARLEY-DAVIDSON
Deal Accessory List

Deal Number: 16055
Contract Date: 5/30/24
Delivery Date: 5/30/24
Salesperson:

VIN/Senal
Model:
Make:
Date Expected:

Ref#:
Year:
Color:
Date In:

Customer 58314
WEST HAVEN POLICE DEPARTMENT
200 SAWMILL RD
WEST HAVEN, CT 06516

Phone:
Fax:

Work: (203) 837-3926 Ext:

Status	Item Number	Vendor	Description	Qty	Bin Loc 1	Bin Loc 2	Install?	Ext List	Total
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Retail Total: 10,298.74
Discount Total: 0.00
Total: 10,298.74

THIS IS NOT AN INVOICE

BILL OF SALE / INVOICE



NORTHERN REACH INC. DBA
MIKE'S FAMOUS HARLEY-DAVIDSON
951 BANK ST
NEW LONDON, CT 06320
PHONE: (860) 574-9200 FAX: (860) 445-4513

DATE: 5/30/2024 SALESPERSON:

DEALER NUMBER: N2636

PHONE: (860) 574-9200 FAX: (860) 445-4513

BUYER INFORMATION		DESCRIPTION OF PURCHASE			
BUYER NAME WEST HAVEN POLICE DEPART	CO-BUYER NAME	YEAR 2024	MAKE HD	COLOR Blk/NHT	MILEAGE FUHTP
BUYER ADDRESS 200 SAWMILL RD WEST HAVEN, CT 06516	CO-BUYER ADDRESS	STOCK #	KEY CODE	VIN #	
BUYER PHONE (203) 837-3926	CO-BUYER PHONE	LIENHOLDER ?			

DESCRIPTION OF TRADE					SALES AGREEMENT	
Bill of Sale of Vehicle Taken In Trade					BASE PRICE:	18,926.00
MAKE	YEAR	MILEAGE	MODEL	VIN #	CONVEYANCE:	399.00
MAKE	YEAR	MILEAGE	MODEL	VIN #	ACCESSORIES:	10,298.74
For value received, I hereby grant, bargain, sell and deliver unto and further certify that I am 18 years of age or older, that said property is my sole and absolute property, and is free and clear of all liens and encumbrances of a nature whatsoever, except:					LABOR:	N/A
\$ 0.00 due to _____					EXTENDED SERVICE PLAN:	N/A
I the undersigned, state that the mileage as shown is the actual mileage which the vehicle has been driven					GAP PROTECTION:	N/A
Signed _____					DEBT PROTECTION:	N/A
					PREPAID MAINTENANCE:	N/A
					THEFT / PAINT PROTECTION:	N/A
					PROPERTY / LIABILITY:	N/A
					VSI:	N/A
					RECONDITIONING:	N/A
					FREIGHT & SET-UP:	850.00
					OTHER:	N/A
					SUBTOTAL:	30,473.74
					SALES TAX:	N/A
					TRADE-IN FEE:	N/A
					REGISTRATION FEES:	N/A
					TOTAL:	30,473.74
					DOWN PAYMENT:	N/A
					TRADE-IN ALLOWANCE:	N/A
					TRADE-IN PAYOFF:	N/A
					BALANCE DUE:	30,473.74

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TO PROTECT YOURSELF,

ASK US

1. TO PUT ALL PROMISES INTO WRITING, AND

2. IF WE OFFER A WARRANTY ON THIS VEHICLE"

Signed _____

CUSTOMER RESPONSIBLE FOR OWN TAX / TAG

ALLOW US TO USE YOUR PICTURE IN ADVERTISING

USED UNITS SOLD COSMETICALLY AS-IS

EVERYTHING THAT HAS BEEN PROMISED IN THIS DEAL IS WRITTEN ON THIS BILL OF SALE

The terms and conditions on this bill of sale comprise the entire agreement pertaining to this purchase. No other agreement of any kind, verbal understanding or promise whatsoever will be recognized. Failure or refusal of the purchaser to complete this agreement for any reason may result in all or part of the cash deposit being forfeited as liquidated damages. The purchaser certifies he/she is of legal age and hereby accepts and acknowledges receipt of a copy of this bill of sale.

TYLOR PFLUGBEIL
BUSINESS MANAGER

5/30/2024
BUYER SIGNATURE DATE

DEALER AUTHORIZED ACCEPTANCE

CO-BUYER SIGNATURE DATE

6/14/24
3:58 pm

MIKE'S FAMOUS HARLEY-DAVIDSON
Deal Accessory List

Deal Number: 16055
Contract Date: 5/30/24
Delivery Date: 5/30/24
Salesperson

VIN/Senal
Model
Make
Date Expected:

Ref#:
Year
Color:
Date In:

Customer: 58314
WEST HAVEN POLICE DEPARTMENT
200 SAWMILL RD
WEST HAVEN, CT 06516

Phone
Fax

Work: (203) 637-3926 Ext

Status	Item Number	Vendor	Description	Qty	Bin Loc 1	Bin Loc 2	Install?	Ext List		Total
	2060-0808	DRGSPC	LED REPLACEMENT 681 BULB	1.00			Y	87.95	0.00	87.95
	2106-0581	DRGSPC	SWITCH ON/OFF BLACK HD	1.00			Y	39.95	0.00	39.95
	53000712DH	HD	KIT,T-PAK,POCE W/EMER LTG	1.00	M4-T3		Y	2,151.19	0.00	2,151.19
	53194-07	HD	T-PAK,X	1.00			Y	29.31	0.00	29.31
	53196-09	HD	POLICE T-P ADAPTER PLATE	1.00			Y	122.95	0.00	122.95
	65989-97E	HD	BATTERY,17.5AH SEALED	1.00	B34-T2		Y	164.95	0.00	164.95
	68000137	HD	KIT-EMERGENCY LIGHT TOUR-	1.00			Y	104.79	0.00	104.79
	68000170	HD	KIT-MNTG,FOG LT,TOURING W	1.00	S29-T6		Y	59.95	0.00	59.95
	68000274	HD	KIT,LTG,SIDE MARKER,RED	1.00			Y	357.95	0.00	357.95
	68000275	HD	KIT,LTG,SIDE MARKER BLUE	1.00			Y	357.95	0.00	357.95
	68000277	HD	KIT,LTG,TOUR PACK EMER,1.	3.00			Y	929.85	0.00	929.85
	68000279	HD	KIT,LTG,POLICE SPLICE BOX	1.00			Y	54.95	0.00	54.95
	68000286	HD	KIT,LTG,TOUR PACK EMER 3	3.00			Y	494.85	0.00	494.85
	68000288	HD	KIT,LTG,LIGHT ARRAY	1.00			Y	956.95	0.00	956.95
	69201092	HD	HARNESS,SPKR INTRCNCT,STA	2.00	S30-T7		Y	126.30	0.00	126.30
	69202610	HD	KIT HARN/WRG PWR INP,POCE	1.00			Y	23.95	0.00	23.95
	76001039	HD	KIT,INFOT,POCE AUD,W/SVCE	1.00			Y	1,278.42	0.00	1,278.42
	PREPAID LABOR		INSTALL POLICE	20.00			Y	2,956.53	0.00	2,956.53

THIS IS NOT AN INVOICE

5/14/24
3:58 pm

MIKE'S FAMOUS HARLEY-DAVIDSON
Deal Accessory List

Deal Number: 16055
Contract Date: 5/30/24
Delivery Date: 5/30/24
Salesperson:

VIN/Serial
Model:
Make
Date Expected:

Ref#
Year:
Color
Date In

Customer: 58314
WEST HAVEN POLICE DEPARTMENT
200 SAWMILL RD
WEST HAVEN, CT 06516

Phone
Fax:

Work (203) 637-3926 Ext.

Status	Item Number	Vendor	Description	Qty.	Bin Loc 1	Bin Loc 2	Install?	Ext List	Total
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Retail Total	10,298.74
Discount Total	0.00
Total	10,298.74

THIS IS NOT AN INVOICE

Police Motorcycle Warranty - Limited 3-Year, 60,000 Mile Warranty

Estimated Delivery Date - August 30th 2024 pending Parts arrival

Bid is for Two(2) 2024 Harley Davidson FLHTP in Black/White with the listed accessories and installation for a total of \$60,947.48