DRAFT

AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

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

BETWEEN the Owner:
(Name, legal status, address, telephone and facsimile numbers, and website)

«State of Rhode Island, acting by and through the Department of Administration, Division of Purchases, on behalf of the User Agency»
«One Capitol Hill, Second Floor»
«Providence, Rhode Island 02908-5855»
«401.578.8100 (telephone); 401.574.8387 (facsimile)»
«www.puchasing.ri.gov»

on behalf of the User Agency:
(Name, legal status, address, telephone and facsimile numbers, and website)

« »
« »
« »
« »
« »

and the Contractor:
(Name, legal status, address, telephone and facsimile numbers, and website)

« »
« »
« »
« »
« »

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

« »
« »
« »

The Design Agent:
(Name, legal status, address, telephone and facsimile numbers, and website)

« »« »
« »
« »
« »

The Owner and Contractor agree as follows.

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

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

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ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. No part of the Work shall be performed by Subcontractors without the Owner's prior written consent.

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ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be the later of: (i) the issuance of the Purchase Order by the Owner; and (ii) the date set forth in a notice to proceed issued by the User Agency.

§ 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: «_»

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

Portion of Work	Substantial Completion Date
« »	

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

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 «_» ($ «_»), 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, are specified in the Bid Proposal Form and include all costs, including without limitation, labor, materials, services, regulatory compliance, overhead, and profit necessary for the completion of the Work. Unit prices shall be used for both additions to, and deletions from the Work.

§ 3.2.3 Allowances, if any, are specified in the Bid Proposal Form and are included in the Contract Sum.

§ 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.

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§ 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, are specified in the Bid Proposal Form and include all costs, including without limitation, labor, materials, services, regulatory compliance, overhead, and profit necessary for the completion of the Work. Unit prices shall be used for both additions to, and deletions from the Work.

§ 3.4.3.4 Allowances, if any, are specified in the Bid Proposal Form and are included in the Guaranteed Maximum 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 Design Agent of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

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«.1 In the event that there is one date for Substantial Completion of the Work, the Contractor shall pay the Owner the sum stipulated in this Section 3.5.1 as liquidated damages, and not as a penalty, for each calendar day of delay until the Work is substantially complete: $_____ .

.2 In the event that the Project is scheduled to be completed in phases, and there is more than one date for Substantial Completion of the Work, the Contractor shall pay the Owner an aggregate amount equal to the sums stipulated in this Section 3.5.2 as liquidated damages, and not as a penalty, for each calendar day of delay until the Work for each phase is substantially complete:

Phase	**Liquidated Damages Sum**

.3 The Owner and the Contractor have reasonably determined the sums set forth in this Section 3.5 to be a fair estimate of the Owner' actual damages which are difficult to ascertain in the event of delay.»

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Design Agent by the Contractor and Certificates for Payment issued by the Design Agent and approved by the Owner in writing, the Owner shall make progress payments, less retainage, 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.

§ 4.1.3 The Owner shall make payment of the certified amount to the Contractor not later than the 30th working day following written approval by the Owner.

§ 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: five (5%) percent.

§ 4.1.4.1 Deleted.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due in accordance with the provisions of "Prompt Payment by Department of Administration," R.I. Gen. Laws §§ 42-11.1-1 et seq.

§ 4.1.6 Within 10 working days of receipt of any progress payment from the Owner, the Contractor must pay its Subcontractors the full amount included for each such Subcontractor within the Contractor's Application for Payment.

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, less the amount withheld pursuant to Section 4.1.4.1, shall be made by the Owner to the Contractor when:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;

.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;

.3 a final Certificate for Payment has been issued by the Design Agent and approved in writing by the Owner, and in accordance with Section 15.7.1.

.4 the Contractor has submitted its final waiver of lien and final waivers of lien from all of its Subcontractors and suppliers in a form acceptable to the Owner; and

.5 the Contractor has submitted to the Owner all close-out documents, including without limitation, all as-built plans, warranties, manuals, and other materials set forth in the Contract Documents.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 working days after the issuance of the Design Agent's final Certificate for Payment and written approval by the Owner.

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§ 4.3 The Owner shall have the right to deduct from any payments due to the Contractor the amount of any unpaid obligations owed to the State of Rhode Island by the Contractor, including without limitation, any and all unpaid taxes, the amount of any claim against the Contractor arising out of this Agreement, or any amount on account of any other reason permitted by applicable law.

§ 4.4 Pursuant to R.I. Gen. Laws § 44-1-6, the Owner shall withhold payment from the Contractor if the Contractor does not maintain a regular place of business in Rhode Island in the amount of three (3%) percent of the Contract Sum until 30 calendar days after Final Completion and compliance by the Contractor with the requirements of such section. The three (3%) percent withheld pursuant to R.I. Gen. Laws § 44-1-6 is not considered retainage which is held pursuant to § 15.4.5.

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 Initial Decision Maker

Claims shall be referred to the Initial Decision Maker for initial decision. The Purchasing Agent appointed pursuant to the provisions of the "State Purchases Act," R.I. Gen. Laws § 37-2-1 et seq., will serve as the Initial Decision Maker in accordance with the provisions of the State Purchases Act, State of Rhode Island Procurement Regulations, and this Section 5.1. An initial decision shall be required as a condition precedent to binding dispute resolution pursuant to Section 5.3 of any Claim arising prior to the date final payment is due.

§ 5.2 Mediation

For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 5.1, and prior to the implementation of the binding dispute resolution procedures set forth in Section 5.3, the Contractor shall have the option to pursue mediation, exercisable by written notice to the Owner within 30 calendar days of an Initial Decision. In the event of the exercise of such option by the Contractor, the Owner and the Contractor shall attempt to select a mediator, and in the event that the Owner and the Contractor cannot agree on a mediator, either party may apply in writing to the Presiding Justice of the Providence County Superior Court, with a copy to the other, with a request for the court to appoint a mediator, and the costs of the mediator shall be borne equally by both parties.

§ 5.3 Binding Dispute Resolution

For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 6.1, or mediation at the option of the Contractor pursuant to Section 5.2, the method of binding dispute resolution shall be determined in accordance with the provisions of the "Public Works Arbitration Act," R.I. Gen. Laws §§ 37-16-1 et seq.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

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

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

§ 6.1.2 **Deleted.**

§ 6.1.3 **Deleted.**

§ 6.1.4 The Specifications: The Specifications are included in the Solicitation and are available on the Division of Purchases website at www.purchasing.ri.gov.

§ 6.1.5 The Drawings: The Drawings are included in the Solicitation and are available on the Division of Purchases website at www.purchasing.ri.gov.

§ 6.1.6 The Addenda, if any, issued pursuant to the Solicitation form a part of the Solicitation and are available on the Division of Purchases website at www.purchasing.ri.gov.

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

.1 Supplementary Conditions and other Conditions of the Contract, including State of Rhode Island General Conditions of Purchase Regulation

.2 Other documents listed below:

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

.1 The Solicitation, issued by the Owner, including without limitation, the Invitation to Bid, the Instructions to Bidders, the Specifications and Drawings, any Addenda, and the Bid Checklist.

.2 The Bid Proposal, including without limitation, the Bid Form and the Bidder Certification Cover Form.

.3 The Purchase Order issued by the Owner.

§ 6.2 This Agreement and the Contract Documents are subject to, and governed by, the laws of the State of Rhode Island, including all procurement statutes and regulations (available at www.purchasing.ri.gov), and applicable federal and local law, all of which are fully incorporated into this Agreement by this reference.

§ 6.3 In the event of any conflict between or among the Contract Documents, or any Contract Documents and any provision of the Rhode Island General Laws and/or the State of Rhode Island Procurement Regulations, the Rhode Island General Laws and the State of Rhode Island Procurement Regulations shall control.

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 Conditions, if any, 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 Design Agent. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for 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; provided, however, the User Agency is a disclosed third-party beneficiary of this Agreement and shall have all of the rights and benefits hereunder to which such a party is entitled.

§ 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 Design Agent and the Design Agent'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 Design Agent and the Design Agent'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 Design Agent or Design Agent's consultants' reserved rights.

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§ 7.5.2 The Owner has a nonexclusive perpetual license to use the Design Agent's Instruments of Service, including electronic or digital documents, solely and exclusively for purposes of constructing, using, maintaining, altering, and adding to the Project, and shall have and retain all rights to use and reproduce them for the production and maintenance of the Work described therein, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due. The Design Agent shall obtain similar nonexclusive licenses from the Design Agent's consultants consistent with this Agreement. These Instruments of Service shall be conveyed to the Owner in their original operative, editable, electronic form in order to allow the Owner's integration of the data into the Owner's or User Agency's facilities management database. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, solely and exclusively for use in performing services or construction for the Project. If the Design Agent rightfully terminates this Agreement for cause as provided in Section 20.2, the license granted in this Section 7.5.2 shall terminate. 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, Design Agent, and the Design Agent'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.

§ 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 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 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.

§ 7.9.2 Claims by either the Owner or Contractor must be initiated by written notice to the other party as set forth in § 7.9.1. Claims by either party must be initiated within 21 working days after occurrence of the event giving rise to such Claim or within 21 working days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 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 Design Agent 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 skilled 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.

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ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 **Deleted**.

§ 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 10 working-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. The Design Agent 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 Design Agent's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Design Agent, 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 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 Design Agent and the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Design Agent or the Owner 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 Design Agent and the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Design Agent or the Owner 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,

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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 Design Agent and in accordance with a Modification.

§ 9.4 Warranty

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

§ 9.5 Taxes

The State of Rhode Island is exempt from payment of any federal or state excise, transportation, or sales tax. The Rhode Island Department of Administration Division of Purchases will furnish Exemption Certificates upon request. The Contractor shall pay any other 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 Contract Sum includes 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.

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§ 9.8 Contractor's Construction Schedules

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

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Design Agent 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 Design Agen reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and the Design Agent 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 Design Agent 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 Design Agent 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 Design Agent'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 Design Agent 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 site and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract Documents. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Design Agent 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 Design Agent harmless from loss on account thereof,

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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 Design Agent. 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 Design Agent and the Owner.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the State of Rhode Island, and each executive, legislative, judicial, regulatory, and administrative body of the state, and any political subdivision thereof, including without limitation, any department, division, agency, commission, board, office, bureau, committee, authority, educational institution, school, water, and fire district, and other agency of Rhode Island state, municipal, and local government that exercises governmental functions, any other governmental authority, and any quasi-public corporation and/or body corporate and politic, including without limitation, the User Agency, their elected or appointed officials, members, employees, and agents, and the Design Agent, the Design Agent's Consultants, Subconsultants, and agents and employees of any of them from and against any and all claims, demands, damages, liabilities, judgments, losses and expenses, including but not limited to attorneys' fees, and costs of mediation, arbitration, and/or litigation, arising out of or resulting from performance of the Work, and/or the obligations of the Contractor under the Contract Documents, but only to the extent caused by the 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 any such claim, demand, damage, liability, judgment, 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.

§ 9.15.3 Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section 9.15 includes, without limitation, all judgments, liabilities, damages, losses, claims, demands, and actions on account of bodily injury, death, or property loss to a person or entity indemnified hereunder or any other persons or entities, whether based upon statutory (including, without limitation, workers compensation), contractual, tort, or other liability of any person or entity so indemnified.

§ 9.15.4 The remedies set forth herein shall not deprive any person indemnified hereunder of any other indemnity action, right, or remedy otherwise available to any such person or entity at common law or otherwise.

§ 9.15.5 The Contractor will include the indemnity set forth in this Section 9.15, without modification, in each Subcontract with any Subcontractor.

§ 9.15.6 Notwithstanding any other language in the Contract Documents to the contrary, the indemnity hereunder shall survive Final Completion of the Work and final payment under the Agreement and shall survive any termination of the Agreement.

ARTICLE 10 DESIGN AGENT

§ 10.1 The Design Agent will provide administration of the Contract as described in the Contract Documents. The Design Agent 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 Design Agent as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, the Contractor, and the Design Agent. Consent shall not be unreasonably withheld.

§ 10.3 The Design Agent and its subconsultants 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 compliance with the Contract Documents and in a

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manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Agent will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Agent 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 Design Agent will keep the Owner and the User Agency informed about the progress and quality of the portion of the Work completed, and promptly report in writing to the Owner and the User Agency (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 Design Agent will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Agent 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 Design Agent's evaluations of the Work and of the Contractor's Applications for Payment, the Design Agent will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

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

§ 10.8 The Design Agent will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or the Contractor. The State Purchasing Agent appointed pursuant to the provisions of the "State Purchases Act," R.I. Gen. Laws §§ 37-2-1 et seq., will make initial decisions on all claims, disputes, and other matters in question between the Owner and the Contractor, and the Design Agent will assist the State Purchasing Agent in such decisions pursuant to the provisions of Article 5. The Design Agent will not be liable for results of any interpretations rendered reasonably in the Design Agent's professional judgment and in good faith.

§ 10.9 **Deleted.**

ARTICLE 11 SUBCONTRACTORS

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

§ 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 Design Agent of the Subcontractors or suppliers proposed for each of the portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Design Agent has made written objection within 14 working 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 the Design Agent, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

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ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The 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.

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 Design Agent, or by written Construction Change Directive signed by the Owner and the Design Agent. 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 the Design Agent, by the Contractor's cost of labor, material, equipment, and overhead and profit as set forth in Section 13.6. 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 Design Agent 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 the Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Design Agent will prepare a Change Order.

§ 13.3 The Design Agent, with the prior written approval of the Owner, 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 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 Design Agent 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 the Contractor; provided that the Contractor provides notice to the Owner and the Design Agent promptly and before conditions are disturbed.

§ 13.5 Subsequent to the approval by the Owner of a Change Order as provided in this Article 13, whether such Change Order changes the Contract Sum or Contract Time or both, no additional claim related to such Change Order will be considered by the Owner. Any change, once incorporated into a Change Order, is all inclusive, and includes all factors that could have been considered at the time of the Change Order such as Project impact or schedule "ripple" effect.

§ 13.6 The combined overhead and profit included in the total cost to the Owner for a change in the Work shall be based on the following schedule:

.1 For the Contractor, for work performed by the Contractor's own forces, an amount not to exceed ten (10%) percent of the cost.

.2 For the Contractor, for work performed by the Contractor's Subcontractors, an amount not to exceed five (5%) percent of the amount due to the Subcontractors.

.3 For each Subcontractor, for work performed by the Subcontractor's own forces, an amount not to exceed ten (10%) percent of the cost.

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.4 Where the Work represents both additions and deletions and results in a net increase, the allowable overhead and profit shall be in accordance with this Section 13.6, but in no event shall the amount exceed fifteen (15%) percent of the net increase in the cost of the Work.

§ 13.7 All proposals with an aggregate cost equal to or in excess of $500.00 shall be accompanied by a detailed itemization of costs, including labor, materials (quantities and prices), and Subcontracts, in a form acceptable to the Owner. In no event will a change order request reflecting an aggregate cost equal to or in excess of $500.00 be approved without such itemization.

ARTICLE 14 TIME

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

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

§ 14.3 **Deleted**.

§ 14.4 The date of Substantial Completion is the date certified by the Design Agent 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 Design Agent determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Design Agent may determine, subject to the provisions of Article 21.

§ 14.5.1 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of calendar days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

§ 14.5.2 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

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 Design Agent 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 Design Agent. 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 14 calendar 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:

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.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 the Design Agent, 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 the Design Agent 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 the Design Agent of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least 10 working days before the date established for each progress payment, the Contractor shall submit to the Design Agent and the Owner for approval an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor’s right to payment that the Owner or the Design Agent require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. All Applications for Payment for Change Orders must be accompanied by a Notice of Change in Purchase Order issued by the Owner, and if directed by the Owner, by the User Agency. 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 be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner’s interests. The Contractor shall immediately satisfy any lien, claim, or encumbrance against the site where the Project is located and indemnify the Owner from and against all resulting costs and expenses, including without limitation, attorneys’ fees.

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§ 15.4 Certificates for Payment

§ 15.4.1 The Design Agent will, within 7 working 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 Design Agent determines is properly due, or notify the Contractor and Owner of the Design Agent 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 Design Agent to the Owner, based on the Design Agent's evaluations of the Work and the data in the Application for Payment, that, to the best of the Design Agent'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 Design Agent. However, the issuance of a Certificate for Payment will not be a representation that the Design Agent 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.

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

.1 defective Work not remedied;

.2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or a Separate Contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 failure to carry out the Work in accordance with the Contract Documents; or

.8 any other failure to comply with the obligations of the Contractor under the Contract Documents.

§ 15.4.4 When either party disputes the Design Agent's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.4.5 The amount of five (5%) percent shall be retained by the Owner through the date of Substantial completion of the Work and then after the date of Substantial Completion of the Work in accordance with R.I. Gen. Laws § 37-12-10.1

§ 15.4.6 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers 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 Design Agent and the Design Agent will reflect such payment on the next Certificate for Payment.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than 10 working 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

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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 the Design Agent 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.

§ 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 Design Agent 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 Design Agent will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Design Agent determines that the Work or designated portion thereof is substantially complete, the Design Agent will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and the 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.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and the 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 less the amount of five (5%) percent to be retained by the Owner in accordance with Section 15.4.5. 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 Design Agent will promptly make such inspection and, when the Design Agent finds the Work acceptable under the Contract Documents and the Contract fully performed, the Design Agent will promptly issue a final Certificate for Payment stating that to the best of the Design Agent's knowledge, information and belief, and on the basis of the Design Agent'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 Design Agent's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner: (i) all close-out documents, including without limitation, all as-built plans, warranties, manuals, and other materials set forth in the Contract Documents; and (ii) 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;

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.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.

§ 15.7.5 From the final payment, the Owner may withhold, as retainage, the amount provided in Section 15.4.5.

§ 15.7.6 Final Completion means that point in time when the Design Agent has issued the final Certificate for Payment, the Owner has confirmed to the Contractor in writing that the Work has achieved final completion, the Contractor has completed all punch list items, and the Contractor has provided all close-out documents required by the Contract Documents.

§ 15.7.7 Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work.

§ 15.8 Interest

No interest shall be due or payable on account of any payment due or unpaid under the Contract Documents except in accordance with the provisions of "Prompt Payment by Department of Administration," R.I. Gen. Laws §§ 42-11.1-1 et seq.

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 governmental 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 Design Agent 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.

§ 16.1.4 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the User Agency and the Owner reasonable advance written notice.

§ 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 Design Agent 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 the Contractor. By Change Order, the Contract Time shall be extended appropriately, and the

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Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 Subject to the limits of liability set forth in R. I. Gen. Laws § 9311, et seq., the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Design Agent, Design Agent'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, subject to the limits of liability set forth in R. I. Gen. Laws § 9311, et seq., for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 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 the Solicitation or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by the Solicitation and this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the State of Rhode Island. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4.

§ 17.1.2 **Deleted.**

§ 17.1.3 **Deleted.**

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§ 17.1.10 **Deleted.**

§ 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 **Deleted.**

§ 17.1.13 Within 3 working 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 **Deleted.**

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§ 17.2 **Deleted**.

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§ 17.2.3 **Deleted.**

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Solicitation.

§ 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 Design Agent 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 Design Agent's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Final 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.

§ 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 Final Completion and the actual completion of that portion of the Work.

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§ 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.

§ 18.6 Upon request by the Owner or the User Agency, and prior to the expiration of one-year period from the date of Final Completion, the Design Agent will conduct, and the Contractor, without additional compensation, shall attend a minimum of 2 meetings with the Owner and the User Agency to review the facility operations and performance.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

This Agreement shall be binding on the Contractor and its successors and assigns; provided, however, that the Contractor may not assign its rights nor delegate its responsibilities under this Agreement without the Owner's prior written consent.

§ 19.2 Governing Law

This Agreement and the Contract Documents are subject to, and governed by, the laws of the State of Rhode Island, including all procurement statutes and regulations (available at www.purchasing.ri.gov), and applicable federal and local law, all of which are fully incorporated into this Agreement by this reference.

§1 9.2.1 In the event of any conflict between or among the Contract Documents, or any Contract Documents and any provision of the State of Rhode Island Procurement Regulations and/or any other provision of the Rhode Island General Laws, the State of Rhode Island Procurement Regulations and the Rhode Island General Laws shall control.

§ 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 governmental 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 governmental authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Design Agent timely notice of when and where tests and inspections are to be made so that the Design Agent 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.

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

§ 19.4 The Owner's representative:
(Name, title, address, email address and other information for the preferred methods of contact)

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§ 19.5 The Contractor's representative:
(Name, title, address, email address and other information for the preferred methods of contact)

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§ 19.6 The Design Agent's representative:

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(Name, title, address, email address, and other information for the preferred methods of contact)

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§ 19.7 Neither the Owner's nor the Contractor's nor the Design Agent's representative shall be changed without 10 working days' prior notice to the other parties.

§ 19.8 The Contractor represents and warrants to the Owner, in addition to any other representations and warranties of the Contractor elsewhere in the Contract Documents:

.1 The Contractor and its Subcontractors are each financially solvent, able to pay their debts as they mature, and possess sufficient working capital to perform their obligations under the Contract Documents.
.2 The Contractor and its Subcontractors are each able to furnish the tools, materials, equipment, and labor required to complete the Project as required under the Contract Documents.
.3 The Contractor and each Subcontractor are authorized to do business in the State of Rhode Island and are properly licensed by all necessary governmental authorities having jurisdictions over them and over the Work and the Project.
.4 The execution of this Agreement and its performance is within its duly authorized powers;
.5 The Contractor has visited the site of the Project, familiarized itself with the local and special conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents.
.6 The Contractor possesses the requisite level of experience and expertise in the business administration, construction, and superintendence of projects of the size, complexity, and nature of the Project, and it will perform the Work with the care, skill, and diligence of a contractor possessing such experience and expertise.

§ 19.8.1 The representations and warranties of the Contractor in this Section 19.8 and elsewhere in the Contract Documents will survive the execution and delivery of this Agreement, any termination of this Agreement, and the Final Completion of the Work.

§ 19.9 The Owner is the State of Rhode Island, acting by and through its Department of Administration, Division of Purchases, and therefore, pursuant to the provisions of R.I. Gen. Laws § 34-28-31, mechanics liens may not be placed against the Project**.**

ARTICLE 20 TERMINATION OF THE CONTRACT

§ 20.1 Termination by the Contractor

If the Design Agent fails to certify payment as provided in Section 15.4.1 for a period of 30 working 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 working days, the Contractor may, upon 7 additional working days' notice to the Owner and the Design Agent, terminate the Contract and recover from the Owner payment for Work executed.

§ 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may terminate the Contract if the Contractor:

.1 refuses or fails to supply enough properly skilled workers or proper materials;
.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
.3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a governmental authority;
.4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
.5 cancels or the Contractor or the Owner receives notice of cancellation of nonrenewal of any insurance required under the Contract Documents.

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§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Design Agent that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor 7 working 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 Design Agent'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 Design Agent, 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.

§ 20.4 The Contract may also be terminated by the Owner: (i) in the event of the unavailability of appropriated funds; (ii) in the absence of a determination of continued need; or (iii) as otherwise provided in the State of Rhode Island General Conditions of Purchase Regulation or other applicable law.

§ 20.5 The Work may be suspended by the Owner as provided in the State of Rhode Island General Conditions of Purchase Regulation or other applicable law.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 **Deleted.**

§ 21.2 **Deleted.**

§ 21.2.2 **Deleted.**

§ 21.3 **Deleted.**

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§ 21.6 **Deleted.**

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§ 21.8 **Deleted.**

§ 21.9 **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.

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§ 21.11 Waiver of Claims for Consequential Damages

The Contractor waives claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes:

.1 **Deleted.**

.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 waiver is applicable, without limitation, to all consequential damages due to the Contractor'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 is entered into as of the day and year first written above; provided, however, that this Agreement shall not become a valid, binding, and enforceable contract unless and until the Owner shall have issued a Purchase Order.

«**THE STATE OF RHODE ISLAND, acting by and through its Department of Administration, Division of Purchases**»		« »
OWNER (Signature)		*CONTRACTOR (Signature)*
« »« »		« »« »
(Printed name and title)		*(Printed name and title)*

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