

## Notice of Contract Purchase Agreement



**State Of Rhode Island and Providence Plantations**  
**Department of Administration**  
**Division of Purchases**  
**One Capitol Hill**  
**Providence, RI 02908-5860**

<b>V E N D O R</b>	<b>AECOM TECHNICAL SERVICES INC</b> <b>5555 GLENWOOD HILLS PKWY SE STE 200</b> <b>GRAND RAPIDS, MI 49512-2091</b> <b>United States</b>
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<b>S H I P T O</b>	<b>DOA-DCAMM</b> <b>1 CAPITOL HILL</b> <b>2ND FLOOR</b> <b>PROVIDENCE, RI 02908-5853</b> <b>United States</b>
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<b>DEVELOPMENT OF ALTERNATIVE CARE FACILITIES FOR COVID-19 RESPONSE</b>	
Award Number	<b>3673343</b>
Revision Number	<b>0</b>
Effective Period	<b>01-APR-2020 - 31-JUL-2020</b>
Approved PO Date	<b>02-APR-2020</b>
Vendor Number	<b>38145-iSupplier</b>

Type of Requisition	<b>*OTHER</b>
Requisition Number	<b>1655028</b>
Change Order Requisition Number	
Solicitation Number	<b>3673343</b>
Freight	<b>Paid</b>
Payment Terms	<b>NET 30</b>
Buyer	- <b>Bovis, Thomas</b>
Requester Name	
Work Telephone	

This Purchase Order is issued pursuant to and in accordance with the terms and conditions of the solicitation and applicable federal, state, and local law, including the State of Rhode Island's purchasing regulations, available at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).

**BLANKET REQUIREMENTS:**  
4/1/2020 - 7/31/2020

**DEVELOPMENT OF ALTERNATIVE CARE FACILITIES FOR COVID-19 RESPONSE (PLANNING, DESIGN, LOGISTICS, CONSTRUCTION MANAGEMENT)**

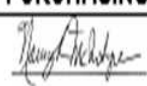
**AGENCY CONTACT:**  
**MAJ. GENERAL CHRISTOPHER CALLAHAN**  
**RI ARMY NATIONAL GUARD**  
**401-641-8838**

**SUPPLIER CONTACT:**  
**VAHID OWNJAZAYERI**

### INVOICE TO

The State of Rhode Island accepts electronic invoices via its supplier portal. To register and submit electronic invoices, visit the supplier portal at <http://controller.admin.ri.gov/iSupplier/isup/index.php>

To submit paper invoices, mail to: Department of Administration Controller, One Capitol Hill, 4th Floor, Providence 02908.

<b>STATE PURCHASING AGENT</b>
 Nancy R. McIntyre

EXECUTIVE VICE PRESIDENT  
617-371-4425

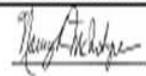
Reference Documents: 3673343ATTACH.pdf  
attach1.pdf

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**STATE PURCHASING AGENT**



Nancy R. McIntyre

**Contract Terms and Conditions**

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**Terms and Conditions**

**PURCHASE ORDER STANDARD TERMS AND CONDITIONS**

**TERMS AND CONDITIONS FOR THIS PURCHASE ORDER**

**INSURANCE REQUIREMENTS (ADDITIONAL)**

ANNUAL RENEWAL INSURANCE CERTIFICATES FOR WORKERS' COMPENSATION, PUBLIC LIABILITY, PROPERTY DAMAGE INSURANCE, AUTO INSURANCE, PROFESSIONAL LIABILITY INSURANCE (AKA ERRORS & OMISSIONS), BUILDER'S RISK INSURANCE, SCHOOL BUSING AUTO LIABILITY, ENVIRONMENTAL IMPAIRMENT (AKA POLLUTION CONTROL), VESSEL OPERATION (MARINE OR AIRCRAFT) PROTECTION & INDEMNITY, ETC., MUST BE SUBMITTED TO THE SPECIFIC AGENCY IDENTIFIED IN THE "SHIP TO" SECTION OF THE PURCHASE ORDER. CERTIFICATES ARE ANNUALLY DUE PRIOR TO THE BEGINNING OF ANY CONTRACT PERIOD BEYOND THE INITIAL TWELVE-MONTH PERIOD OF A CONTRACT. FAILURE TO PROVIDE ANNUAL INSURANCE CERTIFICATION MAY BE GROUNDS FOR CANCELLATION.

**PURCHASE AGREEMENT AWARD**

THIS IS A NOTICE OF AWARD, NOT AN ORDER. Any quantity reference in the agreement or in the bid preceding it are estimates only and do not represent a commitment on the part of the state to any level of billing activity, other than for quantities or volumes specifically released during the term. No action is to be taken except as specifically authorized, as described herein under AUTHORIZATION AND RELEASE. ENTIRE AGREEMENT - This NOTICE OF AWARD, with all attachments, and any release(s) against it shall be subject to: (1) the specifications, terms and conditions set forth in the Request/Bid Number cited herein, (2) the General Terms and Conditions of Contracts for the State of Rhode Island and (3) all provisions of, and the Rules and Regulations promulgated pursuant to, Title 37, Chapter 2 of the General Laws of the State of Rhode Island. This NOTICE shall constitute the entire agreement between the State of Rhode Island and the Vendor. No assignment of rights or responsibility will be permitted except with the express written permission of the State Purchasing Agent or his designee. CANCELLATION, TERMINATION and EXTENSION - This Price Agreement shall automatically terminate as of the date(s) described under CONTRACT PERIOD unless this Price Agreement is altered by formal amendment by the State Purchasing Agent or his designee upon mutual agreement between the State and the Vendor.

**AUTHORIZATION AND RELEASE**

In no event shall the Vendor deliver goods or provide service until such time as a duly authorized release document is certified by the ordering Agency. A Direct Purchase Order (DPO) shall be created by the agency listing the items ordered, using the pricing and format set forth in the Master Blanket. All pricing shall be as described in the Master Blanket and is considered to be fixed and firm for the term of the Agreement, unless specifically noted to the contrary herein. All prices include prepaid freight. Freight, taxes, surcharges, or other additional charges will not be honored unless reflected in Master Blanket.

**PARTIAL PAYMENTS**

PARTIAL OR PROGRESS PAYMENTS MAY BE MADE. PAYMENT WILL BE AUTHORIZED UPON RECEIPT AND ACCEPTANCE BY THE AGENCY OF THE PORTION OF THE CONTRACT OR PURCHASE ORDER COMPLETED BY THE VENDOR. PAYMENT UPON THE RENDERING OF A PROPERLY SUBMITTED INVOICE.

**BLANKET PAYMENT**

DELIVERY OF GOODS OR SERVICES AS REQUESTED BY AGENCY. PAYMENTS WILL BE AUTHORIZED UPON SUBMISSION OF PROPERLY RENDERED INVOICES NO MORE THAN MONTHLY TO THE RECEIVING AGENCY. ANY UNUSED BALANCE AT END OF BLANKET PERIOD IS AUTOMATICALLY CANCELLED.

**EQUAL OPPORTUNITY COMPLIANCE**

THIS PURCHASE ORDER IS AWARDED SUBJECT TO EQUAL OPPORTUNITY COMPLIANCE.

**WAGE REQUIREMENTS - ADDITIONAL**

VENDOR IS ADVISED THAT ALL PROVISIONS OF TITLE 37 CHAPTER 13 OF THE GENERAL LAWS OF RHODE ISLAND APPLY TO THE WORK COVERED BY THIS REQUEST, AND THAT PAYMENT OF THE GENERAL PREVAILING RATE OF PER DIEM WAGES AND THE GENERAL PREVAILING RATE FOR REGULAR, OVERTIME, AND OTHER WORKING CONDITIONS EXISTING IN THE LOCALITY FOR EACH CRAFT, MECHANIC, TEAMSTER, OR TYPE OF WORKMAN NEEDED TO EXECUTE THIS WORK IS A REQUIREMENT FOR BOTH CONTRACTORS AND SUBCONTRACTORS.

**CAMPAIGN FINANCE COMPLIANCE**

**CAMPAIGN FINANCE:** In accordance with RI General Law 17-27-2, Every person or business entity providing goods or services of \$5,000 or more, and has in the preceding 24 months, contributed an aggregate amount in excess of \$250 within a calendar year to any general officer, or candidate for general office, any member, or candidate for general assembly, or political party, is required to electronically file an affidavit regarding political contributions at: <https://secure.ricampaignfinance.com/RhodeIslandCF/Public/VendorAffidavit.aspx>

**ARRA SUPPLEMENTAL TERMS AND CONDITIONS**

For contracts and sub-awards funded in whole or in part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto, such contracts and sub-awards shall be subject to the Supplemental Terms and Conditions For Contracts and Sub-awards Funded in Whole or in Part by the American Recovery and Reinvestment Act of 2009. Pub.L.No. 111-5 and any amendments thereto located on the Division of Purchases website at [www.purchasing.ri.gov](http://www.purchasing.ri.gov).

**DIVESTITURE OF INVESTMENTS IN IRAN REQUIREMENT:**

No vendor engaged in investment activities in Iran as described in R.I. Gen. Laws §37-2.5-2(b) may submit a bid proposal to, or renew a contract with, the Division of Purchases. Each vendor submitting a bid proposal or entering into a renewal of a contract is required to certify that the vendor does not appear on the list maintained by the

General Treasurer pursuant to R.I. Gen. Laws §37-2.5-3.

For all Purchase Orders issued on behalf of the University of Rhode Island, Community College of Rhode Island, and Rhode Island College, vendors will receive a confirming order from the respective entity prior to proceeding.

**MASTER PRICE AGREEMENT CONTRACT ADMINISTRATIVE FEE**

In 2017 the General Assembly amended the "State Purchases Act", R. I. Gen. Laws § 37-2-12 (b) to authorize the Chief Purchasing Officer to establish, charge and collect from vendors listed on master price agreements ("MPA") a contract administrative fee not to exceed one percent (1%) of the total value of the annual spend against their MPA contracts. All contract administrative fees collected from MPA vendors shall be deposited into a restricted receipt account which shall be used for the purposes of implementing and maintaining an online eProcurement system and other costs related to State procurement. In accordance with this legislative initiative the Division of Purchases is upgrading the State procurement system through the purchase and installation of an eProcurement system.

The contract administrative fee shall be applicable to all purchase orders issued relative to State MPA contracts. Therefore, effective January 1, 2020 all MPA contracts shall be assessed the 1% contract administrative fee.

**TERMS AND CONDITIONS OF PRICING AGREEMENT**

**SCOPE AND LIMITATIONS - This Agreement covers requirements as described herein, ordered by State agencies during the Agreement Period. No additional or alternative requirements are covered, unless added to the Agreement by formal amendment by the State Purchasing Agent or his designee.**

Under State Purchasing Law, 37-2-54, no purchase or contract shall be binding on the state or any agency thereof unless approved by the department [of administration] or made under general regulations which the chief purchasing officer may prescribe. Under State Purchasing Regulation 8.2.1.1.2, any alleged oral agreement or arrangements made by a bidder or contractor with any agency or an employee of the Office of Purchases may be disregarded and shall not be binding on the state.

**PRODUCT ACCEPTANCE** - All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by the State. The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option.

a) Failure by the state to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the State's right to subsequently reject the goods in question.

b) Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive receipts or procurements.

Where the vendor fails to cure the defect promptly or replace the goods, the State reserves the right to cancel the Release, contract with a different vendor, and to invoice the original vendor for any differential in price over the original contract price.

**ORDER AUTHORIZATION AND RELEASE AGAINST PRICING AGREEMENT**

**In no event shall the Vendor deliver goods or provide service until such time as a duly authorized release document is certified by the ordering Agency.**

**State Agencies shall request release as follows: All releases shall reference the Price Agreement number, the Contract Issue number, the item(s) covered, and the unit pricing in the same format as described herein.**

A Department Purchase Order (DPO) listing the items ordered shall be created by the agency. The agency may mail or fax a copy of the order to the Vendor. In some cases the agency may request delivery by telephone, but must

provide the Vendor with a DPO Order Number reference for billing purposes. Vendors are encouraged to require written orders to assure payments are processed accurately and promptly.

**DELIVERY** If this is an MPA, Vendor will obtain "ship to" information from each participating agency. This information will be contained in the DPO. APA delivery information will be contained in the Notice of Award.

**PRICING** - All pricing shall be as described herein, and is considered to be fixed and firm for the term of the Agreement, unless specifically noted to the contrary herein. All prices include prepaid freight. Freight, taxes, surcharges, or other additional charges will not be honored unless reflected herein.

**INVOICING** All invoices shall reference the DPO Order Number(s), Price Agreement number, the Contract Issue number, the item(s) covered, and the unit pricing in the same format as described herein. If this is an MPA, Vendor will obtain "bill to" information from each participating agency. This information will be contained in the DPO. APA billing information will be contained in the Notice of Award.

**PAYMENT** - Invoices for items not received, not priced according to contract or for work not yet performed will not be honored. No payment will be processed to any vendor for whom there is no IRS W-9 on file with the State Controller.

# AIA<sup>®</sup> Document C172<sup>™</sup> – 2014

## **Standard Form of Agreement Between Owner and Program Manager for use on a Single Project**

**AGREEMENT** made as of the 31st day of March in the year 2020  
(*In words, indicate day, month and year.*)

**BETWEEN** the Program Manager's client identified as the Owner:  
(*Name, legal status, address, and other information*)

**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.ridop.ri.gov**

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

Rhode Island Army National Guard  
705 New London Avenue  
Cranston, RI 02920

Executive Office of Health and Human Services  
3 West Road  
Cranston, RI 02920

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

AECOM Technical Services Architects &  
Engineers, Inc.  
10 Orms Street, 4th Floor  
Providence, RI 02904

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

Development of Alternative Care Facilities  
See AECOM proposal dated March 29, 2020, attached hereto.

The Owner and Program Manager agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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



## TABLE OF ARTICLES

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution.")*

See AECOM proposal dated March 29, 2020, attached hereto.

#### § 1.2 Definitions

§ 1.2.1 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by the Owner.

#### § 1.3 Project Information

§ 1.3.1 The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

See AECOM proposal dated March 29, 2020, attached hereto.

§ 1.3.2 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographical surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

See AECOM proposal dated March 29, 2020, attached hereto.

§ 1.3.3 Preliminary assessment of the condition of existing facilities or site, if any:

*(Identify or describe written reports of the conditions of existing facilities or site.)*

See AECOM proposal dated March 29, 2020, attached hereto.

§ 1.3.4

*(Paragraphs deleted)*

Deleted.

§ 1.3.5 The Owner's budget for the Project:

*(Provide the Owner's total budget for the Project and, if known, a line-item breakdown of all costs described in Section 3.5.1.)*

See AECOM proposal dated March 29, 2020, attached hereto.  
Owner's total budget to be determined at requisition stage.

§ 1.3.6 The Owner's intended procurement or delivery method for design and construction of the Project:

*(Identify method such as competitive bid, negotiated contract, multiple prime contracts, or construction management.)*

See AECOM proposal dated March 29, 2020, attached hereto.

§ 1.3.7 Anticipated scheduling information:

*(Include overall Project duration and milestones. If known, include proposed dates for commencement and completion of design, commencement and completion of construction, occupancy, and any other critical scheduling information for the Project.)*

.1 Anticipated dates of Project commencement and completion:

.1 Commencement of design, if other than the date of this Agreement:

The date of this Agreement.

.2 Completion of design:

As soon as reasonably possible after the date of this Agreement.

.3

*(Paragraphs deleted)*

Program Manager shall use reasonable efforts to coordinate with Contractor to facilitate construction completion within 21 days of the effective date of this Agreement.

.2 Other Project scheduling information:

See AECOM proposal dated March 29, 2020, attached hereto, for information regarding the emergency nature of the Project.

The time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Program Manager recognizes the importance of meeting the schedule and shall perform its services to meet the schedule as expeditiously as is consistent with the Standard of Care.

§ 1.3.8 Other information regarding the Project:

*(Identify any other available studies or reports, as well as special characteristics or needs of the Project, such as historic preservation requirements, not provided elsewhere.)*

See AECOM proposal dated March 29, 2020, attached hereto.

§ 1.3.9 The Owner's anticipated sustainable objective for the Project, if any:

*(Identify the Owner's sustainable objective for the Project such as sustainability certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency.)*

N/A

**§ 1.4 Project Team**

**§ 1.4.1** The Owner will retain the following consultants and contractors:  
*(List name, discipline, address, and other information.)*

See AECOM proposal dated March 29, 2020, attached hereto. All other consultant names, disciplines, addresses and other pertinent information shall be disclosed to the Owner as soon as practicable after the Program Manager identifies each consultant.

**§ 1.4.2** The Program Manager will retain the consultants identified in Sections 1.4.2.1 and 1.4.2.2:

**§ 1.4.2.1** Consultants retained under Basic Services:  
*(List name, discipline, address, and other information.)*

NEMD Architects  
1 Virginia Avenue  
Providence, Rhode Island 02905

AKF Engineers  
99 Bedford Street  
Boston, Massachusetts 02111

Claflin Medical Equipment  
1206 Jefferson Blvd.  
Warwick, RI 02886

All other consultant names, disciplines, addresses and other pertinent information shall be disclosed to the Owner as soon as practicable after the Program Manager identifies each consultant.

**§ 1.4.2.2** Consultants retained under Additional Services:  
*(List name, discipline, address, and other information.)*

Consultant names, disciplines, addresses and other pertinent information shall be disclosed to the Owner as soon as practicable after the Program Manager identifies each consultant.

**§ 1.4.3** The Owner identifies the following representative in accordance with Section 5.4:  
*(List name, address, and other information.)*

Maj. General Christopher P. Callahan  
Rhode Island Army National Guard  
705 New London Avenue  
Cranston, RI 02920  
401-641-8838 (mobile)  
401-275-1169 (office – direct)  
christopher.p.callahan4.mil@mail.mil

Dacia Reed  
Assistant Secretary  
Executive Office of Health and Human Services  
3 West Road  
Cranston, RI 02920  
508-353-2583 (mobile)  
401-462-6373 (office)  
Dacia.Read@ohhs.ri.gov

§ 1.4.4 The persons or entities, in addition to the Owner's representative, who are required to review and approve the Program Manager's submittals to the Owner are as follows:

*(Paragraphs deleted)*

The representatives identified in § 1.4.3 or their designees.

§ 1.4.5 The Program Manager identifies the following representative in accordance with Section 2.4:

*(List name, address, and other information.)*

Vahid Ownjazayeri (primary representative/contact)

**Vahid.Ownjazayeri@aecom.com**

Executive Vice President

10 Orms Street, 4th Floor

Providence, RI 02904

617.371.4425

Richard C. Prior, P.E. (RI, MA, NJ, PA) (to be copied on communications)

Vice President, New England

10 Orms Street, 4th Floor

Providence, RI 02904

**Richard.Prior@aecom.com**

D: 401.854.2815

M: 401.369.1643

§ 1.5 Other Initial Information on which the Agreement is based:

See AECOM proposal dated March 29, 2020, attached hereto.

§ 1.6 The Owner and Program Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Program Manager shall appropriately adjust the schedule, the Program Manager's services, and the Program Manager's compensation.

## ARTICLE 2 PROGRAM MANAGER'S RESPONSIBILITIES

§ 2.1 The Program Manager shall provide the services as set forth in (i) AECOM Proposal dated March 29, 2020, attached hereto; and (ii) this Agreement. The Program Manager represents that it is properly licensed in the state of Rhode Island to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. No part of the professional services shall be performed by Subconsultants or Subcontractors without the Owner's prior written consent.

§ 2.2 The Program Manager shall perform its services consistent with the professional skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances (the "Standard of Care"). The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Program Manager, as soon as practicable after execution of the Agreement, shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Program Manager's proposed key staff members, the Owner may reply to the Program Manager in writing stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. The Program Manager shall not staff any employees on the Project to whom the Owner has made reasonable and timely objection. The Program Manager shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 2.4 The Program Manager shall identify a representative authorized to act on behalf of the Program Manager with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Program Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Program Manager's judgment with respect to the Project.

§ 2.6 The Program Manager shall provide its services in cooperation with the services provided by the Owner and the Owner's consultants and contractors and shall coordinate its services with those services provided by the Owner and the Owner's consultants and contractors. The Program Manager shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants and contractors. The Program Manager shall provide prompt written notice to the Owner if the Program Manager becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.7 Insurance. The Program Manager shall maintain the following insurance for the duration of this Agreement:

§ 2.7.1 Commercial General Liability (including broad-form contractual liability and completed operations) with policy limits of not less than \$1,000,000 for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.7.2 Commercial Automobile Liability covering vehicles owned and hired by the Program Manager and non-owned vehicles used by the Program Manager with policy limits of not less than \$1,000,000 combined single limit and in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 2.7.3 The Program Manager may achieve the required limits and coverage for Commercial General Liability and Commercial Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.7.4 Workers' Compensation at statutory limits.

§ 2.7.5 Professional Liability covering bodily injury and property damage due to the Program Managers negligent acts, errors, and omissions in the performance of professional services, with policy limits of not less than \$2,000,000 per claim and in the aggregate, maintained during the term of this Agreement and for a period of 5 years after the completion of any and all of the Program Manager's services under this Agreement. Any retroactive date or prior acts exclusion to which such coverage is subject shall predate the date on which services hereunder are commenced and the date of this Agreement.

§ 2.7.6 Additional Insured Obligations. The Program Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Commercial Automobile Liability to include the Owner and the User Agency as additional insureds for claims caused in whole or in part by the Program Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.7.7 The Program Manager shall provide to the Owner and the User Agency, on an annual basis for the duration of the Agreement and from time to time upon request, with a copy of a policy endorsement and certificates of insurance that name the State of Rhode Island and the User Agency as "certificate holders" and as "additional insureds" and that otherwise evidences compliance with the requirements in this Section 2.7. The certificate of insurance must state that 30 calendar days' advance notice of cancellation, nonrenewal, or material change (together with a copy of the materially changed policy or endorsement) in coverage will be sent to: Rhode Island Department of Administration, Division of Purchases, One Capitol Hill, Providence, Rhode Island 02908-5855, fax # (401) 574-8387, and must reference the Project and this Agreement. Material changes that are not acceptable to the Owner may result in the termination by the Owner pursuant to Section 8.4. All policies, endorsements, and certificates of insurance must include the following language: Coverage is primary and noncontributory. Subrogation is waived for the additional insured.

## ARTICLE 3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES

### § 3.1 General

§ 3.1.1 The Program Manager's Basic Services consist of those described in the AECOM proposal dated March 29, 2020, attached hereto and in this Article 3. The Program Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Program Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs employed in connection with the construction of the Project, nor shall the Program Manager be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, the Project in accordance with the plans, specifications, or other contract or legal requirements. The Program Manager shall be responsible for the Program Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Owner's consultants or contractors.

§ 3.1.2 The Program Manager shall provide the Owner with a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other.

§ 3.1.3 The Program Manager shall assist the Owner in determining the Owner's need for retaining consultants to provide professional and other services for the Project, and assist the Owner in reviewing qualifications and selecting any such consultants. The Program Manager shall periodically review the development of the design for the Project, and provide recommendations to the Owner for systems, materials, equipment, and techniques that may be utilized to achieve design standards for the Project, if any.

§ 3.1.4 The Program Manager shall assist the Owner in selecting the services of independent testing laboratories, review their reports, and make recommendations, if any, to the Owner based on that review.

§ 3.1.5 The Program Manager shall assist the Owner in coordinating the professional services of surveyors, special consultants, and testing laboratories required for the Project.

§ 3.1.6 The Program Manager shall assist the Owner in reviewing the qualifications of, and in selecting and retaining, the Contractor for Project.

§ 3.1.7 The Program Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project as appropriate.

§ 3.1.8 The Program Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over the Project; and shall assist the Owner in connection with the Owner's responsibility for filing documents required for such approvals. The Program Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractor. The Program Manager shall verify that the Owner has paid applicable fees and assessments.

§ 3.1.9 The Program Manager and the Owner shall discuss the feasibility of incorporating sustainable objectives in the Project.

§ 3.1.10 The Program Manager shall retain all Project related documents and information it receives. Upon reasonable notice, the Owner shall have access to all such documents and information. Project participants shall have access to such documents and information only as approved by the Owner. The Program Manager shall preserve such documentation and information for a period of one year from the date of Substantial Completion and at that time provide a copy to the Owner.

### § 3.2 Project Management Plan

§ 3.2.1 In order to ascertain the requirements of the Project, the Program Manager shall review and discuss with the Owner the Initial Information, along with any other information to be furnished by the Owner and listed below.  
*(List other information to be furnished by the Owner.)*

See AECOM proposal dated March 29, 2020, attached hereto.

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§ 3.2.2 The Program Manager shall develop and document a Project Management Plan with recommendations for the Owner's internal management of the Project, including a description of, and requirements pertaining to, the following:

- .1 Project management approach and organization, including executive, management and team staffing plan and responsibilities;
- .2 Project planning and development activities, including strategic planning; prioritizing; and defining scope, schedule, and budget for the Project;
- .3 Cost estimates, if selected in Section 4.1;
- .4 Project management controls, including scope, budget/cost, schedule, and quality management plan;
- .5 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; procedures for evaluating and approving substitutions; and strategy for affirmative action or diversity planning;
- .6 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for Project construction procurement, such as award, contracting, notice to proceed, Change Orders, payment certification; and Project closeout;
- .7 Project communication procedures, including systems, meetings, reporting, investigation, and records;
- .8 Development of design process guidelines, including coordination and permit process;
- .9 Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, Change Order management, commissioning, and Project closeout procedures; and
- .10 Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

§ 3.2.3 The Project Management Plan shall also include the Program Manager's recommendations regarding the delivery method for design and construction of the Project.

§ 3.2.4 The Program Manager shall obtain the Owner's approval of the Project Management Plan, and any subsequent revisions to the Project Management Plan.

### § 3.3 Information Management and Standards

§ 3.3.1 The Information Management System is a web-based system used to distribute Project related information. Unless otherwise indicated in Section 3.3.2 below, the Program Manager shall implement a File Sharing System, as described in Section 3.3.3, as the Information Management System for the Project.

§ 3.3.2 If the Program Manager is to implement an Information Management System other than the File Sharing System, check the appropriate box below. If the Program Manager is not going to implement an Information Management System, select "None" below. Nothing in this Section 3.3 is intended to relieve the Program Manager of the information retention obligations set forth in Section 3.1.10.

Project Management Information System (pursuant to section 3.3.4 below)

Other Information Management System  
(Describe in detail the web-based system to be implemented, maintained and upgraded, as necessary, by the Program Manager.)

None

§ 3.3.3 **File Sharing System.** The Program Manager shall implement, maintain, and upgrade as necessary, a web-based File Sharing System to be used to receive and distribute Project Reports, Project Schedules, and other information as agreed by the Owner and the Program Manager.

§ 3.3.4 **Project Management Information System.** The Program Manager shall implement, maintain, and upgrade as necessary, a web-based Project Management Information System to be used to receive, distribute, and maintain Project Reports, Project Schedules, and other information as agreed by the Owner and the Program Manager. Activities under the Project will be scheduled and documented through the Project Management Information System.

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The Project Management Information System shall organize information by activity or other relevant categories, as determined by the Program Manager and Owner. The Program Manager shall collect information pertaining to the Project, and update the Project Management Information System on a weekly basis unless otherwise agreed. The Project Management Information System shall contain, at a minimum, the current status on contracts, budget, and schedule, and the documents identified in this Section 3.3.4, including the following:

- .1 The Contract Documents
- .2 Addenda
- .3 Change Orders and Construction Change Directives
- .4 Modifications
- .5 Construction schedules and submittal schedules
- .6 Requests for information and any responses, logs, or compilations pertaining to requests for information
- .7 Approved Shop Drawings, Product Data, and similar required submittals
- .8 Certificates of insurance received from the Contractor
- .9 Consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment
- .10 Affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens
- .11 Minutes for any meeting the Program Manager attends, and all pertinent meetings.
- .12 Any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals
- .13 Other

**§ 3.3.5** The Owner shall have access to all information in the Information Management System. Other Project participants shall have access to specific information only as approved by the Owner. The Program Manager shall preserve the documentation and information contained in the Information Management System for a period of one year from the date of Substantial Completion and at that time provide a copy of all documentation and information contained in the Information Management System to the Owner.

**§ 3.3.6** The Program Manager shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Information Management System. The Program Manager shall provide information to the Owner and the Owner's consultants and contractors, as required, regarding the use of the Information Management System.

**§ 3.4 Project Report.** On a weekly basis, or as otherwise agreed to by the Owner, the Program Manager shall prepare a Project Report. The Project Report shall include the following:

- .1 A summary update of the Project status, including photographs to document the progress of the Project
- .2 An updated Project Schedule
- .3 Actual and anticipated costs related to the Project
- .4 Cost and payment reports for each consultant and construction contract
- .5 Updated cash flow projections
- .6 Tests and inspection reports
- .7 A status report of nonconforming and rejected Work
- .8 Proposed and approved Change Orders
- .9 Any actual or potential claims pertaining to the Project
- .10 A status update of the Contractor's submittals
- .11 Other

Some reporting will take place on a daily basis as detailed in the AECOM proposal dated March 29, 2020, attached hereto.

### **§ 3.5 Project Budget Control**

**§ 3.5.1** If the Owner has not established a budget for the Project, the Program Manager and the Owner shall collaborate to prepare a Project Budget, which shall include the costs for the Program Manager's services, the costs of the services of the Owner's other consultants, the costs for design and construction of the Project, reasonable cost contingencies, and additional cost projections and information as necessary. The Owner shall review and approve the

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Project Budget in writing. On a weekly basis, or as otherwise agreed to by the Owner, the Program shall update and provide reports on the Project Budget. If a Project Management Information System is selected in Section 3.3, the Program Manager shall organize the Project Budget in a manner that will allow costs to be tracked using the Project Management Information System.

§ 3.5.2 The Program Manager shall develop and implement a system of budget and cost controls to assist the Owner in the management of Project costs. The Program Manager shall prepare cash flow projections of costs for the Project.

§ 3.5.3 The Program Manager shall share information regarding the Project Budget with the Owner's consultants as authorized by the Owner.

§ 3.5.4 The Program Manager shall report the impact on the Project Budget of contracts and Modifications proposed by the Owner and the Owner's consultants and contractors.

### § 3.6 Project Schedule Control

§ 3.6.1 The Program Manager shall prepare a Project Schedule showing priorities, sequences, durations, and responsible parties, for major design, pricing, construction, and Owner activities. The Project Schedule shall also identify critical milestone dates and schedule contingencies. As the Project progresses, the Program Manager shall update the status and expand the level of detail of the Project Schedule. The Project Schedule shall also incorporate or identify

- .1 dates for approvals and permits;
- .2 the design and construction schedules, including dates of commencement and completion, and other Project milestones;
- .3 Project components that need to be ordered or procured by the Owner, if any; and
- .4 the Owner's occupancy requirements, and any portions of the Project having occupancy priority.

§ 3.6.2 The Program Manager shall provide recommendations for sequencing and phasing to meet overall Project objectives.

§ 3.6.3 The Program Manager shall monitor and report on the progress of the Project and advise the Owner of observed deviations from the Project Schedule or key milestones that may impact Substantial Completion or final completion. The Program Manager shall include the reports in the Project Management Information System if selected in Section 3.3. The Program Manager shall consult with the Owner and the Owner's consultants and contractors and assist the Owner in developing recovery plans when the schedules or objectives are not being met.

### § 3.7 Project Quality Control

§ 3.7.1 The Program Manager shall establish quality control guidelines, that the Owner may include in agreements between the Owner and the Owner's consultants or contractors, and distribute them through the Information Management System, if one is selected in Section 3.3.

§ 3.7.2 The Program Manager shall confirm that the Contractor has prepared a safety program and quality control plan.

§ 3.7.3 Unless the Program Manager shall provide on-site representation as an additional service pursuant to Section 4.2.1, the Program Manager shall visit the site at intervals appropriate to the state of construction, or at the specific intervals or milestones set forth in Section 3.7.3.1, to become generally familiar with the progress and quality of the portion of the Work completed.

§ 3.7.3.1 If the Program Manager is required to visit the site at specific intervals or milestones, set forth such intervals or milestones below.

The Program Manager shall visit the site daily.

§ 3.7.4 The Program Manager shall advise the Owner of observations it makes regarding deficiencies in the performance of the Owner's consultants and contractors.

**§ 3.8 Other Services**

**§ 3.8.1** Subject to Sections 4.3.1 and 4.5.1, upon the Owner's written request, the Program Manager shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Project and the Owner.

**§ 3.8.2** The Program Manager shall schedule and conduct meetings with the necessary Project participants to coordinate the progress of the Project. The Program Manager shall also prepare minutes of such meetings. The Program Manager shall include its meeting minutes, as appropriate, in the Project Management Information System if selected in Section 3.3.

**§ 3.8.3** The Program Manager shall assist the Owner in preparing construction contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by the Contractor. The Program Manager shall review all proposals for additional services from the Contractor and Owner's consultations and advise the Owner on the acceptability.

**§ 3.8.4 Deleted.**

**§ 3.8.5** Upon the written request of the Owner, the Program Manager shall evaluate and provide input to the Owner on claims arising out of the Project.

**ARTICLE 4 ADDITIONAL SERVICES**

Additional Services listed below may not be included in Basic Services or the March 29, 2020 proposal but may be required for the Project.

**§ 4.1 Cost Estimating Services**

The Program Manager shall provide to the Owner only the services in this Section that are designated by a check or "X" in the box adjacent to the listed service. The Owner shall compensate the Program Manager for the Additional Services selected in this Section 4.1 as set forth in Section 10.3.

*(Designate the services the Program Manager shall provide by placing a check or "X" in the box adjacent to the listed service. If necessary, provide expanded or modified descriptions of the designated services in the section or in an exhibit attached to this document.)*

	<p><b>§ 4.1.1</b> Based on the preliminary design and other design criteria prepared by the Design Agent and provided by the Owner, the Program Manager shall prepare a written preliminary estimate of the Cost of the Work using area, volume, or similar conceptual estimating techniques. If the Design Agent suggests alternative materials and systems, at the request of the Owner the Program Manager shall provide written cost evaluations of those alternative materials and systems, and may also provide its own suggestions for review and consideration by the Owner. The Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Design Agent and shall include the Contractor's general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Design Agent or Program Manager, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Owner.</p>
	<p><b>§ 4.1.2</b> As the Design Agent progresses with the preparation of the schematic design, design development, and construction documents, the Program Manager shall prepare and update, at appropriate intervals agreed to by the Owner and Program Manager, written estimates of the Cost of the Work in increasing detail and refinement. The Program Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. The Program Manager shall advise the Owner in writing if it appears that the Cost of the Work may exceed the Project Budget and make recommendations for corrective action to be considered by the Owner and Design Agent, and if appropriate, incorporated by the Design Agent.</p>
	<p><b>§ 4.1.3</b> The Program Manager shall provide written recommendations regarding add and deduct alternates to be considered by the Owner and Design Agent, and if appropriate, incorporated by the Design Agent in the Drawings and Specifications.</p>

**§ 4.2 Construction Contract Administration Services**

The Program Manager shall provide to the Owner only the services in this Section that are designated by a check or "X" in the box adjacent to the listed service. The Owner shall compensate the Program Manager for the Additional Services selected in this Section 4.2 as set forth in Section 10.3.

(Designate the services the Program Manager shall provide by placing a check or "X" in the box adjacent to the listed service. If necessary, provide expanded or modified descriptions of the designated services in the section or in an exhibit attached to this document.)

	<p>§ 4.2.1 The Program Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Program Manager shall determine in general that the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner and Design Agent in writing of observed defects and deficiencies in the Work.</p>
	<p>§ 4.2.2 The Program Manager shall review information regarding tests and inspections provided by the Contractor, and provide written comments to the Owner, for consideration by the Owner and Design Agent, regarding any questions or concerns the Program Manager has with the information provided by the Contractor.</p>
	<p>§ 4.2.3 If the Program Manager reasonably believes the Design Agent should reject Work or require additional inspection or testing of the Work, the Program Manager shall promptly recommend such actions to the Owner and Design Agent in writing. The Program Manager shall also recommend to the Owner, in writing, courses of action when requirements of a contract are not being fulfilled. The Program Manager shall include all recommendations required by this Section 4.2.3 in its Project Reports.</p>
	<p>§ 4.2.4 The Program Manager shall review the Contractor's Applications for Payment and provide written recommendations, if any, to the Owner and Design Agent.</p>
	<p>§ 4.2.5 If requested by the Design Agent and Owner, the Program Manager shall evaluate Contractor requests for information regarding the Contract Documents and provide written recommendations to the Owner and Design Agent.</p>
	<p>§ 4.2.6 When requested by the Owner, the Program Manager shall review requests for changes, assist the Owner and Design Agent in evaluating and negotiating Contractors' proposals, and submit written recommendations to the Design Agent and Owner. Upon request by the Owner, the Program Manager will review Change Orders and Construction Change Directives prepared by the Design Agent and provide written comments regarding any questions or concerns the Program Manager has regarding the Change Orders or Construction Change Directives.</p>
	<p>§ 4.2.7 The Program Manager shall review the Contractor's daily logs and other similar relevant data as the Owner may require, and provide written comments to the Owner regarding any questions or concerns the Program Manager has regarding the daily logs or other data.</p>
	<p>§ 4.2.8 The Program Manager shall evaluate whether the Work, or a designated portion thereof, is substantially complete and provide its written recommendations to the Owner and Design Agent. Upon the Contractor's completion of the Work, the Program Manager shall inspect the Work and provide written recommendations to the Owner and Design Agent.</p>
	<p>§ 4.2.9 With the Design Agent and the Owner's maintenance personnel, the Program Manager shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment, and observe any commissioning as the Contract Documents may require.</p>
	<p>§ 4.2.10 The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and Project close-out. The Program Manager shall deliver to the Owner all keys, manuals, record drawings, and maintenance stocks it receives from the Contractor.</p>
	<p>§ 4.2.11 The Program Manager shall review the Contractor's final Application for Payment and provide written recommendations, if any, to the Owner and Design Agent.</p>
	<p>§ 4.2.12 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Program Manager shall, without additional compensation, attend a meeting with the Owner and Design Agent to review the facility operations and performance.</p>

§ 4.3 The Program Manager shall provide the listed Additional Services only if specifically designated in the table below as the Program Manager's responsibility, and the Owner shall compensate the Program Manager as provided in Section 10.3.

(Designate the Additional Services the Program Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.4 or in an attached exhibit. If in an exhibit, identify the exhibit. AIA Contract Document numbers are cited, where applicable, to provide a basis for the proposed scope of services, but may need to be revised to be applicable in the program management context.)

Services	Responsibility (Program Manager, Owner or not provided)	Location of Service Description (Section 4.4 below or in an exhibit attached to this document and identified below)
§ 4.3.1 Community communications not included in		

Section 3.8.1		
§ 4.3.2 Capital campaign support		
§ 4.3.3 Assistance with sustainability certifications		
§ 4.3.4 Affirmative action/diversity compliance and outreach		
§ 4.3.5 Existing facilities analysis		
§ 4.3.6 Site Selection Analysis (B203™-2007)		
§ 4.3.7 Economic analysis		
§ 4.3.8 Programming (B202™-2009)		
§ 4.3.9 Master planning		
§ 4.3.10 Design standards services		
§ 4.3.11 Early procurement of materials and equipment		
§ 4.3.12 FF&E procurement coordination		
§ 4.3.13 Life cycle analysis		
§ 4.3.14 Move management		
§ 4.3.15 Coordination of hazardous material testing or abatement		
§ 4.3.16 Payroll compliance services		
§ 4.3.17 Stakeholder relationships management		

§ 4.4 Insert a description of each Additional Service designated in Section 4.3 as the Program Manager's responsibility, if not further described in an exhibit attached to this document.

§ 4.5 Additional Services may be provided after execution of this Agreement without invalidating this Agreement. Except for services required due to the fault of the Program Manager, any Additional Services provided in accordance with this Section 4.5 shall entitle the Program Manager to compensation pursuant to Section 10.4.

§ 4.5.1 Upon recognizing the need to perform the following Additional Services, the Program Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Program Manager shall not proceed to provide the following services until the Program Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information; a change to previous instructions or approvals given by the Owner; or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's Project Schedule or Project Budget, or procurement or delivery methods listed in Section 1.3.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations, or by official interpretations, after the date of this Agreement;
- .3 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Program Manager is party thereto;
- .4 Services required to assist in the repair or replacement of any elements of construction for any cause except the negligence of the Program Manager; or
- .5 Services required by deficiencies in the performance or default of Owner's consultants or contractors.

§ 4.5.2 Deleted.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for in this Agreement, the Owner shall provide and update information regarding requirements for, and limitations on, the Project in a timely manner, including the information in Article 1;

information pertaining to other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Program Manager to perform its services.

**§ 5.2 Deleted.**

**§ 5.3** The Owner shall retain all contractors and consultants necessary to carry out the Project except for those consultants retained by the Program Manager as listed in Section 1.4.2. The Owner shall provide the Program Manager with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as required by law, and require that its contractors maintain commercial general liability insurance and other liability insurance as required by law.

**§ 5.4** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Program Manager's services.

**§ 5.5** If necessary for the Program Manager to perform its services under this Agreement, the Owner shall furnish surveys to describe the physical characteristics, legal limitations, utility locations and written legal description of the Project site. The survey and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to an appropriate benchmark.

**§ 5.6** If necessary for the Program Manager to perform its services under this Agreement, the Owner shall furnish services of a geotechnical engineer, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests, and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 5.7** The Owner shall furnish tests, inspections, and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 5.8 Deleted.**

**§ 5.9** The Owner shall provide, and shall require that its consultants and contractors provide, prompt written notice to the Program Manager if they become aware of any fault or defect in the Project, including errors, omissions or inconsistencies in any documents produced by, or services provided by, the Program Manager.

**§ 5.10** In the agreements between the Owner and the Owner's consultants or contractors, the Owner shall include a duty that the consultant or contractor cooperate with the Program Manager and provide information and documents reasonably necessary for the Program Manager to prepare and update the Project Management Plan or as otherwise required for the Program Manager to perform its services.

**§ 5.11** Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Program Manager's consultants through the Program Manager about matters arising out of or relating to the Project. The Owner shall communicate with its own forces, consultants, and contractors, and coordinate its own internal information and communications that are necessary for the Project. The Owner shall notify the Program Manager of any such communication that affects the Project. The Owner shall promptly notify the Program Manager of any direct communications that may affect the Program Manager's services.

**§ 5.12** The Owner shall provide the Program Manager access to the Project site and other facilities under the Owner's control and associated with the Project. The Owner shall obligate its contractors to provide the Program Manager access to the Project site wherever Work is in preparation or progress.

**§ 5.13 Deleted.**

**§ 5.14** The Program Manager shall be entitled to rely upon the accuracy of information, documents and surveys supplied by the Owner.

**ARTICLE 6 COPYRIGHTS AND LICENSES**

**§ 6.1** The Program Manager assigns to the Owner its rights, including copyright, in its Instruments of Service. The Program Manager shall obtain a similar assignment to the Owner from the Program Manager's consultants consistent with this Agreement. For purposes of this Agreement, 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 Program Manager, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

**§ 6.2** The Program Manager and Owner warrant that in transmitting any information, including Instruments of Service, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 6.3** The Owner shall have exclusive ownership of all data in the Information Management System and the Project Management Plan developed or contributed by the Program Manager or the Program Manager's consultants and contractors. Ownership of the data in the Information Management System and the Project Management Plan does not include ownership of any proprietary software developed and owned by the Program Manager and used in connection with the collection, manipulation, or publication of the data in the Information Management System and the Project Management Plan. Unless the Owner pays the licensing fee described in Section 10.7, the Owner's right to use any such proprietary software shall terminate at the time of termination of this Agreement. The Program Manager shall take all steps reasonably necessary to allow the Owner to exercise the Owner's rights to own and utilize the data in the Information Management System and the Project Management Plan after termination of the Owner's rights to use any proprietary software. The Program Manager shall include provisions consistent with the provisions in this Section 6.3 in the Program Manager's agreements with the Program Manager's consultants. If the Program Manager rightfully terminates this Agreement for cause as provided in Section 8.4, the Program Manager's obligations under, and the Owner's rights to further use of proprietary software granted in, this Section 6.3 shall terminate. Ownership of data obtained from, or compiled, developed or contributed by, the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

**§ 6.4** Except as otherwise stated in Section 6.3, the provisions of Article 6 shall survive the termination of this Agreement.

**ARTICLE 7 CLAIMS AND DISPUTES**

**§ 7.1 General**

**§ 7.1.1** The Owner and Program Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other, arising out of or related to this Agreement, in accordance with the requirements of the method of binding dispute resolution selected in this Agreement, within the period specified by applicable law. The Owner and Program Manager waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

**§ 7.1.2** To the extent damages are covered by property insurance required under Article 2, the Owner and Program Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in Article 2 and AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by the Owner. The Program Manager shall require of their contractors, consultants, and agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 7.1.3** The Program Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless in accordance with the Rhode Island General Conditions of Purchase Regulation, 220-RICR-30-00-13.21.

Notwithstanding anything to the contrary in this Agreement or the Rhode Island General Conditions of Purchase Regulation, 220-RICR-30-00-13.21, Program Manager's indemnity, hold harmless and defense obligations are limited to the extent arising out of its negligence and/or willful misconduct.

§ 7.1.4 The parties waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

§ 7.1.4.1 Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section 7.1.4 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.

§ 7.1.4.2 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.

§ 7.1.4.3 The Program Manager will include the indemnity set forth in this Section 7.1.3 without modification, in each Subcontract with any Subconsultant or Subcontractor.

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

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

## § 7.2 Mediation

§ 7.2.1 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 7.2.1. An initial decision shall be required as a condition precedent to binding dispute resolution pursuant to Section 7.3.1 of any Claim arising prior to the date final payment is due.

*(Paragraph deleted)*

§ 7.2.2 For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 7.2.1, and prior to the implementation of the binding dispute resolution procedures set forth in Section 7.3.1, the Program Manager 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 Program Manager, the Owner and the Program Manager shall attempt to select a mediator, and in the event that the Owner and the Program Manager 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.

§ 7.2.3 Deleted.

## § 7.2.4

*(Paragraphs deleted)*

Deleted.

## § 7.3 Arbitration

§ 7.3.1 For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 7.2.1, or mediation at the option of the Program Manager pursuant to Section 7.2.2, 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. The provisions of Article 7 shall survive the termination of this Agreement.

*(Paragraphs deleted)*

#### **ARTICLE 8 TERMINATION OR SUSPENSION**

§ 8.1 If the Owner fails to make payments to the Program Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Program Manager's option, cause for suspension of performance of services under this Agreement. If the Program Manager elects to suspend services, the Program Manager shall give 7 working days' written notice to the Owner before suspending services. In the event of a suspension of services, the Program Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Program Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Program Manager's services. The Program Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.2 The Owner may suspend the Project as provided in this Agreement, the State Purchases Act, R.I. Gen. Laws § 37-2-1 et seq., the State of Rhode Island Procurement Regulations, or other applicable law. If the Owner suspends the Project, the Program Manager shall be compensated for services performed prior to notice of such suspension. If and when the Project is resumed, the Program Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.3 If the Owner suspends the Project for more than 90 cumulative working days for reasons other than the fault of the Program Manager, the Program Manager may terminate this Agreement by giving not less than 7 working days' written notice.

§ 8.4 Either party may terminate this Agreement upon not less than 7 working days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 8.5 The Owner may terminate this Agreement upon written notice to the Program Manager for the Owner's convenience and without cause. The Owner may also terminate this Agreement: (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 Purchases Act, R.I. Gen. Laws §§ 37-2-1 et. seq., the State of Rhode Island Procurement Regulations, or other applicable law.

§ 8.6 In the event of termination not the fault of the Program Manager, the Program Manager shall be compensated for services performed prior to termination.

§ 8.7 Deleted.

§ 8.8 In the event of termination of this Agreement, the Owner's rights to use information and materials provided by the Program Manager are set forth in Article 6.

#### **ARTICLE 9 MISCELLANEOUS PROVISIONS**

§ 9.1 This Agreement is subject to, and governed by, the laws of the State of Rhode Island, including all procurement statutes and regulations (available at [www.ridop.ri.gov](http://www.ridop.ri.gov)), and applicable federal and local law, all of which are incorporated into this Agreement by reference. In the event of any conflict between this Agreement and any such procurement statutes or regulations or any other provision of Rhode Island law, the procurement statutes, regulations and Rhode Island law will control. The Program Manager hereby consents to and confers exclusive personal jurisdiction upon the courts of the State of Rhode Island and of the federal government sitting within this state. In the event of any conflicts or discrepancies among the Contract Documents, the provisions of the Contract Documents will be interpreted in the order of precedence set forth in the Rhode Island General Conditions of Purchase Regulation 220-RICR-30-00-13.4(B).

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement; provided, however, that the Program Manager may not assign its rights nor delegate its responsibilities under this Agreement without the Owner's prior written consent.

§ 9.3 If the Owner requests the Program Manager to execute certificates, the proposed language of such certificates shall be submitted to the Program Manager for review at least 14 days prior to the requested dates of execution. If the

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Owner requests the Program Manager to execute consents reasonably required to facilitate assignment to a lender, the Program Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Program Manager for review at least 14 days prior to execution. Program Manager shall not be required to execute certificates, consents or reliance letters that would require knowledge, services or responsibilities beyond the scope of this Agreement, and shall not be required to sign any documents that would result in Program Manager having to certify the existence of conditions whose existence the Program Manager cannot ascertain. Any certificate will state that it is based on the best of the Program Manager's knowledge, information and belief.

§ 9.4 The User Agency is a disclosed third-party beneficiary of this Agreement and shall have all of the rights and benefits to which such a party is entitled hereunder. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any other third party against the Owner, User Agency, or Program Manager.

§ 9.5 Unless otherwise required in this Agreement, the Program Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 9.6 The Program Manager shall have the right to include photographs of the Project among the Program Manager's promotional and professional materials. The Program Manager shall be given reasonable access to the Project to take photographs. However, the Program Manager's materials shall not include the Owner's confidential or proprietary information. This Section shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 8.4.

§ 9.7 If the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.7.1. This Section shall survive the termination of this Agreement.

§ 9.7.1 The receiving party may disclose "confidential" or "business proprietary" information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 9.7.1.

§ 9.8 Written notice shall be duly served in accordance with Section 13.3 of AIA Document A201- General Conditions of the Contract for Construction, as modified by the Owner.

§ 9.9  
*(Paragraphs deleted)*  
Deleted.

## ARTICLE 10 COMPENSATION

§ 10.1 For the Program Manager's Basic Services described under Article 3, the Owner shall compensate the Program Manager as follows:

See AECOM proposal dated March 29, 2020, attached hereto.

§ 10.2 The hourly labor cost rates and billing rates for services of the Program Manager and the Program Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Program Manager's and Program Manager's consultants' normal review practices.

See AECOM proposal dated March 29, 2020, attached hereto.  
*(Table deleted)*

§ 10.3 For Additional Services designated in Sections 4.1, 4.2, or 4.3, the Owner shall compensate the Program Manager as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.) The personnel rates listed in the Bid response.*

See AECOM proposal dated March 29, 2020, attached hereto.

**§ 10.4** For Additional Services that may arise during the course of the Project, including those under Section 4.5, the Owner shall compensate the Program Manager as follows:

*(Insert amount of, or basis for, compensation.)*

The compensation shall be the expenses incurred by the Program Manager.

**§ 10.5** Compensation for Additional Services of the Program Manager's consultants when not included in Sections 10.3 and 10.4 shall be:

See AECOM proposal dated March 29, 2020, attached hereto.

**§ 10.6 Compensation for Reimbursable Expenses**

**§ 10.6.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Program Manager and the Program Manager's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence except for travel to and from the Project Manager's offices or the Consultant's offices, to meet with the Owner, the User Agency, or to visit the Project site; travel reimbursable expenses are subject to the limitations established from time to time for state employees by the Rhode Island Department of Administration Office of Accounts and Control;
- .2 Deleted.
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Fees paid for testing, surveys or other data obtained at the request of the Owner;
- .5 Printing, reproductions, plots, standard form documents provided to the Owner, Owner's consultants and Contractor;
- .6 Postage, handling, and delivery, if authorized in advance by the Owner;
- .7 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .8 Professional photography and presentation materials requested by the Owner;
- .9 Deleted.
- .10 All taxes levied on professional services and on reimbursable expenses;
- .11 Site office expenses, if authorized in advance by the Owner;
- .12 Customization of the Information Management System; and
- .13 Other similar Project-related expenditures, if authorized in advance by the Owner.

**§ 10.6.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Program Manager and the Program Manager's consultants.

**§ 10.6.3 Deleted.**

**§ 10.7 Compensation for Use of Program Manager's Proprietary Software**

If the Owner terminates the Program Manager for its convenience under Section 8.5, or the Program Manager terminates this Agreement under Section 8.3, or upon completion of the Program Manager's services under this Agreement, the Owner shall pay a licensing fee, as compensation for the Owner's continued use of the Program Manager's proprietary software developed and owned by the Program Manager in accordance with Section 6.3, as follows:

None.

**§ 10.8 Payments to the Program Manager**

**§ 10.8.1 Deleted.**

**§ 10.8.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

Payments are due and payable

*(Paragraphs deleted)*

not later than the 30<sup>th</sup> working day following written approval by the Owner of the Program Manager's invoice. No interest shall be due or payable on account of any payment due or unpaid except in accordance with the provisions of "Prompt Payment by Department of Administration," R.I. Gen. Laws §§ 42-11.1-1, et. seq.

§ 10.8.3 The Owner shall not withhold amounts from the Program Manager's compensation to impose a penalty or liquidated damages on the Program Manager, or to offset sums requested by or paid to contractors or other consultants for the cost of changes to the Project, unless the Program Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 10.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner upon reasonable notice for a period of three years after the termination or completion of this Agreement.

§ 10.9 Within 10 working days of receipt of any progress payment from the Owner, the Program Manager must pay its Subconsultants and Subcontractors the full amount included for each such Subconsultant and Subcontractor reflected in the Program Manager's invoice for payment.

§ 10.9.1 The Owner may, at its sole option, issue joint checks to the Program Manager and to any Subconsultant or Subcontractor or material or equipment suppliers to whom the Program Manager failed to make payment for Work properly performed or material and equipment suitably delivered.

#### ARTICLE 11 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 11.1 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 11.2 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, liens against the Project are not enforceable.

#### ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Program Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Program Manager.

§ 12.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C172™–2014, Standard Form Agreement Between Owner and Program Manager for use on a Single Project
- .2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:
- .3 AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by the Owner.
- .4 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

AECOM proposal dated March 29, 2020, attached hereto.

§ 12.3 **Force Majeure:** Neither Party shall be responsible for a delay in its respective performance under this Agreement, other than a delay in payment for services already performed, if such delay is caused by events

beyond the reasonable control of the claiming party, including, but without limitation to, "acts of god," abnormal weather conditions or other natural catastrophes, war, terrorist attacks, sabotage, computer viruses, riots, strikes, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, disease, plague, quarantine, travel restrictions, discovery of hazardous materials, differing or unforeseeable site conditions, acts of governmental agencies or authorities (whether or not such acts are made in response to other Force Majeure Events), or any other events or circumstances not within the reasonable control of the party affected, whether or not of a similar kind or nature to any of the foregoing (a "Force Majeure Event"). For the avoidance of doubt, Force Majeure Events include the Coronavirus (SARS-CoV-2) and such related diseases (e.g. COVID-19) outbreak. The party seeking application of this provision shall notify the other party in writing promptly upon learning of the impact of the Force Majeure Event upon the notifying party's performance of its obligations under this Agreement. Upon the occurrence of a Force Majeure Event, Program Manager shall be entitled to an equitable adjustment to the project schedule and compensation sufficient to compensate Program Manager for any increase in the time or costs necessary to perform the services under this Agreement. Should a Force Majeure Event substantially prevent or be reasonably likely to substantially prevent Program Manager's performance of the services for more than thirty (30) days, then Program Manager shall be entitled to terminate this Agreement without breach. In case of such termination, Program Manager shall be entitled to compensation for those services performed as of the date of termination.

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

~~Michael D. Mitchell~~ Digitally signed by  
Michael D. Mitchell  
Date: 2020.04.02  
12:19:28 -04'00'



PROGRAM MANAGER (Signature)

Vahid Ownjazyeri, Executive Vice President  
(Printed name and title)

# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Development of Alternative Care Facilities

See AECOM proposal dated March 29, 2020, attached hereto.

### THE OWNER:

*(Name, legal status and address)*

The 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)) 574-8100 (telephone)

((401)) 574-8387 (facsimile)

[www.ridop.ri.gov](http://www.ridop.ri.gov)

### THE USER AGENCY

*(Name, address, telephone and facsimile numbers, and web address)*

Rhode Island Army National Guard

705 New London Avenue

Cranston, RI 02920

Executive Office of Health and Human Services

3 West Road

Cranston, RI 02920

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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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(1801998195)

- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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User Notes:

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*(Paragraphs deleted)*

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (the Agreement) and consist of the Agreement (and the documents enumerated therein), Conditions of the Contract (General Conditions, Supplementary Conditions, if any, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Design Agent.

#### **§ 1.1.2 THE CONTRACT**

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

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the 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.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items and services 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; the Contractor shall perform all work reasonably inferable from the Contract Documents as being necessary to produce the indicated results.

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

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

§ 1.2.4 In the event of any conflicts or discrepancies among the Contract Documents, the provisions of the Contract Documents will be interpreted in the order of priority set forth in Rhode Island Procurement Regulation 220-RICR-30-00-13.4(B).

§ 1.2.5 In the event of any conflicts or discrepancies between the Contract Documents and the State of Rhode Island Procurement Regulations or any provision of the Rhode Island General Laws, the State of Rhode Island Procurement Regulations and the Rhode Island General Laws will control.

§ 1.2.6 In the event of any inconsistency between the Drawings and Specifications, the better quality or greater quantity of Work shall be provided.

§ 1.2.7 The Owner will be the final decision maker for any and all interpretations.

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Owner and the User Agency shall have a perpetual license to utilize the Drawings, Specifications, and other documents, including electronic or digital documents, prepared by the Design Agent and the Design Agent's consultants, for the execution of the Project and shall have and retain all rights to use them and reproduce them for the production and maintenance of the Work described therein. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Agent's or Design Agent's consultants' reserved rights.

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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§ 2.1.2 Deleted.

**§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

§ 2.2.1 Deleted.

§ 2.2.2 The Contractor shall secure and pay for permits and fees, necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 If required for the Work in the discretion of the Owner, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of any information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Deleted.

**§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

**§ 2.4 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Agent's additional services made necessary by such default, neglect, or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Design Agent. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**ARTICLE 3 CONTRACTOR**

**§ 3.1 GENERAL**

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

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

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

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## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 Owner and the Design Agent any errors, inconsistencies, or omissions discovered by or made known to the Contractor or additional Drawings, Specifications, or instructions required to define the Work in greater detail to permit the proper progress of the Work as a request for information in such form as the Design Agent may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the 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 Owner may require.

§ 3.2.3.1 Omissions from the Drawings and Specifications of items obviously needed to perform the Work properly, such as attachments, bolts, hangers, and other fastening devices, shall not relieve the Contractor from the obligation to furnish and install such items.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Agent issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2, 3.2.3, or 3.2.3.1, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Design Agent for damages resulting from errors, inconsistencies, or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.4.1 The Contractor shall not make any changes without prior written authorization from the Design Agent and the Owner.

§ 3.2.5 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

## § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Agent and shall not proceed with that portion of the Work without further written instructions from the Design Agent. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without

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acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

#### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Whenever the Contractor has an obligation to provide labor and materials under the Agreement, the Contractor, at a minimum, shall provide the labor for, and furnish and install and place in operation all items, including without limitation, all proper connections.

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

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

#### § 3.5 WARRANTY

The Contractor warrants to the Owner and the Design Agent that materials and equipment furnished under the Contract will be of first quality, prime manufacture, 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, including substitutions not properly authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Agent, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § 3.6 TAXES

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

§ 3.6.2 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.

#### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections required by the Rhode Island State Building Code 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. The Contractor shall be responsible for obtaining the Certificate of Occupancy from the appropriate governmental authorities.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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§ 3.7.3 The Contractor shall promptly notify the Design Agent and the Owner if the Contractor becomes aware that the Contract Documents are not in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Design Agent before conditions are disturbed and in no event later than 21 working days after first observance of the conditions. The Design Agent will promptly investigate such conditions and, if the Design Agent determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design Agent determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Agent shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Design Agent's determination or recommendation, that party may proceed as provided in Article 15.

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

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Design Agent the name and qualifications of a proposed superintendent. The Design Agent may reply within 14 working days to the Contractor in writing stating (1) whether the Owner or the Design Agent has reasonable objection to the proposed superintendent or (2) that the Design Agent requires additional time to review. Failure of the Design Agent to reply within the 14 working-day period shall constitute notice of no reasonable objection.

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

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, within 20 working days after the issuance of the Purchase Order, shall prepare and 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, not less frequently than monthly, 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. The Contractor shall certify on the initial schedule and all revised schedules that they comply with the Contract Documents.

§ 3.10.2 The Contractor shall prepare a submittal schedule, within 20 working days after the issuance of the Purchase Order, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and the Design Agent's approval. The Owner's and the Design Agent's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and the Design Agent reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Agent and shall be delivered to the Design Agent for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Design Agent that the Contractor has (1) reviewed and approved them, (2) determined and verified

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materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Agent will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Agent. The Owner and the Design Agent shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Design Agent have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Design Agent will review, approve, or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Design Agent for evaluation of resubmittals.

### § 3.13 USE OF SITE

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

### § 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably

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withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

**§ 3.15 CLEANING UP**

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

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

**§ 3.16 ACCESS TO WORK**

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

**§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

**§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, the User Agency and the State of Rhode Island in accordance with Rhode Island Procurement Regulation 220-RICR-30-00-13.21.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 3.18.3** Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section 3.18 includes, without limitation, all 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.

**§ 3.18.4** 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.

**§ 3.18.5** The Contractor will include the indemnity set forth in this Section 3.18, without modification, in each Subcontract with any Subcontractor.

**§ 3.18.6** 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.

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**ARTICLE 4 DESIGN AGENT**

**§ 4.1 GENERAL**

§ 4.1.1 The Design Agent is the person lawfully licensed to practice his or her profession in the State of Rhode Island or an entity lawfully practicing its profession in the State of Rhode Island and identified in the Contract Documents as the Design Agent. The term "Design Agent" means the Design Agent or the Design Agent's authorized representative.

§ 4.1.2 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, Contractor and Design Agent. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Design Agent is terminated, the Owner shall employ a successor Design Agent as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Design Agent.

**§ 4.2 ADMINISTRATION OF THE CONTRACT**

§ 4.2.1 The Owner with assistance from the Design Agent will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction through the date the Design Agent issues the final Certificate for Payment and continuing until the expiration of the one-year period following Final Completion. The Design Agent will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Design Agent will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the 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 the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.2.1 The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Design Agent will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The 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.

**§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Design Agent about matters arising out of or relating to the Contract. Communications by and with the Design Agent's consultants shall be through the Design Agent. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Design Agent's evaluations 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.

§ 4.2.6 The Design Agent has authority to reject Work that does not conform to the Contract Documents. Whenever the Design Agent considers it necessary or advisable, the Design Agent will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Agent nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Agent to the Contractor,

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Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 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. The Design Agent's action will be taken in accordance with the submittal schedule approved by the Design Agent or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Agent's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Agent's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Design Agent's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Agent, of any construction means, methods, techniques, sequences or procedures. The Design Agent's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Design Agent agree, the Design Agent will provide one or more project representatives to assist in carrying out the Design Agent's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Design Agent will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Design Agent's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Design Agent's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and approved by the Owner.

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

#### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Design Agent the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work. The Owner may reply within 14 working days to the Contractor in writing stating (1) whether the Owner or the Design Agent has reasonable objection to any such proposed person or entity or (2) that the Owner or Design Agent requires additional time for review.

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

§ 5.2.3 If the Owner or Design Agent has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Agent has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

#### § 5.2.5 MANUFACTURERS AND FABRICATORS

§ 5.2.5.1 Not later than 10 working days after the date of commencement of the Work, the Contractor shall furnish in writing to the Owner and the Design Agent the names of the manufacturers or fabricators for certain products, equipment, and systems identified in the Specifications and, where applicable, the name of the installing Subcontractor. The Owner may reply within 14 working days to the Contractor in writing, stating: (i) whether the Owner or the Design Agent has reasonable objection to any such proposed person manufacturer or fabricator; or (ii) whether the Owner or Design Agent requires additional time to review.

§ 5.2.5.2 The Contractor shall not contract with a proposed manufacturer, fabricator, or Subcontractor to whom the Owner or Design Agent has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.5.3 If the Owner or Design Agent has an objection to a manufacturer, fabricator, or Subcontractor proposed by the Contractor, the Contractor shall propose another to whom the Owner or Design Agent has no objection.

§ 5.2.5.4 The Contractor shall not substitute a manufacturer, fabricator, or Subcontractor previously selected if the Owner or Design Agent makes reasonable objection to such substitution.

#### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Agent. Upon the request of the User Agency and/or the Owner, the Contractor shall provide the User Agency and/or the Owner with copies of each subcontract agreement. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Agent under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor

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shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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

*(Paragraph deleted)*

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

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

#### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

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

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

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

##### **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Agent apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement between the Owner and the Contractor; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Design Agent alone.

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

### § 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Subsequent to the approval of a Change Order as provided in § 7.1.2, 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.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

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- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

**§ 7.3.4 Deleted.**

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

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

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Design Agent shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 7.3.1. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Design Agent may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of delivery;
- .3 Rental costs of machinery and equipment, exclusive of hand tools; or
- .4 Costs of premiums for all bonds and insurance and permit fees related to the Work..

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Design Agent. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Design Agent will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Design Agent determines, in the Design Agent's professional judgment, to be reasonably justified. The Design Agent's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

**§ 7.3.11** 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%) 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.
- .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 7.3.11, but in no event shall the amount exceed fifteen (15%) percent of the net increase in the cost of the Work.

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§ 7.3.12 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.

#### § 7.4 MINOR CHANGES IN THE WORK

The Design Agent with the prior written approval of the Owner has 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 will be affected by written order signed by the Design Agent and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

The date of commencement of the Work is the date established in Section 3.1 of the Agreement.

*(Paragraph deleted)*

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

§ 8.1.4 Deleted.

#### § 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Design Agent, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

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

*(Paragraph deleted)*

### ARTICLE 9 PAYMENTS AND COMPLETION

#### § 9.1 CONTRACT SUM

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

#### § 9.2 SCHEDULE OF VALUES

Within 20 working days of the issuance of the Purchase Order, and promptly if revision is necessary from time to time as a result of a Change Order, the Contractor shall submit to the Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Design Agent and the Owner may require. This schedule,

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if and when approved by the Design Agent and the Owner in writing, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** 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. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or the Design Agent may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** 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.

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

**§ 9.3.1.3** The form of Application for Payment shall be AIA Document G702, Application and Certification for Payment, supported by AIA Document G702A, Continuation Sheet.

**§ 9.3.1.4** Until Substantial Completion, the Owner shall pay ninety-five (95%) percent of the amount due the Contract on account of progress payments.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. 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.

### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** 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 in writing of the Design Agent's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Design Agent to the Owner, based on the Design Agent's evaluation of the Work and the data comprising the Application for Payment, that, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Design Agent. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The Contractor must submit all product literature, material and color samples with each Application for Payment, or as otherwise required by the Owner.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 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 9.4.2 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 9.4.1. If the Contractor and 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 may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the 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 3.3.2, because of:

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

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

§ 9.5.3 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.

#### § 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 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 appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within 7 working days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Owner shall have the right to withhold payment(s) to the Contractor in the event that any Subcontractors or material and equipment suppliers have not been



properly paid. Neither the Owner nor Design Agent shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

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

#### § 9.7 FAILURE OF PAYMENT

If the Design Agent does not issue a Certificate for Payment, through no fault of the Contractor, within 7 working days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within 7 working days after the date established in the Contract Documents the amount certified by the Design Agent or awarded by binding dispute resolution, then the Contractor may, upon 7 additional working days' written notice to the Owner and Design Agent, make a claim for payment as provided under the provisions of applicable law.

#### § 9.8 SUBSTANTIAL COMPLETION

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the 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.

§ 9.8.3 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. If the Design Agent's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Design Agent. In such case, the Contractor shall then submit a request for another inspection by the Design Agent to determine Substantial Completion. The Design Agent will perform no more than 2 inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for any additional inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Design Agent will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such 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 R.I. Gen. Laws § 37-12-10.1. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Design Agent as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Design Agent.

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

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

### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Design Agent's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Design Agent will perform no more than 2 inspections to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner is entitled to reimbursement from the Contractor for amounts paid to the Design Agent for any additional inspections.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Design Agent (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 working days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (6) all other close-out documents required by the Owner, including without limitation, all as-built plans, warranties, manuals, and other materials set forth in the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. 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 all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Design Agent so confirms, the Owner shall, upon application by the Contractor and certification by the Design Agent, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work

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fully completed and accepted shall be submitted by the Contractor to the Design Agent prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 claims permitted under the State of Rhode Island General Conditions of Purchase Regulation.

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

§ 9.11 The Contractor and the Contractor's surety shall be liable for and shall pay the Owner as liquidated damages the sums specified in the Contract Documents, or if completed, the amount set forth in Section 3.4 of the Agreement.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

§ 10.2.4.1 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 notice.

§ 10.2.4.2 If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by

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any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Design Agent or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

#### § 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Design Agent the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Design Agent will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Design Agent has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Design Agent have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the extent permitted by the provisions of R.I. Gen. Laws §§ 9-31-1 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 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to

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perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

#### § 10.4 EMERGENCIES

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as is specified in the Contract Documents and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.1.2 The Contractor's liability insurance shall include all major coverages and be on a comprehensive general liability basis.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance as specified in the Contract Documents and as otherwise acceptable to the Owner shall be filed with the Owner and the User Agency prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 working days' prior written notice has been given to the Owner and the User Agency. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

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§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the User Agency, and their elected and appointed officials, members, employees, and agents, the Design Agent and the Design Agent's consultants as additional insureds for claims caused in whole or in part by the Contractor's acts or omissions during the Contractor's operations; and (2) the Owner, the User Agency, and their elected and appointed officials, members, employees, and agents, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.1.5 The Contractor shall be responsible for the prompt payment to the Owner of any deductible amounts under any insurance policies required under the Contract Documents for claims made pursuant to such policies.

## § 11.2 OWNER'S LIABILITY INSURANCE.

§ 11.2.1 The Contractor shall furnish the Owner and the User Agency, through the Design Agent, an insurance certificate providing Owner's Protective Liability extended to include the interests of the Design Agent, and to protect the Owner, User Agency, and Design Agent from any liability which might be incurred against any of them as a result of any operation of the Contractor or Subcontractors or their employees or anyone for whom either the Contractor or Subcontractors are responsible. Such insurance shall be written for the same limits as the Contractor's commercial general liability insurance and shall include the same coverage.

§ 11.2.2 If the Owner engages separate contractors to perform work for, or in or around, the Project, it shall require in its contracts with each separate contractor that Contractor and its officers, directors, partners, members, employees, and agents shall be: (i) named as additional insureds on a primary, noncontributory basis to any commercial general liability, pollution liability, and excess liability insurance policies; and (ii) provided a waiver of subrogation on all workers compensation and professional liability insurance policies.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the state of Rhode Island, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the User Agency, the Contractor, Subcontractors and Sub-subcontractors in the Project. If the Owner and/or the User Agency incur any damages by failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable cost resulting from such failure.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design Agent's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 Deleted.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Contractor shall take reasonable steps to obtain consent of the insurance company or companies and

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shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 Deleted.

§ 11.3.3 Deleted.

§ 11.3.4 Deleted.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 working days' prior written notice has been given to the Owner and the User Agency.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Contractor waives all rights against the Owner and the User Agency and any of their subcontractors, sub-subcontractors, agents and employees, and (2) the Design Agent, Design Agent's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Design Agent, Design Agent's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under this property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within 5 working days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

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**§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

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

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

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

**§ 12.1 UNCOVERING OF WORK**

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

§ 12.1.2 If a portion of the Work has been covered that the Design Agent has not specifically requested to examine prior to its being covered, the Design Agent may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

**§ 12.2 CORRECTION OF WORK**

**§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

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.

**§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from the Owner or Design Agent, the Owner may correct it in accordance with Section 2.4.

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

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

§ 12.2.2.4 Upon request by the Owner and prior to the expiration of one year from the date of Final Completion, the Design Agent will conduct and the Contractor shall attend 2 meetings with the Owner to review the facility operations and performance.

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

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

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

#### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Rhode Island.

#### § 13.2 SUCCESSORS AND ASSIGNS

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to any executive, legislative, judicial, regulatory, or administrative body of the state, or any political subdivision thereof, including without limitation, any department, division, agency, commission, board, office, bureau, authority, school, water, or fire district, or other agency of Rhode Island state or local government that exercises governmental functions, any other governmental authority, and any quasi-public corporation and/or body corporate and politic. The Contractor shall execute all consents reasonably required to facilitate such assignment.

#### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice, or when received, if manually delivered or transmitted by electronic mail or facsimile to the last such address known to the party giving notice.

#### § 13.4 RIGHTS AND REMEDIES

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

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

#### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Design Agent, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Design Agent will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Design Agent of when and where tests and inspections are to be made so that the Design Agent may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Design Agent's services and expenses shall be at the Contractor's expense.

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

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

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

#### § 13.6 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.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Design Agent has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1

#### § 14.1.2 Deleted.

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon 7 working days' written notice to the Owner and Design Agent, terminate the Contract and recover from the Owner payment for Work executed.

§ 14.1.4 If the Work is stopped for a period of 60 calendar days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon 7 additional days' written notice to the Owner and the Design Agent, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor:

- .1 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 or fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of breach of a provision of the Contract Documents; or
- .5 cancels or the Contractor or the Owner receives notice of cancellation or nonrenewal of any insurance required under the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, 7 working days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the 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 Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**§ 14.3.2** The  
*(Paragraphs deleted)*

Owner shall not be liable to the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of any delays. The sole remedy against the Owner for delays shall be the allowance of additional time for completion of the Work in accordance with the provisions of Section 8.3.1.

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

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## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

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

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written 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 serviced if delivered in person, by mail, by courier, or by electronic transmission. 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.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Design Agent will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.5.3 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 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.

§ 15.1.5.4 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.

§ 15.1.6 The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this

*(Paragraphs deleted)*

Contract. This waiver includes damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit. This waiver is applicable, without limitation, to all consequential damages due to the Contractor's termination in accordance with Article 14. Nothing in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Init.

**§ 15.2 INITIAL DECISION**

**§ 15.2.1** 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 15.2.1. An initial decision shall be required as a condition precedent to binding dispute resolution pursuant to Section 15.3.1 of any Claim arising prior to the date final payment is due.

**§ 15.2.2 Deleted.**

**§ 15.2.3 Deleted.**

**§ 15.2.4 Deleted.**

**§ 15.2.5 Deleted.**

**§ 15.2.6 Deleted.**

**§ 15.2.6.1 Deleted.**

**§ 15.2.7 Deleted.**

**§ 15.2.8 Deleted.**

**§ 15.3 MEDIATION**

**§ 15.3.1** For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 15.2.1, and prior to the implementation of the binding dispute resolution procedures set forth in Section 15.4.1, the Contractor or the Design Agent 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 or the Design Agent, the Owner and the Contractor or the Design Agent shall attempt to select a mediator, and in the event that the Owner and the Contractor or the Design Agent 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.

**§ 15.3.2 Deleted.**

**§ 15.3.3 Deleted.**

**§ 15.4 BINDING DISPUTE RESOLUTION**

**§ 15.4.1** For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 15.2.1, or mediation at the option of the Contractor pursuant to Section 15.3.1, 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.*

*(Paragraphs deleted)*

**§ 15.4.4 Deleted.**

**§ 15.4.4.1 Deleted.**

**§ 15.4.4.2 Deleted.**

**§ 15.4.4.3 Deleted.**

**§ 16 COMPLIANCE WITH APPLICABLE LAW**

The Contractor and its Subcontractors shall comply with all applicable federal, state, and local laws.

# STATE OF RHODE ISLAND

## Scope of Services for the Development of Alternative Care Facilities

Prepared by AECOM

March 29, 2020

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### A. Understanding of the Program and Need

In consideration of the state of Rhode island's efforts to address the Coronavirus crisis, AECOM is submitting the following unsolicited scope of services. As a representative of AECOM and Rhode Island resident I am deeply grateful of Rhode Island leadership's efforts to protect our state's residents. We are committed to assist you in achieving your goals.

Please find below an outline of our proposed approach to provide planning, design, logistics' support, program and construction management oversight support services. The team is comprised of local resources supported by our global subject matter experts. We are standing by and ready to mobilize immediately.

The AECOM Team understands the needs of the State to potentially travel two tracks of development for a newly constructed alternative care facility (ACF): Permanent vs. Temporary methodologies. We are prepared to work with the State, the Rhode Island National Guard, and other stakeholders to determine suitability and viability of either track, or possibly both simultaneously. A permanent ACF facility could provide the State with a valuable resilient asset in the event of future natural or public health disasters. The AECOM Team would modify its approach to design and delivery of this work accordingly, taking into account a much longer lifecycle and therefore greater resiliency of design and construction, material and component selection. With a permanent design may also come a longer schedule for completion of the work, but also a much longer lifecycle for the new ACF.

Sincerely,



Vahid Ownjazayeri  
Executive Vice President

### B. Program Management

AECOM will provide program oversight and management services for the assessment, planning, programming, and design to convert the existing facilities into an Alternative Care Facility.

The AECOM Team will provide logistics and operational support during the assessment, design, and construction phases of this work to facilitate the accelerated schedule and drive the work along the critical path toward completion. Our team will rely on our asset management and systems engineering approach to similar fast-paced multidisciplinary efforts to track progress of various parties in real-time, coordinate communications, and shepherd the process of information transfer between the parties working concurrently on this effort. Daily meetings and situational reports will be provided to all key members of the client and delivery teams, and any challenges or hurdles will be addressed immediately to keep progress moving forward.

The work will include administration of RFP documents to enable contractor procurement and ongoing coordination with the State and impacted agencies to insure facility needs and goals are met. Key activities and actions are as follows:

1. Establish a detailed work-plan for program delivery with agreed upon time-line
2. Contract with local subconsultants and mobilize full project team
3. Oversee and coordinate the building assessment and coordinate with impacted parties
4. Coordinate planning, programming and design activities between all parties
5. Develop request for proposal procurement documents for space conversion
6. Develop estimate of anticipated construction cost
7. Provide bid/proposal phase service support
8. Review of proposals and recommendation
9. Assist the State with contractor procurement and ongoing support
10. Construction management and coordination during conversion
11. Weekly reporting regarding progress, costs and schedule
12. Daily status meetings
13. Program Controls

<b>Program Management</b>	
<b>Deliverable(s)</b>	Daily Status Meetings
	Weekly Progress, cost, and schedule reporting
	Estimate of Anticipated Construction Cost
	Bid Evaluation and Recommendation

### **C. Facility Assessment**

AECOM will rapidly assess existing facilities for reuse as alternative care facilities in response to the COVID-19 crisis. Our evaluation will be focused on identification of facility appropriateness, physical characteristics and material, equipment, and service components found in the facility or onsite. Assessments will be conducted by a team of technical professionals consisting of Architects and Engineers who will utilize a data collection methodology based upon asset management best-practices, the USACE assessment template, and AECOM's healthcare and bio-containment expertise. This rapid-assessment process will expedite the development of conceptual design information for deployment by the construction team. Our approach to the rapid assessment of facilities for repurposing as part of the Coronavirus pandemic response consists of the following key benefits.

1. Based upon USACE COVID-19 Assessment Template, augmented by our medical and bio-containment experts
2. Data collected via simple to use website developed specifically for COVID-19; no app download required, limited training necessary which equals rapid mobilization
3. Provides seamless transfer of information from field team to the design and construction teams of key data
4. Identify and share trends / best practices across and between cities to disseminate knowledge
5. Evaluate additional facilities for potential long-term healthcare needs

<b>Facility Assessment</b>	
<b>Deliverable(s)</b>	Facility Assessment Report
	Analysis and Recommendations Report

## D. Medical Planning and Advisory

The AECOM Team will provide programming, medical planning, design and coordination during construction, to rapidly establish temporary hospitals and/or medical care facilities. Our advisory capabilities include strategic planning for the location of testing sites, bed hospitals, ICUs, isolation units, laboratories, pharmacies, food services, sanitation, security, information technology, telecommunications, and demobilization.

AECOM's Medical Planning and Advisory services can include:

- Identify functional and space needs based on use
- Retrofit of building systems to provide proper ventilation, isolation
- Identify and convert nearby ancillary spaces for overflow space
- Identify and quickly configure temporary power, negative pressure ventilation, and isolation structures
- Convert blocks or wings of existing non-critical patient rooms to quarantine or isolation rooms by changing the ventilation and the room entry conditions and SOPs
- Assess and provide proper isolation materials and systems for different facility and room types (i.e., traditional ante rooms are positively pressurized to both the corridor and the patient room, this is not required if adequate use of SOPs and disinfectants are employed)
- Reconfigure buildings and space to accommodate drive up testing
- Repurposing of space for rapid redeployment of leadership, management and administrative teams

<b>Medical Planning and Advisory</b>	
<b>Deliverable(s)</b>	Functional/Space Program  Floor Plans  Project Narrative

## E. Facility Design

AECOM will work with our local partner, NEMD architects of Rhode Island, to design the Alternative Care Facility according to programming and planning information determined in the preceding task. Our multidisciplinary A/E design teams will develop drawings with the appropriate level of detail required for both conveyance of information and accelerated schedules, providing real-time coordination with the general contractor on a continuous basis. The delivery of A/E design documents will also be phased in such a way to allow the contractors to begin work on construction before final design drawings and specifications are completed.

AECOM's healthcare and bio-containment specialists will work closely with the local A/E design team members to provide technical oversight during the development of documents, and will make critical decisions about spatial layout, placement of core functions, material and equipment specification, and determinations for necessary demolition or construction. Some of the key activities anticipated during the design phase will be as follows:

1. Reviewing programming and planning detail
2. Setting up BIM models and drawing standards
3. Mapping out drawing sets
4. Providing preliminary details to the construction team
5. Developing preliminary Requests For Information (RFI) from A/E design team to contractor
6. Development of construction drawings and specifications
7. Code and ADA review
8. Responding to Requests For Information (RFI) and submittal requests
9. Meeting minutes

<b>Facility Design</b>	
<b>Deliverable(s)</b>	Construction Documents



Facility Design	
	Specifications

## F. Construction Management Oversight

AECOM will provide CM oversight services, including the following:

1. Review, understand, and resolve poor existing conditions (particularly utilities) prior to design proceeding, and CM services coming on board to minimize future delays, or to make sure that known issues are addressed in the design and construction documents
2. When unforeseen conditions are discovered, we will coordinate with the General Contractor to resolve issues quickly. We will expedite and assist in coordinating this work.
3. Direct CM interface and oversight with the State
4. QA/QC and HS&E audits and inspections
5. Review contractor qualifications, availability and pricing

Successful program implementation requires our AECOM team to be collaborative with the General Contractor to confirm that all Standard Operating Procedures are understood and applied, and that the communication of needs is clear and effective. CM Oversight will include QA/QC procedures derived from AECOM's ISO 9001 certified quality program.

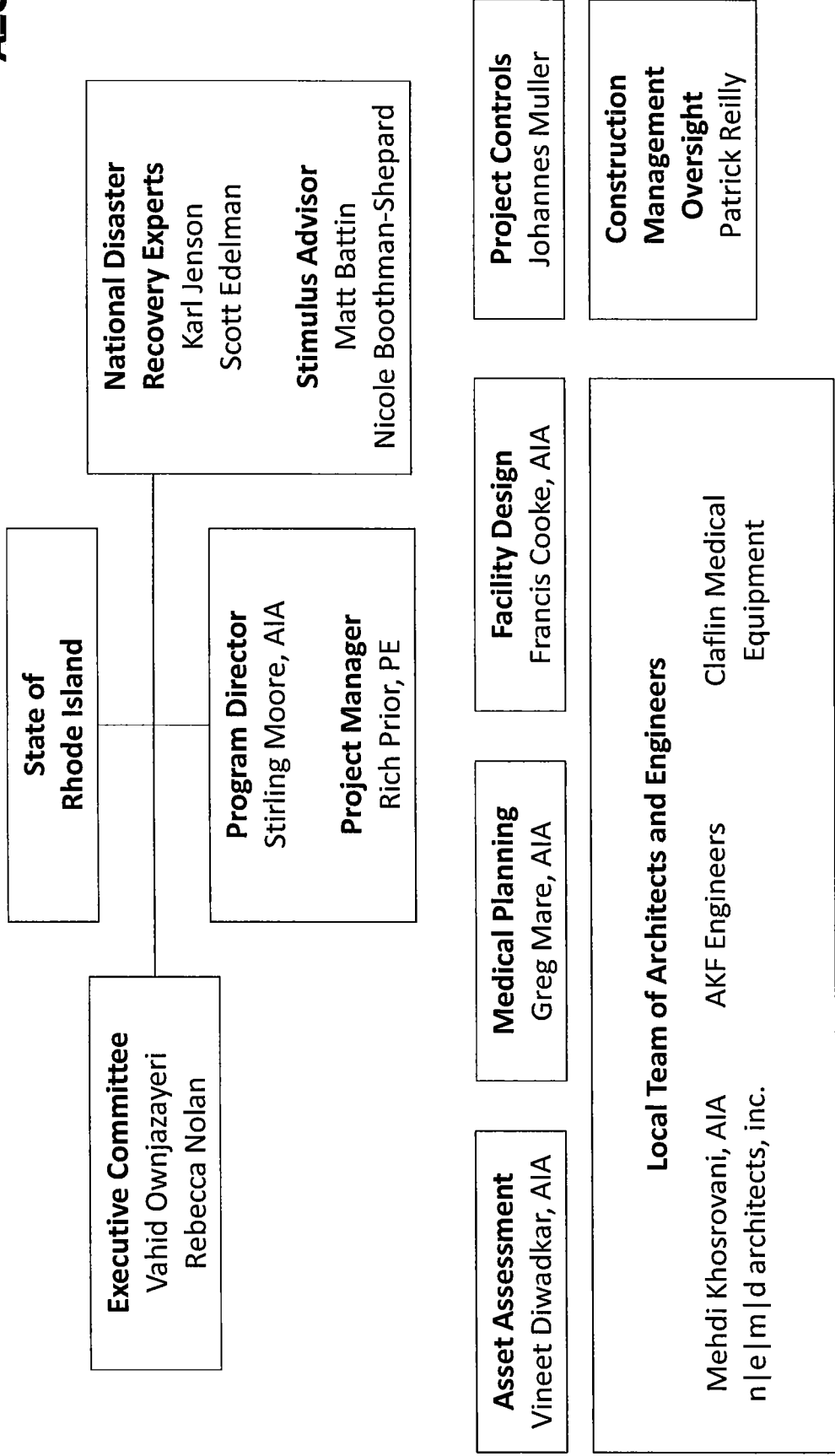
Construction Management Oversight	
<b>Deliverable(s)</b>	Daily Logs Weekly Progress Reports Consolidated Bid Documents Contractor Payment Review

## G. Stimulus Funding Advisory

AECOM will work with the State to manage received funding, provide and manage documentation, and provide expert insight to the State. AECOM will provide grant cost and deliverable tracking support to assist and prepare Rhode Island for any post audit activity by USACE and/or FEMA. In accomplishing this task, AECOM recommends daily meetings with Rhode Island, USACE and FEMA to review daily policy decisions.

AECOM will help maximize, obtain, document, and support compliance for federal funds awarded through the Stafford Act by FEMA and other federal entities, as well as by the State of Rhode Island. AECOM will support the State in understanding eligible scopes of work, and document compliance to maximize eligibility and minimize audit risks. AECOM will provide operational support to the State to facilitate smooth management of funding including payments, compliance and documentation, communications, and any other tasks which support the State in the development of Alternative Care Facilities.

Stimulus Advisory	
<b>Deliverable(s)</b>	Daily Meeting Minutes Close out Document



**STATE OF RHODE ISLAND**  
**Fee for the Development of Alternative Care Facilities**

**March 29, 2020**

**Prepared by AECOM**

AECOM Approved State OH Rate	133.02%
Percent Profit on all Costs	8.00%
Direct Labor Multiplier with Profit (DLM)	2.52

**LABOR**

1 The project will be invoiced based on employees actual salary rates multiplied by DLM.

Labor Category/Classification	Approximate Hourly Labor Salary Range			Approximate Hourly Labor Fully Burdened Cost Range (Labor x DLM)		
	Lower Range		Upper Range	Lower Range		Upper Range
Program Director/Manager and Executive Leadership/CM Oversight/Principals	\$80.00		\$150.00	\$201.33		\$377.49
Discipline Leads/Associates/Deputy PM's	\$80.00		\$130.00	\$201.33		\$327.16
Senior Architects, Engineers and Designers	\$74.00		\$130.00	\$186.23		\$327.16
Architects, Engineers and Designers	\$35.00		\$74.00	\$88.08		\$186.23
Junior Architects/Engineers/CADD	\$25.00		\$55.00	\$62.92		\$138.41
Support Staff/Technician/Administration	\$22.00		\$45.00	\$55.37		\$113.25

**SUBCONSULTANTS AND EXPENSES**

Reimbursed at actual cost plus 8%

**SUBCONSULTANTS**

1 Subconsultants will invoice based on actual labor rates multiplied by an approved multiplier.

# WHEN CALLED, WE RESPOND

AECOM has a uniquely qualified history of critical support to our nation through its most challenging situations. We are a global company with decades of experience in delivering against multiple medical emergency situations. From trauma field hospitals in Haiti to protective equipment and logistics to counter Ebola in West Africa, to urgently repairing the Air Force's 2nd largest healthcare facility after Hurricane Katrina at Kessler AFB. AECOM has also responded to repair DoD installations and private customers after Hurricanes Sandy, Matthew, Harvey, Irma, and Michael.

AECOM has been an enduring partner with USACE all over the globe, helping tackle the most challenging projects. We have more than 50 years of experience helping public and private organizations prepare for, respond to, and recover from disasters of all kinds.

AECOM's platform provides you with access to custom expertise tailored to your program needs to ensure you can deliver well-planned solutions expeditiously. We understand the urgency and required alignment needed to deliver a multi-tiered approach that can align with the anticipated ever-changing requirements from the initial needs to forward down-stream macro level objectives.

The unprecedented nature of the coronavirus pandemic will drive needs across markets and disciplines, from federal and healthcare expertise to disaster response and recovery. In addition to our in-house multi-disciplinary healthcare expertise for design, construction, and medical equipment planning, AECOM brings the required dedicated and experienced disaster response experts to rapidly mobilize medical solutions to address the coronavirus pandemic. AECOM's nationwide presence and resources creates a consistent, yet flexible and scalable solution to rapidly respond to the various challenges communities across the US are experiencing.

## AECOM SERVICES

- Facility planning, design and design-build
- Rapid facility renovation, deployment of mobile health clinics
- Program management, risk assessment
- Workplace continuity/Continuity of Operations Planning (COOP), workplace strategy exercises
- Change management and crisis communications
- Staff augmentation and on-site support
- Rapid mobilization – in every state
- Transportation planning
- Training and oversight for hazmat remediation
- Logistics and procurement support

## AECOM BENEFITS

We have valuable knowledge and lessons learned that can be directly leveraged to benefit the coronavirus response. We will:

- Maximize processes/operations in support of community responsiveness
- Strengthen strategic planning with the aim of improved effectiveness/efficiency of services
- Maximize patient care and positive outcomes
- Mitigate the chances of cost overruns through effective cost tracking