

**PROFESSIONAL SERVICES AGREEMENT**

**between**

**THE CONNECTICUT PORT AUTHORITY**

**and**

[\_\_\_\_\_]

**Dated as of**

[\_\_\_\_\_] [\_\_\_], 2017

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## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the “**Agreement**”) is made and dated as of [\_\_\_\_\_] [\_\_], 2017, between the CONNECTICUT PORT AUTHORITY, a quasi-public agency of the State of Connecticut (the “**Owner**”), and [\_\_\_\_\_] [\_\_\_\_], a [corporation] organized and existing under the laws of the State of [\_\_\_\_\_] [\_\_\_\_] (the “**Contractor**” and together with the Owner, the “**Parties**”). Terms used and not otherwise defined shall have the meanings assigned in Article I.

### RECITALS

**WHEREAS**, the Owner desires to retain the Contractor for the purposes of providing certain Services described herein and has the authority to employ such assistance as it may require as provided in Section 15-31b(a)(9) of the Connecticut General Statutes, as revised.

**WHEREAS**, the Contractor has the capability and capacity to provide, and is willing to perform, the Services pursuant to the terms of this Agreement.

**WHEREAS**, a resolution authorizing this Agreement, its execution and delivery was duly adopted by the Owner on [\_\_\_\_\_] [\_\_], 2017.

**WHEREAS**, the execution and delivery of this Agreement by the Contractor has been duly authorized by all necessary corporate action.

**NOW THEREFORE**, in consideration of mutual covenants herein contained, the Parties hereto intending to be legally bound, agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

**Section 1.1** Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

“Act” means Chapter 264a, Section 15-31a. *et. seq.*, of the Connecticut General Statutes, as amended from time to time.

“Affiliate” means, with respect to any Person, any other Person which, directly or indirectly, controls or is controlled or is under common control with such Person.

“Agreement” means this Professional Services Agreement between the Contractor and the Owner, including all of its Schedules, Exhibits and all other documents incorporated by reference, as the same may be further amended or modified from time to time in accordance herewith.

“Agreement Date” means the date this Agreement has been executed and delivered by the Parties hereto.

“Applicable Law” means any law, statute, constitution, charter, ordinance, rule, code, standard, regulation, requirement, consent decree, consent order, consent agreement, authorization, policy, permit, resolution, judgment, writ, directive, guideline, action, determination or order of, or Legal Entitlement issued by or deemed to be issued by, any Governmental Body or similarly binding authorities now existing or hereafter enacted, adopted, promulgated, issued or enforced by any federal, state or local government or political subdivision or agency thereof or court of competent jurisdiction.

“Change in Services” means a writing signed by each of the Owner and Contractor setting forth their agreement as to a change in the scope of the Services or time of performance.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

(1) the enactment, adoption, promulgation, issuance, modification, repeal or written change in the administrative or judicial interpretation of any Applicable Law on or after the Agreement Date unless such Applicable Law was, on or prior to the Agreement Date, duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation;

(2) the order or judgment of any Governmental Body, issued on or after the Agreement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Contractor or of the Owner, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence;

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a term, condition or requirement which is more stringent or burdensome in connection with the issuance, renewal or failure of issuance or renewal on or after the Agreement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption or imposition materially and adversely affects the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption or imposition is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Contractor or of the Owner, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption or imposition shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

A “Change in Law” shall not include (i) a change in any Applicable Law pertaining to Tax; (ii) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Agreement Date; (iii) a change in the Code (and any successor statute of similar import, and the rules and regulations promulgated thereunder, each as amended from time to time; (iv) a change in the law of any foreign country, (v) any Change in Law (including the issuance of any Legal Entitlement, the

enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Contractor than those set forth in the obligations contained herein, (vi) any change in interpretation, however stringent, by a Government Body of the meaning of the terms and conditions of the Legal Entitlements in force as of the Agreement Date, or (vii) union work rules, demands or requirements causes an increase in Contractor's projected or actual cost of performing the Services.

"CHRO" means the Connecticut Commission on Human Rights and Opportunities, an agency of the State established and empowered, pursuant to Chapter 814c of the Connecticut General Statutes, to eliminate discrimination through civil and human rights enforcement.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor statute of similar import, and the rules and regulations promulgated thereunder, in each case in effect from time to time.

"Commencement Date" means [\_\_\_\_\_] [\_\_\_], 2017, the date upon which the Contractor shall commence providing the Services to the Owner pursuant to this Agreement.

"Connecticut General Statutes" means the General Statutes of Connecticut, Revision of 1958, as the same may be amended or superceded from time to time.

"Contract Standards" means the standards, terms, conditions, methods, techniques and practices imposed or required by: (i) Applicable Law, (ii) Good Industry Practices, (iii) applicable equipment manufacturers' specifications, (iv) applicable Insurance Requirements, and (v) any other standard, term, condition or requirement set forth in this Agreement to be observed by the Contractor.

"Contractor" means [\_\_\_\_\_], an independent nationally recognized consulting engineer or firm of consulting engineers licensed in the State of Connecticut, and its successors or assigns permitted hereunder.

"Contractor Breach" means (i) the untruth or inaccuracy of any representation or warranty made by the Contractor hereunder, (ii) any breach, failure, non-performance or non-compliance by the Contractor under this Agreement with respect to its obligations, covenants or responsibilities hereunder to the extent not attributable to Uncontrollable Circumstances, or (iii) any breach, failure, non-performance, non-compliance or inaccuracy in any of the representations, warranties, obligations, covenants or responsibilities due to or arising, directly or indirectly, from any act or omission by the Contractor, its officials, agents, employees, representatives or independent contractors or Subcontractors.

"Contractor Indemnified Parties" has the meaning specified in Section 10.5.

"Contractor Insurance" means the insurance requirements of the Contractor specified in Schedule D hereto.

"Contractor's Authorized Representative" shall mean the [\_\_\_\_\_] of the Contractor.

“Contractor’s Designated Personnel” means the employees of Contractor as set forth in Exhibit A.

“Convenience Termination” shall have the meaning set forth in Section 8.4.

“Cost Substantiation” or “Cost Substantiated” means any cost reasonably incurred or to be incurred by the Contractor which is directly or indirectly chargeable in whole or in part to the Owner hereunder, delivery to the Owner of a certificate signed by an authorized officer of the Contractor, setting forth the amount of such cost and the provisions of this Agreement under which such cost is properly chargeable to the Owner, stating that such cost is a fair market price for the service or materials supplied or to be supplied and that such services and materials are reasonably required pursuant to this Agreement, and accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been or will be paid or incurred. Any Cost Substantiation required with respect to costs reasonably incurred by the Owner which are directly or indirectly chargeable in whole or in part to the Contractor hereunder shall include similarly detailed information, and shall be certified by an authorized officer of the Owner.

“Cure” means any repair, replacement, change, modification, reconstruction, remedy or correction to the performance of the Services under this Agreement.

“Damages” means any and all debts, claims, suits, demands, actions, charges, impositions, liabilities, obligations and other liabilities (whether absolute, accrued, contingent, fixed or otherwise, or whether known or unknown, or due or to become due or otherwise), diminution in value, monetary damages, fines, fees, penalties, interest, interest obligations, deficiencies, losses, costs, expenses (including amounts paid in settlement, interest, court costs, costs of investigators, fees and expenses of attorneys, accountants, financial advisors and other experts, and other expenses of litigation, including without limitation, Fees-And-Costs) and any and all costs incurred by the Owner for the purchase of similar services to cover any default by the Contractor.

“Designated Representative” means a person identified by the Owner, Contractor or the parties’ Subcontractors or subcontractors as authorized to make decisions on their behalf with respect to the Project including, but not limited to, the Contractor’s Authorized Representative and the Owner’s Authorized Representative.

“Deliverables” means Instruments of Service and other documentation, including those in electronic form, that are to be created, prepared or produced by the Contractor or its Subcontractors and furnished to the Owner in performance of the Services or part of the Services as specified in this Agreement.

“Drawings” means plans, elevations, sections, details, schedules, diagrams, and all other graphic or pictorial depictions of the design, location and dimensions of the Project.

“Event of Default” means, with respect to the Contractor, those items specified in Section 8.2 and with respect to the Owner, those items specified in Section 8.3.

“Extra Services” means such additional Services as ordered by the Owner beyond the scope of this Agreement to the extent that such Services will not be reflected in the lump sum fee payment specified in this Agreement. Such Services as shall supersede or revise completed Services that has been accepted in writing by the Owner. Changes in Services to effect refinements in the designs and Services made necessary by errors, omissions, oversight or neglect on the part of the Contractor, will not be considered Extra Services.

“Federal Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time.

“Fee” means the fees for the Services as described in Section 7.1(a).

“Fees-And-Costs” means reasonable fees and expenses of attorneys, expert witnesses, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with any Legal Proceeding.

“Good Industry Practices” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally accepted as good in the engineering industry.

“Governmental Approval” means all Permits, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any Person with respect to the Agreement.

“Governmental Body” means any local, city, county, regional, state or federal legislative, executive, judicial or other governmental body, agency, board, bureau, authority, administration, commission, department, court or other body, or ant official employee or agent thereof having jurisdiction.

“Hazardous Materials” means any pollutant, hazardous or toxic substance, waste, contaminant or material, including oil products, mold, asbestos, asbestos-containing materials, lead, lead-containing materials, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid-containing polychlorinated biphenyls, flammable explosives, radioactive materials or any other material or substance designated or regulated as hazardous under Applicable Law.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any fire insurance rating bureau or anybody having similar functions or by any insurance company which has issued a policy of Contractor Insurance under this Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Instruments of Service” means any tangible services product, including those in electronic form and reproductions of such tangible services product, prepared by the Contractor or its Subcontractors for the Project, including without limitation Intellectual Property, sketches, electronic data, preliminary drawings, outline specifications, calculations, studies, reports, analyses, models, and renderings.

“Intellectual Property” means all:

- (1) software (in any form including source code and executable or object code);
- (2) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility model, certificate of invention and design patents, patent applications, registrations and applications for registrations;
- (3) trademarks, service marks, trade dress, Internet domain names, logos, trade names and corporate and company names and registrations and applications for registration thereof;
- (4) copyrights and registrations and applications for registration thereof;
- (5) mask works and registrations and applications for registration thereof;
- (6) computer software, data and documentation;
- (7) inventions, know-how, trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information;
- (8) any rights analogous to those set forth in the preceding clauses and any other proprietary rights relating to intangible property anywhere in the world, including but not limited to all Intellectual Property rights in and to algorithms, application program interfaces, customer lists, databases, schemata, data collections, design documents and analyses, diagrams, documentation, domain names, drawings, formulae, literary works, maps, marketing plans and collateral, methodologies, network configurations, architectures, topologies and topographies, processes, program listings, programming tools, protocols, sales data, schematics, specifications, subroutines, user interfaces, web sites, works of authorship, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing such as blueprints, compilations of information, instruction manuals, notebooks, prototypes, reports, samples, studies, and summaries);
- (9) other proprietary rights relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions); and
- (10) copies and tangible embodiments thereof.

“Legal Entitlement” means all permits, licenses, registrations, approvals, authorizations, consents, certifications, exemptions, rulings or entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any Person with respect to the Services.

“Legal Proceeding” means every action, suit, litigation, administrative proceeding, and other legal or equitable proceeding arising out of the obligations of the Parties under this Agreement.

“Lien” means any and every lien against the Project Site or against any monies due or to become due from the Owner to the Contractor under this Agreement, for or on account of the Services, including without limitation mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Notice of Non-Compliance” shall mean a written notice from the Owner and/or Governmental Body to the Contractor and/or Subcontractor detailing one or more violations of the Contract Standards.

“Not To Exceed (NTE) Fees” means portions of the Fee described in Section 7.1(b).

“Official Notice” shall mean notice construed to include but not be limited to any request, demand, authorization, direction, waiver, and/or consent of the Party(ies) as well as any document(s) provided, permitted, or required for the making or ratification of any change, revision, addition to or deletion from the document, contract, or agreement in which this “Official Notice” specification is contained.

“Owner” means the Connecticut Port Authority, a quasi-public agency of the State of Connecticut.

“Owner Indemnified Parties” has the meaning specified in Section 10.4.

“Owner’s Authorized Representative” shall mean the Executive Director of the Owner.

“Permits” means any and all permits, licenses, approvals, certificates of public convenience as necessary, franchises or authorization that must be issued by any Governmental Body having jurisdiction thereof to legally enable the Contractor to carry out the Services and the Owner to own the Project and the Project Site.

“Person” means any individual, firm, corporation, general or limited partnership, company, limited liability company, trust, joint venture, union, estate, organization, association, federal, state, local or foreign government, court of competent jurisdiction, administrative agency or commission or other Governmental Body or instrumentality or self-regulatory authority, or any other similar entity.

“Project” means the entire project contemplated by the Owner pursuant to this Agreement which includes without limitation the Services, other professional services and any related services by the Contractor and others retained by the Contractor.

“Project Site” means the buildings, premises and spaces on which any portion of the construction Services for the Project is performed or used for the performance, or in support of the performance, of any portion of such Services required under this Agreement.

“Reimbursable Expenses” means the costs identified in Section 7.1(c) all subject to Cost Substantiation.

“Services” means any and all activities, services, extra services, efforts and actions required of the Contractor under this Agreement including without limitation those set forth in Schedule A hereto, including those that are reasonably necessary to produce the Deliverables required herein, except to the extent specifically indicated in this Agreement to be the responsibility of others. A reference to “Services” shall mean “any part and all of the Services” unless the context otherwise requires.

“Specifications” means the written description of the quantitative and qualitative requirements for materials, equipment, systems, standards and workmanship for the construction Services on the Project.

“State” means the State of Connecticut.

“Subcontract” means an agreement between the Contractor and a Subcontractor, or between two Subcontractors, as applicable.

“Subcontractor(s)” means every person or entities (other than employees of the Contractor) employed or engaged by the Contractor or any person directly or indirectly in privity with the Contractor (including every sub-subcontractor of whatever tier) to provide any portion of the Services under this Agreement, whether for the furnishing of labor, materials, equipment, supplies, services, or otherwise.

“Subcontractor Costs” means payments made by the Contractor to the Subcontractor in accordance with agreements awarded with authority and approval of the Owner.

“Task(s)” means those segments of the Project that the Contractor or its Subcontractors require to be satisfactorily completed pursuant to this Agreement and the attached “Scope of Services” in Schedule A.

“Tax” means any tax, fee, levy, duty, impost, charge, surcharge, tax equivalent, withholding, assessment, or other governmental charge or deficiency thereof, or any payment in lieu thereof, and any related interest, penalties, fines or additions to any such items.

“Term” has the meaning set forth in Section 9.1.

“Uncontrollable Circumstances” means any act, event or condition that is beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under this Agreement, and that materially interferes with or materially increases the cost or time required for performing its obligations hereunder (other than payment obligations), to the extent that such act, event or condition is not the result, in whole or in part, of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Agreement on the part of such Party.

Inclusions. Subject to the foregoing, Uncontrollable Circumstances shall include the following:

(a) Naturally occurring events (except weather conditions normal for the northeast region of the United States) such as landslides, underground movement, earthquakes, fires, tornadoes, floods, and epidemics;

(b) Explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, terrorism, blockade or insurrection, riot or civil disturbance; or

(c) Acts of terror of a public enemy.

Exclusions. It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances, and shall not entitle the Contractor to any price, fee, schedule or other adjustments or relief hereunder:

(a) general economic conditions, interest or inflation rates, or currency fluctuation;

(b) changes in the financial condition of the Contractor or any of its Affiliates or any Subcontractor affecting its ability to perform its respective obligations;

(c) the consequences of error, neglect or omissions by the Contractor or any of its employees, agents, Subcontractors, suppliers or Affiliates in the performance of the Services;

(d) the failure of any Subcontractor (other than to the extent due to Uncontrollable Circumstances) to furnish labor, services, material, supplies or equipment on the dates agreed to;

(e) strikes, work stoppages, or other labor disputes or disturbances;

(f) union or labor work rules, requirements or demands which have the effect of increasing the cost or burden to the Contractor or any Subcontractor of performing the Services;

(g) any increase for any reason in premiums charged by the Contractor's insurers or the insurance markets generally for the Contractor Insurance;

(h) economic infeasibility;

(i) any event reasonably foreseeable on the Agreement Date;

(j) a change in Applicable Law pertaining to Tax;

(k) any change in Applicable Law the terms and conditions of which do not impose more stringent or burdensome requirements on the Contractor than are imposed by the terms and provisions of this Agreement;

(l) any impact of prevailing wages, laws or rates on the Contractor's or its Subcontractors' costs with respect to wages and benefits;

(m) any act, event or circumstance to the extent that it would not have occurred if the affected party had complied with its obligations hereunder; or

(n) Change in Law.

“Utilities” means any and all utility services and installations whatsoever (including gasoline, diesel, fuel oil/propane, water, sewer, telephone and electricity), excluding Owner telephone services.

**Section 1.2 Interpretation.** All Parties acknowledge and agree that this Agreement has been freely negotiated and that in any dispute over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no presumption whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof. In this Agreement, unless the context otherwise requires:

(a) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(b) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(c) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(d) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the transactions contemplated by this Agreement and supersedes all oral or written agreements, negotiations, correspondence, documentation, and statements made before its acceptance and execution. Nothing in this Agreement is intended to confer on any person other than the Parties and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(f) Conflicts in Obligations and Standards. In the event of a conflict between any provisions of this Agreement (including the Schedules/Exhibits hereto) imposing any requirement, obligation, standard or guarantee on the Contractor, the higher or more stringent requirement, obligation, standard or guarantee shall apply. As used herein, the “most stringent” shall mean the applicable Contract Standards that are most beneficial to the Owner. The Parties shall resolve all issues of interpretation not related to stringency by submitting any such dispute to a state or federal court sitting in Hartford County, Connecticut in accordance with Section 10.26.

(g) References to Days. All references to days herein are to calendar days, including Saturdays, Sundays and holidays, except as otherwise specifically provided. In the event that any time period herein ends on a day that is not a business day, the time period shall be extended to the next business day thereafter.

(h) Counterparts. This Agreement may be executed in any number of original counterparts, including by way of facsimile or other electronic transmission, each of which shall be enforceable to the same extent as an original. All such counterparts shall constitute but one and the same Agreement.

(i) Applicable Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Connecticut, and disputes between the Parties shall be handled in the manner provided in Section 8.7.

(j) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the Parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein; (ii) if necessary or desirable to accomplish item (i) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (iii) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (i) and (ii) above to effect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

## ARTICLE II

### CONDITIONS PRECEDENT

#### **Section 2.1** The Contractor.

As of or prior to the execution and delivery of this Agreement, the Contractor shall have delivered to the Owner:

(a) a certified copy of the resolutions of the manager(s) and member(s) of the Contractor approving the execution and delivery of this Agreement;

(b) certificates of incumbency for the officers of the Contractor executing this Agreement; and

(c) such other certificates and documentation as the Owner shall reasonably request in connection with the execution, performance and delivery of this Agreement and the transactions contemplated thereby.

#### **Section 2.2** The Owner.

As of or prior to the execution and delivery of this Agreement, the Owner shall have delivered to the Contractor:

- (a) certified approval of this Agreement;
- (b) a certificate of incumbency for the officers of the Owner executing this Agreement; and

**Section 2.3** Conditions to Obligations of Each Party.

The respective obligations of each of the parties hereto at the Agreement Date are subject to the fulfillment to their reasonable satisfaction of the following conditions precedent (or mutual written waiver thereof) on or before the Agreement Date:

- (a) Consummation of the transactions contemplated hereby shall not have been prohibited by any order, decree or judgment of any United States court, governmental agency, or other regulatory agency or commission having competent jurisdiction.
- (b) There shall not have been promulgated, entered, issued or determined to be applicable to this Agreement any law, regulation, order, judgment or decree making the providing of the Services as contemplated hereby illegal.
- (c) No action, suit, or proceeding before any court or any Governmental Body, pertaining to the transactions contemplated by this Agreement or to its consummation, shall have been instituted or threatened in writing.
- (d) copies of certificates of insurance required pursuant to Schedule D hereof.
- (e) The Contractor shall prepare and provide to the Owner all information regarding its Subcontractors, if any, for the Services required to be provided pursuant to Section 10.11, to the extent such Subcontractors have been identified prior to the Agreement Date.
- (f) The Contractor shall provide to the Owner a copy of all Legal Entitlements and Permits necessary for Contractor and its Subcontractors to perform their respective obligations pursuant to the terms and provisions of this Agreement.
- (g) The Contractor shall deliver to Owner such other certificates and documentation as the Owner shall request in connection with the execution, performance and delivery of this Agreement and the transactions contemplated thereby.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES**

**Section 3.1** Representations and Warranties of the Owner. The Owner represents and warrants to the Contractor that:

(a) Existence and Powers. The Owner is a is a quasi-public agency of the State, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) Due Authorization and Binding Obligation. The Owner has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Owner and constitutes a legal, valid and binding obligation of the Owner, enforceable against the Owner in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(c) No Conflict. Neither the execution nor the delivery by the Owner of this Agreement nor the performance by the Owner of its obligations hereunder nor the consummation by the Owner of the transactions contemplated hereby (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Owner is a party or by which the Owner or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument.

(d) No Litigation. There is no action, suit or other proceeding as of the Agreement Date, at law or in equity, before or by any court or Governmental Body, pending or, to the Owner's knowledge, threatened against the Owner which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument to be entered into by the Owner in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Owner of its obligations hereunder or under any such other agreement or instrument.

(e) No Legal Prohibition. The Owner has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Owner of this Agreement and the transactions contemplated hereby.

**Section 3.2** Representations and Warranties of the Contractor. The Contractor hereby represents and warrants to the Owner that:

(a) Existence and Powers. The Contractor is duly organized and validly existing as a [corporation] under the laws of the State of Connecticut, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) Due Authorization and Binding Obligation. The Contractor has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Contractor and constitutes the legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(c) No Conflict. Neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder (i) conflicts with, violates or results in a breach of any of the terms of the certificate of incorporation or partnership agreement of Contractor or any Applicable Law, (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor, or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, (iii) will result in the creation or imposition of any Liens or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor or the Owner, or (iv) conflict with, or result in or constitute a default under or breach or violation of or grounds for termination of, any Permits or other Legal Entitlements to which the Owner, Contractor, or an Affiliate is a party or by which the Owner, Contractor, or an Affiliate may be bound, or result in the violation by Contractor or its Affiliates of any Applicable Law to which Contractor or its Affiliates or any assets of Contractor or an Affiliate may be subject, which would materially adversely affect the transactions contemplated herein. No Governmental Approval or Legal Entitlement or other authorization, consent or approval of, notice to, or filing with, any other Person is necessary in connection with the execution, delivery and performance by Contractor of this Agreement, as applicable.

(d) No Litigation. There is no action, suit or other proceeding as of the Agreement Date, at law or in equity, before or by any court or Governmental Body, pending or, to the Contractor's best knowledge, threatened against the Contractor or its officers or directors which is or reasonably could be expected to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Contractor of its obligations hereunder or by the Contractor under any such other agreement or instrument.

(e) No Legal Prohibition. The Contractor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Contractor of this Agreement and the transactions contemplated hereby.

(f) No Collusion. Neither the Contractor nor any Affiliate of the Contractor has employed or retained any Person, other than a bona fide full time salaried employee working solely for the Contractor to solicit or secure this Agreement, and neither the Contractor nor any Affiliate of the Contractor has paid or agreed to pay any Person (other than payments of fixed salary to a bona fide full time salaried employee working solely for the Contractor) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement. For any breach or violation of this Section 3.2(f), without limiting any other rights or remedies to which the Owner may be entitled or any civil or criminal penalty to which any violator may be liable, the Owner shall have the right, in its discretion, to terminate this Agreement without liability, or otherwise to recover the full amount of such fees, commission, percentage, gift or consideration.

(g) Compliance With Law. The Contractor is presently in compliance in all material respects with all Applicable Law, and to the best of the Contractor's knowledge, no event has occurred which would constitute reasonable grounds for a claim that such non-compliance has occurred or is occurring.

(h) Related Parties. No officer, director or agent of the Contractor is an employee of the Owner and, to the best of the Contractor's knowledge, no Owner employee owns, directly or indirectly, any interest in the Contractor or any of its Affiliates.

(i) Debt. The Contractor is not in arrears upon any debt nor in default of any obligation owed to the Owner. The Contractor has not nor have any of its Affiliates filed, nor have creditors of the Contractor filed, any type of proceeding under the United States Bankruptcy Code. As of the Commencement Date, there has been no material adverse change in the Contractor's financial condition which would impair the Contractor's ability to perform its obligations under this Agreement. After the Commencement Date, the Contractor shall immediately report to the Owner any material adverse change in its business.

(j) Licenses and Permits. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the revocation, cancellation, suspension, modification, or limitation of any of the Permits and will not give any Person any right to revoke, cancel, suspend, modify, or limit any of the Permits. Renewal of each of the Permits has been or shall be timely applied for and obtained to the extent required under Applicable Law, and to the extent appropriate to protect renewal rights thereunder. To the knowledge of Contractor, there is no fact or event which reasonably would be expected to prevent the renewal of any of the Permits under Applicable Law or which, with the passage of time or the giving of notice or both, would reasonably be expected to constitute a violation of the terms of any of the Permits, Applicable Law or of any applications or agreements made in connection therewith. No action or proceeding is pending or, to the knowledge of Contractor, threatened which could result in the revocation, cancellation, suspension, modification, or limitation of any of the Permits.

(k) Representations and Warranties. No statement, representation or warranty by the Contractor in this Agreement, including the attachments and schedules hereto, contains any untrue statement of material fact, or, to the best of the Contractor's knowledge, omits to state any material fact, necessary to make such statements, representations and warranties not misleading.

## ARTICLE IV

### SERVICES PERIOD

**Section 4.1** Scope of Services. The purpose and scope of this Agreement is to provide for the undertaking and the successful completion of the all Services, Deliverables and Tasks assigned to the Contractor as set forth in accordance with the standards and requirements of this Article and in the "Scope of Services" of this Agreement, specified in Schedule A. Any revisions of additions to or deletion from the Services, Deliverables and Tasks specified in Schedule A, shall be in a written supplemental agreement executed by each of the Parties.

(a) Time of Performance. The Contractor shall submit all Services stipulated in Schedule A of this Agreement within the time frame set forth therein, commencing from the date stipulated by the Owner in a formal notice to proceed, the Parties acknowledging and agreeing that time is of the essence in the performance of the Services by Contractor hereunder.

(b) Extension of Time. The Owner may, in its sole and absolute discretion, extend the allotted time beyond the period specified above when the Services have been delayed for reasons beyond the control of the Contractor. The Contractor may present to the Owner, in writing, requests for extension of allotted time for completion of the Services. The Owner will evaluate such requests and if the Owner determines such requests are based on valid grounds shall in the sole and absolute discretion of the Owner, grant such extension of time for such reasonable period for completion of the Services as the Owner deems, in the sole and absolute discretion, warranted. All requests for extension of time must be submitted within forty eight (48) hours from the first occurrence of any event of delay and submitted prior to the time that the Contractor is in any default under the Agreement. Decisions made by the Owner relative to the granting of extension of time, if any, shall be final and binding.

(c) Additional Charges. The Contractor agrees that no charges or claim for Damages or additional compensation shall be made for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services specified in Schedule A of this Agreement. Contractor's sole remedy for such delays or hindrances, if any, shall be an extension of time, (described above), for such reasonable period as the Owner may determine, it being understood, however, that the permitting of the Contractor to proceed to complete any Services or any part of them after the date of completion or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of its rights herein.

#### **Section 4.2** Extra Services.

(a) Additional Services. The Contractor shall make any revisions, additions, deletions, modifications, corrections, substitutions, or changes to the plans or changes in the layout as may be ordered by the Owner or any of its duly authorized representatives at any time during the life of this Agreement. No additional payment will be made for such revisions, additions, deletions, modifications, corrections, substitutions, or changes to the plans or layout, unless such changes constitute Extra Services.

(b) Documentation of Extra Services. In the event that changes in the Contractor's proposed project are suggested which, in the opinion of the Contractor, would result in Extra Services, the Contractor shall immediately submit complete written documentation of the claim and upon the Owner's concurrence shall submit a written estimate of the cost for the Extra Services and refrain from working in the area while the Owner reviews the claim, or proceed otherwise if specifically directed by the Owner. If approval is denied, the Contractor shall continue to perform the original Services without delay and payment will be made according to the terms of this Agreement. No Services, other than that for which a claim is being reviewed, shall be delayed pending a decision of the Owner.

(c) Claim for Extra Services. Unless the Contractor identifies, and the Owner acknowledges, Extra Services prior to its performance, the Owner will not be obligated to consider Extra Services after the fact.

(d) Payment for Extra Services. Classification of any Services as Extra Services, and also the method of evaluation of the amount of fee to be paid for such Extra Services, shall be the function of the Owner in its sole and absolute discretion, and the Owner's decision shall be final and binding. Where the extent and cost of Services to be performed can be determined in advance with reasonable accuracy, a mutually agreed upon lump sum fee may be the basis for payment. If the Owner finds that the extent and cost of Services to be performed cannot be determined in advance with reasonable accuracy, the payment for Extra Services shall be determined on the basis of the cost to the Contractor for performing such Extra Services subject to Cost Substantiation, according to the provision of Schedule B.

(i) The cost for Extra Services shall be segregated by the Contractor to facilitate audit at a later date by the Owner.

#### **Section 4.3** Change in Services.

(a) General. The Owner may, without invalidating this Agreement, add, delete, modify or alter the Project or the Services. Any additions, deletions, alterations, revisions, modifications, substitutions, or changes to Services may go beyond the general scope of the Agreement and include subsequent related Services not originally contemplated in Schedule A. The Contractor shall not undertake any addition, deletion, modification or alteration in the Services without an executed Change in Services as provided in this Article.

(b) Change in Services. A Change in Services constitutes a final settlement by the Contractor of all matters relating to the change that is the subject of the Change in Services, including any and all Damages, and all direct and indirect costs associated with such change and any and all adjustments in Fee, Reimbursable Expenses, schedule and time for performance.

(c) Compensation for Changes. Before commencing any services for which a Change in Services will be requested, the Contractor shall provide the Owner with a written proposal to provide such services on the basis of a fixed fee or, if the scope of the change cannot be sufficiently determined, on the basis of the Contractor's hourly rates plus Subcontractor Costs up to an NTE Fee (as set forth in Section 7.1(b)). Upon receipt of the Contractor's written proposal, the Owner may, in its sole and absolute discretion, accept the requested change by issuing a Change in Services to the Contractor or reject the requested change and require the Contractor to proceed with the Services as designated by the Owner.

(d) Continuing Performance. Pending issuance of a Change in Services, the Contractor shall proceed diligently with performance of the Services and its other contractual obligations.

**Section 4.4** Reduction or Extension of Services. The Owner may limit, reduce, or extend any Services proposed by the Contractor, or at Owner's option, specify the extent and details of the Services, perform any or all of the Services by any other means as the Owner may

desire, with a corresponding decrease in the lump sum fee or an increase approved as Extra Services.

**Section 4.5** Reduction in Scope of Services. The Contractor agrees that should the scope of the Services under this Agreement be reduced, it will be reflected in the fees noted in applicable schedules, through negotiations, without requiring a supplemental agreement.

**Section 4.6** Project Schedule and Timing of Services.

(a) Schedule. The Contractor shall commence the Services on the Commencement Date of this Agreement, and shall perform the Services in strict accordance with the Preliminary Development Schedule, attached hereto as Exhibit B, and the overall project schedule as furnished and updated by the Owner. Time is of the essence in the performance of the Services by the Contractor under this Agreement.

(b) Acceleration. The Owner may accelerate the Services for any reason, whether or not the Contractor's performance is in accordance with the schedule then in effect pursuant to this Article. If the Contractor performance is timely and the Owner accelerates the Services, the Contractor's compensation shall be adjusted by a Change in Services, provided that the Contractor has complied with this Agreement in seeking such a change.

(c) Delays. If the Contractor or its Subcontractors are delayed at any time in the commencement or performance of the Services by any wrongful act or neglect of the Owner or others retained by the Owner, by changes or suspensions ordered in the Services or by unforeseeable circumstances beyond the control of the Contractor or its Subcontractors and without their fault or negligence in whole or in part, then to the extent that the Contractor demonstrates schedule ramifications and actual impact to the critical path of its scheduled Services, the Time for performance will be equitably adjusted by a Change in Services, provided that the Contractor has complied with this Agreement in seeking such a change.

(d) Change in Services. Any request for a Change in Services based on delay shall include an impact study detailing specific activities affected by such delay.

(e) Adjustment for Delays. The Contractor and its Subcontractors of all tiers shall not be entitled to any adjustment in Time for delays that they could have reasonably avoided or mitigated.

## ARTICLE V

### CONTRACTOR'S PERFORMANCE OF SERVICES

**Section 5.1** Obligations of the Contractor. The Contractor covenants and agrees that it shall:

(a) Designated Personnel. In carrying out its responsibilities under this Agreement, the Contractor shall use skilled employees with proven experience in projects of comparable size and complexity. Attached as Exhibit A are the Contractor's Designated Personnel, including its Designated Representative for this Project, together with a statement of

their training and experience, all of whom must be approved by the Owner. The Contractor's Designated Representative shall have full authority to accept instructions, make decisions, communicate for and act on behalf of the Contractor at all times.

(1) The Contractor represents that its Designated Personnel are committed to performing as Designated Personnel for the entire duration of the Project. The Contractor will not change these Designated Personnel or their responsibilities without the Owner's prior written consent.

(2) If, at any time, any of the Designated Personnel are not satisfactory to the Owner, the Contractor shall, if requested by the Owner, remove and replace such personnel with another person acceptable to the Owner. In the event that one or more of the Contractor's Designated Personnel leave the service of the Contractor or must be replaced for any reason, such replacement personnel shall be subject to the Owner's interview and acceptance, such acceptance being at the sole and absolute discretion of the Owner.

(b) Progress Reports. Monitor the progress of the Services performed and submit to the Owner a progress report showing the percentage of the Project completed, based on the negotiated monetary value for the Project. The percentages agreed upon by the Owner and the Contractor shall be used in the progress report submitted every calendar month and shall be binding upon the Contractor, unless actual delays and reasonably anticipated delays prevent the Services from being completed and such Services are adjusted pursuant to the terms of this Agreement and at the sole discretion of the Owner. Said progress reports shall be subject to examination and approval of the Owner.

(c) Invoices. Submit to the Owner invoices for payment subject to the terms of ARTICLE VI.

(d) Project Site Visits. Visit the Project Site and conduct inspections during all stages of the Project to detect changed field conditions, and if required, modify and adjust the Project as required to insure that the reports reflect the latest existing field conditions.

(e) Visitors' Log. Maintain a visitors' log during the Term and require that all visitors to the Project Site (other than Designated Representatives) and regulatory or service personnel, sign in and sign out in the visitors' log.

(f) Conferences. Attend, make presentations and participate in meetings as the Owner may direct, for consultation and review of data upon request of any party having direct concern with the Project, or before such public and private boards, commissions, committees and Governmental Bodies to discuss details, review designs, provide comments, recommendations and progress reports, and obtain approvals for the Project. The Contractor shall assist the Owner in the preparation of documentation, records, and submissions required by Governmental Bodies or the Owner.

(g) Entry Upon Private Property. Obtain permission to enter upon private property as an agent of the Owner, from all owners or occupants of property involved in the Project when such entry by the Contractor is required in order to perform its Services under this Agreement and to complete the Project.

(h) Entry Subject to Security. Assume responsibility for obtaining all necessary Permits that may be required and obtain clearance for entry onto any properties subject to security regulations.

(i) Review of Services. Permit the Owner to review at any time, all Services performed under the terms of this Agreement at any stage of the Project.

(j) Responsibility for Accuracy of Services. Assume full responsibility for the accuracy of all products of its Services under this Agreement including any supplements thereto.

(k) Relationship with Others. Cooperate fully with all representatives of all allied disciplines involved, including, but not necessarily limited to, other Contractors, State personnel, municipalities, officials, public utility companies and others having information on this project; attend such meetings, discussions, hearings as may be requested from time to time by the Owner to effectuate this cooperation; and comply with all directives given by the Owner.

(l) Utilities. At its own cost and expense, provide and maintain all Utilities necessary to perform the Services without reimbursement from the Owner.

(m) Maintenance And Repair. At its own cost and expense, be responsible for the maintenance and repair of all equipment owned or leased by the Contractor and used in connection with the Services.

(n) Safety and Security. Maintain the safety of the Project Site at a level consistent with the Contract Standards. Without limiting the foregoing, the Contractor shall, at its sole cost and expense:

(1) Take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the performance of the Services, at all times to all employees working at or all visitors to the Project Site, all machinery, materials and equipment under the care, custody or control of the Contractor for performing the Services, and other property on the Project Site, including trees, shrubs, lawns, walks, pavements, roadways, structures and Utilities;

(2) Establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations;

(3) Give all notices and comply with all Applicable Law and lawful orders of any Person or Governmental Body having jurisdiction relating to the safety of persons or property or their protection from damage, injury or loss;

(4) Designate a qualified and responsible employee at the Project Site whose duty shall be the supervision of safety, the prevention of fires and accidents and the coordination of such activities as shall be necessary with local, federal, State and Owner officials;

(5) Operate all equipment in a manner consistent with the Contract Standards and manufacturer's safety recommendations;

(6) Provide fire extinguishers and safety equipment in accordance with Applicable Law and develop a site security plan.

(o) Licensure/Permitting. Obtain and hold, or employ persons or entities holding, such valid licenses or registrations if any Governmental Body requires licenses or registrations for the performance of the Services.

## **Section 5.2** Information.

(a) Information from Others. The Contractor shall obtain information pertinent to the completion of the Project such as maps, plans, photographs, demographic and environmental data, and documents from other consultants, municipalities, local authorities or other sources having information on the Project. At the earliest possible date but in no event after the Contractor commences performing its Services, the Contractor shall provide the Owner with a list of information or documentation required from the Owner that is necessary for the performance of the Services. The Contractor shall gather available documents from the Owner's identified record storage location(s) and shall assemble, review and coordinate it with data furnished by the Owner. Documents to be furnished by the Owner are set forth in Section 6.3 herein.

(b) Audit of Books and Records. The Contractor shall prepare and maintain proper, accurate and complete books, records and accounts concerning the implementation of this Agreement and regarding the Services to the extent necessary, for a period of not less than three (3) years from the date of the final payment under this Agreement, in order to (i) to verify data with respect to any operations or transactions in which the Owner has a financial or other material interest hereunder, (ii) to substantiate any payment, including any payment related to an Uncontrollable Circumstance or which is subject to Cost Substantiation, and (iii) to prepare any report required pursuant to Applicable Law.

(i) The Owner or its designee shall have the right to access, inspect, audit and review all the Contractor's and Subcontractors' documents, data, records, bills, expenses, and files, electronic or otherwise, at any reasonable time during or after completion of the Services and request, upon reasonable notice and demand to the Contractor, any such books and records if required under Applicable Law, to support any Owner litigation, to substantiate an Uncontrollable Circumstance claim from the Contractor or to substantiate any payment whether or not subject to Cost Substantiation.

(ii) The Owner and with the full cooperation of the Contractor, shall, at the Owner's sole cost and expense and during normal business hours, have access to copy, consistent with Applicable Law, all books, records and accounts regarding the Services, in native electronic format (including metadata) or otherwise.

(iii) The Contractor shall promptly respond to any inquiries of the Owner or its designee arising out of any such inspection or audit and the Contractor will

be expected to produce any pertinent file information requested including Consultant's time and expense records.

(iv) The Owner reserves the right to seek reimbursement of inappropriately billed time or expenses discovered during an audit. If during any such audit, it is discovered that the Contractor inappropriately billed time or expenses then Contractor shall be responsible for all costs and expenses incurred by Owner in conducting said audit.

(v) The provisions of this subsection shall survive the termination of this Agreement.

(c) Notice of Default Under Agreements. The Contractor shall provide to the Owner, immediately after the receipt thereof, copies of any written notice of a material default or non-compliance event received in connection with any Legal Entitlement, Subcontract or Agreement pertaining to the Services under any material financial or contractual instrument to which they are a party.

**Section 5.3** Hazardous Materials. If the Contractor or its Subcontractors know or become aware of Hazardous Materials on or about the Project Site other than those required to be introduced to the Project Site by those performing the Services for the Project, or if they become aware of any spill or release of Hazardous Materials on or about the Project Site, the Contractor shall immediately notify the Owner in writing.

**Section 5.4** Owner Corrective Action. The Owner shall have the right, but not the obligation, to perform any obligation of the Contractor that the Contractor fails to immediately perform after receipt of reasonable notice from the Owner. If the Owner exercises this right, the Owner shall be entitled to withhold such amount as part of the setoff set forth in Section 10.5 or recover from the Contractor all costs and expenses related to the performance of such corrective action. The Contractor agrees that if the Owner exercises its corrective rights pursuant to this Section, the Owner shall have no obligation to perform the Contractor's obligations at the lowest cost available; provided, that the Owner's performance is consistent with the terms of this Agreement.

**Section 5.5** Conditions for Subcontract of Services.

(a) Subcontractors. The Contractor shall not subcontract any portion of the Services required for the completion of this Agreement without the prior written approval of the Owner, in the sole and absolute discretion of the Owner. The form of the Subcontractor's Agreement shall be as developed by the Contractor and approved by the Owner, in the sole and absolute discretion of the Owner. The Subcontractors to be retained by the Contractor as part of its Services for the Project are identified in Schedule C. The use of Subcontractors other than those listed in Schedule C shall be subject to the Owner's sole and absolute discretion and acceptance. Copies of all subcontracting agreements shall be provided to the Owner as soon as they are finalized and before including the Subcontractor's services in an invoice to the Owner. The Owner may designate specific Subcontractors to be retained by the Contractor with respect to certain elements of the Project.

(b) Assignments. The Contractor hereby assigns, transfers and conveys to the Owner all of its right, title and interest in and to any subcontracting agreement pertaining to the Project, which assignment shall only become effective as of the date of this Agreement, and which shall only become enforceable after a termination of this Agreement and only as to those agreements that the Owner expressly accepts by written notification. The Owner may, in turn, assign such agreements in its sole discretion, without recourse to any person or entity, in which event such assignee shall assume the Owner's rights and obligations under such agreements.

(c) Coordination for Subcontract of Services. The Contractor shall be solely responsible for coordinating all portions of the Services, including those performed by its personnel and Subcontractors. The Contractor shall monitor information flow, decision making, progress, schedule, billings and payments and reporting to facilitate the orderly progress of the Services.

(1) The Contractor shall coordinate the Services with those of its Subcontractors, shall review and check all deliverables and shall make all modifications necessary to ensure that the documents are integrated into a complete and coordinated set of documents prior to submission to the Owner.

(2) To the extent that any portion of the Services is interdependent upon the Designated Representative of the Owner or other entities retained by the Owner on the Project or other projects identified by the Owner, the Contractor shall coordinate with such persons or entities as part of its Services.

(3) The Contractor shall reimburse the Owner for costs incurred to other entities because of delays, improperly timed activities or defective performance of Services by the Contractor or its Subcontractors.

**Section 5.6** Compliance with Contract Standards. The Contractor shall at all times during the Term comply with the Contract Standards, except to the extent excused by any Uncontrollable Circumstances. If the Contractor fails to comply with any Contract Standard, the Contractor shall at its own cost and expense and without relief under any other Contract Standard (a) promptly notify the Owner in writing of any such non-compliance, (b) promptly provide the Owner with copies of any notices sent to or received from any Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law, (c) pay any and all applicable Damages provided for herein or resulting therefrom, and (d) take any action (including without limitation making all repairs, or operating changes) necessary in order to comply with such Contract Standard, continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of non-compliance with such Contract Standard.

**Section 5.7** Compliance with Applicable Law. The Contractor shall perform the Services in accordance with Applicable Law, ensure that all of the Deliverables furnished under this Agreement comply with Applicable Law and shall cause all Subcontractors to comply with Applicable Law. The Contractor shall provide the Owner (a) immediately upon receipt thereof, a true, correct and complete copy of any written Notice of Non-Compliance with Applicable Law, and true and accurate transcripts of any oral Notice of Non-Compliance with Applicable Law, issued or given by any Governmental Body, and (b) immediate written notice describing the

occurrence of any event or the existence of any circumstance which may result in any such non-compliance, or of any Legal Proceeding alleging such non-compliance. Except to the extent excused by Uncontrollable Circumstances, if the Contractor or any Subcontractor fails at any time to comply with Applicable Law related to the performance of Services herein, the Contractor, without limiting any other remedy available to the Owner upon such an occurrence and notwithstanding any other provision of this Service Agreement shall (i) immediately, at its cost and expense, correct such failure and resume compliance with Applicable Law; (ii) bear all Damages of Contractor and the Owner resulting therefrom; (iii) pay or reimburse the Owner for any resulting Damages (including any liquidated damages); (iv) and comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy the Contractor's failure to comply with Applicable Law.

## ARTICLE VI

### OWNER'S OBLIGATIONS FOR PERFORMANCE OF CONTRACTOR'S SERVICES

**Section 6.1** Designated Personnel. The Owner shall identify its Designated Personnel for this Project, including its Designated Representatives, by separate notice. The Owner may change its Designated Representatives from time to time and shall inform the Contractor when any changes affecting these designations are made. Except as otherwise expressly provided in this Agreement, the Owner's Designated Representatives are authorized to make decisions on behalf of the Owner with respect to the Project.

**Section 6.2** Determination of Extra Services. The Owner shall consider as Extra Services any Services in which the Contractor is directed to perform by Owner beyond the scope and character of this Agreement if the requirements of Section 4.2 are met. Upon presentation by the Contractor of a request for payment for such Extra Services, the request shall be evaluated by the Owner and, if found valid, the Owner shall authorize payment therefore. In the event the Contractor requests payment for Extra Services which the Owner determines is without basis or foundation, the Owner may reject such request. The decision of the Owner on the request for payment of Extra Services shall be final and binding upon the Contractor.

**Section 6.3** Publications and Data.

(a) Data. The Owner shall furnish selected publications, data, maps, photographs, historical documents, and all factual information pertinent to the Project including vendors, invoices, billings, agreements, and correspondence.

(b) Existing Conditions. The Owner shall furnish such surveys and reports that are known by the Owner to be in its possession, that are relevant to the Services and that are readily available to the Owner. The Owner makes no representations or warranties as to the accuracy of information that such surveys and reports may provide. The Contractor may rely on such surveys and reports to the extent that it would be prudent to do so in the exercise of its professional judgment. The Contractor and its Subcontractors shall notify the Owner promptly if they observe or are become aware that any portion of such surveys or reports are at variance with the existing conditions.

**Section 6.4** Owner's Design and Construction Professionals. At any time prior to or during the performance of the Services, the Owner may, in its sole discretion, retain design or construction professionals to provide services that may include architectural or engineering design, preparation of Drawings and Specifications, budgeting, estimating, construction, scheduling, phasing and value engineering for the Project. The Owner and Contractor will coordinate the Contractor's scope and Services with those of any other design and construction professionals retained by the Owner to ensure, among other things, that there are no gaps or duplication in services among the construction and design professionals, and that all parties providing services to the Project are communicating and cooperating with each other as necessary.

**Section 6.5** Finder's Fees. The Parties acknowledge that, pursuant to Sections 3-13j and 3-13l the Connecticut General Statutes, the Owner is prohibited from paying a finder's fee to any Person in connection with any investment transaction. Accordingly, the Contractor shall not provide the Owner any investment services, or receive, pay, or distribute any finder's fees under this Agreement.

**Section 6.6** Access, Inspection And Visitation. The Owner, its representatives, employees, agents and consultants, and representatives of the Federal government and the State shall have at any time during the Term, the right of access to the Project Site to inspect, monitor or review the Services. Such access shall be made available in a manner which does not interfere in any material respect with the Contractor's performance of its obligations hereunder. Any non-regulatory, non-Owner and non-Contractor personnel requesting access to the Project Site shall sign a liability release in a form agreeable to the Owner.

**Section 6.7** Progress Payments. The Owner shall pay the Contractor for work performed in accordance with the terms specified herein. The Contractor may request progress payments for work performed. These requests for payment may be submitted monthly. Subject to Cost Substantiation, progress payments will be made by the Owner on the following basis:

(a) Progress payments for the work specified in Schedule A will be equal to lump sum fee payments set forth in Section 7.1(a), based on the percentage of completion of work specified in Schedule A.

**Section 6.8** Final Payment. The Owner shall pay the Contractor in accordance with this Agreement and upon final acceptance of all completed Services an amount equal to one hundred percent (100%) of the payment for the Services performed. From the payment thus computed shall be deducted all previous progress payments made to the Contractor for the Services performed.

## ARTICLE VII

### COMPENSATION

**Section 7.1** Compensation. The Owner shall pay the Contractor for Services performed in accordance with the terms specified herein. The Contractor's compensation for the Services shall consist only of the Fee plus Reimbursable Expenses

(a) Fee. The Fee payment to the Contractor for the Services, set forth in Schedule A, shall be a sum total not to exceed Fee of [ \$\_\_\_\_\_ ] ( \$[\_\_\_\_,\_\_\_\_] ), a percentage of which will be paid to the Contractor, in monthly installments, based on the completion of the Services, project milestones, Deliverables, and Tasks as provided in Schedule A. The portion of the Fee allocated to each separately priced Service, in Schedule A, includes all compensation to which the Contractor is entitled for such portion of the Services, including Contractor's own costs, Subcontractor Costs, overhead and profit, but excluding Reimbursable Expenses.

(b) NTE Fee. Portions of the Fee designated as not to exceed (NTE) shall consist of the Contractor's hourly rate (as agreed upon by Owner and as set forth in Schedule B) and Subcontractor Costs directly attributable to such portion of the Services, which together shall not exceed and amount of [ \$\_\_\_\_\_ ] ( \$[ , ] ).

(c) Reimbursable Expenses. The costs reasonably and necessarily incurred by the Contractor, its Subcontractors and their employees in the proper performance of the Services for the expenses set forth in this ARTICLE VII, without additional markup, margin, contribution or fee. The Contractor shall not be entitled to compensation for Reimbursable Expenses in excess of the budgeted amounts without the prior, written approval of the Owner.

(1) Reimbursable Expenses only consists of the following expenses only:

1. Owner-approved travel expenses. Air travel, if authorized by the Owner, shall be compensated at coach fares.

2. Postage and courier service.

3. Copying and Drawing reproduction expenses. Reproduction services performed in-house shall be compensated at rates that are no higher than competitive rate generally available from outside vendors.

4. Living expenses in connection with out-of-town travel, if approved by the Owner in writing.

5. Fees paid by the Contractor for securing approval of Governmental Bodies for the Project, if requested by the Owner.

6. Expenses of Drawings, renderings, models and mock-ups beyond those required herein and requested by the Owner.

7. Any other costs submitted by the Contractor for approval and approved by the Owner as reimbursable.

(2) Reimbursable Expenses shall not include the following, which shall be borne by the Contractor:

1. Materials, supplies, reference documents and reproduction costs for the office use of the Contractor or its Subcontractors.

2. Computer time and CAD plotting.
3. Cost of the Contractor's and its Subcontractors' home and branch offices including any and all home office overhead.
4. Costs resulting from a breach of this Agreement, negligence or willful misconduct of the Contractor or its personnel or Subcontractors.
5. Any portion of the Contractor's capital expenses, including interest on the capital employed for the Services.
6. All other costs and expenses not specifically described in this Article.

(d) Progress Payments. The Contractor may request progress payments for Services performed. These requests for payment may be submitted monthly and shall be made on invoice forms. Progress payments will be made by the Owner within thirty (30) days after the Owner receives the invoice and all required supporting documentation unless the Owner has grounds to withhold payment pursuant to Section 7.2. Upon payment by the Owner, the Contractor shall promptly, but in no event later than thirty (30) days after receiving the Owner's payment, pay its Subcontractors the amounts to which they are entitled.

1. Portions of the Fee shall be computed in each invoice on the basis of the percentage of each portion of the Services that is properly completed through the period covered by the invoice, less the aggregate of previous payments made by the Owner on account of such portion of the Services.

2. Portions of the Fee designated as NTE and amounts invoiced on the basis of hourly rates (as set forth in Schedule B) shall be computed in each invoice on the basis of the number of hours actually incurred by Designated Personnel during the period covered by the invoice. Invoices containing such amounts shall be accompanied by an itemized statement of the actual Tasks and hours devoted to the Project on a daily basis by Designated Personnel during the billing period.

3. Invoices that include Reimbursable Expenses shall be subject to Cost Substantiation with sufficient detail to enable the Owner to substantiate such Reimbursable Expenses.

4. The Contractor shall examine the invoices of its Subcontractors to confirm that all claimed fees and expenses are allowed under the Agreement, and shall not include ineligible amounts in its invoices to the Owner. Invoices that include fees based on NTE shall be accompanied by invoices of the Contractor's Subcontractors.

5. Invoices shall include only amounts actually incurred and authorized by the Owner or amounts memorialized in a written Change in Services executed by the Owner and Contractor.

6. The submission of the Contractor's invoice for payment shall constitute the Contractor's representation that:

- a. the amounts sought are due and earned in accordance with this Agreement.
- b. it shall use the amounts requested to discharge its financial obligations on account of Services furnished for the Project and included in the invoice.
- c. it has discharged its financial obligations on account of Services furnished for the Project for which the Owner has made payment.
- d. to the best of its knowledge, there are no claims of Liens, security interests or encumbrances in favor of Persons that provided Services to the Project on its behalf.

7. The Contractor's invoices shall also be accompanied by:

- a. Partial releases and lien waivers, in a form acceptable to the Owner, from the Contractor and its Subcontractors for Services furnished to the Project through the date covered by the preceding invoice paid by the Owner, conditioned on performance of the Services and receipt of payment, and excluding any unresolved claims submitted in accordance with this Agreement.
- b. Such other data, accounts and receipts substantiating amounts invoiced by the Contractor as reasonably requested by the Owner.
- c. For the Contractor's final invoice, final releases and lien waivers, in a form acceptable to the Owner, from the Contractor and its Subcontractors, conditioned on performance of the Services and receipt of payment, and excluding any unresolved claims submitted in accordance herewith.

## **Section 7.2** Withholding of Payment.

(a) Fee. The Owner may in its sole and absolute discretion withhold payment from the Contractor any portion of the Fee or Reimbursable Expenses to the extent reasonably necessary to protect the Owner from the following:

1. Damages due to defective Services not remedied, whenever discovered, or to reimburse the Owner for Damages for which it is entitled to indemnity from the Contractor under this Agreement;
2. Failure of the Contractor or its Subcontractors to perform the Services in accordance with the terms of this Agreement;
3. Uninsured or underinsured loss due to personal injury or damage to the Services or the Services of other entities to the extent of the responsibility of the Contractor or its Subcontractors; or
4. Claims of nonpayment by Persons that furnished Services for or on behalf of the Contractor; or
5. Damages suffered as a result of Contractor's delay in performing the Services and/or failure to comply with the Schedule.

**Section 7.3** Fee Adjustment. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Owner determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the Term of this Agreement.

**Section 7.4** Conversion to Federal Aid. In the event that Federal funds become available to finance the completion of the Project, the Contractor shall alter the plans, specifications, and estimates in accordance with the latest requirements for Federal-aid projects. The Services shall then be considered as Extra Services and payment shall be made in accordance with Section 4.2.

**Section 7.5** State of Connecticut Taxes. Pursuant to Section 15-31g of the Connecticut General Statutes, the Owner is exempt from all Tax and assessments of the State, and the payment thereof. Accordingly, the Contractor shall not include in the fees, and Contractor shall not charge any Tax to the Owner, including that portion of any combined Tax or assessment of the State, regardless of whether the Contractor has incurred any Tax of the State in its performance of the Agreement.

**Section 7.6** Covenant Against Contingency Fees. The Contractor shall warrant that it has not employed or retained any company or Person other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that the Contractor has not paid or agreed to pay any company or Person, other than bona fide employees working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of the above stipulation the Owner shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the agreed price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## ARTICLE VIII

### BREACH, DEFAULT, TERMINATION FOR CAUSE AND FORUM FOR DISPUTE RESOLUTION

**Section 8.1** Remedies for Breach. The Parties agree that, except as otherwise provided in Section 8.2 and Section 8.3 and with respect to termination rights, in the event that either party breaches this Agreement, the other party may exercise any legal rights it has under this Agreement and under Applicable Law to recover Damages or to secure specific performance, and that such rights to recover Damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Agreement for cause except upon the occurrence of an Event of Default as set forth in this Article.

**Section 8.2** Events of Default by the Contractor.

(a) Events of Default.

(i) Events of Default Not Requiring Notice or Cure Opportunity for Termination. Unless and to the extent excused by an Uncontrollable Circumstance, each of the following shall constitute an Event of Default on the part of the Contractor for which the Owner may terminate without any requirement of notice or cure opportunity:

(A) Failure to Maintain or Renew Contract Insurance. The failure, in any Contract Year, to maintain or renew the Contract Insurance by no later than thirty (30) days prior to the expiration of the current Contract Insurance;

(B) Voluntary Bankruptcy. The written admission by the Contractor that it is bankrupt, or the filing by the Contractor of a voluntary petition under the Federal Bankruptcy Code, or the consent by the Contractor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by the Contractor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of the Contractor's property or business;

(C) Involuntary Bankruptcy. The final adjudication of the Contractor as bankrupt after the filing of an involuntary petition under the Federal Bankruptcy Code, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by the Contractor nor until the order of the adjudication shall be regarded as final unless and until the same is no longer being contested by the Contractor nor until the order of the adjudication is no longer appealable; and

(ii) Events of Default Requiring Notice or Cure Opportunity for Termination. The failure or refusal by the Contractor substantially to perform any other obligation, covenant, service or duty under this Agreement (other than those obligations, covenants, services and duties contained in Section 8.2(a)(i) above) or the falseness or

inaccuracy of any representation or warranty made by Contractor herein, unless and to the extent such failure or refusal is excused by an Uncontrollable Circumstance, or the failure of the Contractor to pay or credit undisputed amounts owed to the Owner under this Agreement within thirty (30) days following the due date for such payment or credit or the placement of any Lien or encumbrance upon the Project Site as a result of the action of, or failure to act by, the Contractor or an Affiliate of the Contractor or a Subcontractor, which is not timely discharged pursuant to the provisions of this Agreement, shall constitute an Event of Default on the part of the Contractor for which the Owner may terminate this Agreement;

(b) Enforcement Costs. The Contractor agrees to pay the Owner all Damages incurred by or on behalf of the Owner in enforcing payment or performance of the Contractor's obligations hereunder if such non-performance results in an Event of Default by the Contractor. It is specifically understood that upon the occurrence of an Event of Default by the Contractor, the Owner shall have the right to terminate this Agreement and to receive Damages as and to the extent provided in this Article.

**Section 8.3** Events of Default by the Owner. Each of the following shall constitute an Event of Default on the part of the Owner for which the Contractor may receive Damages:

(a) Failure to Comply with Agreement. Upon the repeated failure or refusal by the Owner to substantially perform any material obligation under this Agreement (unless such failure or refusal is excused by an Uncontrollable Circumstance or Contractor Breach), the Contractor shall have the right to do the following:

(i) provide the Owner with written notice advising the Owner that the specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Owner, and

(ii) if the Owner has neither challenged in an appropriate forum the Contractor's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or taken steps to correct such default within a reasonable period of time, but not more than sixty (60) days from the date of the notice given pursuant to clause of this subsection, proceed to dispute resolution procedures set out in this Article. If the Owner shall have, however, diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as the Owner is continuing to take such steps to correct such default.

(b) No Contractor Termination. No Owner failure or refusal shall constitute an Event of Default giving the Contractor the right to terminate this Agreement. The provisions of this Article are intended to constitute an adequate remedy for non-performance by the Owner.

**Section 8.4** Procedure for Termination for Cause. If the Owner has the right to terminate in accordance with this Article, the same may be exercised by notice of termination given to the Contractor at least fourteen (14) days prior to (or, in the case of a bankruptcy default, simultaneously with) the date of termination specified in such notice.

**Section 8.5** Certain Obligations of the Contractor Upon Termination.

(a) Obligations on Default Termination. Upon a termination of the Contractor's right to perform this Agreement in accordance with this Article or at the end of the Term, the Contractor at its sole cost and expense shall:

(i) stop the Services on the date and to the extent specified by the Owner;

(ii) promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;

(iii) clean the Project Site, and leave the same in a neat and orderly condition;

(iv) promptly remove all employees of the Contractor and any Subcontractors and vacate the Project Site;

(v) promptly deliver to the Owner copies of all Subcontracts;

(vi) promptly deliver to the Owner all supplies, materials, machinery, equipment and other property previously delivered or fabricated by the Contractor or any Subcontractor but not yet incorporated in the Services;

(vii) assign to the Owner all contracts the Contractor has entered into with respect to this Project;

(viii) unless the Owner directs otherwise, terminate all Subcontracts and make no additional agreements with Subcontractors and promptly advise the Owner of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(ix) provide technical and operational support to the Owner;

(x) promptly notify the Owner in writing of any Legal Proceedings against the Contractor by any Subcontractor relating to the termination of the Services (or any Subcontracts);

(xi) give written notice of termination, effective as of the date of termination of this Agreement, promptly under each policy of Contractor Insurance (with a copy of each such notice to the Owner), but permit the Owner to continue such policies thereafter at its own expense, if possible;

(xii) upon the request of the Owner, assign and transfer any equipment or vehicle leases; and

(xiii) take such other actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise

necessary or desirable to minimize the Owner's costs, and take no action which will increase any amount payable by the Owner under this Agreement.

(b) Contractor Payment of Certain Costs. If termination is due to a Contractor Event of Default pursuant to this Agreement and the Contractor fails to comply with its obligations under this Section, the Owner may, with reasonable notice to the Contractor, perform such obligations and the Contractor shall pay the entire cost (or any portion thereof) upon demand, notwithstanding that any other person may have defaulted in taking similar action or occupied the same areas or otherwise had any responsibility for the condition involved and such costs shall also be subject to a setoff as set forth in Section 10.5.

**Section 8.6** No Waivers. No action of the Owner or Contractor pursuant to this Agreement, and no failure to act, shall constitute a waiver by either Party of the other Party's compliance with any term or provision of this Agreement. No course of dealing or delay by the Owner or Contractor in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the Owner or Contractor under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**Section 8.7** Applicable Law, Forum for Dispute Resolution and Waiver of Jury Trial. All legal actions and proceedings related to this Agreement or to any rights or any relationship between the Parties arising therefrom shall be governed solely by the laws of the State of Connecticut and shall be solely and exclusively initiated and maintained in the courts of the State of Connecticut which encompasses the Owner within its jurisdiction and in all such actions the Parties shall have waived their rights to a trial by jury.

**Section 8.8** Limitation on Liability.

(a) No Limitation on Contractor Liability. There shall not be a monetary limitation on the liability exposure of the Contractor pursuant to the provisions of this Agreement.

(b) Limitation on Owner Liability. If the Contractor claims to have sustained any Damages by reason of delays, extraordinary or otherwise, or hindrances which it claims to be due to any action, omission or direction of the Owner, the Contractor shall be entitled only to an extension of time and shall not have or assert any other claim, cause or action against the Owner based on such delay or hindrance.

## ARTICLE IX

### TERM AND SURVIVAL OF CERTAIN PROVISIONS

**Section 9.1** Term of Agreement.

(a) Early Termination Rights. This Agreement shall become effective on the Agreement Date, and shall terminate on or before June 30, 2020 ("**Term**") unless earlier

terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(b) Termination for Convenience by Owner. Notwithstanding anything herein to the contrary, the Owner may, in its sole and absolute discretion, terminate this Agreement for its convenience and without cause at any time upon 60 days prior written notice to the Contractor (a “Convenience Termination”). If the Owner exercises a Convenience Termination, the Owner shall pay the Contractor a percentage of the lump sum fee which is specified in Section 7.1(a), said percentage to be the same as the percentage of Services completed by the Contractor under this Agreement as of the designated date of termination.

**Section 9.2** Survival. The rights and obligations of the Parties hereto pursuant to this Agreement and in any certificate, agreement or instrument delivered in connection with the transactions contemplated hereby, shall survive the completion, expiration, suspension or termination of this Agreement for a period equal to the applicable statute of limitations plus six (6) months and no such expiration or termination of this Agreement shall limit or otherwise affect the respective rights and obligations of the Parties hereto accrued prior to the date of such termination.

## ARTICLE X

### GENERAL

#### **Section 10.1** Ownership and Sources of Payment of Compensation.

(a) Ownership. The Owner owns and shall retain ownership of the Project Site and all buildings and other improvements now existing and to be made thereon.

**Section 10.2** Prevailing Wages. If required pursuant to Applicable Law, the Contractor shall pay or cause to be paid prevailing wages for all labor engaged in connection with the Services.

#### **Section 10.3** Uncontrollable Circumstances Generally.

(a) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the Owner nor the Contractor shall be liable to the other for any failure or delay in performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure is solely due to the occurrence of an Uncontrollable Circumstance.

(b) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by hardcopy telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within seven (7) days by a written description of (i) the Uncontrollable Circumstance and the cause thereof (to the extent known), (ii) the date the Uncontrollable Circumstance began, its estimated duration, the estimated time during which the performance of such party’s obligations hereunder will be delayed, and the impact, if any, on the Commencement Date, (iii) the estimated amount, if any, by which the Fee may need to be

adjusted as a result of such Uncontrollable Circumstance, (iv) its estimated impact on the other obligations of such party under this Agreement and (v) potential mitigating actions which might be taken by the Contractor or Owner and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use all reasonable efforts to eliminate the cause therefore, reduce costs and resume performance under this Agreement. The Contractor shall furnish promptly (if and to the extent available to the Contractor) any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the Owner Engineer or the Owner.

(c) No Reimbursement for Costs Due to Delays Caused by Uncontrollable Circumstances. If an Uncontrollable Circumstance causes the Contractor a delay (including the obligation to accelerate to satisfy the Schedule) in the performance of any of its obligations under this Agreement, the sole remedy available to the Contractor shall be a reasonable extension of time as set forth in Section 4.1(b). The Contractor shall not be entitled to any reimbursement of costs due to any such delay caused by Uncontrollable Circumstances.

#### **Section 10.4 Indemnification.**

(a) Contractor's Indemnification Obligations. The Contractor agrees that it will protect, indemnify and hold harmless the Owner, and its representatives, directors, officers, officials, agents, employees and subcontractors (as applicable in the circumstances) (collectively, the "**Owner Indemnified Parties**"), from and against (and pay the full amount of) all Damages, and will defend the Owner Indemnified Parties in any suit, including appeals, arising out of or resulting, directly or indirectly, from (a) any act or omission of the Contractor or any of its directors, officers, officials, members, managers, employees, agents, representatives or Subcontractors in connection with its obligations or rights under this Agreement, (b) the performance of Services during the Term in violation of Applicable Law or in breach of the terms and conditions of this Agreement, (c) any Contractor Breach, (d) any inaccuracy or misrepresentation in or breach of any representation, warranty, covenant or agreement of the Contractor contained herein, (e) any act or omission of the Contractor or any of its directors, officers, officials, members, managers, employees, agents, representatives or Subcontractors in connection with this Agreement that may result in any liability for any Owner Indemnified Party under any Applicable Law, (f) the performance or non-performance of the Contractor's obligations under this Agreement, or (g) any violation of trade secrets, copyright, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this Agreement; or any libelous or other unlawful matter contained in such data. The Contractor shall not, however, be required to reimburse or indemnify any Owner Indemnified Party for any Damages to the extent any such Damages are solely due to the gross negligence of any Owner Indemnified Party. An Owner Indemnified Party shall promptly notify the Contractor of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Contractor the opportunity to defend such claim. These indemnification provisions are for the protection of the Owner Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination of this Agreement. The Owner and the Contractor agree that any claim for indemnification by any Owner Indemnified Party under this Agreement may, at the option of the

Owner, be offset against amounts then owing or to become owing by the Owner to the Contractor pursuant to the terms of this Agreement.

(b) Right to Counsel. The Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor. The Contractor expressly consents to the Owner's selection of legal counsel and to waive any waivable conflict.

(c) All representations, warranties, covenants and agreements that are covered by the indemnification in this Section shall (a) survive the termination or expiration of this Agreement. The rights to indemnification set forth in this Section shall not be affected by (i) any investigation conducted by or on behalf of an the Party seeking such indemnification or any knowledge acquired with due inquiry by the Party seeking indemnification, whether before or after the date of this Agreement or the expiration of the Term, with respect to the inaccuracy of or noncompliance with any representation, warranty, covenant or obligation which is the subject of indemnification hereunder or (ii) any waiver by the Party seeking such indemnification of any condition relating to the accuracy of any representations and warranties or the performance of or compliance with agreements and covenants contained herein.

**Section 10.5 Setoff**. In the event the Contractor is not in compliance with the terms of this Agreement or in the event any Owner Indemnified Party is entitled to indemnification pursuant to Section 10.4 of this Agreement or in the event any Damages or any other amounts are owed but unpaid by the Contractor pursuant to any provision of this Agreement, or upon the occurrence any Event of Default by Contactor, the Owner shall have the immediate right, upon the giving of notice, to offset the amount of any such indemnity claim, Damages or other amounts against amounts then owing or to become owing by the Owner to the Contractor pursuant to the terms and provisions of this Agreement including any schedules or exhibits thereto. The rights of the Owner under this Section shall be in addition to, and not in limitation of, any other rights, which it may have.

**Section 10.6 Contractor Insurance**. As of the Commencement Date and continuing throughout the remainder of the Term, the Contractor shall obtain and maintain, the Contractor Insurance as specified in Schedule D, shall pay all deductibles relating thereto and shall comply with all applicable Insurance Requirements. Insurance coverage required pursuant to this Section shall be maintained with generally recognized financially responsible insurers reasonably acceptable to the Owner and qualified and licensed to insure risks in the State. The cost of the Contractor Insurance, including all deductible amounts, shall be paid by the Contractor and shall not be subject to reimbursement by the Owner.

**Section 10.7 Intellectual Property Rights**. The Contractor shall not use a design, process or product for which they have not obtained all necessary permissions and paid all royalties and non-governmental license fees.

(a) Nonexclusive Licenses. Upon execution of this Agreement, the Contractor grants to the Owner an irrevocable, nonexclusive license to reproduce, display, distribute, make derivative works of, and use the Contractor's Intellectual Property, including, but not limited to designs, architectural works and Instruments of Service for purposes of constructing, using, maintaining, promoting, advertising, altering or adding to the Project and its

surroundings. The Contractor shall obtain similar nonexclusive licenses from the Contractor's subcontractors consistent with this Agreement. The Intellectual Property license granted under this Section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's contractors, to reproduce applicable portions of the Instruments of Service for use in performing services or construction for the Project.

1. In the event the Owner modifies the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases such author from all claims and causes of action arising from such modification.
2. Except for the licenses granted herein, no other license or right shall be deemed granted or implied. The Contractor and its Subcontractors of all tiers shall not assign, delegate, sublicense, pledge or otherwise transfer any Intellectual Property license granted herein to another party without the prior written agreement of the Owner.
3. The Owner may use the Instruments of Service for the completion of the Project or for reference with respect to any future alteration or expansion, all without permission from or further compensation to the Contractor or its Subcontractors provided that all identification shall be removed from the Instruments of Service subsequent to modification by or on behalf of the Owner. The Owner agrees to appropriately credit the Contractor in any public display of the Contractor's Instruments of Service. The Owner may alter or destroy any or all portions of the Project at its sole discretion and without the Contractor's consent.

**Section 10.8 Relationship of the Parties.** Neither party to this Agreement shall have any responsibility with respect to services provided or contractual obligations assumed by the other party hereto, and nothing in this Agreement shall be deemed to constitute either party a partner, joint venture, agent or legal representative of the other party or to create any fiduciary relationship between the Parties.

**Section 10.9 Third Parties.** All duties and responsibilities undertaken by the Contractor pursuant to this Agreement will be for the sole and exclusive benefit of the Owner and the Contractor, and not for the benefit of any other party. Nothing herein shall be construed to create, impose, or give rise to any duty owed by Owner to any other party. Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Contractor and any other party. Contractor shall not provide any services directly to any other party associated with the Project unless Contractor obtains the Owner's prior written consent.

**Section 10.10 Repair of Owner and Private Property.** The Contractor shall promptly repair or replace all Owner and all private property damaged by the Contractor, its

Subcontractors, or any officer, director, employee, representative or agent of the Contractor in connection with the performance of, or the failure to perform, the Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

**Section 10.11 Owner Approval of Subcontractors.**

(a) **Required Subcontractor Information.** The Contractor shall, unless waived by the Owner, supply the Owner with the information for each proposed Subcontractor who will undertake work related to the Services in excess of \$25,000.

(b) **Subcontractors Approval.** The Owner shall have the right to approve all Subcontractors engaged to perform any work related to the performance of Services. The Contractor shall furnish the Owner written notice of its intention to request proposals or bids from such Subcontractors, together with all information requested by or otherwise available to the Contractor pertaining to the proposed Subcontractor and Subcontract pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (i) any conflicts of interest, (ii) any record of felony criminal convictions or pending felony criminal investigations, (iii) any final judicial or administrative finding or adjudication of illegal employment discrimination, (iv) any unpaid federal, state or local taxes and (v) any final judicial or administrative finding or adjudication of non-performance in contracts with the Owner. The approval or withholding thereof by the Owner of any proposed Subcontractor shall not create any liability of the Owner to the Contractor, to third parties or otherwise. In no event shall any subcontract be awarded to any person debarred, suspended or disqualified from State or Owner contracting for any services within the scope of the Services.

**Section 10.12 Non-Discrimination.** The Contractor in accordance with Applicable Laws agrees and warrants that in the performance of the Services, the Contractor will not discriminate or permit discrimination against any Person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the Services involved, in any manner prohibited by Applicable Laws. The Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the Services involved;

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

(b) The Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or

understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the CHRO, advising the labor union or workers' representative of the Contractor's commitments under Sections 4a-60 and 4a-60a of the Connecticut General Statutes and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(c) The Contractor agrees to comply with each provision of Sections 4a-60, 4a-60a, 46a-68e, and 46a-68f, inclusive, of the Connecticut General Statutes and with each regulation or relevant order issued by the CHRO pursuant to Sections 46a-56, 46a-68e, and 46a-68f of the Connecticut General Statutes; and

(d) The Contractor agrees to provide the CHRO with such information requested by the CHRO, and permit access to pertinent books, records and accounts concerning the employment practices and procedures of the Contractor as they relate to the provisions of Sections 4a-60, 4a-60a and 46a-56 of the Connecticut General Statutes.

**Section 10.13 Whistleblower Protection.** If any officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of Connecticut General Statutes Section 4-61dd, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and direct offense. The Contractor shall post a notice in a conspicuous place which is readily available for viewing by employees of the provisions of Connecticut General Statutes Section 4-61dd relating to large state contractors.

**Section 10.14 Campaign Contribution And Solicitation Prohibitions.** For all State contracts as defined in Section 9-612 of the Connecticut General Statutes having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Agreement expressly acknowledges receipt of the State Elections Enforcement Commission's notice, SEEC Form 10 in Exhibit C, advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

**Section 10.15 Affidavit of Third Party Fees.** At the time the Contractor submitted its Statement Of Qualifications to the Owner, it simultaneously executed a document entitled Affidavit Of Third Party Fees and said document is attached hereto and made a part of this Agreement as Exhibit D.

**Section 10.16 Affidavit Concerning Nondiscrimination.** At the time the Contractor submitted its Statement Of Qualifications to the Owner, it simultaneously executed a document entitled Affidavit Concerning Nondiscrimination and said document is attached hereto and made a part of this Agreement as Exhibit E.

**Section 10.17 Affidavit Concerning Consulting Fees.** At the time of Contractor's execution of this Agreement, Contractor simultaneously executed a document entitled Affidavit Concerning Consulting Fees and said document is attached hereto and made a part of this Agreement as Exhibit F.

**Section 10.18 Contractor's Certification Concerning Gifts.** At the time of Contractor's execution of this Agreement, Contractor simultaneously executed a document entitled Contractor's Certification Concerning Gifts and said document is attached hereto and made a part of this Agreement as Exhibit G.

**Section 10.19 Executive Director's Certification Concerning Gifts.** At the time of the Executive Director of the Owner's execution of this Agreement, the Executive Director of the Owner simultaneously executed a document entitled Executive Director's Certification Concerning Gifts and said document is attached hereto and made a part of this Agreement as Exhibit H.

**Section 10.20 Assignment and Transfer.** This Agreement may not be assigned by the Contractor without the prior written consent of the Owner, and any such assignment by the Contractor shall be null and void. This Agreement may be assigned by the Owner. The Owner may create such security interests in it rights hereunder and pledge such monies receivable hereunder as may be required in connection with the issuance of bonds to finance any capital improvement without the consent of the Contractor.

**Section 10.21 Binding Effect.** This Agreement shall bind and inure to the benefit of the Parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 10.11(b). The Contractor binds itself, its partners, successors, assigns and legal representatives to the Owner and its successors, assigns and legal representatives with respect to all its covenants in this Agreement.

**Section 10.22 Amendments; Waiver.** Neither this Agreement nor any provision hereof may be changed, modified, amended, supplemented or waived except by a written instrument signed by both the Parties (or, in the case of a waiver, by the party granting such waiver). Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, or waived. No waiver by either Party with respect to any default, misrepresentation, or breach of warranty, obligation, or covenant hereunder shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty, obligation or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. The making or acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of such default or breach or any subsequent default or breach.

**Section 10.23 Notices.** It is mutually understood and agreed by the Parties hereto that any Official Notices or communications hereunder from one such party to the other such party (or parties), in order for such notice to be binding thereon, shall be in writing and shall be sufficiently given if transmitted by facsimile transmission or delivered in person or by overnight courier to the following:

If to the Contractor: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]

If to the Owner: Connecticut Port Authority
505 Hudson Street
Hartford, Connecticut 06106-7106
Attention: Executive Director

with a copy to: Robinson & Cole LLP
280 Trumbull Street
Hartford, Connecticut 06103-3597
Attention: Glenn A. Santoro
Facsimile: (860) 275-8299

Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by written notice to the other party. Notices and communications given by mail hereunder shall be deemed to have been given five days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

Section 10.24 Further Assurances. Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement. Specifically, upon reasonable request of the Owner, the Contractor shall supply an affidavit that the Project Site is free of all liens and encumbrances, including liens for any taxes which are due and required to be paid by the Contractor (other than liens required or contemplated by this Agreement). In the event that liens are filed by any party in relation to the Services, the Contractor agrees to have said liens discharged, within ten (10) days of receipt of written notice from the Owner. In the event such Lien is not so discharged, the Owner shall have the right to discharge said lien and recover from the Contractor all costs associated therewith, including the Owner's attorney's fees incurred in having the lien discharged.

Section 10.25 Arbitration.

(a) The Owner may, at its sole and absolute discretion and option, choose to have any or all claims, disputes or other matters in question between the Parties decided by arbitration administered by a dispute resolution administrator acceptable to the Owner. The Construction Industry Arbitration Rules of the American Arbitration Association shall govern. Any such arbitration may include, at the Owner's sole and absolute discretion, by consolidation, joinder and in any other manner, third parties whose interests relate to the matters in arbitration.

(b) If the Owner elects arbitration, the demand for arbitration shall be made promptly after the occurrence of the event giving rise to the Claim, and in no event later than the

date when institution of legal or equitable proceedings based on such Claim, dispute or other matter in question would be barred by the applicable statute of limitation.

(c) If the Owner elects arbitration, the award rendered by the arbitrator shall be final and binding on the Parties, and judgment may be entered upon the award in accordance with the laws of the State of Connecticut.

(d) The Contractor and its Subcontractors of all tiers shall incorporate the dispute resolution provisions of this Article in substantially the same form in their agreements with Subcontractors or entities furnishing services, labor, materials or equipment to the Project.

**Section 10.26 Non-Binding Mediation; Jurisdiction and Venue; Waiver of Trial by Jury.**

(a) Either party hereto may give the other party written notice of any dispute arising under this Agreement. Such notice shall specify a date and location for a meeting of the Parties hereto at which such Parties shall attempt to resolve such dispute. In the event that such dispute cannot be resolved by the Parties hereto within 30 days of such notice, the Parties may submit such dispute to non-binding mediation upon the agreement of both Parties.

(b) Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the Parties in the state or federal courts located in the County of Hartford, Connecticut and each of the Parties irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

(c) CONTRACTOR AND THE OWNER EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WITHOUT DURESS AND ONLY AFTER CONSIDERATION WITH ITS ATTORNEYS OF THE RAMIFICATIONS, WAIVE ANY RIGHT EACH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER PARTY IN CONNECTION HEREWITH.

**Section 10.27 Confidentiality.** Throughout the Term and following the expiration or earlier termination of this Agreement, the Owner and Contractor shall maintain in confidence and not disclose to any Person or use to the detriment of the other party any written, oral or other information obtained in confidence from the other party and designated in writing as confidential, unless disclosure of such information is required by Applicable Law. The Contractor also acknowledges that, pursuant to Applicable Law, the Owner's ability to limit the use of information disclosed under Applicable Law is limited and therefore the Owner may not be able to preserve the confidentiality of Confidential Information once in the hands of a Governmental Body or other Person.

**Section 10.28 Recourse under Agreement.** All covenants, stipulations, promises, agreements and obligations of the Owner contained in this Agreement shall be deemed to be the

covenants, stipulations, promises, agreements and obligations of the Owner, and not of any commissioner, director, officer, official, employee or agent (including counsel) of the Owner in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any commissioner, director, officer, official, employee or agent (including counsel) of the Owner or any natural person executing this Agreement on behalf of the Owner.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

**OWNER:**

**CONNECTICUT PORT AUTHORITY**

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

Name: Evan H. Matthews

Title: Authorized Representative

**CONTRACTOR:**

[\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: [Authorized Representative]

SCHEDULES/EXHIBITS  
TO THE  
PROFESSIONAL SERVICES AGREEMENT

between

THE CONNECTICUT PORT AUTHORITY

and

\_\_\_\_\_

**Dated as of**

\_\_\_\_\_, \_\_ 2017

## **SCHEDULE A**

**SCOPE OF SERVICES TO BE PERFORMED  
STATE PIER COMPLEX  
CVRR PIER - NORTHWEST QUAY AND CENTRAL WHARF PLATFORM REPAIR  
NEW LONDON, CONNECTICUT  
[\_\_\_\_\_] [\_\_], 2017**

### **PROJECT STATEMENT AND BACKGROUND**

The Connecticut Port Authority (Owner) seeks to implement the preliminary design of improvements outlined in the 2011 State Pier Needs and Deficiencies Study, commissioned by the Connecticut Department of Transportation (CTDOT). In April 2015, the 35% Schematic Design Plans, and Preliminary Design Report, set forth preliminary design plans, which represent 35% of the deliverables from the 2011 State Pier Needs and Deficiencies Study (35% Schematic Design). The 35% Schematic Design improvements to the infrastructure at the State Pier facility generally include construction of site layout and circulation; location of buildings, drives, parking, etc.; access road design; site security provisions; site grading, retaining walls, and drainage; structure rehabilitation plans and details; dredge plans; schematic utility and illumination layout; and track restoration layout and details.

The 35% Schematic Design outlined eight (8) proposed improvement stages. Currently, Stage Nos. 1-3 designs are complete. The Owner is in the process of attaining the necessary State and Federal permits in order to bid and initiate the fourth phase towards the completion the 35% Schematic Design (Stage No. 4). Phase 4, specifically concerning the CVRR Pier and Northwest Quay Wall, will consist of design plans regarding the relocation of access roads, renovation to the piers, improvements to the bulkheads, paving of storage areas, and drainage and outfalls. The Owner is seeking Proposals to engage one (1) professional consulting engineering firm to prepare an environmental analysis and documentation as well as provide engineering and design development, which meet the requirements of the Connecticut Environmental Policy Act (CEPA) and the National Environmental policy Act (NEPA), to implement Stage No. 4 of the 35% Schematic Design, considering repairs the Northwest Quay and Central Wharf Platform (i.e. construction modifications along west side of CVRR Pier; construction of on-pier rail track; construction modifications to Northwest Quay Wall; and the paving of upland area at the head of CVRR Pier).

### **SCOPE OF SERVICES**

The Contractor will be required to perform the following Services outlined herein. It is expected that the Contractor will demonstrate ability to perform and produce additional Deliverables, Services and Tasks, and corresponding timelines for the delivery of same, beyond these minimum/base Services, which will be mutually agreed upon, by both Parties, under a separate agreement prior to the commencement of the Term and/or any performance, by the Contractor, of any Services under the provisions of the Agreement. The comprehensive Scope of Services produced thereby is incorporated by reference as an addendum to this Schedule A, and the timeframe for Services incorporated as the Preliminary Development Schedule in Exhibit B.

<b>Task:</b>	<b>Description</b>	<b>Deliverable(s):</b>	<b>Timeline</b>
<b>Project Initiation</b> <b>Kick-Off Meeting</b> <b>Schedule</b>	The Project will be initiated with a kick-off meeting with the [_____] team, where the project manager along with another [_____] staff person and one representative from each subcontractor firm teaming with [_____] will attend the kick-off meeting, to review the study's scope and schedule, outline the responsibilities of the [_____] team, and confirm the projects goal and objectives. The kick-off meeting will be held immediately after a notice to proceed	[_____] will provide summary of meeting minutes	_____, 2017
<b>Identify Project Deliverables and Schedule</b>	Prepare an additional general scope of work with Deliverables, Services and Tasks, and corresponding timelines for the delivery for same, to supplement the Scope of Services	Draft Scope of Services and a Preliminary Development Schedule to be incorporated to the Agreement as <u>Exhibit B</u>	_____, 2017
<b>Data Collection</b>	Review of the 35% Schematic Design Plans, and Preliminary Design Report Dated April 2015	[_____] will provide high level summary of 35% Schematic Design Plans, and Preliminary Design Report an identify open-items, updated information	_____, 2017
	Perform site visits		_____, 2017
	Perform subsurface soils investigation		_____, 2017
	Perform structure inspections		_____, 2017
	Perform topographic surveying		_____, 2017
	Perform hydrographic surveying		_____, 2017
	Perform utility mapping		_____, 2017
	Review available environmental data		_____, 2017
	Identify and map regulatory limits		_____, 2017
<b>Site Assessment</b>	Assess the alternatives, structure rehabilitation options, upland grading schemes and site layout scenarios, drainage and outfall locations	Provide technical memoranda, and illustrations as appropriate, summarizing relevant observations and conclusions	_____, 2017
<b>Permitting</b>	Obtain the permits and approvals required for the installation of bulkheads, piles, fills and other materials water ward of existing structures and shoreline	Submit copies of approvals and permits acquired and applications of same, along with an estimated timeframe for completion of all required approvals	_____, 2017

<b>Bid Specifications</b>	Complete and provide final design plans, bid permits and specifications	Provide for 100% design completion of 35% Schematic Design Plan	
	Prepare and finalize complete set of bid documents for construction phase of the Project	Prepare final bid documents	
<b>Stakeholder Management</b>	Stakeholder coordination to identify specific concerns and end-user needs	Conduct informational meetings with stakeholders periodically, at least once a quarter, and report to stakeholders with relevant updates	
<b>Concept Refinement and Evaluation</b>	Evaluate the structural alternatives to the Northwest Quay Stone Bulkhead, to maximize the available yard operational footprint and to provide necessary alongside vessel draft for small vessels and the upland operational footprint	Identify key alternatives and provide memoranda with recommendations	_____, 2017
	Evaluate the structural alternatives for repair to the Central Wharf Platform. Specifically address alternatives including, steel pipe pile supported deck replacement; confined disposal facility (CDF) bulkhead; and the elevation berthing between both CVRR and State Pier or other acceptable alternatives	Identify key alternatives and provide memoranda with recommendations	_____, 2017
<b>Stormwater Management</b>	Design a stormwater management plan on the Project Site and review the schematic plan to design a Best Management practice suitable to properly handle the CVRR Pier runoff	Provide technical memorandum, with illustrations as necessary, detailing recommendation for stormwater management on Project Site	_____, 2017
<b>Education/ Expertise</b>	Design documents shall be prepared with knowledge and expertise in Design Loads and Loading Combinations for wharf and yard live loading, including structural deck loads, design vessel parameters for each structure	Provide documentation of all relevant certifications, accreditations, degrees, etc. in areas of expertise	_____, 2017

**SCHEDULE B**

**PAYMENT FOR EXTRA SERVICES**

1. The fee amount for Extra Services may be increased by a supplemental agreement if the scope for the Extra Services is enlarged. The fee amount for Extra Services may be decreased without a supplemental agreement if (a) the Extra Services are decreased, (b) a termination occurs, or (c) the Agreement is allowed to expire if the Owner's funds are exhausted before the Services are completed.
2. If cost for Extra Services cannot be determined in advance with reasonable accuracy, and will, rather, be paid on an hourly basis, the maximum hourly rate for each classification of employee to be used for such purpose shall be as follows:

CLASSIFICATION OF EMPLOYEE

MAXIMUM HOURLY RATE OF PAY

<b>Experience Level of Engineer(s)</b>	<b>Hourly Rate</b>
Junior Engineer (0-4 years, EIT)	
Mid-Level Engineer (4+ years)	
Senior Engineer (4-8 years)	
Junior Partner Engineer (8+ years)	
Senior Partner Engineer (20+ years)	

**\*Classification and rates to be determined during negotiations for Extra Services.**

**SCHEDULE C**  
**SUBCONTRACTORS**

## SCHEDULE D

### CONTRACTOR'S INSURANCE

I. **Certificates of Insurance.** For all required insurance coverages, prior to commencing any Services hereunder, the Contractor shall provide to the Owner a Certificate of Insurance completed by a duly authorized representative of its insurer certifying that at least the minimum insurance coverages required in this Schedule are in effect, naming the Owner and others designated by the Owner as additional insureds as set forth herein, and specifying that the liability coverages, with the exception of Professional Liability, are written on an occurrence form and that the coverages will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without thirty (30) days advance written notice and specifying a ten (10) day written notice for non-payment of premium, to the Owner.

1. In the event that the Contractor has any self-insured retentions or deductibles under any of the minimum required coverages, the Contractor must identify on the certificate of insurance the nature and amount of such self-insured retention or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retentions or deductibles shall be the sole responsibility of the Contractor.

2. The Owner's acceptance of a certificate of insurance does not constitute approval of coverage that is not in compliance with this Agreement.

3. If any of the insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the party's final invoice or application for payment.

II. **Insurer Qualification.** All required insurance shall be provided through companies authorized to do business in the State of Connecticut with a Best rating of A or better unless otherwise specifically approved by the Owner. A copy of all insurance policies required herein shall be made available for the Owner's review at a mutually convenient time and place within ten (10) days of the Owner's written request.

III. **Insurance Primary.** All insurance coverages provided by the Contractor and those for whom it is liable shall be primary, and any insurance or self-insurance program carried by the Owner will be considered excess or contingent.

IV. **No Reduction or Limit of Obligation.** By requiring insurance herein, the Owner does not represent that coverage and limits will necessarily be adequate to protect the party providing insurance. The insurance required herein shall not reduce or limit any party's contractual obligation in connection with its obligations pursuant to the Agreement.

V. **Additional Insureds.** The Contractor and those for whom it is responsible shall, to the fullest extent permitted by Applicable Law, add and include the Owner, its directors, officers, representatives, agents, employees, and any other parties designated by the Owner, as additional insureds on all liability policies required hereunder, with the exception of workers compensation and professional liability coverage. The additional insured coverage must include the same completed operations coverage required herein for commercial general liability

coverage. Additional insured coverage provided under general liability and umbrella/excess liability policies must be provided under ISO forms CG 20 10 10 01 and CG 20 37 10 01 or their equivalent, if approved in writing by Owner. Additional insured coverage on liability policies will be primary coverage to any other coverage maintained by such additional insureds and shall not permit or require such other coverage to contribute to the payment of any loss.

VI. **Duration of Coverage.** All insurance coverages provided hereunder shall be maintained without interruption during the entire Term and for such additional time as the Owner may require.

VII. **Retroactive Date and Extended Reporting Period.** If the Owner specifically permits any required insurance to be issued or renewed on a “claims made” form, as opposed to the “occurrence” form, the retroactive date for such claims made coverage shall be no later than the Commencement Date and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) shall be available for at least thirty-six (36) months.

VIII. **Subrogation Waiver.** The Contractor and its Subcontractors of all tiers waive all rights against the Owner and the Owner’s agents, officers, directors, employees and those for whom they are liable, for any Damages to the extent covered by insurance, and to the extent of actual recovery of insurance proceeds, excluding any applicable deductible. 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.

IX. **Subcontractors’ Insurance.** The Contractor shall cause all its Subcontractors and those for whom they are responsible to provide and maintain insurance in compliance herewith, using good business judgment in establishing coverage limits and deductibles applicable to such insurance, and subject to the Owner’s acceptance. They shall furnish to the Owner copies of certificates of insurance evidencing such coverage.

X. **Excluded Obligations.** Except for purchasing and maintaining property insurance, the Owner shall bear no responsibility and shall provide no coverages for any obligations of the Contractor, or those for whom it is liable, under any contract.

XI. **ISO Forms.** To the extent applicable, the types of insurance shall conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements, or equivalent.

XII. **Contractor’s Insurance Obligations.**

A. the Contractor and its subcontractors shall carry for the duration of this Agreement, and any supplements thereto, the coverage policies listed below, with the Owner being named as an additional insured:

i. **Commercial General Liability.** The Contractor shall maintain Commercial General Liability Insurance, covering all operations by or on behalf of the Contractor on an occurrence basis against

claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance shall provide Five Million Dollars (\$5,000,000) for all Damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all Damages arising out of injury to or destruction of property in any one accident or occurrence, and, subject to that limit per accident, a total (or aggregate) limit of Five Million Dollars (\$5,000,000) for all Damages arising out of bodily injuries to or death of all persons in all accidents or occurrences and out of injury to or destruction of property during the policy period.

- ii. **Automobile Liability.** The Contractor shall maintain business auto liability insurance covering liability arising out of any auto (including owned, hired and non-owned autos). The operation of all motor vehicles, including those hired or borrowed, used in connection with the Agreement shall be covered by Automobile Liability Insurance providing for a total limit of Two Million Dollars (\$2,000,000) for all Damages arising out of bodily injuries to or death of all persons in any one accident or occurrence, and for all Damages arising out of injury to or destruction of property in any one accident or occurrence. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least Two Million Dollars (\$2,000,000).
- iii. **Valuable Papers and Records.** The Contractor shall secure and maintain a Valuable Papers Insurance Policy at no direct cost to the Owner, until the complete design has been accepted by the Owner, and all original tracings, highway and bridge design computations, survey data, documents or data will have been returned to the Owner. This will assure the Owner that all records, papers, maps, statistics, survey notes, all tracings, highway and bridge design and other data or documents will be reestablished, recreated or restored if made unavailable by fire, theft, or any other cause. When survey data is furnished by the Owner it shall retain in its possession duplications of all survey plans and field notes. The Contractor shall retain in its possession duplications of all products of its Services under this Agreement, if and when it is necessary for the originals to be removed from its possession during the time that this policy is in force.
- iv. **Workers' Compensation.** With respect to all operations the Contractor performs and all those performed for the Contractor by subcontractors, the Contractor and its subcontractor(s) shall maintain Workers' Compensation Insurance, employers liability insurance and, as applicable, insurance required in accordance with

the U.S. Longshore and Harbor Workers' Compensation Act, in accordance with the requirements of the laws of the State of Connecticut, and of the laws of the United States respectively.

v. **Professional Liability.** The Contractor shall secure and maintain, at no direct cost to the Owner, a Professional Liability Insurance policy for errors and omissions in the minimum amount of Two Million Dollars (\$2,000,000). The Contractor shall obtain the appropriate and proper endorsement to its Professional Liability Policy to cover the Indemnification clause in this contract as the same relates to negligent acts, errors or omissions in the Services performed by the Contractor. The Contractor may, at its election, obtain a policy containing a maximum Two Hundred Fifty Thousand Dollars (\$250,000) deductible clause, but if the Contractor should obtain a policy containing such a clause the Contractor shall be liable, as stated above herein, including the deductible amount. The Contractor shall continue this liability insurance coverage for a period of three (3) years from the date of acceptance of the completed design or Services subject to the continued commercial availability of such insurance.

vi. **Excess/Umbrella Liability.** The Contractor shall secure and maintain, at no direct cost to the Owner, an Excess/Umbrella Insurance Policy in the minimum amount of Five Million Dollars (\$5,000,000). The Contractor shall obtain the appropriate and proper endorsement to its Excess/Umbrella Liability Policy to cover the Indemnification clause in this contract as the same relates to the Services performed by the Contractor. The Contractor may, at its election, obtain a policy containing a maximum Two Hundred Fifty Thousand Dollars (\$250,000) deductible clause, but if the Contractor should obtain a policy containing such a clause the Contractor shall be liable, as stated above herein, including the deductible amount. The Contractor shall continue this liability insurance coverage for a period of three (3) years from the date of acceptance of the completed design or Services subject to the continued commercial availability of such insurance.

B. It is understood that the above insurance may not include standard liability coverage for pollution and/or environmental impairment. However, the Contractor agrees to acquire and maintain pollution and environmental impairment coverage as part of this Professional Liability Insurance, if such insurance is applicable to the Services performed by the Contractor under this Agreement.

XIII. The Contractor shall produce, within five (5) business days, a copy or copies of all applicable insurance policies when requested by the Owner.

XIV. In providing said policies, the Contractor may redact provisions of the policy that are proprietary. This provision shall survive the suspension, expiration or termination of this Agreement.

**EXHIBIT A**  
CONTRACTOR'S DESIGNATED PERSONNEL

**EXHIBIT B**

(Preliminary Development Schedule)

**EXHIBIT C**

(SEEC Form 10 attached)

**EXHIBIT D**

(See Proposal Form 6 of the RFP)

**EXHIBIT E**

(See Proposal Form 8 of the RFP)

**EXHIBIT F**

(See Proposal Form 9 of the RFP)

**EXHIBIT G**

(See Proposal Form 10 of the RFP)

**EXHIBIT H**

**PROFESSIONAL SERVICES AGREEMENT**

**Awarded To**

**[NAME OF CONTRACTOR]**

(This CERTIFICATION is to be signed by the Executive Director of CPA  
at the time the Agreement is executed by him)

By submission of this Certification, the Executive Director of the Connecticut Port Authority (“CPA”) hereby certifies that the selection of the most qualified or highest ranked person, firm or corporation for the “Professional Services Agreement” was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

Signature:

Name: **Evan H. Matthews**

Title: **Executive Director**

State Of: **Connecticut**

County Of: **Hartford**

Evan H. Matthews, being fully sworn, deposes and says that he is the Executive Director of the Connecticut Port Authority, that he has read the forgoing statement concerning collusion, the giving of gifts or the promise of gifts, compensation, fraud or inappropriate influence and, under the penalty of perjury, certifies that each and every part of said statement is true.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20

Notary Public/Commissioner of the Superior Court

  

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