

**Standard Form of Agreement Between Owner and Construction Manager-At-Risk (CMR)  
For Guaranteed Maximum Price (GMP)**

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AGREEMENT made as of the 22 day of July in the year of 2011

**BETWEEN:**

State of Connecticut  
Department of Construction Services  
165 Capitol Avenue, 4th Floor  
Hartford, CT 06106

Acting herein by its <sup>Acting Deputy</sup> Commissioner of the Department of Construction Services, hereinafter referred to as the Owner (Owner), under the provisions of Sections 4-8, 4b-1 and 4b-103 of the Connecticut General Statutes, as revised;

And

Gilbane Building Company  
208 New London Turnpike  
Glastonbury, Connecticut 06033

hereinafter referred to as the Construction Manager at Risk (CMR).

WHEREAS all references in this Agreement to the "Department of Public Works" ("DPW") shall be deleted and the "Department of Construction Services" ("DCS") shall be substituted for the "Department of Public Works" and shall have the same meaning and effect as the "Department of Public Works." The statutory authority, duties and responsibilities of the DPW relating to this Agreement are consolidated into the DCS.

**The Project is:**

H.C. Wilcox Technical High School  
298 Oregon Road  
Meriden, Connecticut 06451

and is hereinafter referred to as the Project

**The Project Number is:**

BI-RT-843 CMR

**The Architect is:**

Tai Soo Kim Partners  
Hartford Square West  
146 Wyllys Street - Suite 1  
Hartford, CT 06106

And is hereinafter referred to as the Architect

The Owner and CMR agree as set forth below:

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## ARTICLE 1 GENERAL PROVISIONS

### 1.1 RELATIONSHIP OF PARTIES

The CMR accepts the relationship of trust and confidence established with the Owner by this Construction Manager at Risk Agreement (the "Agreement"), and covenants with the Owner to furnish the CMR's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The CMR shall furnish construction administration and management services as further described herein and use the CMR's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner.

### 1.2 GENERAL CONDITIONS

The General Conditions of the contract shall be the General Conditions of the Contract for Construction - CMR, Department of Public Works, State of Connecticut, Section 00 72 23 (the "General Conditions"), a copy of which is attached hereto as Exhibit C and incorporated herein in its entirety by this reference. For the Project, as that term is defined in General Conditions Article 1, the General Conditions shall apply. The term Construction Manager at Risk ("CMR") is more fully defined in General Conditions Article 1.

If a conflict exists between this Agreement and the General Conditions, the terms and conditions of this Agreement shall govern. This Agreement contemplates the creation of a Guaranteed Maximum Price Amendment (the "GMP Amendment"), the form of which is attached hereto as Exhibit A. If a conflict exists between the GMP Amendment and this Agreement, the terms and conditions of the GMP Amendment shall govern, with the Assumptions and Clarifications (Exhibit C to the GMP Amendment) having the highest level of priority of all the Contract Documents. Thereafter, the order of precedence of Contract Documents shall be in accordance with General Conditions Article 3. The term "Contract Documents" as used in this Agreement and as further defined in General Conditions Article 1 shall include:

- .1 this Agreement;
- .2 the General Conditions;
- .3 the Department of Public Works Division 01 General Requirements- CMR (the "General Requirements");
- .4 Drawings;
- .5 Specifications;
- .6 the Owner's Request for Qualifications and Request for Proposals for the Project and any addenda thereto,
- .7 the CMR's Proposal and addenda, as required; and
- .8 any other documents listed in this Agreement and modifications thereto issued after execution of this Agreement.

Each of the Contract Documents is more particularly described in General Conditions Article 1. The Contract Documents are incorporated herein and made a part of this Agreement. The term "Contract Sum" as used in this Agreement and the General Conditions shall mean the Guaranteed Maximum Price ("GMP") when it is established in accordance with this Agreement. The term "Work" as used in this Agreement is defined in General Conditions Article 1.

1.3 The CMR shall identify key staff to be assigned to the Project, which staff shall be listed in Exhibit B to this Agreement, the "CMR - GMP Cost Allocation Guide" (the "Cost Allocation Guide") incorporated herein by reference. Listed individuals shall be the same individuals identified in the CMR's Proposal, as accepted by the Owner, and shall remain assigned for the duration of the Project unless the Owner approves of their removal or substitution in writing. The Owner shall have the right to direct that any of the CMR's staff assigned to the Project be removed and/or replaced at any time.

1.4 The Cost Allocation Guide may not be revised, modified or supplemented, nor may any of the costs set forth in the Cost Allocation Guide as a Construction Phase Services Cost be required of a trade contractor, with the exception of, and provided prior express written approval of the Owner has been received for, certain trade contractor scopes of service consistent with industry practice and project conditions.

## ARTICLE 2 CONSTRUCTION MANAGER AT RISK RESPONSIBILITIES

The CMR shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase Services. If the Owner and CMR agree after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

**2.1 PRECONSTRUCTION PHASE**

**2.1.1 PRELIMINARY EVALUATION**

The CMR shall provide a preliminary evaluation of the Project requirements and Project budget. Such preliminary evaluation shall be submitted to the Owner in a form and format acceptable to the Owner.

**2.1.2 CONSULTATION**

The CMR with the Architect shall jointly schedule and attend regular meetings with the Owner. The CMR shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The CMR shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible savings.

**2.1.3 PRELIMINARY PROJECT SCHEDULE**

When Project requirements described in Section 3.1.1 have been sufficiently identified, the CMR shall prepare, and periodically update, a Preliminary Project Schedule, as further described in Section 01 32 16.13 CPM Schedules - CMR of the General Requirements, for the Architect's review and the Owner's approval. The CMR shall obtain the Architect's approval of the portion of the Preliminary Project Schedule relating to the performance of the Architect's services. The CMR shall coordinate and integrate the Preliminary Project Schedule with the services and activities of the Owner, Architect and CMR.

As design proceeds, the Preliminary Project Schedule shall be updated to indicate: Proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information; submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement; Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and Acceptance as those terms are defined and described in the General Conditions and Section 7.2 of this Agreement; and work preceding submission and approval of the GMP consisting of the Project Elements of site preparation and demolition as further described in Section 2.1.6.8 herein. The term "Project Elements" as used in this Agreement shall refer to the permanent structures, site improvements and other permanent developments at the site specifically defined and specified in the Contract Documents. The Project Elements may constitute the whole or part of the Work and are defined in General Conditions Article 1. If Preliminary Project Schedule updates indicate that previously approved schedules may not be met, the CMR shall make appropriate recommendations to the Owner and Architect and take all steps necessary to ensure completion of the aspects of Work within its control and within the time period required by the Contract Documents. All Preliminary Project Schedules shall contain the items and be in the format as directed by the Owner.

**2.1.3.1** The CMR shall prepare a project Construction Schedule as defined and described in General Conditions Article 1 and Article 11, concurrent with the initiation of the trades bidding process more fully described in Section 2.1.6 herein. This Construction Schedule will be reviewed with the Owner and the Architect to identify the anticipated dates for key milestones related to required permits, approvals and funding. All Construction Schedules shall contain the items and be in the format as directed by the Owner.

**2.1.4 PHASED CONSTRUCTION**

The CMR shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as savings, time of performance, availability of labor and materials, and provisions for temporary facilities.

**2.1.5 COST ESTIMATES**

**2.1.5.1** CMR shall prepare sufficiently detailed bid scopes, as more particularly described in Section 00 54 13 of the Request for Proposal "Preconstruction Phase Supplemental Scope of Services" ("PPSSS"), Subsection 8, "Bid Phase Services". The PPSSS is made a part of this Agreement pursuant to Article 1.2 herein. As used in this section, the phrase "sufficiently detailed bid scopes" shall mean bid scopes that are adequate to allow competitive bidding on the respective trade packages for Project Elements. In developing and preparing the bids for trade packages, the CMR shall consider constructability, construction cost, sequence of

construction, construction duration and means and methods of construction. Any and all costs incurred by the CMR as a part of such process, including the engagement of structural, engineering or other consultants, shall be included in the CMR's Preconstruction Phase Services Cost Lump Sum amount. In the event the bids for trade packages, as further described in Section 2.1.6 herein, exceed Owner's budget, CMR shall value engineer and/or provide a relevant scope reduction matrix, along with estimates for selected substantial scope items, as needed.

2.1.5.2 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CMR shall make appropriate recommendations to the Owner and Architect to reduce estimated cost to a level consistent with Owner's budget.

2.1.5.3 The CMR shall, in addition to the cost estimates, consult with Owner and Architect regarding site logistics and a proposed plan for construction access; material staging and loading; pedestrian access and safety; and compliance with relevant traffic ordinances during the Construction Phase.

## 2.1.6 SUBCONTRACTORS AND SUPPLIERS

2.1.6.1 **Bidding and Award of Subcontracts.** The CMR shall review with the Owner the CMR's bidding procedures and bidder criteria and shall establish a schedule for the competitive bidding and awarding of Subcontracts, to be conducted separately for each of the Project Elements, in accordance with all applicable federal and state requirements. The Project Elements may constitute the whole or part of the Work. The CMR shall use all reasonable means and efforts to develop the interest of qualified Subcontractors in the Project.

.1 The CMR shall include in its subcontractor bid documents the following requirements:

.1 For work to be performed with an estimated value in excess of Five Hundred Thousand Dollars ( **\$500,000.00** ), the subcontractor shall be prequalified in the State of Connecticut Department of Administrative Services classification noted on the pertinent Invitation to Bid;

.2 the bid shall be accompanied by a bid bond or certified check in an amount which shall be Ten Percent ( **10%** ) of any bid for work with an estimated value of at least Fifty Thousand Dollars ( **\$50,000.00** ). If the bidder is a small contractor or minority business enterprise pursuant to Connecticut General Statutes Section 4a-60g and further described in Appendix I to this Agreement "Administrative and Statutory Requirements" ("Appendix I"), it may provide in lieu of a bid bond, a letter of credit in an amount equal to Ten Percent ( **10%** ) of the bid amount if the estimated value is less than one hundred thousand dollars and in an amount equal to Twenty-Five Percent ( **25%** ) if the estimated value is one hundred thousand dollars or greater; and

.3 the bidder shall possess experience with projects of a similar nature and scope.

.2 The Bid documents and any relevant notices or advertisements shall set forth all of the CMR's submission requirements for the bid packages and shall clearly list those requirements the omission of which shall result in a bid rejection. In addition, the Bid documents shall include, prominently placed, the following language: "*The CMR is authorized to waive minor irregularities which it considers in the best interest of the Project, provided the reasons for any such waiver are stated in writing by the CMR and made a part of the contract file.*"

2.1.6.2 The CMR shall invite bids and give notice of opportunities to bid on Project Elements by advertising, at least once, in one or more newspapers having general circulation in the State of Connecticut. Bids shall be directed to the CMR at the address indicated in the aforementioned advertisements. Bidders shall be prequalified pursuant to Connecticut General Statutes Section 4a-100 through the State of Connecticut Department of Administrative Services. All advertisements, notices, scheduling notices, addenda and/or communications of any kind relevant to the bidding and award of contracts for Project Elements shall be posted on the State of Connecticut Department of Administrative Services Contracting Portal.

2.1.6.3 The CMR shall conduct pre-bid conferences, in coordination with the Owner's DPW Project Manager, to familiarize prospective bidders with the Project and the bid documents. The CMR shall assist the

Architect with regard to responding to questions from bidders and with the issuance of addenda to the bid documents. All responses to questions from bidders submitted prior or subsequent to pre-bid conferences shall be in writing. All bid opening dates and times shall be scheduled to accommodate the presence of Owner's DPW Project Manager or other designated representative of the Owner, who shall witness each bid opening and initial and date each bid.

- .1 Each bid shall be kept sealed until opened publicly on the date and at the time set forth in the notice soliciting such bid. Such opening shall take place at a location to be selected by the CMR and approved by the Owner. The CMR will analyze all bids and proposals to verify that the proposals are complete, that no unacceptable qualifications are made, that the bidders meet all CMR's criteria to the extent that it is in the best interest of the Project, and that the bidders have included the essential and qualitative information specified by the CMR in its bid documents. The CMR may waive minor irregularities in the bid documents.
- .2 Within **Seven (7)** days of any bid opening, the CMR shall make available for review by bidders all bid packages at a location within the State of Connecticut to be designated by the CMR. A notice in prominent typeface describing such location shall be displayed in a visible place at the bid opening.
- .3 The CMR is responsible for ensuring an adequate number of bids received for each advertised bid package through careful scope preparation and combination and/or separation of work, as required. In the event the CMR wants to recommend award of a package that received fewer than **three (3)** bids, CMR must describe in writing the following:
  - .1 detailed explanation of efforts made by the CMR;
  - .2 the number of contractors provided with the bid information;
  - .3 any information the CMR may have acquired as to reasons for the low number of bids received; and
  - .4 that the pricing received from the contractor to be recommended is competitive and reasonable according to industry standards and the Project estimate.
- .4 Prior to CMR's recommendation to Owner for approval of a contract, the CMR shall review any of Owner's performance related files or evaluations pertinent to the recommended award. The CMR shall, after consultation with and approval by the Owner, award any contracts for Project Elements to the responsible, qualified, and approved subcontractor submitting the lowest bid in compliance with CMR's bid requirements and procedures. The CMR shall not be eligible to submit a bid for any Project Element contract work.
- .5 The CMR shall resolve any issues that may arise relevant to the bidding process including bidder qualifications, bidder responsibility, and bid protests or disputes and shall be responsible for any and all costs incurred as a result thereof, including any administrative or professional costs incurred to resolve such issues extra-judicially and any and all costs related to legal proceedings commenced in state or federal court in Connecticut as a result of a Project Element trade contractor bid challenge.

The resolution of any issues referenced herein that will result in either a change to the award of contracts of Project Elements to a responsible qualified contractor or to the agreed upon GMP for the cost of construction shall require prior consultation with, and approval by, the Owner.

The CMR shall notify Owner within **Five (5)** days of the date the CMR received notice of a judgment entered in a legal proceeding upholding a challenge by a non-recommended bidder or of a proposed resolution to a pending challenge by a non-recommended bidder.

If the judgment or proposed resolution will, or potentially will, cause or result in a delay to the Project, an impact to the Project Schedule or a change in a recommended bidder submitted with the previously approved GMP Amendment; then within **thirty (30)** days of providing the five (5) day notice mentioned above, the CMR shall submit to Owner a written explanation setting forth in detail the following items, as appropriate: the nature and extent of the delay; the impact to Project Schedule; the change in recommended subcontract; the proposed change to the GMP. The proposed change to the GMP shall conform to the requirements of Section 5.3 of this Agreement and be in accordance with Article 13 of the General Conditions, except that any proposed decrease to the GMP shall be promptly administered through a deduction by a Change in Work pursuant to Section 2.2.8 herein and Article 13 of the General Conditions, with any savings reverting to the CMR's Contingency.

Any resultant increase to the GMP shall be funded by and through the CMR Contingency up to One Hundred Thousand Dollars ( \$100,000.00 ). If the increase exceeds One Hundred Thousand Dollars ( \$100,000.00 ) then the Owner's Contingency shall be used to fund the amount in excess of One Hundred Thousand Dollars ( \$100,000.00 ). The total maximum amount that can be utilized from the CMR Contingency for any and all increases to the GMP resulting from delays, impacts to the Project Schedule or change in recommended bidders is limited to One Hundred Thousand Dollars ( \$100,000.00 ), with the balance of any such increases being funded through the Owner's Contingency.

It shall be a condition precedent, however, prior to funds being utilized from the Owner's Contingency for increases in the GMP due to the afore-mentioned reasons, that the CMR has acted in good faith and in a reasonably competent manner, and has consulted with the Owner in regard to any such bid process matter, and has complied with all notice requirements set forth in this section.

The term "Owner's Contingency" as used in this Agreement shall refer to funds controlled exclusively by the Owner and which are not a part of the GMP. Such funds shall not be considered to be used or held for the benefit of the CMR and are not accessible to the CMR without:

- .1 prior written approval of the Owner; and
- .2 a formal Change Order submitted pursuant to Section 5.1.2 herein and General Conditions Article 13.

Additional Construction Phase Services Costs resulting from an aforementioned delay, change in recommended bidder or impact to Project Schedule shall require prior review and approval by the Owner and shall comply with the provisions set forth in Section 5.1.2 herein and Article 13 of the General Conditions.

Notwithstanding anything to the contrary in the foregoing, in the event that the CMR is determined by judicial authority in connection with its supervising, controlling, managing and resolving any issue arising from, involving or related to the bidding process, including bidder qualifications and bidder responsibility, to have acted in bad faith or in an arbitrary and capricious manner or with intentional or reckless disregard of the law, or to have acted in a fraudulent manner; the CMR shall be responsible, to the extent directly caused by said bad faith, arbitrariness and capriciousness, intentional or reckless disregard of the law, or fraud, for any resulting delay or impact on the Project Schedule and shall cover any increase in the Cost of the Work at its own expense exclusively.

2.1.6.4 Notwithstanding the foregoing Subsection 2.1.6.3, and as set forth in all pertinent bid advertisements and notices, the following conditions shall render a bid invalid and rejected by the CMR:

- .1 the subcontractor, if submitting a bid for work to be performed with an estimated value in excess of Five Hundred Thousand Dollars ( \$500,000.00 ) is not prequalified in the State of Connecticut Department of Administrative Services requisite classification noted on the pertinent Invitation to Bid;
- .2 the bid is not accompanied by a bid bond or certified check in an amount which shall be Ten percent ( 10% ) of any bid for work with an estimated value of at least Fifty Thousand Dollars ( \$50,000.00 ), or if the bidder is a small contractor or minority business enterprise pursuant to Connecticut General Statutes Section 4a-60g, it has not provided in lieu of a bid bond a letter of credit in an amount equal to Ten Percent ( 10% ) of the bid amount if the estimated value is less than one hundred thousand dollars and in an amount equal to Twenty-Five Percent ( 25% ), if the estimated value is one hundred thousand dollars or greater;
- .3 the bidder appears on the State of Connecticut Department of Labor Debarment List.; and/or
- .4 the bidder does not provide a requirement or qualification, the omission of which the CMR clearly stated in all bid solicitation communications would be grounds for bid rejection without allowance for waiver.

2.1.6.5 Aspects of the Work which are not Project Elements, not included in the Construction Phase Services Costs described in Section 6.1 herein, and not otherwise included as an allowance under this Agreement, shall be awarded through a competitive process by which the CMR shall obtain quotes from no fewer than Three ( 3 ) firms. In the event the CMR obtains fewer

than Three ( 3 ) quotes, the CMR must explain in writing the reasons therefor. If the CMR does not select the lowest price, the CMR must justify in writing its basis for its selection. All selections are subject to consultation with, and approval by, the Owner. Any issues arising from the award process described in this Section 2.1.6.5 shall be resolved by the CMR at its own cost.

2.1.6.6 The CMR shall be solely and fully responsible for the performance of each of the Subcontractors and shall indemnify and hold harmless the Owner from and against any and all additional costs and liability in excess of the GMP incurred as a result of failure of any Subcontractor to perform in accordance with the applicable Subcontract or the performance of such Subcontractor in a negligent manner. In no event will any cost or expense resulting in any manner from the negligence, fault, breach or failure of any Subcontractor to perform be a Cost of the Work as defined in this Agreement.

.1 The CMR shall compile evaluation information for each subcontract during the performance of the subcontract and shall submit the evaluation information in a format acceptable to the Owner to the DPW Project Manager at Fifty Percent ( 50% ) completion and One Hundred Percent ( 100% ) completion of each subcontract.

2.1.6.7 The CMR shall, after obtaining the written consent of the Owner as to the acceptability of each Subcontractor, award and execute Subcontracts with the successful bidders in accordance with applicable laws, regulations and ordinances. The terms of each Subcontract and the award of such contracts shall be fully in accordance with this Agreement and are subject to the prior approval of the Owner. Any selection and/or rejection of any bid must be approved by the Owner. Upon Owner's request, CMR shall provide copies of any and all Subcontracts to Owner for review.

2.1.6.8 Construction work shall not begin prior to determination of the GMP as hereinafter described. At its sole discretion and in accordance with Connecticut General Statutes Section 4b-103, the Owner may direct the CMR to proceed with the Project Elements of site preparation and demolition, or portions thereof, that have been previously put out to bid and awarded, prior to submission and approval of the GMP. The specific services and scope of work to be performed will be described in one or more "Work Authorization Orders" ("WAO"); as that term is defined in General Conditions Article 1. The form of the WAO is attached hereto as Exhibit D. The terms and conditions of this Agreement shall be considered a part of any WAO that the Owner may issue to the CMR, and such WAO shall be subject to the mutual agreement of the Owner and the CMR. A WAO is an authorization to perform the services and scope of work described therein and for the total amount set forth therein, which amount shall be factored into the GMP. Such amount of the WAO shall be determined as previously bid and awarded and not pursuant to Section 4.1 of this Agreement.

.1 In the event the Owner and CMR cannot agree to a GMP or funds are not available for the continuance of the CMR's services pursuant to Section 9.2.6 of the Agreement, the Owner is obligated to pay for the work performed pursuant to the WAO and as determined by the Owner, but in no event exceeding the amount set forth on such WAO. Any additional costs incurred by the CMR in the prosecution of such work shall be the obligation of the CMR. Prior to the performance of any work specified in a WAO, CMR shall provide Owner with proof of proper insurance and the required payment and performance bonds, in accordance with Article 8 herein.

.2 A WAO shall not constitute:

- .1 a Notice to Proceed or the start of the Construction Phase as described in Section 2.3.1.1 of this Agreement;
- .2 the start of days to Substantial Completion or increase in Construction Phase Services Costs as described in Sections 2.2.4.7 and 6.1 respectively of this Agreement;
- .3 evidence of any approval or funding of the GMP.

#### 2.1.7 LONG-LEAD-TIME ITEMS

The CMR shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the CMR. Upon the Owner's acceptance of the CMR's GMP proposal, all contracts for such items shall be assigned by the Owner to the CMR, who shall accept responsibility for such items as if procured by the CMR. The CMR shall expedite the delivery of long-lead-time items.

**2.1.8 EXTENT OF RESPONSIBILITY**

The CMR does not warrant or guarantee estimates and schedules except as may be included as part of the GMP. However, CMR will exercise due diligence in providing and updating schedules so as to include such actions as are reasonably anticipated and necessary to achieve the Substantial Completion and Acceptance dates for the Project. The recommendations and advice of the CMR concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's consultants. It is not the CMR's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the CMR becomes aware that portions of the Drawings and Specifications are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, the CMR shall promptly notify the Architect and Owner in writing.

**2.1.9 ADMINISTRATIVE, STATUTORY REQUIREMENTS, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

The CMR shall comply and shall use reasonable efforts to cause all Subcontractors to comply, with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs, set forth in Appendix I, attached hereto and incorporated herein in its entirety. The CMR shall present to, and review with, the Owner, any submissions relative to such administrative and statutory requirements prior to any submission by the CMR to the appropriate governmental agencies. In particular, the CMR shall present to, and review with, the Owner its set-aside program and Affirmative Action Plan prior to submission to the relevant agencies.

**2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME**

**2.2.1** After the Drawings and Specifications are sufficiently complete and not more than **Sixty ( 60 ) days** (or such time frame as otherwise agreed to by the Owner and CMR) after CMR has received bids from Subcontractors and suppliers representing at least **Ninety Percent ( 90% )** of the Subcontractor bids for the Project Elements, the CMR shall propose a GMP. As used in this Section, the phrase "sufficiently complete" shall mean Drawings and Specifications that are adequate to describe the Work in graphic and written form and that have been approved by the Owner. The sufficiently complete Drawings and Specifications shall be suitable for submission for all Permits and Approvals. The CMR shall advise the Owner as to the completeness of these documents. The Drawings will graphically depict the Work; i.e., plans, elevations, sections, details, schedules and diagrams. The Specifications will contain the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and the performance of related services. GMP shall mean the sum of the Cost of the Work as developed by the CMR and the CMR Fee for the construction and post-construction phase work, including all sales, use and consumer and other taxes required by law; all other fees, general conditions, bonds, required permits and insurance; tools, construction machinery, and temporary facilities required at the construction site; and all other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated in the Work. The GMP and the Substantial Completion and Acceptance dates, as shown in the GMP Amendment and the Assumptions and Clarifications, shall not exceed the Owner's maximum Cost of the Work Budget and schedule for the Project.

**2.2.2** As the Drawings and Specifications may not be finished at the time the GMP proposal is prepared, the CMR shall provide in the GMP for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom.

**2.2.2.1** The GMP is not intended to include material changes in scope, systems, kinds, qualities, quantities of material, finishes or equipment from that which is shown or reasonably inferred from the information in the Contract Documents upon which the GMP is based, subject to the Assumptions and Clarifications. Such changes, if required, are excluded because they would warrant an adjustment to the GMP by Change Order.

**2.2.3** The Cost of the Work shall include the CMR's Contingency, which shall be a sum equal to **Four Percent ( 4% )** of the Cost of the Work developed and established by the CMR and approved by the Owner for the CMR's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as a Cost of the Work but not the basis for a Change Order.

Use of CMR's Contingency to cover costs described in this Section shall include but not be limited to, costs associated with matters related to:

**2.2.3.1** estimating errors;

- 2.2.3.2 trade buy-out differentials;
- 2.2.3.3 unanticipated market conditions, including price escalation after the GMP is accepted through the GMP Amendment to this Agreement;
- 2.2.3.4 labor and material market conditions;
- 2.2.3.5 interface and coordinating omissions between various Subcontractor packages;
- 2.2.3.6 overtime and/or shiftwork;
- 2.2.3.7 acceleration and/or expediting and/or schedule recovery for CMR;
- 2.2.3.8 correcting defective, damaged, and/or nonconforming work, provided CMR makes an effort to first recover such costs from the responsible Subcontractor, Subcontractor's surety, and/or vendor;
- 2.2.3.9 design errors or omissions that are the responsibility of the CMR;
- 2.2.3.10 bidder, Subcontractor, and vendor defaults;
- 2.2.3.11 professional expenses incurred to obtain guidance, consultation, and recommendation, provided that such expenses are limited to issues that:
  - .1 relate primarily and directly to the performance of the Work or the Cost of the Work;
  - .2 do not arise primarily and directly from the bidding process;
  - .3 do not concern or involve any matter between and among the CMR, Owner and/or Architect;
  - .4 do not concern, or were not incurred as part of, litigation matters; and,
  - .5 have received Owner's prior written approval which shall not be unreasonably withheld; and
- 2.2.3.12 losses not covered by insurance, including insurance deductibles not resulting from the neglect or negligence of the CMR or its Subcontractors.

Except as provides in Article 2.1.6.3.5 herein, the CMR's Contingency shall not, be used to fund changes in the Work as described in General Conditions Article 13 including any adjustments to any of the allowances included in the GMP, nor shall it be used to fund costs that result from the gross negligence or willful misconduct of CMR. CMR shall furnish documentation evidencing expenditures charged to the contingency and the reasons therefor. The CMR shall keep full and detailed records regarding costs used from the CMR's Contingency and the accounting and control systems for such costs shall be in accordance with generally accepted accounting principles acceptable to the Owner, and Owner shall be provided access to such records upon prior notice and as further provided under General Conditions Article 25. Any savings to a Project Element bid subsequent to its inclusion as part of the determination of CMR's GMP proposal, as approved by the Owner, shall be added to, and become a part of, the CMR's Contingency. Any unused CMR's Contingency as of the date that Final Payment is determined, shall revert to the Owner.

- 2.2.4 No expenditures from the CMR's Contingency shall be paid without prior notice to the Owner and written approval of the Owner, whose approval will not be unreasonably withheld for any expenditure charged to the CMR's Contingency in excess of **Twenty Thousand Dollars ( \$20,000.00 )**. For any expenditure charged to the CMR's Contingency equal to or less than **Twenty Thousand Dollars ( \$20,000.00 )**, the Owner's approval is not required. The CMR shall account to the Owner for the allocation of the CMR's Contingency on a monthly basis in a manner acceptable to the Owner.
  - 2.2.4.1 The CMR's Contingency is not available and shall not be used for any of the following:
    - .1 Payment of liquidated damages, reimbursement of additional consultant services due to deficient or delayed work, or similar back charges or damages from the Owner caused by the CMR.
    - .2 Any costs identified in this Section that are recovered by the CMR from insurance, Subcontractors or suppliers, or other sources.
    - .3 To supplement the CMR's own office or field staff, beyond the levels or commitment originally agreed to, without the prior written consent of the Owner.
  - 2.2.4.2 When all of the funds in the CMR's Contingency are expended or in the event that the Cost of the Work exceeds the GMP and any adjustments as may be due under the terms of this Agreement; the CMR shall continue to perform at no additional cost to the Owner until the

Work is complete. The CMR shall be responsible for paying all costs in accordance with the terms of this Agreement that may be necessary to complete the Work, even if such amounts are in aggregate in excess of the GMP.

**2.2.5 BASIS OF GUARANTEED MAXIMUM PRICE**

The CMR shall include with the GMP proposal a written statement of its basis, which shall include:

- 2.2.5.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.
  - 2.2.5.2 A list of allowances and a statement of their basis.
  - 2.2.5.3 A detailed list of the clarifications and assumptions made by the CMR in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications; i.e. the Assumptions and Clarifications.
  - 2.2.5.4 The proposed GMP, including a statement of the developed cost organized by trade categories, allowances, contingency, other verified costs and the CMR Fee, as defined in Section 5.1.1 herein.
  - 2.2.5.5 All costs incurred for work performed for site preparation and/or demolition and/or long lead items purchased pursuant to Section 2.1.7 of this Agreement prior to acceptance of the GMP and any estimated costs for any items for which Subcontractor bids have not been received by the CMR and which have not been approved by the Owner and documentation of the basis for same.
  - 2.2.5.6 A list of all Project Elements for which bids have been received by the CMR and which have been approved by the Owner, which bids must represent at least **Ninety Percent ( 90% )** of the Subcontractor bids for the Project.
  - 2.2.5.7 The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based and a confirmation of the Liquidated Damages assessment in the amount **Four Thousand Seven Hundred Forty Dollars (\$4,740.00)** per day for each calendar day beyond the established Substantial Completion Date that the CMR fails to achieve Substantial Completion.
  - 2.2.5.8 The Date of Acceptance upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Acceptance is based and a confirmation of the Liquidated Damages assessment in the amount of **Three Thousand – Four Hundred and Thirty Dollars (\$3,430.00),** per day for each calendar day beyond the **Ninety (90) calendar days** of the established Substantial Completion Date that the CMR fails to achieve Acceptance.
- 2.2.6 The CMR shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. Said meeting shall occur within **Fourteen ( 14 )** days of Owner's receipt of the GMP Proposal. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMR, who shall make appropriate adjustments to the GMP proposal, its basis, or both.
  - 2.2.7 Owner shall have the right to accept or reject the GMP in its sole discretion. Unless the Owner accepts the GMP proposal in writing within **Sixty ( 60 )** days of the meeting described in Section 2.2.6, above, and so notifies the CMR, the GMP proposal shall not be effective without written acceptance by the CMR.
  - 2.2.8 Prior to the Owner's acceptance of the CMR's GMP proposal and issuance of a Notice to Proceed, the CMR shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing with the exception of those items provided for under Sections 2.1.6.8 and 2.1.7 of this Agreement.
  - 2.2.9 Upon acceptance by the Owner of the GMP proposal, the GMP, the GMP basis, and the dates of Substantial Completion and Acceptance shall be set forth in the GMP Amendment. The GMP shall be subject to additions and deductions by a Change in the Work as provided in the Contract Documents, and the Dates of Substantial Completion and Acceptance shall be subject to adjustment as provided in the Contract Documents.

- 2.2.10 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon Assumptions and Clarifications contained in the GMP Amendment. Such revised Drawings and Specifications shall be furnished to the CMR in accordance with schedules agreed to by the Owner, Architect and CMR. The CMR shall notify the Architect and Owner within Fourteen ( 14 ) days of being furnished with such revised Drawings and Specifications if such revised Drawings and Specifications are inconsistent with the agreed-upon Assumptions and Clarifications. Failure to notify the Architect and Owner within the aforementioned time frame shall result in a waiver of any claim for increase in Cost of the Work.
- 2.2.11 The State of Connecticut is tax exempt pursuant to Connecticut General Statutes Section 12-412. The CMR shall be responsible for reviewing the current regulations of the Department of Revenue Services. The tax on materials or supplies exempted by such regulation shall not be included as part of the GMP. A sales tax certificate will be provided by the Owner upon execution of the Contract.
- 2.2.12 By proposing the GMP, the CMR warrants that it has the capability, in all respects, and the moral and business integrity, reliability, technical ability, financial resources, management, superintendence, equipment and materials which will assure effective and efficient good faith performance in full compliance with the Contract Documents and with any and all schedules and milestone and completion dates, that it has made allowances for normal inclement weather indigenous to the Project site, in its estimating, planning and scheduling of the Work. The CMR further acknowledges that the Contract Documents, if not complete, will be upon completion, appropriate and adequate to complete this Project and for the construction of sound and suitable work, and that the GMP submitted is complete and covers all of the Work shown or reasonably inferred and as specified or shown in the Contract Documents. The CMR hereby certifies that the Work shall be completed, in place and in full accordance with the Contract Documents, within the time limits specified.

## 2.3 CONSTRUCTION PHASE

### 2.3.1 GENERAL

- 2.3.1.1 The Construction Phase shall commence upon the Owner's acceptance of the CMR's GMP proposal and issuance of a Notice to Proceed.
- 2.3.1.2 The CMR shall ensure that all construction activities are performed efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Contract Documents. The CMR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.3.1.3 The CMR shall establish and implement a program to monitor the quality of construction to guard the Owner against defects and deficiencies in the Work. The CMR shall reject the Work and transmit to the Subcontractor or supplier a notice of non-conforming work with a copy of such notice provided to Owner, when it is the opinion of the CMR that the Work does not conform to the requirements of the Contract Documents. The CMR is not authorized as part of this requirement to change, enlarge, relax, alter or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. In the event a dispute arises regarding CMR's rejection of Work; or in the event the Owner prefers to accept such Work, the provisions of General Conditions Articles 21, 25 and 26 shall apply.
- 2.2.1.4 Notwithstanding the provisions of Section 01 45 00 of the General Requirements, the CMR shall be fully responsible for the skill of workers employed for the Project and for providing that the quality of materials used for the Project is in conformance with the Contract Documents.
- 2.3.1.5 The CMR shall, if requested by the Owner, coordinate and oversee the work of third-party contractors retained directly by the Owner.

### 2.3.2 ADMINISTRATION

- 2.3.2.1 The Work shall be performed under subcontracts or by other appropriate agreements with the CMR. The CMR shall obtain competitive public bids in accordance with the provisions of Sections 2.1.6.1 through 2.1.6.3 of this Agreement. Subcontracts shall be in a form acceptable to the Owner.
- .1 Each subcontract shall contain provisions that:
- .1 require that such work be performed in accordance with the requirements of the Contract Documents;

- .2 waive all rights to subrogation against the Owner, Architect, Owner's agents, CMR, subcontractors for damages caused by fire or other perils covered by insurance obtained for or in place upon the Project;
- .3. require the Subcontractors to carry and maintain insurance coverage in accordance with the Contract Documents and file Certificates of such coverage, with the CMR;
- .4. require the Subcontractors to submit certificates of waiver of claims for work completed by their respective Secondary Subcontractors, as that term is defined in General Conditions Article 1, conditioned upon disbursement of the progress payment next due and owing;
- .5. require that each Subcontractor pay any amounts due any of its Sub-subcontractors whether for labor performed or materials furnished within thirty (30) days after such Subcontractor received a payment from the CMR which encompasses labor or materials furnished by such Subcontractor.
- .6. the Subcontractor or the Secondary Subcontractor's mark-up on change orders to have committed maximum overhead and profit pursuant to General Conditions Article 13;
- .7. require submission to the CMR or the Subcontractor as the case may be, of applications for payment on a form approved by the Owner together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Subcontractor is a party;
- .8. require each Subcontractor to furnish to the CMR in a timely fashion all information necessary for the preparation and submission of the reports required herein;
- .9. require that each Subcontractor continue to perform under its subcontract in the event that the CMR is terminated and the Owner, at its sole option takes as an assignment the subcontract and requests that the Subcontractor continue such performance;
- .10. require each Subcontractor to satisfactorily remove or stockpile all debris created by its activity pursuant to the discretion of the CMR;
- .11. provide that the subcontract should be assignable to the Owner;
- .12. require all performance and payment bonds issued by a Subcontractor on the Project name the Owner and the CMR as dual obligees;
- .13. require that each Subcontractor cooperate with the Owner and CMR and permit the Owner, CMR or a designated auditor or representative to review and audit the Subcontractor's books and records in connection with any costs charged to the Project and included in the price of any change orders;
- .14. require that each Subcontractor agree to work overtime, add manpower, or do whatever is necessary to meet the milestone dates and/or Substantial Completion dates, if in the opinion of the CMR any of the milestone dates and/or Substantial Completion dates are in jeopardy as a result of such Subcontractor;
- .15. require that each Subcontractor agree that if in the opinion of the CMR, the Subcontractor fails to take sufficient action to preserve the milestone and/or Substantial Completion dates after two days' written notice from the CMR, the CMR may take whatever action he deems necessary to meet the milestone and/or Substantial Completion dates and deduct all costs incurred as a result of such action from the relevant subcontract;
- .16. require that each Subcontractor include in its performance bonds, if required, the language set forth in Items .13 and .14, above.

2.3.2.2 The CMR shall comply with the provisions of the Connecticut General Statutes (GCS) §49-41 regarding the Subcontractor Payment And Performance Bonds.

- .1 The CMR shall require Payment Bonds from its Subcontractor, except that, pursuant to CGS §49-41, a Payment Bond shall not be required to be furnished in relation to any general bid in which the total estimated cost of labor and materials under the contract with respect to which the bid is submitted is less than One Hundred Thousand Dollars (~~100,000.00~~) or in relation to any sub-bid in which the total estimated cost of labor and materials under the contract with respect to which the sub-bid is submitted is less than One Hundred Thousand Dollars ( ~~\$100,000.00~~ ).

- .2 The CMR may, in its discretion, require Performance Bonds from its Subcontractors, except that, pursuant to CGS §49-41, a Performance Bond shall not be required to be furnished in relation to any general bid in which the total estimated cost of labor and materials under the contract with respect to which the bid is submitted is less than Twenty-Five Thousand Dollars (\$25,000.00) or in relation to any sub-bid in which the total estimated cost of labor and materials under the contract with respect to which the sub-bid is submitted is less than Fifty Thousand Dollars (\$50,000.00).
- .3 If the bidder is a small contractor or minority business enterprise pursuant to Connecticut General Statutes Section 4a-60g, it may provide in lieu of a Payment or Performance bond, if required by the CMR in accordance with this Section 2.3.2.2, a letter of credit in an amount equal to Ten Percent ( 10% ) of the bid amount if the estimated value of the contract for which the bid is submitted is less than one hundred thousand dollars and in an amount equal to Twenty-Five Percent ( 25% ) if the estimated value of such contract is One Hundred Thousand Dollars ( \$100,000.00 ) or greater.
- 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.
- 2.3.2.4 The CMR shall schedule and conduct meetings at which the Owner, Owner's Representative (as described in Section 3.2 herein), DPW Project Manager, Architect, CMR and appropriate Subcontractors can discuss matters including but not limited to: procedures, quality control, safety, scheduling, changes in the Work and the status of the Work. The CMR shall prepare and promptly distribute meeting minutes, including formal weekly project meetings. Owner may also schedule meetings at such times as it deems necessary.
- 2.3.2.5 Promptly after the Owner's acceptance of the GMP proposal, the CMR shall update and incorporate the planned Project Construction Schedule described in Section 2.1.3.1 of this Agreement into the schedules described in General Conditions Article 11, including the Owner's occupancy requirements.
- 2.3.2.6 The CMR shall provide monthly written reports to the Owner and Architect on the progress of the Work. Such reports shall contain such information as may be required by the Owner in its sole discretion and be in a form and format acceptable to the Owner. The CMR shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, heavy equipment on the site and utilization of such equipment, Work accomplished, observations of any differing conditions encountered, problems encountered and other similar relevant data as the Owner may reasonably require. Heavy equipment as referred to in this Section shall mean machinery that may be used for construction, including but not limited to, bulldozers, earthmoving equipment, well-drilling machinery and cranes. The log shall be available to the Owner and Architect but shall not relieve the CMR of its notice and reporting obligations to Owner hereunder.
- 2.3.2.7 The CMR shall develop a system of cost control for the Work to be provided to Owner in monthly reports, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CMR shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.
- 2.3.2.8 The CMR will provide administrative, management and related services as required to coordinate work of the Subcontractors with each other and with the activities and responsibilities of the CMR, the Owner, and the Architect to complete the Project in accordance with Owner's objectives for cost, time and quality and provide sufficient organization, personnel and management to carry out the requirements of this Agreement.
- 2.3.2.9 The CMR will at all times monitor and update the Project Construction Schedules, consistent with General Conditions Article 11.

- 2.2.2.10 The CMR will provide regular monitoring of the approved GMP showing actual costs for activities in progress and estimates for uncompleted tasks.
- 2.3.2.11 The CMR shall cause the Mechanical, Electrical and Plumbing (MEP) Subcontractors to provide commissioning support services and testing services per the Commissioning Agent's requirements, as part of their respective positions relative to the Work.
- 2.3.2.12 The CMR will, consistent with the requirements of the project schedule and budget, endeavor to prevent and eliminate the necessity or requirement for any Changes to the Work and to the extent such changes are nevertheless determined to be necessary or desired by the Owner, make recommendations to the Architect and the Owner, prepare proposed changes orders, review requests for changes, negotiate Subcontractor's change proposals; and if change orders are acceptable, sign change orders prepared by the Architect and Owner.
- 2.3.2.13 The CMR shall compile performance evaluation information for each subcontractor during the performance of the subcontract and shall submit the evaluation information in a format acceptable to the Owner to the DPW Project Manager at Fifty Percent ( 50% ) completion and One Hundred Percent ( 100% ) completion of each subcontract.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### 3.1 INFORMATION AND SERVICES

- 3.1.1 The Owner shall provide available information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. Such program shall be in the form of a written statement including all of the aforementioned information, which statement has been prepared by the Architect or other consultant for the Owner and which statement is on file with the Owner.
- 3.1.2 The Owner shall establish and update an overall budget for the Project, based on consultation with the CMR and Architect.
- 3.1.3 **STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS**  
In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the CMR knows of any inaccuracy, the CMR shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.3.1 through 3.1.3.6 of this Agreement but shall exercise customary precautions relating to the performance of the Work.
- 3.1.3.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.
- 3.1.3.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.
- 3.1.3.3 The services of a geotechnical engineer. Such services shall include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.
- 3.1.3.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.
- 3.1.3.5 The services of such other consultants which may be required by the scope of the Work and are requested by the CMR and approved by the Owner.
- 3.1.3.6 Testing and inspection services in accordance with General Conditions Article 16.

**3.2 OWNER'S DESIGNATED REPRESENTATIVE**

A staff member of the Owner shall be designated as the DPW Project Manager. All contact and communication with the Owner shall be through the DPW Project Manager. The Owner also intends to retain the services of an Owner's Representative. The CMR will be advised in writing, as appropriate, of the scope and nature of this Owner's Representative's role relevant to these Contract Documents. A copy of the agreement between the Owner and the Owner's Representative will be furnished to the CMR upon request. Nothing in the agreement between the Owner and the Owner's Representative shall relieve the CMR of its responsibilities under this CMR Agreement.

**3.3 ARCHITECT**

The Owner has retained the Architect to provide certain architectural services with respect to the Project in accordance with the agreement between Owner and Architect, a copy of which will be furnished to the CMR upon request.

**3.4 LEGAL REQUIREMENTS**

The Owner shall determine and advise the Architect and CMR of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1 of this Agreement.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE**

The Owner shall compensate and make payments to the CMR for the Preconstruction Phase Services as follows:

**4.1 COMPENSATION**

4.1.1 The CMR Preconstruction Phase Services Cost shall be the lump sum amount of Ninety-Eight Thousand Five Hundred Dollars (\$98,500.00) as set forth in the CMR's Total Cost Proposal Breakdown Table under Section 00 42 23 of the CMR's Proposal (the "CMR Total Cost Proposal.") for all Preconstruction Services Costs required under the Contract Documents. This amount includes all costs and expenses incurred by the CMR through the bidding and award of subcontracts and the establishment and approval of the GMP.

**4.2 PAYMENTS AND PAYMENT SCHEDULES**

4.2.1 The CMR shall receive the following payments upon acceptance by Owner of the CMR's Preconstruction Phase Services and deliverables as detailed in the CMR PPSSS of the Request for Proposal.

Percentage Completion	CMR Preconstruction Scope of Service	Percentage Payment
100%	Final Bid Documents Conversion Into Subcontractor Bid Packages Services:	30%
100%	Bid Phase Services and Agreement on CMR GMP:	70%

If any of the above-described Preconstruction Phase Services has been completed prior to execution of this Agreement, the Percentage Payments set forth above shall be adjusted and distributed in a manner mutually agreed upon by the Owner and the CMR.

If (a) the number of days for Preconstruction Phase Services pursuant to the Proposed Key Milestone Schedule contained in Subsection 2.0 of Section 00 24 19.2 of Owner's Request for Proposals, extends by more than ten percent (10%) beyond the date this Agreement is fully executed and approved (which calculation shall be confirmed at the time this Agreement is fully approved) due to no fault of the CMR; or (b) the CMR, due to no fault of its own and due to issues related to this Project, is required to utilize additional resources in order to complete services required to meet certain Proposed Key Milestones, which services may include but are not limited to: formal value engineering, budget analysis, agency approvals, permits, development of and approval process for, the GMP; then, upon prior written approval of the Owner, such further or additional services shall be billed at hourly rates in accordance with the following rate schedule:

Preconstruction Rate Schedule:			
Personnel	Rate (\$/hour)		
	Project Executive	\$	To Be Determined
Project Manager(s)	\$	106.00	/hr.
Project Superintendent(s)	\$	97.00	/hr.
Field Engineer	\$	73.00	/hr.
MEP Specialist(s)	\$	121.00	/hr.
Quality Control	\$	97.00	/hr.
Safety & E.E.O. Officer(s)	\$	64.00	/hr.
Field Accountant	\$	67.00	/hr.
General Superintendent	\$	106.00	/hr.
Construction Scheduler	\$	110.00	/hr.
Admin. Assistant/Project Secretary	\$	43.00	/hr.
Chief Estimator	\$	182.00	/hr.
Electrical Estimator	\$	141.00	/hr.
Mechanical Estimator	\$	144.00	/hr.
Plumbing Estimator	\$	137.00	/hr.
Sr. Architectural Estimator	\$	97.00	/hr.
Architectural Estimator	\$	77.00	/hr.
All rates include cost plus burden			

The hourly rates above shall be adjusted in accordance with annual cost of living adjustments based on the Consumer Price Index ("CPI") published by the U.S. Department of Labor Bureau of Labor Statistics, specifically for all Urban Consumers (CPI-U), Northeast Region, All Items, 1982-84-100, commencing on January 1, 2012 and upon the expiration of each twelve months thereafter.

- 4.2.2 Payments shall be made monthly following presentation of the CMR's invoice and, where applicable, shall be in proportion to services performed.
- 4.2.3 Payments are due and payable **Thirty ( 30 )** days from the date the CMR's invoice is received and approved by the Owner in accordance with General Conditions Articles 27 and 28.

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

The Owner shall compensate the CMR for services rendered for the Construction Phase as follows:

**5.1 COMPENSATION**

- 5.1.1 For the CMR's performance of the Work as described in 2.3 of this Agreement, the Owner shall pay the CMR in current funds the GMP, which shall consist of the "Cost of the Work" as defined in Section 6 of this Agreement and the CMR Fee. The CMR Fee shall represent the CMR's overhead and profit and risk cost for its performance of the Work and shall be determined as follows:

The CMR Fee shall be **One and 25/100 Percent (1.25%)** of the Cost of the Work.

- 5.1.2 Notwithstanding any provision of the General Conditions to the contrary, the CMR's compensation for any Changes in the Work is limited to the applicable CMR Fee set forth in Section 5.1.1, above. The CMR shall not be entitled to any overhead and profit percentages or any additional Construction Phase Services Costs as further defined in Section 6.1 herein, except that if a Change in the Work results in an increase in the overall calendar days set forth in Section 7.1.3 herein, or if a Change in the Work requires additional resources from the CMR, the CMR may receive, upon prior review and approval by the Owner, additional Construction Phase Services Costs based upon the staffing costs provided pursuant to the CMR Total Cost Proposal, together with necessary, reasonable and verified costs. The annual adjustment rate, if applicable, shall be indicated by Owner in its Request for Proposal.

- 5.1.3 The CMR shall not be entitled to any additional compensation associated with factors relevant to commencement and progress of the Work except as provided in General Conditions Article 4.

**5.2 GUARANTEED MAXIMUM PRICE**

5.2.1 The sum of the Cost of the Work and the CMR Fee are guaranteed by the CMR not to exceed the amount provided in the GMP Amendment, subject to additions and deductions by approved Changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved Changes in the Work is referred to in the Contract Documents as the GMP. Costs which would cause the GMP to be exceeded shall be paid by the CMR without reimbursement by the Owner.

**5.3 CHANGES IN THE WORK**

5.3.1 Adjustments to the GMP on account of Changes in the Work subsequent to the execution of The GMP Amendment may be determined by any of the methods listed in General Conditions Article 13.

5.3.2 The amount of each Change in the Work shall be determined in accordance with General Conditions Article 13.

5.3.3 Adjustments to subcontracts shall be determined as provided in General Conditions Article 13.

5.3.4 If, however, a Change in the Work results in deleted work as provided in General Conditions Article 14, then the CMR shall not be entitled to retain its CMR Fee for such deleted work.

**ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

**6.1 COST OF THE WORK**

6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the CMR in the proper performance of the Work. Such costs shall include the CMR Construction Phase Services Costs as further defined herein and the CMR Contingency as described in section 2.2.3 of this Agreement. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner.

The Cost of the Work shall include only the items set forth in this Article 6. The cost of those items set forth in this Article 6 that are Construction Phase Services Costs are fixed in the amount of Three Million Six Hundred Twenty-Three Thousand Two Hundred Thirty-One Dollars (\$3,623,231.00) as set forth in the CMR Total Cost Proposal. The items constituting Construction Phase Services Costs are those identified as such in the Cost Allocation Guide, plus costs associated with CMR's performance of:

6.1.1.1 Construction Manager At Risk Responsibilities - Construction Phase set forth in Section 2.3 herein; and

6.1.1.2 Project Scope, Proposal Submittal Requirements, Evaluation and Selection Procedures, Subsection 4.2, Part 2 - Construction Phase of the CMR Request for Proposal.

6.1.1.3 If a conflict exists between this Article 6 and the Cost Allocation Guide, the terms and conditions of the Cost Allocation Guide shall take precedence.

**6.1.2 SUBCONTRACT COSTS**

Payments made by the CMR to Subcontractors shall be in accordance with the requirements of the subcontracts. CMR will, as appropriate, obtain quote for payment and performance bonds from Subcontractors.

Payment and/or performance bonds may be required by the CMR pursuant to Section 2.3.2.2 herein, and the costs of same shall, as appropriate, be included as a Cost of the Work.

**6.1.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION**

6.1.3.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

6.1.3.2 Costs of materials described in the preceding Section 6.1.2.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the CMR; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**6.1.4 OTHER COSTS**

6.1.4.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

**6.1.5 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK**

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the CMR:

6.1.5.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in General Conditions Articles 13 and 19.

**6.1.6 REIMBURSABLE COSTS**

Unless otherwise provided, when such reimbursable costs are properly included in the Cost of the Work, the CMR shall only be entitled to reimbursement of its direct, out-of-pocket costs without allowance for any surcharge, overhead, or profit, except as provided in Section 5.1.1. Except where agreed rates are applicable, the CMR, when entitled to reimbursable costs under this Agreement, shall promptly furnish in a form satisfactory to the Owner, itemized statements of the costs incurred, including, but not limited to, certified payrolls and copies of documents, bills and vouchers. Reimbursable costs relative to construction services personnel shall, upon prior written approval of the Owner, be billed at hourly rates in accordance with the following rate schedule:

Construction Rate Schedule:		
Personnel	Rate (\$/hour)	
Project Executive	\$	To Be Determined /hr.
Project Manager(s)	\$	110.00 /hr.
Project Superintendent(s)	\$	100.00 /hr.
Field Engineer(s)	\$	75.00 /hr.
MEP Specialists	\$	125.00 /hr.
Safety & E.E.O. Officer(s)	\$	66.00 /hr.
Field Accountant	\$	69.00 /hr.
Quality Control	\$	100.00 /hr.
General Superintendent	\$	110.00 /hr.
Construction Scheduler	\$	114.00 /hr.
Admin. Assistant/Project Secretary	\$	45.00 /hr.
Chief Estimator	\$	185.00 /hr.
Electrical Estimator	\$	145.00 /hr.
Mechanical Estimator	\$	148.00 /hr.
Plumbing Estimator	\$	140.00 /hr.
Senior Architectural Estimator	\$	100.00 /hr.
Architectural Estimator	\$	80.00 /hr.
All rates include cost plus burden.	—	—

The hourly rates above shall be adjusted in accordance with annual cost of living adjustments based on the Consumer Price Index ("CPI") published by the U.S. Department of Labor Bureau of Labor Statistics, specifically for all Urban Consumers (CPI-U), Northeast Region, All Items, 1982-84-100, commencing on January 1, 2013 and upon the expiration of each twelve months thereafter.

**6.1.7 LABOR COSTS**

6.1.7.1 Wages or salaries of the CMR's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

6.1.7.2 Wages and salaries of the CMR's supervisory or administrative personnel engaged, at factories, workshops or off site, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, and only with the prior approval of the Owner.

6.1.7.3 Costs paid or incurred by the CMR for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, the CMR's standard fringe benefits such as sick leave, medical and

health benefits, holidays, vacations and pensions, provided such costs are based upon wages and salaries included in the Cost of the Work under Section 6.1 herein and the Cost Allocation Guide.

**6.1.8 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**

**6.1.8.1** Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMR at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the CMR. Cost for items previously provided by the CMR shall mean fair market value.

**6.1.8.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CMR at the site, whether rented from the CMR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. Rental charges for all tools and equipment shall be consistent with published rates for similar equipment in the location of the Project. In no case shall the aggregate total rental cost for any tool or piece of equipment exceed the purchase price of a functionally comparable item. In no event will the CMR be entitled to the cost of rentals from any affiliated entity or from itself or from its Subcontractors.

**6.1.8.3** Costs of removal of debris from the site.

**6.1.8.4** Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office with prior approval of the Owner.

**6.1.8.5** That portion of the reasonable pre-approved, out-of-state travel and subsistence expenses of the CMR's personnel incurred while traveling in discharge of duties connected with the Work.

**6.1.9 MISCELLANEOUS COSTS**

**6.1.9.1** That portion directly attributable to this Agreement of premiums for insurance and bonds, subject to the provisions of General Conditions Article 35.

**6.1.9.2** Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the CMR is liable.

**6.1.9.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the CMR is required by the Contract Documents to pay.

**6.1.9.4** Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work, in accordance with General Conditions Article 16.

**6.1.9.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents and the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents.

**6.1.9.6** Data processing and computer costs related to project support for the Work, including but not limited to project scheduling and tracking programs and data processing and computer costs related to business or corporate or corporate overhead.

**6.1.9.7** Deposits lost for causes other than the CMR's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.

**6.1.9.8** Expenses incurred in accordance with CMR's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations with the prior written approval of the Owner.

**6.2 COSTS NOT TO BE CONSIDERED AS COST OF THE WORK**

**6.2.1** The following costs shall not be considered as Cost of the Work and shall not be reimbursed to CMR by Owner:

- 6.2.1.1 Salaries and other compensation of the CMR's personnel stationed at the CMR's principal office or offices other than the site office, except as specifically provided in Article 6 herein.
- 6.2.1.2 Expenses of the CMR's principal office and offices other than the site office, except as specifically provided in Article 6.
- 6.2.1.3 Overhead and general expenses, except as may be expressly included in Article 6.
- 6.2.1.4 The CMR's capital expenses, including interest on the CMR's capital employed for the Work.
- 6.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Article 6.
- 6.2.1.6 Except as provided with respect to the use of the CMR's Contingency as set forth in Section 2.2.3, costs due to the negligence of the CMR or to the failure of the CMR to fulfill a specific responsibility to the Owner set forth in this Agreement.
- 6.2.1.7 Costs incurred in the performance of Preconstruction Phase Services since they are to be paid for separately pursuant to Article 4 herein.
- 6.2.1.8 Except as provided in Article 6, any cost not specifically and expressly described herein.
- 6.2.1.9 Costs which would cause the GMP to be exceeded.
- 6.2.1.10 Losses not covered by insurance, including deductibles.
- 6.2.1.11 Except as provided in Section 2.1.6.3.5 herein, costs associated with issues relevant to the bidding process.
- 6.2.1.12 Corrective Work Pursuant to General Conditions Article 21, except as otherwise provided under the Cost Allocation Guide and Section 2.2.3.8 herein.

### 6.3 DISCOUNTS, REBATES AND REFUNDS

- 6.3.1 Cash discounts obtained on payments made by the CMR shall accrue to the Owner if:
  - 6.3.1.1 before making the payment, the CMR included them in an Application for Payment and received payment therefor from the Owner, or
  - 6.3.1.2 the Owner has deposited funds with the CMR with which to make payments; otherwise, cash discounts shall accrue to the CMR. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CMR shall make provisions so that they can be secured.
- 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work and shall be credited on the next monthly construction pay requisition after receipt.

### 6.4 ACCOUNTING RECORDS

- 6.4.1 The CMR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. CMR's accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded reasonable access upon request to the CMR's software systems records (including but not limited to records maintained in electronic form), books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the CMR shall preserve these for a period of Six ( 6 ) years after final payment, which period of time exceeds the Three ( 3 ) year time period set forth in Appendix I, Section 11(e), or for such longer period as may be required by law.

## ARTICLE 7 CONSTRUCTION PHASE PAYMENTS

### 7.1 PROGRESS PAYMENTS

- 7.1.1 Based upon Applications for Payment submitted to the Architect and DPW Project Manager by the CMR and Applications for Payment recommended by the Architect, all in accordance with the provisions of General Conditions Articles 27 through 29 the Owner shall make progress payments to the CMR as provided below and elsewhere in the Contract Documents.
- 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

- 7.1.3 Provided an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment to the CMR not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than **Thirty ( 30 ) days** after the Architect receives the Application for Payment.
- 7.1.3.1 Each Application for Payment shall set forth subcontract work on a monthly basis.
- 7.1.3.2 Each Application shall set forth payment for Construction Phase Services Costs, conditioned upon an anticipated schedule not to exceed **Eleven Hundred and Twenty-five (1125) Calendar Days** to Substantial Completion plus **Ninety ( 90 ) Calendar Days** to Acceptance. Each scheduled payment shall be subject to prior approval by the Owner.
- 7.1.4 With each Application for Payment, the CMR shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence which may be required by the Owner or Architect pursuant to General Conditions Articles 27 through 29 to determine in the opinion of the Owner the amounts that properly represent the value of the Work completed and for the materials suitably stored on the site, as applicable.
- 7.1.5 Each Application for Payment shall be based upon an approved schedule of values submitted by the CMR in accordance with the Contract Documents and more fully discussed and described in Section 7.1.4, above and General Conditions Articles 27 through 29. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the CMR Fee and CMR Contingency, and the Lump Sum CMR Construction Phase Services Cost shall be shown as **three ( 3 )** separate items. Schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule shall be used as a basis for reviewing the CMR's Applications for Payment.
- 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the percentage of that portion of the Work which has actually been completed.
- 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as set forth herein and in General Conditions Articles 27 through 29.
- 7.1.7.1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values.
- 7.1.7.2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- 7.1.7.3 Add the CMR Fee, less Retainage of **Seven And Five-Tenths Percent ( 7.5% )**. The CMR Fee shall be computed upon the Cost of the Work described in Sections 5 and 6 of this Agreement at the rate stated in Section 5.1.1.
- 7.1.7.4 If applicable, subtract an additional **Two Percent ( 2% )** from the Application for Payment amount pending the State Commission on Human Rights and Opportunities' ("CHRO") approval of the CMR's Affirmative Action Plan.
- 7.1.7.5 Subtract the aggregate of previous payments made by the Owner.
- 7.1.7.6 Subtract the shortfall, if any, indicated by the CMR in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- 7.1.7.7 Subtract amounts, if any, for which the Owner has withheld a proportion of any payment due the CMR pursuant to General Conditions Article 32.
- 7.1.7.8 There shall be no Retainage held on CMR's Construction Phase Services Costs.
- 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than **Seven And Five-Tenths Percent ( 7.5% )**. The Owner and the CMR shall agree upon a mutually acceptable procedure for review and approval of payments and Retainage for subcontracts. Retainage on any particular Subcontractor may be reduced or eliminated upon mutual agreement of the Owner and the CMR. Notwithstanding the provisions of General Conditions Article 28, the

determination in the reduction of Retainage described therein shall be made on a per trade subcontractor package basis.

7.1.8.1 The CMR within Thirty ( 30 ) days after payment to the CMR by the Owner, shall be required to pay any amounts due any Subcontractor, whether for labor performed or materials furnished, when the labor or materials have been included in a requisition submitted by the CMR and paid by the Owner.

7.1.8.2 The CMR shall include in each of its subcontracts a provision requiring each Subcontractor to pay any amounts due any of its Subcontractors, whether for labor performed or materials furnished, within Thirty ( 30 ) days after each Subcontractor receives a payment from the CMR which encompasses labor or materials furnished by such Subcontractor.

7.1.9 Except with the Owner's prior approval, the CMR shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## 7.2 SUBSTANTIAL COMPLETION AND ACCEPTANCE

### 7.2.1 Substantial Completion:

Substantial Completion, shall be achieved on or before the date set forth in the GMP Amendment and in accordance with General Conditions Article 30. Substantial Completion shall be determined by the date of execution of the Certificate of Substantial Completion by the Owner, pursuant to General Conditions Article 30.

### 7.2.2 Acceptance:

Acceptance shall be achieved within the time frame set forth in the GMP Amendment in accordance with General Conditions Article 30. Acceptance shall be determined by the date of execution of the Certificate of Acceptance by the Owner pursuant to General Conditions Article 30.

## 7.3 FINAL PAYMENT

7.3.1 Final payment shall be made by the Owner to the CMR when:

7.3.1.1 the Contract has been fully performed by the CMR and accepted by the Owner in accordance with Section 7.2, above, and General Conditions Article 30, except for the CMR's responsibility to correct nonconforming Work as provided in General Conditions Article 21 and to satisfy other requirements, if any, which necessarily survive final payment;

7.3.1.2 a final Application for Payment, including an executed final release for payment of materials and services rendered, if in an acceptable form, and a final accounting for the Cost of the Work have been submitted by the CMR and reviewed and approved by the Owner and Architect;

7.3.1.3 a Certificate of Compliance, as defined in General Conditions Article 1 has been issued along with the Certificate of Acceptance, as defined in General Conditions Article 1, which is further described in General Conditions Article 30;

7.3.1.4 any other documentation required pursuant to General Conditions Article 31 has been submitted by the CMR to the Owner through the DPW Project Manager and subsequently reviewed and approved by both the DPW Project Manager and the Architect; and

7.3.1.5 any and all other requirements set forth in General Conditions Article 31 have been fully satisfied.

7.3.2 The amount of the final payment shall be calculated as follows:

7.3.2.1 Take the sum of the Cost of the Work substantiated by the CMR's final accounting and the CMR Fee, but not more than the GMP, as adjusted by authorized Changes in the Work.

7.3.2.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in General Conditions Article 32 or other provisions of the Contract Documents.

7.3.2.3 Subtract the aggregate of previous payments made by the Owner.

7.3.2.4 Subtract the amount of any unused contingency and allowance(s).

If the aggregate of previous payments made by the Owner exceeds the amount due the CMR, the CMR shall reimburse the difference to the Owner.

- 7.3.3 If the Owner determines the Cost of the Work as substantiated by the CMR's final accounting to be less than claimed by the CMR, the CMR shall be entitled to proceed in accordance with Article 9 herein.
- 7.3.4 If, subsequent to final payment and at the Owner's request, the CMR incurs costs described in Section 6.1 herein and not excluded by Section 6.2:
- 7.3.4.1 to correct nonconforming Work; or
- 7.3.4.2 arising from the resolution of disputes, other than disputes addressed under 2.1.6.3.5;
- the Owner shall reimburse the CMR such costs and the CMR Fee if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP.

**ARTICLE 8 INSURANCE AND BONDS**

**8.1 INSURANCE REQUIRED OF THE CMR**

Except for Builders Risk Insurance, the CMR shall purchase and maintain insurance as set forth below and any other insurance required in Article 35 of the General Conditions during both phases of the Project. Such insurance shall be written for not less than the following limits, or greater if required by law:

**8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If:**

- 8.1.1.1 limits in excess of those required by statute are to be provided; or
- 8.1.1.2 the employer is not statutorily bound to obtain such insurance coverage; or
- 8.1.1.3 additional coverages are required, additional coverages and limits for such insurance shall be as follows:

<b>.1 Statutory Workers' Compensation and Employers Liability:</b>	
.1 Workers' Compensation:	Statutory Limits
.2 Employers' Liability:	
Bodily injury per occurrence	\$ <u>\$100,000.00</u> per occurrence
Bodily injury by illness	\$ <u>100,000.00</u> each employee
	\$ <u>500,000.00</u> policy limit

**8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations; Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards, asbestos abatement and lead liability, when applicable to the Work to be performed):**

Commercial General Liability	
\$ <u>1,000,000</u>	Each Occurrence
\$ <u>2,000,000</u>	Annual Aggregate

- 8.1.2.1 The Owner and its officers, agents, and employees shall be listed as an additional insured.
- 8.1.2.2 Products and Completed Operations insurance shall be maintained for the duration of the Project and shall be maintained for a minimum of **Three ( 3 )** years after certification by the Owner that all work has been completed and accepted by the Owner in accordance with the Contract Documents.
- 8.1.2.3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in General Conditions Article 35.

**8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:**

Automobile Liability	
Combined Single Limit:	\$ <u>1,000,000.00</u> each occurrence
	\$ <u>2,000,000.00</u> annual aggregate

**8.1.4 Other coverage:**

8.1.4.1 **Umbrella Liability.** The CMR shall maintain coverage in the amount of **Fifteen Million Dollars ( \$15,000,000.00 )**, each occurrence and annual aggregate. The CMR may satisfy the minimum limits required under this Article for Commercial General Liability, Automobile Liability

and Employer's Liability coverage under an Umbrella Liability policy described herein. The underlying limits may be set at the minimum amounts required by the Umbrella Liability policy provided the combined limits meet at least the minimum limit for each required policy. The Umbrella Liability policy shall have an Annual Aggregate at a limit not less than Two ( 2 ) times the highest per occurrence minimum limit required for any of the required coverages described in this Article. The Owner shall be specifically endorsed as an Additional Insured on the Umbrella Liability policy, and the Umbrella Liability policy shall provide continuous coverage to the underlying policies on a complete "Follow-Form" basis.

- 8.1.4.2 Professional Services Liability.** The CMR shall furnish evidence by way of a certificate of insurance that it has obtained a professional services liability insurance policy with Five Million Dollars ( \$5,000,000.00 ), each occurrence and annual aggregate, minimum coverage for negligence and errors and omissions. If any claims are paid against its professional services liability insurance policy, the CMR agrees to purchase additional insurance in order to maintain the minimum coverage of Five Million Dollars ( \$5,000,000.00 ). The insurance shall remain in effect during the entire duration of this contract and for Six ( 6 ) years after Substantial Completion of the project. For policies written on a "Claims Made" basis, the CMR agrees to maintain a retroactive date prior to or equal to the effective date of the contract. The CMR's policy shall provide that it shall indemnify and save harmless the State and its officers, agents and employees from claims, suits, actions, damages and costs of every name and description resulting from negligence and errors and omissions in the Work performed by the CMR under the terms of this contract.
- 8.1.4.3 Valuable Paper and Record Loss.** \$25,000 each occurrence
- 8.1.4.4 Inland Marine/Transit Insurance.** With respect to property with values in excess of One Hundred Thousand Dollars ( \$100,000.00 ) which is rigged, hauled, or situated at the site pending installation, the CMR shall maintain inland marine/transit insurance provided the coverage is not afforded by a Builder's Risk policy.
- 8.1.4.5 Builders Risk Coverage.** Upon Owner's acceptance of the CMR's GMP proposal and prior to Owner's issuance of a Notice to Proceed, the CMR shall provide coverage for the entire Work in an amount equal to the total contract amount and any additional modifications. Insurance shall be maintained until certification by the Owner that all work has been completed and accepted by the Owner in accordance with the Contract Documents. The Owner and its officers, agents and employees shall be listed as additional insured subject to the prior review of the Owner.

Builders Risk Policy Description	Coverage Limits
Policy Limit	Value of Project
Limits for Windstorm, Rain, Fire, Lightning, Hail, Arson, and Acts of Sabotage.	Value of Project
Limits for Soft Costs	<u>\$ 5</u> Million
Limits for Flood	<u>\$ 10</u> Million
Limits of Earthquake	<u>\$ 10</u> Million
Toppling of Crane	<u>\$ 1</u> Million
Theft or Destruction of Materials at Job Site	<u>\$ 500</u> Thousand
Mold, Mildew, Fungus, Dry Rot, Wet Rot	<u>\$ 500</u> Thousand
Loss of Use	<u>\$ 5</u> Million
Landscaping	<u>\$ 100</u> Thousand
Storage	<u>\$ 500</u> Thousand
Business Interruption	<u>\$ 5</u> Million
Inland Marine/Transit	<u>\$ 500</u> Thousand

Terrorism	Value of Project
Deductibles "Significant" Loss (equal to greater than <u>\$2.0</u> million) "Minor Loss" (less than <u>\$2.0</u> million).	<u>\$ 25,000</u>
Period	<u>1125</u> Days plus period of time required for Close Out and Acceptance.

8.1.5 CMR must obtain the permission of the Owner to adjust any of the above requirements. The CMR shall provide Owner with certificates of insurance which show that CMR is so insured, and Owner shall keep them on file. The insured's certificates of insurance shall include a statement as to the indemnification of Owner by CMR and the insurer of CMR. Such certificates shall be updated and provided to Owner on an annual basis.

8.1.6 Notwithstanding Article 35 of the General Conditions, the CMR shall cause each Subcontractor to effect and maintain insurance for not less than the limits, and in accordance with the provisions, set forth below:

Item No.	Coverage	Amount
8.1.6.1	<b>Commercial General Liability:</b> Including Bodily Injury and Property Damage. Policy must include: Explosion, Collapse and Underground Hazards; Completed Operations Coverage; Contractual Liability. Policy must be on the Insurance Services Office (ISO) 2001 form or equivalent. It is the responsibility of the Subcontractor to maintain general liability coverage on an occurrence form including completed operations for a period of 5 years beyond final payment.	<u>\$1,000,000.00</u> . Combined Single Limit Each Occurrence <u>\$2,000,000.00</u> . Annual Aggregate/On a per Project Basis
8.1.6.2	<b>Commercial Automobile Liability:</b> Including Bodily Injury and Property Damage (Owned, Hired and Non-Owned)	<u>\$1,000,000.00</u> . Combined Single Limit Each Occurrence No Aggregate
8.1.6.3	<b>Professional Liability:</b>	Not Required;
8.1.6.4	<b>Workers Compensation:</b> Coverage applies in the state work is performed.	<u>\$1,000,000.00</u> Minimum Employers Liability; WC Statutory Limits Required.
8.1.6.5	<b>Umbrella Liability:</b>	Contract amounts of <u>\$1.00</u> to <u>\$500,000.00</u> ; <u>\$1,000,000.00</u> Each Occurrence; <u>\$1,000,000.00</u> Annual Aggregate.
		Contract amounts of <u>\$500,000.01</u> to <u>\$1,000,000.00</u> ; <u>\$2,000,000.00</u> Each Occurrence; <u>\$2,000,000.00</u> Annual Aggregate.
		<sup>4</sup> Contract amounts of <u>\$1,000,000.01</u> to <u>\$10,000,000.00</u> ; <u>\$5,000,000.00</u> Each Occurrence; <u>\$5,000,000.00</u> Annual Aggregate.
		Contract amounts of <u>\$10,000,001.00</u> to <u>\$30,000,000.00</u> ; <u>\$10,000,000.00</u> Each Occurrence;

		<b>\$10,000,000.00</b> Annual Aggregate.
		Contract amounts of <b>\$30,000,000.01</b> to <b>\$80,000,000.00</b> ; <b>\$15,000,000.00</b> Each Occurrence; <b>\$15,000,000.00</b> Annual Aggregate.
		Contract amounts of <b>\$80,000,000.01</b> to <b>\$150,000,000.00</b> ; <b>\$20,000,000.00</b> Each Occurrence; <b>\$20,000,000.00</b> Annual Aggregate.
		Contract amounts of <b>\$150,000,000.01</b> to <b>\$300,000,000.00</b> ; <b>\$25,000,000.00</b> Each Occurrence; <b>\$20,000,000.00</b> Annual Aggregate.

8.1.7 In addition to the preceding, the Commercial General Liability policy must include an endorsement or endorsements naming the CMR Owner and others as required by the Contract Documents as additional insureds on a primary and noncontributory basis. Only the following ISO endorsements or their equivalents are acceptable:

8.1.7.1 CG2010 (11/85), or

8.1.7.2 CG2010 (10/01) when used with CG2037 (10/01), or

8.1.7.3 CG2033 (10/01) when used with CG2037 (10/01), or

8.1.8 The Commercial General Liability and the Worker's Compensation policies must include an endorsement that waives the insurance company's right of subrogation against the CMR and the Owner.

The Umbrella Liability policy must name the CMR, Owner and others as required by the Contract Documents as additional insureds.

Certificates that evidence all such insurance shall be filed with the CMR prior to the commencement of any work at the project location. Policies cannot be modified or canceled with less than thirty (30) days notice of such action by registered mail to the CMR. The words "ENDEAVOR TO" and "BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES" shall be deleted from the certificate form's cancellation provision.

The description of operations section of the certificate of insurance must include the following:

8.1.8.1 A statement that the policies evidenced meet all the insurance requirements provided under the subcontract agreement between CMR and the named insured Subcontractor.

8.1.8.2 A list of all additional insureds required by the Contract Documents.

8.1.8.3 A statement that the worker's compensation policy provides coverage in the State of Connecticut.

8.1.8.4 The workers' compensation and general liability policies include a waiver of subrogation.

Failure of CMR to demand such certificate or other evidence of full compliance with these insurance requirements or failure of CMR to identify a deficiency from evidence that is provided shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance. CMR shall have the right, but not the obligation, of prohibiting Subcontractor or any Secondary Subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by contractor. Failure to maintain the required insurance may result in termination of this subcontract at CMR's option. If Subcontractor failed to maintain the insurance as set forth herein, CMR shall have the right, but not the obligation, to purchase said insurance at Trade Contractor's expense. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to CMR whenever requested. Subcontractor shall provide certified copies of all insurance policies required above within ten (10) days of CMR's written request for said copies.

## 8.2 PERFORMANCE BOND AND PAYMENT BOND

8.2.1 The CMR shall furnish to the Owner, Performance and Payment Bonds pursuant to the requirements of Connecticut General Statutes Section 49-41 et. seq. The CMR shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Each bond shall be in a form acceptable to the Owner and shall be approved by a surety company licensed to do business in the State of Connecticut and that is acceptable to the Owner and is named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the "Treasury Department Circular 570." The surety company's underwriting limitation as further set forth in "Treasury Department Circular 570" must not be less than the full amount required by the bond itself. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

8.2.2 The CMR shall deliver the required bonds to the Owner with the amendment intended to authorize the start of construction; i.e., The GMP Amendment, together with the Connecticut Department of Labor Wage and Workplace Standards Division Contractors Wage Certification form, fully completed and executed before the commencement of any Work at the Project site. The Wage Certification form is found at the Department of Labor website: [www.ctdol.state.ct.us/wgwkstnd/forms/contractwage](http://www.ctdol.state.ct.us/wgwkstnd/forms/contractwage).

The CMR shall comply and ensure that its subcontractors comply, with any and all posting and reporting requirements related to minimum wage rates and adjustments, as set forth above and in General Conditions Articles 9 and 10. The CMR shall familiarize itself with and, as required, comply with, and ensure that its Subcontractors comply with, Connecticut Department of Revenue Services guarantee bond requirements and regulations pertinent to nonresident contractors. The guarantee bond form and guidelines are located at the Department of Revenue Services website: [www.ct.gov/drs/lib/drs/forms/2005forms/salesandusetax/au-766](http://www.ct.gov/drs/lib/drs/forms/2005forms/salesandusetax/au-766).

## ARTICLE 9 MISCELLANEOUS PROVISIONS

### 9.1 DISPUTE RESOLUTION

9.1.1 Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in General Conditions Article 38 and in accordance with Connecticut General Statutes Section 4-61, as revised.

### 9.2 OTHER PROVISIONS

9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the General Conditions.

#### 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the CMR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and CMR and with the written approval of the Attorney General. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.2.2.1 In the event that any provision of this Agreement, shall be deemed to be invalid or unenforceable in any context, such invalidity or unenforceability shall affect only the particular provision in the particular context and shall not have any effect upon the remaining provisions of this Agreement, or the application of the challenged provision in any other context.

#### 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

General Conditions Article 17 shall apply to this Agreement.

9.2.3.1 The Drawings, Specifications and other documents prepared by the Architect, and copies (electronic and otherwise) thereof furnished to the CMR, are for use solely with respect to this Project. They are not to be used by the CMR, Subcontractors, Secondary Subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and the Architect. The CMR, Subcontractors, Secondary Subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the

Architect appropriate to and for use in the execution of their Work under the Contract Documents.

9.2.3.2 Notwithstanding anything herein to the contrary, it is expressly agreed that the CMR's Project Control Systems, including without limitation, its estimating, scheduling, purchasing, cost reporting and Project engineering systems and all modifications, additions or alterations thereto, are and shall remain the sole property of the CMR. Provided, however, ownership of the work product produced from such systems shall be transferred to Owner upon Owner's payment for same pursuant to the terms of the Contract Documents.

**9.2.4 GOVERNING LAW**

The Contract shall be governed by the laws of the State of Connecticut.

**9.2.5 ASSIGNMENT**

The Owner and CMR respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in General Conditions Article 34, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**9.2.6 CANCELLATION DUE TO FAILURE TO FUND**

Each payment obligation of the Owner created hereby is conditioned upon the availability of funds which are allocated for the payment of such an obligation. If funds are not allocated and available for the continuance of the CMR's services, this Agreement may be terminated by the Owner at the end of the period for which funds are available. The Owner shall notify the CMR at the earliest possible time if the CMR's services will or may be affected by a shortage of funds. No penalty shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section. This provision shall not be construed so as to permit the Owner to terminate this Agreement solely in order to acquire similar services from another CMR.

**9.2.7 INDEMNIFICATION**

To the fullest extent permitted by law the CMR shall defend, indemnify and hold harmless the Owner, Architect, Architect's Consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of the negligent acts or omissions of the CMR, its Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to any party or person described in General Conditions Article 35.

**9.2.8 SOVEREIGN IMMUNITY**

Notwithstanding any provisions to the contrary contained in this Agreement, it is agreed and understood that the State of Connecticut shall not be construed to have waived any right or defenses or sovereign immunity which it may have with respect to all matters arising out of this Agreement.

**ARTICLE 10 TERMINATION OR SUSPENSION**

**10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE**

10.1.1 Prior to commencement of the Construction Phase, the Owner may at its sole discretion and without cause terminate this Agreement as provided under General Conditions Article 33.

In the event the Owner terminates any or all of the services provided under this Agreement, the Owner will effect such termination by delivering to the CMR a written Notice of Termination specifying the extent to which performance of Work under the Agreement is terminated and the date upon which such termination shall be effective.

10.1.2 If the Owner terminates this Agreement pursuant to this Section 10.1 prior to commencement of the Construction Phase, the CMR shall be compensated:

.1 For Preconstruction Phase Services actually performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the

compensation set forth in Section 4.1 and shall not include, nor shall the CMR be entitled to, any anticipated overhead or profit on any work that was not executed.

.2 For any Work performed pursuant to one or more WAOs as described in, and in accordance with, Section 2.1.6.8 of this Agreement. In no event shall the CMR be entitled to payment of any anticipated overhead or profit for any Work that was not executed.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of The GMP Amendment, the Agreement may be terminated as provided in General Conditions Article 33. In no event shall the CMR be entitled to payment of any anticipated overhead or profit for any Work that was not executed.

10.3 SUSPENSION

The Work may be suspended by the Owner as provided in General Conditions Article 33.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

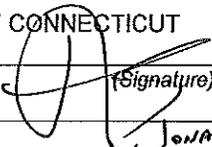
11.1 LIQUIDATED DAMAGES

The Owner and CMR agree that liquidated damages may be assessed at two distinct times: Substantial Completion and Acceptance as those dates are set forth in the GMP Amendment to this Agreement and in the dollar amounts set forth in Section 2.2.5 of this Agreement and in accordance with General Conditions Article 8. Notwithstanding the foregoing, it is understood that the tasks necessary to complete certain commissioning and related systems verifications and/or adjustments under the required seasonal testing conditions, may occur after the date of Acceptance. These activities will not be subject to the liquidated damages requirements provided under this Agreement. It is further understood that liquidated damages shall not be assessed if the failure to achieve Substantial Completion or Acceptance is based on reasons unrelated to fault on the part of the CMR.

11.2 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement shall forthwith be physically amended to make such insertion.

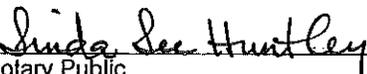
IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first written above.

STATE OF CONNECTICUT  
  
(Signature)  
By: JONATHAN P. HOLMES  
Insert Name  
Its Acting Director of the Department of  
Construction Services  
Date 7/22/11

Gilbane Building Company  
  
(Signature)  
By: STEVEN D. KONONCHIK  
(Printed name and title)  
Its V.P.  
Date 7.20.11

STATE OF CT )  
COUNTY OF HARTFORD ) ss.: Hartford, CT

On this the 20<sup>th</sup> day of July, 2011, before me, personally appeared Steven D. Kononchik who, acknowledged that he/she is the Vice President of Gilbane Building Company a Corporation, and that he/she as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Gilbane Building Company by himself/herself as Vice President.

  
Notary Public  
My Commission Expires: Aug. 31, 2011  
Commissioner of the Superior Court

STATE OF CONNECTICUT                    )  
                                                          )  
COUNTY OF HARTFORD                    )           ss.: Hartford

On this the 22nd day of July, 2011 before me, personally appeared Jonathan P. Holmes, Acting Deputy  
Commissioner of the State of Connecticut Department of Construction Services, known to me to be the person described  
in the foregoing instrument, and acknowledged that he/she executed the same in the capacity therein stated and for the  
purposes therein contained.

Robert M. Avery  
Notary Public Robert M. Avery  
My Commission Expires: \_\_\_\_\_  
Commissioner of the Superior Court

Approved as to form  
ATTORNEY GENERAL  
By: [Signature]  
Associate Attorney General  
Date: 8/9/11

**EXHIBIT A**

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC WORKS

**GUARANTEED MAXIMUM PRICE AMENDMENT  
To Agreement dated**

**Between the State of Connecticut and  
Gibbane Building Company**

For Project No. BI-RT-843 CMR

This amendment to the hereinafter-mentioned Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the State of Connecticut, hereinafter called the Owner, acting herein by its Commissioner of the Department of Public Works (DPW), under the provisions of Sections 4-8 and 4b-1 and 4b-103 of the Connecticut General Statutes, as revised, and

hereinafter called the CMR

WITNESSETH

Whereas the Owner and CMR entered into an Agreement on \_\_\_\_\_ in connection with the project entitled **Additions & Renovations to H. C. Wilcox Technical High School, Meriden, Connecticut**, Project No. BI-RT-843 CMR (the "Agreement"); and

Whereas, Section 4.1.1 of the Agreement provides compensation for preconstruction services in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_); and

*(Include if applicable)*

Whereas, DPW issued a Work Authorization Order on \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), which amount is factored into and made a part of the GMP set forth below; and

Whereas the Owner and CMR wish to establish a Guaranteed Maximum Price and Contract Time for the Work as contemplated by the Agreement and described in Section 2.2 thereof.

Now, therefore, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto do hereby agree to amend the Agreement (as it may have been previously amended to the date hereof) as follows:

1. The CMR's Guaranteed Maximum Price ("GMP") for the Work is: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).
2. The GMP is for the performance of the Work in accordance with the Contract Documents and items listed below, which items are compiled as the Guaranteed Maximum Price Proposal, attached hereto and by this reference made a part of this GMP Amendment. The GMP Proposal consists of the following items marked Exhibits A through \_\_\_ as follows:

Exhibit A Letter dated \_\_\_\_\_ from CMR to the Owner regarding this GMP Proposal. Said letter includes statements pertinent to the following:

- (a) Total GMP amount
- (b) Substantial Completion with confirmation of associated Liquidated Damages
- (c) Date of Acceptance with confirmation of associated Liquidated Damages
- (d) Formal recommendation for approval of the listed Trade Contractors
- (f) Debarred Trade Contractors
- (g) Trade Contractor's Licenses
- (h) CMR Insurance Certificates
- (i) CMR Bonds
- (j) Wage Certifications

- Exhibit B GMP Proposal Summary Sheet
- Exhibit C Assumptions and Clarifications made in preparing the GMP
- Exhibit D Allowance items
- Exhibit E Completion Schedule
- Exhibit F Alternate Prices (if applicable)

Exhibit G Unit Prices  
Exhibit H Small Business Enterprise and Minority Business Enterprise Summary

3. The date of Substantial Completion established by this GMP Amendment is: \_\_\_\_\_
4. The date of Acceptance established by this GMP Amendment is: \_\_\_\_\_
5. All of the terms and conditions of the Agreement as it may have been previously amended to the date hereof, not hereby amended by this GMP Amendment shall remain in full force and effect.
6. This GMP Amendment shall take effect upon its approval as to form as noted in Paragraph 7.
7. This GMP Amendment shall not be binding on the State unless and until it is approved as to form by the Attorney General of the State of Connecticut, the Deputy Attorney General of the State of Connecticut or an Associate Attorney General of the State of Connecticut.
8. Campaign Contribution Restriction Provision. For all State contracts as defined in Section 1(g)(l)(c) of Public Act 07-1 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 First Amendment expressly acknowledges receipt of the State Elections Enforcement Commission's notice ("Notice") advising state contractors, as defined in Public Act 07-1, of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of such Notice. The Notice issued by the State Elections Enforcement Commission, SEEC Form 11, is appended as "Attachment" and incorporated herein by reference.

IN WITNESS WHEREOF, the Owner, acting herein by the Commissioner of the Department of Public Works, and the CMR have executed this GMP Amendment.

Attested by:

State of Connecticut (the "Owner")

\_\_\_\_\_  
*Witness signature*  
Print name \_\_\_\_\_

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

Insert Name  
Its Commissioner  
of the Department of Public Works

\_\_\_\_\_  
*Witness signature*  
Print name \_\_\_\_\_

Date signed: \_\_\_\_\_

Attested by:

Gilbane Building Company

\_\_\_\_\_  
*Witness signature*  
Print name \_\_\_\_\_

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

Its \_\_\_\_\_, Duly Authorized

\_\_\_\_\_  
*Witness signature*  
Print name \_\_\_\_\_

Date signed: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney General

Date signed: \_\_\_\_\_

**EXHIBIT B**

**CMR - GMP Cost Allocation Guide:** The CMR - GMP Cost Allocation Guide is one of CMR RFP Contract Documents. The CMR RFP Contract Documents are complementary and if any discrepancy or conflict exists between the CMR RFP Contract Documents, then the CMR shall provide the greater quality or greater quantity of the more stringent requirements, unless the Owner otherwise agrees in writing.

Descriptions	Cost Allocation Categories			
	Cost of the Work		CMR Fee	Owner Paid Costs
	Direct Cost of The Work	CMR Construction Phase Services Cost		
<b>1.0 Direct Project Costs:</b>				
1.1 Wages of Construction Labor:	X			
1.2 Labor/Fringe Benefits & Burden:	X			
1.3 Subcontractor Costs:	X			
1.4 All Material / Equipment incorporated into the Completed Work, and including:	X			
1.4.1 Rental and Contractor Owned Equipment.	X			
1.4.2 Small Tools – Purchased.	X			
1.4.3 Small Tools – Rental.	X			
1.5 Warranty Work & Coordination:	X	X		
<b>2.0 Project On-Site Staff: (Cannot be passed down to Trade Contractors)</b>				
2.1 Project Executive:		X		
2.2 Project Manager(s):		X		
2.3 Project Superintendent(s):		X		
2.4 Sustainable Design Manager / Coordinator		X		
2.4 Field Engineer(s):		X		
2.5 MEP Specialists:		X		
2.6 Quality Control:		X		
2.7 Safety & E.E.O. Officer(s):		X		
2.8 Field Accountant:		X		
2.9 General Superintendent:		X		
2.10 Construction Scheduler:		X		
2.11 Administrative Assistant / Project Secretary:		X		
2.12 Chief Estimator:		X		
2.13 Electrical Estimator:		X		
2.14 Mechanical Estimator:		X		

SDIC  
 7-20-11  
 JEF  
 7/20/11

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Descriptions	Cost Allocation Categories			
	Cost of the Work		CMR Fee	Owner Paid Costs
	Direct Cost of The Work	CMR Construction Phase Services Cost		
<b>2.0 Project On-Site Staff (Continued):</b> <i>(Cannot be passed down to Trade Contractors)</i>				
2.15 Plumbing Estimator:		X		
2.16 Senior Architectural Estimator:		X		
2.17 Architectural Estimator:		X		
2.18 Staffing Requirements: NOTE: This listing of project on-site staff represents the type of staff services that shall be included in the CMR Proposers "Construction Phase Services" Lump Sum Cost. Three (3) CMR staff members; the Project Manager, Project Superintendent, and Field Engineer shall be full time on-site staff, which support the project needs through the full duration of construction. The Safety Officer shall be half time on-site staff during the <b>Eleven Hundred And Twenty-Five ( 1125 )</b> Calendar Day construction period. The Project Superintendent and the Project Engineer shall be full-time on-site staff during the ninety (90) day close out period. The additional indicated functions, as well as any other needed on-site staff, shall be provided to the staffing level that the CMR recommends as appropriate for this specific project's (No. BI-RT-843 CMR) needs. The CMR staffing chart as described in Section 00 24 19.2, Paragraph 10.2 "Cost Proposal Worksheet" shall indicate the on-site staffing level by month for the project duration and the subsequent ninety (90) day closeout period.		X		
2.19 Timekeeper/Checker:		X		
2.20 Fringe Benefits / Job Site Staff:		X		
2.21 Vacation Time/Job Site Staff:		X		
2.22 Sick Leave/Job Site Staff:		X		
2.23 Bonuses/Job Site Staff:			X	
2.24 Staff Travel & Out of Pocket Expenses:		X		
2.25 Staff Vehicles (purchase / lease cost, insurance, gas, maintenance, etc.)		X		
2.26 Professional Fee & Costs	X			
2.27 All minor and miscellaneous costs for field office small items and consumables including but not limited to copy paper, toner, digital camera storage cards, and ID badges:		X		

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Descriptions	Cost Allocation Categories			
	Cost of the Work		CMR Fee	Owner Paid Costs
	Direct Cost of The Work	CMR Construction Phase Services Cost		
<b>3.0 Temporary Support Facilities &amp; Controls</b> <i>(Cannot be passed down to Trade Contractors)</i>				
3.1 Set Up Field Office:		X		
3.2 Field Office Trailers and/or Field Office Rental:		X		
3.3 Furniture for Field Office:		X		
3.4 Stationery & Supplies:		X		
3.5 Postage/UPS/FedEx & Shipping:		X		
3.6 Field Office Equipment:		X		
3.7 Field Computer Equipment:		X		
3.8 Field Office Fax Machine:		X		
3.9 Field Photocopying:		X		
3.10 Field Office Utilities		X		
3.11 Field Drinking Water/Coffee		X		
3.12 Data Processing/Computer Time - Project Support & DPW Prolog:		X		
3.13 Data Processing/Computer Business Support:		X		
3.14 Office, Phone & PC Service for Owner's Rep. & DPW Project Manager:		X		
3.15 Field First Aid Supplies/Fire Extinguishers:		X		
3.16 Field Office Maintenance & Repair:		X		
3.17 Staff Small Gear Account:		X		
3.18 Field Office Security System, if required:		X		
3.19 Project Sign:		X		
3.20 Records Storage:		X		
3.21 Temporary Toilets:		X		
3.22 Cleaning & Maintenance of Temporary Toilets:		X		
3.23 Temporary Wayfinder Signs		X		
<b>4.0 Temporary Utilities:</b> <i>(Cannot be passed down to Trade Contractors)</i>				
4.1 Field Telephone Equipment: Electric Power, Sewer, Gas, Water	X			
4.2 Field Office Telephone Line Monthly Charges:		X		

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Descriptions	Cost Allocation Categories			
	Cost of the Work		CMR Fee	Owner Paid Costs
	Direct Cost of The Work	CMR Construction Phase Services Cost		
<b>4.0 Temporary Utilities: (Continued):</b> <i>(Cannot be passed down to Trade Contractors)</i>				
4.3 Field Communication Equipment (Radios):		X		
4.4 Rodent and Pest Control:		X		
<b>5.0 Misc Project Costs:</b>				
5.1 Building Permit Fees:				X
5.2 Premium - Liability Insurance: for the CMR		X		
5.3 Premium - Builder's Risk Insurance:		X		
5.4 Premium - CMR Payment & Performance Bond:		X		
5.5 Initial Soils Investigation:				X
5.6 Video Taping of Training; Mud/Dust Control; Trash Chutes, Hoppers; Winter Protection, General Weather Protection; Snow Removal; Construction Waste Management & Disposal	X	X		
5.7 Field Engineering Services/Construction Layout:	X			
5.8 Printing of Construction Documents (Drawings and Specifications):	X	X		
5.9 As-Built Drawings & Monthly Updates:	X	X		
5.10 Testing & Inspections for Special Inspections:				X
5.11 Re-Tests and Re-Inspections for all Tests and Inspections Which Fail:	X	X		
5.12 Facilities, Labor and Materials Necessary to Coordinate and Perform Operational Tests and Checkout of the Work:	X	X		
5.13 Corrective Work for work nonconforming to specifications and/or for work damaged by CMR or Subcontractors: <b>NOTE:</b> While Corrective Work may in no event be an Owner's Cost, the CMR may seek to recover relevant costs from the Subcontractors and failing recovery through the Subcontractors may utilize the CMR Contingency pursuant to, and in compliance with, Section 2.2.3.8 of the CMR Agreement.		X		
5.14 Architectural / Engineering Fees:				X
5.15 Peer Review, if required:				X
5.16 Municipal, State or Federal bonds:				X
5.17 Commissioning Agent (Cx):				X
5.18 Commissioning (Cx) Coordination:	X	X		

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Descriptions	Cost Allocation Categories			
	Cost of the Work		CMR Fee	Owner Paid Costs
	Direct Cost of The Work	CMR Construction Phase Services Cost		
<b>5.0 Misc Project Costs (Continued):</b>				
5.19 "RediCheck" Services:				X
5.20 Preconstruction Survey of Existing Surrounding Properties:	X			
5.21 CPM Schedule for Base Schedule and Monthly Updates:		X		
5.22 Fee - Stormwater Permit:	X			
<b>6.0 CMR's Main Office Staff:</b>				
6.1 Corporate Executives:			X	
6.2 Principle In Charge;			X	
6.3 Estimating Cost Engineering:			X	
6.4 Value Engineering:			X	
6.5 Scheduling;			X	
6.6 Drafting and Engineering:			X	
6.7 Purchasing & Contracts:			X	
6.8 Accounting & Bookkeeping:			X	
6.9 Safety & E.E.O. Officers:			X	
6.10 Secretarial:			X	
6.11 Clerk/Typist:			X	
6.12 Computer / Data Processing @ Main Office:			X	
6.13 Professional Expenses (General Services/Pertaining to Project):			X	
6.14 Travel and Subsistence:			X	
6.15 Fringe Benefits and Burden:			X	
6.16 Vacation Time Main Office:			X	
6.17 Bonuses/Main Office:			X	
6.18 See also CMR Agreement - 5.2.1 GMP:			X	

END

Exhibit B

Section 00 52 23

CMR - GMP Cost Allocation Guide

## EXHIBIT C

General Conditions of the Contract for Construction  
For Construction Manager At Risk (CMR)  
Department of Public Works  
State of Connecticut

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**ARTICLE 1**  
**DEFINITIONS**

WHENEVER THE FOLLOWING TERMS, OR PRONOUNS IN PLACE OF THEM, ARE USED THE INTENT AND MEANING SHALL BE AS FOLLOWS:

- 1.1 ACCEPTANCE OF THE WORK:** The Owner's acknowledgement of the Acceptance of the Work from the CMR upon issuance of a Certificate of Acceptance by the Owner's Representative and Architect or Engineer that all Work has been completed, with the exception of heating and cooling systems requiring Seasonal Testing, and Approved Deferred Functional Performance Testing, to Certify Functional Completion of those systems. Owner's prior written approval shall be required for any and all such exceptions.
- 1.2 ADDITIONAL OR DELETED WORK:** Work required by the Department that, in the judgment of the Commissioner, involves any addition to, deduction from, or modification of the Work required by the Contract Documents.
- 1.3 AGENCY:** The (User) Agency of the State of Connecticut having administrative authority of the facility in which the Work is being performed.
- 1.4 APPLICATION FOR PAYMENT, PROGRESS PAYMENT OR REQUISITION:** Construction Manager's certified request for payment for completed portions of the Work and, if the Contract so provides, for materials or equipment suitably stored pending their incorporation into the Work.
- 1.5 APPROVED DEFERRED FUNCTIONAL PERFORMANCE TESTING.** Execution of checklists and Functional Performance Testing that is delayed only upon written request by the CMR and the written approval of the DPW PM for any required check or test that cannot be completed including, but not limited to, the building's structure, required occupancy conditions or other deficiency.
- 1.6 ARCHITECT OR ENGINEER:** A sole proprietor, partnership, firm, corporation or other business organization under Contract with the Owner, commissioned to prepare Contract Drawings and Specifications, to advise the Owner and in certain cases, to perform regular inspections during construction and when authorized to perform the duties of the Owner's Representative.
- 1.7 AS-BUILT DRAWINGS:** Construction Drawings revised by the CMR to show all significant Modifications made during the construction process.
- 1.8 BID BOND:** Form of Bid Security executed by the Bidder as Principal and by a Surety to guarantee that the Bidder will enter into a Contract within a specified time and furnish any required bond as mandated by Connecticut General Statutes Section 4b-92.
- 1.9 BIDDER:** A sole proprietor, partnership, firm, corporation or other business organization submitting a Bid on the Bid Proposal Form for the Work contemplated, including Work to be performed under any Subcontract with the CMR.
- 1.10 BIDDING DOCUMENTS:** Collectively, the Bidding Requirements and the proposed Contract Documents, including any addenda issued prior to receipt of Bids, relevant to competitive bidding for Subcontracts for designated portions of the Work.
- 1.11 BID OR BID PROPOSAL FORM:** A complete and duly signed proposal to perform Work (or a designated portion thereof) for a stipulated sum submitted in accordance with the Bidding Documents.
- 1.12 BID SECURITY:** Certified check or Bid Bond submitted with Bid Proposal Form, which provides that the Bidder, if awarded a Subcontract, will execute such Subcontract in accordance with the requirements of the Bidding Documents, and specified time and furnish any required bond as mandated by Connecticut General Statutes Section 4b-92, as applicable to the subcontract amount.
- 1.13 BUILDER'S RISK INSURANCE:** Builders Risk Insurance insures a building under construction. The contractor normally purchases a builders risk policy to cover their materials and the property under construction until it is claimed by the owner. Builders Risk policies cover new construction or remodeling projects. Builders risk policies are project specific and are purchased in addition to a contractor's general liability insurance.
- 1.14 CALENDAR DAY:** Each Day in a calendar including weekends and holidays.
- 1.15 CASH ALLOWANCE:** An amount established in the Contract Documents for inclusion in the Contract Sum to cover the cost of prescribed items not specified in detail, and as shown in the Allowance Schedule, which shall be factored into and become a part of the Guaranteed Maximum Price.
- 1.16 CERTIFICATE OF ACCEPTANCE:** A document issued by the Owner to the CMR stating that all Work, excepting those items previously agreed to and approved by the Owner, has been completed and accepted by the Owner.
- 1.17 CERTIFICATE OF COMPLIANCE:** A document stating that for the portion of the Project completed, either the design portion or the construction portion, has been performed in substantial compliance with all applicable building codes.
- 1.18 CERTIFICATE OF OCCUPANCY:** Document issued by the authority having jurisdiction certifying that all or a designated portion of a building is approved for its designated use.
- 1.19 CERTIFICATE OF FUNCTIONAL COMPLETION:** A document issued by the Owner to the CMR when all

remaining Testing, Adjusting and Balancing (TAB) and commissioning responsibilities of the Construction Manager and their subcontractors (except for seasonal or Approved Deferred Functional Performance Testing and controls training), have been certified as complete by the Owner's Commissioning Agent (CxA).

**1.20 CERTIFICATE OF SUBSTANTIAL COMPLETION:** A document prepared by the Architect or Engineer and approved by the Owner on the basis of an inspection stating:

1.20.1 that the Work, or a designated portion thereof, except for Functional Testing, Approved Deferred Performance Functional Testing, and controls training, is determined to be Substantially Complete;

1.20.2 the date of Substantial Completion;

1.20.3 the responsibilities of the Owner and the CMR for security, maintenance, heat, utilities, damage to the Work and insurance; and

1.20.4 the time within which the CMR shall complete the remaining Work.

**1.21 CHANGE ORDER:** Written authorization signed by the Owner, authorizing a modification in the Work, an adjustment in the Contract Sum, or an adjustment in the Contract Time.

**1.22 COMMERCIAL GENERAL LIABILITY INSURANCE:** Including contractual liability, products/completed operations, broad form property damage and independent Contractors. Coverage for hazards of explosion, collapse and underground (X-C-U) and for asbestos abatement when applicable to this Contract, must also be included when applicable to the Work to be performed. The State of Connecticut, the Department of Public Works, and their respective officers, agents, and employees shall be named as an Additional Insured. This coverage shall be provided on a primary basis and include:

1.22.1 **Asbestos Abatement:** When applicable includes but is not limited to removal and/or abatement of: pipe and boiler insulation, sprayed on fireproofing, troweled on acoustical plaster, floor tile and mastic, floor linoleum, transite shingles, roofing materials, wall and ceiling plaster, ceiling tiles, and gasket materials.

1.22.2 **"X" (Explosion Damage):** Damage to property caused by blasting or explosions.

1.22.3 **"C" (Collapse Damage):** Collapse includes structural property damage and property damage to any other property rising out of grading of land, excavating, burrowing, filling or backfilling, tunneling, pile driving, or coffer dam or caisson work, or moving, shoring, underpinning, razing or demolishing any building or structure.

1.22.4 **"U" (Underground Damage):** Underground damage includes damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any similar property beneath the surface of the ground or water caused by and occurring during the use of mechanical equipment for the purpose of

grading land, paving, excavating, drilling, burrowing, filling, backfilling, or pile driving.

**1.23 COMMISSIONER:** The State of Connecticut, Department of Public Works (DPW) Commissioner acting directly or through specifically authorized DPW personnel or agent(s) having authority to perform duties defined in Article 25, "All Work Subject to Control of the Commissioner".

**1.24 COMMISSIONING AGENT (CxA):** An entity identified by the Owner who leads, plans, schedules, and coordinates the commissioning team to implement the Commissioning Process.

**1.25 COMMISSIONING (Cx):** A systematic process of ensuring that all building systems perform interactively according to the contract documents, the design intent, and the building's operational needs. Commissioning involves three phases: pre-design, construction, and warranty.

**1.26 COMMISSIONING (Cx) PLAN:** A plan that includes a list of all equipment to be commissioned, delineation of roles for each of the primary commissioning participants, and details on the scope, timeline, and deliverables throughout the commissioning process.

**1.27 CONSTRUCTION CHANGE DIRECTIVE:** A written authorization signed by the Owner, directing a modification in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum, Contract Time or both. Any Construction Change Directive effecting an adjustment to the Contract Sum or Contract Time shall result in a Change Order.

**1.28 CONSTRUCTION DOCUMENTS:** Drawings, and Specifications, Signed and sealed by the Architect and Engineers that set forth in detail the requirements for the construction of the Project and have received a Building Permit from the State of Connecticut Department of Public Safety or the DPW equivalent.

**1.29 CONSTRUCTION MANAGER AT RISK (CMR):** A sole proprietor, partnership, firm or Corporation, under a construction manager at risk agreement with the Department of Public Works. The CMR is responsible for the performance of the Work under the Contract Documents. Whenever the term "Contractor" is used in these General Conditions and the pertinent Contract Documents, it may be understood to mean Construction Manager at Risk ("CMR") as defined herein and Identified in the Construction Manager at Risk Agreement between Owner and CMR or, if appropriate, Contractor may refer to a Subcontractor or Sub-subcontractor for the Work.

**1.30 CONSTRUCTION PHASE START DATE OR DATE OF COMMENCEMENT OF THE WORK:** The date, specified by the Owner in the Notice to Proceed which date shall be contingent upon Owner's acceptance of CMR's Guaranteed Maximum Price pursuant to Article 1 Definitions herein.

**1.31 CONTRACT DOCUMENTS OR CONTRACT:**

The Agreement between Owner and CMR (the "CMR Agreement"), Conditions of the Contract (General Conditions, Supplementary Conditions, General Requirements and other Conditions), Drawings, Specifications, and any addenda the Request For Proposals, the CMR's Proposal and any other Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued thereto after execution of the Contract, all of which shall constitute the Contract. When the words "Contract Document" or "Contract" are used in these General Conditions, they may, as appropriate, refer to the documents, Drawings, Specifications and Addenda relevant to bid packages competitively bid and awarded for Subcontracts with the CMR for designated portions of the Work, pursuant to the CMR Agreement.

**1.32 CONTRACT SUM:** The sum stated in the Contract, which is the total amount payable by the Owner to the CMR for performance of the Work under the Contract Documents. When used in the CMR Agreement, the Contract Sum shall mean the Guaranteed Maximum Price as defined in Article 1 "Definitions" herein.

**1.33 CONTRACT TIME:** The period of time allotted in the Contract Documents for Substantial Completion of the Work, including authorized adjustments thereto. The Contract Time is the sum of all Working Days and Non-Working Days as further defined herein and specified in the Contract Documents.

**1.34 COST OF THE WORK:** Those costs necessarily incurred by the CMR in the proper performance of the Work, including the CMR Construction Phase Services Costs. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior approval of the Owner.

**1.35 DAY:** Whenever the word Day is used it shall be understood to mean Calendar Day stated in the Bidding Documents, unless stated otherwise.

**1.36 DEPARTMENT OF PUBLIC WORKS (DPW) PROJECT MANAGER:** The individual employed by the Owner, designated and authorized by the Commissioner, to be responsible for the overall management and oversight of the Project, and to represent the (User) Agency.

**1.37 DIESEL VEHICLE EMISSIONS CONTROL:** The reduction of air pollution emissions from diesel powered vehicles through the use of diesel engine emission control technologies.

**1.38 EQUAL(S):** Any deviation from the Specification which is defined as follows: A replacement for the specified material, device, procedure, equipment, etc., which is recognized and accepted as substantially equal to the first listed manufacturer or first listed procedure specified after review by the Architect/Engineer, and may be rejected or approved at the sole discretion of the Owner. All equals must be substantially equivalent to the first manufacturer or first procedure listed in the Specifications with reference to all of

the following areas: the substance and function considering quality, workmanship, economy of operation, durability, and suitability for purposes intended; size, rating, and cost. The equal does not constitute a modification in the scope of Work, the Schedule, or Architect/Engineer's design intent of the specified material, device, procedure, equipment, etc.

**1.39 FINAL INSPECTION:** Review of the Work by the Architect or Engineer and Owner to determine whether Acceptance of the Work has been achieved.

**1.40 FINAL PAYMENT:** The last payment made by the Owner to the CMR, made after notice of the Acceptance of the Work. Payment shall include the entire unpaid balance of the Contract Sum as adjusted by modifications.

**1.41 FUNCTIONAL COMPLETION:** Functional Completion is when all remaining TAB (Testing, Adjusting, Balancing) and Commissioning responsibilities of the CMR and their subcontractors (except for Seasonal and/or Approved Deferred Functional Performance Testing and controls training), have been functionally certified as complete by the Owner's Commissioning Authority (CxA) and the Certificate of Functional Completion has been issued.

**1.42 FUNCTIONAL PERFORMANCE TEST (FT) PROCESS:** A documented testing of system parameters, under actual or simulated operating conditions. Functional testing is the dynamic testing of systems (rather than just components).

**1.43 GENERAL CONDITIONS:** The part of the Contract Documents entitled "General Conditions of the Contract for Construction Manager at Risk", part of Division 00 of the Specifications.

**1.44 GENERAL REQUIREMENTS:** That part of the Contract Documents entitled General Requirements, which is Division 01, "General Requirements", of the Specifications.

**1.45 GUARANTEE:** See Warranty.

**1.46 GUARANTEED MAXIMUM PRICE (GMP):** GMP shall mean the sum of the Cost of the Work as developed by the CMR and the CMR Fee for the construction and post-construction phase work, including all sales, use and consumer and other taxes required by law; all other fees, general conditions, bonds, required permits and insurance; tools, construction machinery, and temporary facilities required at the construction site; and all other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated in the Work. If the Owner and CMR cannot agree on a GMP, the Owner may terminate the Agreement and proceed with the construction phase through other means, including but not limited to a different CMR or different project delivery method.

**1.47 INLAND MARINE INSURANCE (TRANSPORTATION INSURANCE):** Inland marine insurance (transportation insurance) coverage for (1) property damage or destruction of an Insured's property and (2) liability exposure of an Insured for damage or destruction of someone else's property under his or her care, custody, or control. The Insured (shipper) needs this insurance because the carrier (who can also be the Insured and purchase inland marine insurance) may be found not at fault for damage to a property; or the carrier may not have any insurance or adequate insurance. Perils covered include fire, lightning, windstorm, flood, earthquake, landslide, theft, collision, derailment, overturn of the transporting vehicle, and collapse of bridges.

**1.48 LIQUIDATED DAMAGES:** A sum established in a Contract, usually as a fixed sum per Day, as the predetermined measure of damages to be paid to the Owner due to the CMR's failure to complete the Work within the Contract Time.

**1.49 LUMP SUM:** An item or category priced as a whole rather than broken down into its elements.

**1.50 MOBILE SOURCE:** A source designed or constructed to move from one location to another during normal operation except portable equipment and includes, but is not limited to, automobiles, buses, trucks, tractors, earth moving equipment, hoists, cranes, aircraft, locomotives operating on rails, vessels for transportation on water, lawnmowers, and other small home appliances.

**1.51 NON-WORKING DAYS:** All Saturdays, Sundays, twelve (12) Legal State Holidays, and any other Days identified in the Contract Documents or any Subcontracts held by the CMR relevant to its performance of the Work that the CMR or Subcontractors, as appropriate, are not permitted to execute the Work. The restriction of Non-Working Days may be suspended upon the approval or direction of the Commissioner.

**1.52 NOTICE TO BIDDER:** A notice contained in the Bidding Documents informing prospective Bidders of the opportunity to submit Bids and setting forth the procedures doing so.

**1.53 NOTICE TO PROCEED:** Written notice, issued by the Commissioner or the Commissioner's authorized representative, to the CMR authorizing the CMR to proceed with the Work and establishing the date for commencement of the Contract Time.

**1.54 OWNER OR DEPARTMENT:** The State of Connecticut, Department of Public Works acting through its Commissioner or specifically authorized Department personnel or agent.

**1.55 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE:** Liability coverage for negligent acts of contractors and subcontractors hired by the Insured. This

specialized coverage is written for a specific project and protects the owner, who is responsible for actions of contractors on the project.

**1.56 OWNER'S REPRESENTATIVE:** A sole proprietor, partnership, firm, corporation or other business organization, under Contract or employed by the Owner authorized to oversee the fulfillment of the requirements of the Contract Documents.

**1.57 OVERHEAD:** Indirect costs, including but not limited to: supervision (any position over the foreman) and transportation vehicles (including fuel) for such supervisors; and communication equipment; field and home office expenses; change order coordination; as-built drawings; liability insurance; and small tools and consumables.

**1.58 PAYMENT, BOND, LABOR BOND OR MATERIAL BOND:** A bond required to be furnished by the party performing the Contract for the protection of persons supplying labor or materials in the prosecution of the work provided for in the Contract for the use of each such person, in accordance with the threshold amounts and requirements set forth in Connecticut General Statutes Section 49-41.

**1.59 PERFORMANCE BOND OR SURETY BOND:** A bond furnished by the party performing the Contract and such party's surety, ensuring performance of the work provided for in the Contract, in accordance with the threshold amounts and requirements set forth in Connecticut General Statutes Section 49-41.

**1.60 PERFORMANCE SPECIFICATION:** A description of the desired results or performance of a product, material, assembly, procedure, or a piece of equipment with criteria for identifying the standard.

**1.61 PLANS OR DRAWINGS:** All Drawings or reproductions of Drawings pertaining to the construction of the Work contemplated and its appurtenances.

**1.62 PRE-COMMISSIONING CHECKLISTS:** Installation and start-up items to be completed by the appropriate party prior to operational verification through Functional Testing.

**1.63 PROFESSIONAL LIABILITY INSURANCE: (Errors and Omissions Insurance):** Insurance coverage generally available to the various professions that require protection for negligent acts and/or omissions resulting in bodily injury, personal injury, and/or property damage liability to a client.

**1.64 PROJECT:** The total construction of which the Work performed under the Contract Documents may be the whole or a part.

**1.65 PROJECT ELEMENTS:** The permanent structures, site improvements and other permanent developments at the site specifically defined and specified in the Contract Documents requiring construction and services, which construction and services may constitute the whole or part of the Project.

- 1.66 PROJECT MANUAL:** The set of documents assembled for the Work which includes, but is not limited to, Contract Documents, Bidding Requirements, Sample Forms, Conditions of the Contract, General Requirements, and the Specifications.
- 1.67 PROPRIETARY SPECIFICATION:** A specification that describes a product, procedure, function, material, assembly, or piece of equipment by trade name and/or by naming the manufacturer(s) or manufacturer's procedure, exact model number, item, etc., of those products acceptable to the Owner.
- 1.68 REQUEST FOR PROPOSALS and CMR's PROPOSAL:** The document issued by the Owner to solicit proposals for a Construction Manager at Risk for the Project and the CMR's document submitted in response to such solicitation.
- 1.69 REQUEST FOR QUALIFICATIONS:** The document issued by the Owner to request submittals of qualifications by completing and submitting a Qualification Based Selection ("QBS") Booklet for evaluation by the Owner.
- 1.70 RETAINAGE:** A percentage of each Application for Payment and a percentage of the total Contract Sum retained by the Owner.
- 1.71 SCHEDULE:** A Critical Path Method (CPM) as required by Section 01 32 16.13 "CPM Schedules" - CMR of Division 01 "General Requirements", showing all events expected to occur and operations to be performed and indicating the Contract Time, start dates, durations and finish dates as well as Substantial Completion and Acceptance of the Work, rendered in a form permitting determination of the optimum sequence and duration of each operation.
- 1.72 SCHEDULE OF VALUES:** A document furnished by the CMR to the Architect or Engineer and Owner stating the portions of the Contract Sum allocated to the various portions of the Work, which is to be used for reviewing the CMR's Applications for Payment.
- 1.73 SEASONAL COMMISSIONING TESTS:** Functional Tests that are deferred until the system(s) will experience conditions closer to their intended design conditions.
- 1.74 SENSITIVE RECEPTOR SITES:** Areas where concentrations of diesel emissions may be harmful to sensitive populations, including, but not limited to, hospitals, school and university buildings being occupied during a student semester, residential structures, daycare facilities, elderly housing, and convalescent facilities.
- 1.75 SHOP DRAWINGS:** Drawings that illustrate construction, materials, dimensions, installation, and other pertinent information for the incorporation of an element or item into the construction as detailed Contract Documents.
- 1.76 SPECIFICATIONS:** The description, provisions and other requirements pertaining to the method and manner of performing the Work and/or to the quantities and quality of materials to be furnished under the Contract.
- 1.77 SUBCONTRACTOR:**  
A Subcontractor is a person or entity who has a direct contract with the CMR to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
- 1.78 SUB-SUBCONTRACTOR:** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- 1.79 SUBMITTALS:** Documents including, but not limited to, samples, manufacturer's data, Shop Drawing, or other such items submitted to the Owner and Architect or Engineer by the CMR for the purpose of approval or other action, as required by the Contract Documents.
- 1.80 SUBSTANTIAL COMPLETION:** The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, the determination of which shall be represented by the issuance by the Owner of a Certificate of Substantial Completion.
- 1.81 SUBSTITUTION:** Any deviation from the specified requirements, which is defined as follows: A replacement for the specified material, device, procedure, equipment, etc., which is not recognized or accepted as equal to the first manufacturer or procedure listed in the Specification after review by the Architect/Engineer, and may be rejected or approved by the Owner. The Substitution is not equal to the specified requirement in comparison to the first manufacturer or first procedure listed in the Specifications in one or more of the following areas: the substance and function considering quality, workmanship, economy of operation, durability, and suitability for purposes intended; size, cost, and rating. The Substitution constitutes a modification in the scope of Work, the Schedule, or the Architect/Engineer's design intent of the specified material, device, procedure, equipment, etc.
- 1.82 SUPERINTENDENT:** The CMR's representative at the site who is responsible for continuous field supervision, coordination, in, completion of the Work, and, unless another person is designated in writing by the CMR to the Owner and the Owner's Representative, for the prevention of accidents.
- 1.83 THRESHOLD LIMIT BUILDING:** Any proposed (new) structures or additions as defined by the Connecticut General Statutes Section 29-276b.

CONDITIONS OF WORK

**1.84 UMBRELLA LIABILITY INSURANCE:** Umbrella liability insurance provides additional coverage when the limits of insurance on an underlying policy or several different underlying policies are exceeded. The limits provided by this policy will not respond to the loss until after some specified underlying policies limits are spent, exhausted, or otherwise not available.

**1.85 UNIT PRICE:** The monetary value stated by the Owner or the CMR, as a price per unit of measurement for materials or services as described in the Contract Documents and/or Bidding Documents.

**1.86 VALUABLE PAPER AND RECORD LOSS INSURANCE:** An "all risk" insurance coverage that covers the cost of research to reconstruct damaged records, as well as the cost of new paper and transcription. The term "valuable papers" refers to written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts.

**1.87 WARRANTY:** A written, legally enforceable assurance of specified quality or performance of a product or Work or of the duration of satisfactory performance.

**1.88 WORK:** The construction and services required by the Contract Documents, and including all labor, materials, equipment and services provided or to be provided by the CMR to fulfill the CMR's obligations. The Work may constitute the whole or a part of the Project whether on or off the site of the Project, and including all labor, materials, equipment and services provided or to be provided by Subcontractors, Sub-subcontractors, material suppliers or any other entity for whom the CMR is responsible under or pursuant to the Contract Documents.

**1.89 WORK AUTHORIZATION ORDER (WAO):** An authorization by the Owner to the CMR to perform the services and scope of work described in the WAO and for the total amount set forth in the WAO, which amount shall be factored into the GMP. The total amount shall be determined as previously bid and awarded by the CMR as part of its bidding and award of subcontracts. The services and scope of work shall be for site preparation and demolition as provided under Connecticut General Statutes Section 4b-103. A WAO shall not constitute: (i) a Notice to Proceed or the start of the Construction Phase of the CMR Agreement; (ii) the start of days to Substantial Completion or any increase in general conditions costs as set forth in the CMR Agreement; (iii) evidence of any approval or funding of the GMP.

**1.90 WORKERS COMPENSATION / EMPLOYER LIABILITY INSURANCE:** Coverage providing four types of benefits (medical care, death, disability, rehabilitation) for employee job-related injuries or diseases as a matter of right (without regard to fault).

**2.1** The CMR shall carefully examine and study the conditions under which the Work is to be performed and the site of the Work, and compare the Contract Documents with each other and to information furnished by the Owner including but not limited to the Plans and Specifications, the form of the Contract, General Conditions, Supplementary Conditions, General Requirements, Bonds and all other Contract Documents associated with the Work.

**2.2** The CMR shall report to the Construction Administrator all errors, inconsistencies or omissions discovered. The CMR shall not be liable to the Owner for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the CMR recognized such errors, inconsistencies or omission and failed to report it to the Owner's Representative. If the CMR performs any actions or construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without notice to the Owner's Representative, the CMR shall assume responsibility for such performance and related costs for the correction and shall not be allowed to submit any claim related to error, inconsistencies or omission.

**2.3** The CMR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CMR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner's Representative at once; and it will be assumed that the CMR has been satisfied as to all requirements of the Contract Documents. Any deterrent conditions at the site of the Work which are obvious and apparent upon examination of the site but are not indicated on the Plans shall be corrected by the CMR without additional compensation.

**2.4** In performing the Work, the CMR must employ such methods or means as will not cause any interruption of or interference with the Work of any other Contractor, nor any inordinate disruption with the normal routine of the Owner, institution or Agency operating at the site.

**2.5** No claims for additional compensation will be considered when additional costs result from conditions made known to, discovered by, or which should have been discovered by, the CMR prior to Contract signing.

**2.6** All Communications from the CMR concerning proposed changes to the Contract Sum, Contract Time, or Work shall be in writing.

2.7 The CMR shall be responsible for the performance of the Work in accordance with the Contract Documents and approved Submittals pursuant to Article 5 "Submittals, Product Data, Shop Drawings, and Samples".

**ARTICLE 3**  
**CORRELATION OF CONTRACT DOCUMENTS**

3.1 The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Where discrepancies of conflict occur in the Contract Documents the following order of precedence shall be utilized:

3.1.1 Amendments and addenda shall take precedence over previously issued Contract Documents.

3.1.2 The General Conditions take precedence over the General Requirements.

3.1.3 The Specifications shall take precedence over the Plans.

3.1.4 Stated dimensions shall take precedence over scaled dimensions.

3.1.5 Large-scale detail Drawings shall take precedence over small-scale Drawings.

3.1.6 The Schedules contained in the Contract Documents shall take precedence over other data on the Plans.

3.2 Neither party to the Contract shall take advantage of any obvious error or apparent discrepancy in the Contract Documents. The CMR shall give immediate written notification of any error or discrepancy discovered to the Owner's Representative, who shall take the necessary actions to obtain such corrections and interpretations as may be deemed necessary for the completion of the Work in a satisfactory and acceptable manner. The CMR shall then promptly proceed under the direction of the Owner and the provisions of Article 13 Compensation for Changes in the Work. The CMR's failure to provide immediate notice shall mean the CMR will not be entitled to any additional compensation, either monetary or Contract Time adjustment, with respect to any discrepancy.

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

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

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

**ARTICLE 4**  
**COMMENCEMENT AND PROGRESS OF WORK**

4.1 The Work shall start upon the date given in the Notice to Proceed. The CMR shall complete all the Work necessary for Final Payment, including but not limited to Substantial Completion, Contract close-out, Functional Completion, Acceptance of the Work, punchlist Work, training and submission of Record Documents, manuals, Guarantees and Warranties as stated in the Contract Documents.

4.2 Time is of the essence with respect to the Contract Time. By executing the Contract, the CMR confirms and agrees that the Contract Time is a reasonable period to perform the Work. The CMR shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The CMR may, at their discretion, plan to complete the Work and achieve Substantial Completion in less time than the Contract Time.

4.3 The CMR's early completion Schedule notwithstanding, the Owner reserves the right to order Modifications to the Work in accordance with Article 13 Compensation for Changes in the Work at any time during the Contract Time.

4.4 The CMR shall not be entitled to costs for delay due to Owner ordered Modifications or any other circumstances for the period of time between the CMR's elected early completion and the end of the Contract Time. Such costs include, but are not limited to, extended home office costs, field office costs, or supervisory and management costs incurred in performance of the Work. Early completion of the Work shall not merit additional compensation.

4.5 If the CMR is delayed at any time in the progress of Work by acts of God, such as fire or flood or any action, injunction or stop order issued by any court, judge or officer of the court or any other court action beyond the Owner's control, then the Contract Time may be extended by Change Order for such reasonable time as demonstrated by the CMR's Schedule and as the Owner may determine that such event has delayed the Work. In any event, the granting of an extension of time shall be solely within the discretion of the Owner.

4.6 Except as otherwise may be provided herein, extensions of time shall be the CMR's sole remedy for such delay. No payment or compensation of any kind shall be made to the CMR for damages because of hindrance in the orderly progress of Work caused by the aforesaid causes.

4.7 The CMR acknowledges that the Contract amount includes and anticipates any and all delays, whether avoidable or unavoidable, from said orders, which may issue from any court, judge, court officer, or act of God, and that such delays shall not, under any circumstances, be construed as compensable delays.

4.8 Any extension of the Contract Time shall be by Change Order pursuant to Article 13 Compensation for Changes in the Work.

4.9 The CMR shall employ a competent project manager who shall represent the CMR. Communications given to the project manager shall be binding as if given to the CMR. The project manager will be employed full time on the Project and be located and assigned to the Project site during and for the duration of the Work.

4.10 The CMR shall employ a competent Superintendent and necessary assistants who will be in attendance at the project site during the performance of the Work.

4.11 Upon execution of the Contract, materials may be purchased. No material escalation costs will be valid or compensable unless the Owner directs, in writing, a delay in the procurement.

**ARTICLE 5  
SUBMITTALS, PRODUCT DATA, SHOP DRAWINGS,  
AND SAMPLES**

5.1 The CMR shall review, approve, and submit to the Owner's Representative all Submittals including but not limited to, product data, Shop Drawings, and samples, with such promptness as to cause no delay in the Work.

5.2 Correction or approval of such Submittals, Shop Drawings, product data and samples will be made with reasonable promptness by the Architect or Engineer. Approval will be general only and shall not relieve the CMR from responsibility for errors in dimensions, for construction and field coordination of the Work or for any departure from the Contract Documents, unless such departure has received the Owner's written approval.

5.3 No Work governed by such Shop Drawings, Schedules or samples shall be fabricated, delivered or installed until approved by the Architect or Engineer.

5.4 No damages for delays or time extensions will be granted, even if approvals deviate from the approved Schedule.

**ARTICLE 6  
SEPARATE CONTRACTS**

6.1 The Owner reserves the right to perform Work in connection with the Contract with the Owner's own forces, or to let separate contracts relating to the Contract (Project) site or in connection with Work on adjoining sites. In such cases, the CMR shall afford such parties reasonable opportunity for storage of materials and equipment and coordinate and connect the Work with the work on adjoining sites or other Projects, and shall fully cooperate with such parties in the matter required under Article 7 Cooperation Of Trades herein.

6.2 Contractors working in the same vicinity shall cooperate with one another and, in case of dispute, decision of the Owner shall be final and binding to all Contractors involved, including Contractors under separate Contracts.

6.3 The CMR shall assume all liability, financial or otherwise, in connection with this Contract and shall protect and hold harmless the Owner from any and all damages or claims that may arise because of inconvenience or delay which the CMR may cause other Contractors. If the CMR experiences a loss because of the presence and operations of other Contractors working adjacent to or within the limits of the same Project, then as between the Owner and the CMR, the CMR shall bear such loss.

6.4 Insofar as possible, the CMR shall arrange the Work and shall place and dispose of the materials being used so as not to interfere with the operations of other Contractors adjacent to or within the limits of the same Project. The CMR shall join its Work with that of other Contractors in an acceptable manner, and perform the Work in proper accordance with that of the others.

6.5 In no event shall the Owner be responsible for any claim or damages that are the result of the CMR's failure to coordinate the Work with any other Contractor or Subcontractor.

**ARTICLE 7  
COOPERATION OF TRADES**

7.1 The CMR shall be responsible for and shall control all activities of their Subcontractors. The Subcontractors shall consult and cooperate with one another. Each Subcontractor shall furnish all necessary information to other Subcontractors and shall lay out and install their own Work so as to avoid any delays or interference with the Work of others.

7.2 Any cost or changes, cutting and/or repairing, made necessary by the failure to observe the above requirements shall be borne by the party or parties responsible for such failure or neglect or their Subcontractors' faulty Work installed.

**ARTICLE 8  
DAMAGES**

8.1 The Liquidated Damages, provided in the Bidding Documents, will be assessed at two distinct times, as follows:

8.1.1 **Liquidated Damages -- Substantial Completion:** If the CMR fails to achieve Substantial Completion of the Work by the Substantial Completion Date, and such delay is not otherwise excused under this Contract, then the CMR agrees to pay to the Owner Liquidated Damages for the dollar amount specified in the Cost Proposal Form in

the Request for Proposals for this Project, for each Day beyond Substantial Completion that the CMR fails to achieve Substantial Completion. The parties to this Contract acknowledge and agree that the actual damages that are to be anticipated as a result of the neglect, failure, or refusal of the CMR to substantially complete the Project by the established Substantial Completion Date are uncertain in amount or extremely difficult to determine. Accordingly, the parties to this Contract do intend and in fact now agree to liquidate damages in advance and stipulate that the amount set forth in this subparagraph is reasonable and an appropriate remedy and is intended to constitute compensatory damages and does not constitute a penalty of any kind. The parties understand and agree that, by including a provision for Liquidated Damages in this Contract, or in pursuing any relief pursuant to such provision:

- .1 the parties do not intend to set a price for the privilege not to perform;
- .2 the availability of Liquidated Damages may not be relied upon as a basis for argument that the Owner has an adequate remedy at law; and
- .3 the remedies available to the Owner under this Agreement are cumulative and not exclusive.

**8.1.2 Liquidated Damages - Acceptance of the Work:** If the CMR fails to complete all of the Work, as more particularly described under the Article 1 Acceptance of the Work and the Liquidated Damages Definitions herein, required for Acceptance of the Work within ninety (90) Days of Substantial Completion then the CMR agrees to pay to the Owner Liquidated Damages for the dollar amount specified in the CMR Cost Proposal Form in the Request for Proposals for this Project, for each Day in excess of ninety (90) Days beyond the Substantial Completion Date that the CMR fails to achieve Acceptance of the Work. The parties to this Contract acknowledge and agree that the actual damages that are to be anticipated as a result of the failure of the CMR to complete all of the Work required for Acceptance of the Work within ninety (90) Days of the established Substantial Completion Date are uncertain in amount or extremely difficult to determine. Accordingly, the parties to this Contract do intend and in fact now agree to liquidate damages in advance and stipulate that the amount set forth in this subparagraph is reasonable and an appropriate remedy and is intended to constitute compensatory damages and does not constitute a penalty of any kind. The parties understand and agree that, by including a provision for Liquidated Damages in this Contract, or in pursuing any relief pursuant to such provision:

- .1 the parties do not intend to set a price for the privilege not to perform;

.2 the availability of Liquidated Damages may not be relied upon as a basis for argument that the Owner has an adequate remedy at law; and

.3 the remedies available to the Owner under this Agreement are cumulative and not exclusive.

8.2 The Liquidated Damages or any portion thereof may be waived at the sole discretion of the Commissioner.

8.3 No payment by the Owner, either partial or final, shall be construed to waive the Owner's right to seek Liquidated Damages.

8.4 In the event a court determines that the Contract herein is null and void for any reason, CMR agrees that CMR will not seek or pursue any lawsuit or claim for damages, including, but not limited to, claims for loss of Overhead or anticipated profits, against the Owner and the Owner shall not be liable for any damages which CMR may incur as a result of such decision. In addition, if the court enjoins the Owner from entering into or proceeding with the Contract herein, the Owner shall not be liable for any damages arising out of or relating to the award of such Contract which CMR may have incurred as a result of the injunction.

#### ARTICLE 9 MINIMUM WAGE RATES

9.1 In accordance with the provisions of the Connecticut General Statutes Section 31-53, the following applies:

*"The wages paid on an hourly basis to any person performing the work of any mechanic, laborer, or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (h) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each payday."*

9.2 Each Contractor who is awarded a Contract on or after October 1, 2002 shall be subject to provisions of the Connecticut General Statutes, Section 31-55a "Annual Adjustments to wage rates by contractors doing state work."

No wage adjustment will be made to the Contract for any wage increase under this Article.

**ARTICLE 10**  
**POSTING MINIMUM WAGE RATES**

10.1 The CMR and every Subcontractor performing work for the Owner subject to Connecticut General Statutes Sections 31-53 or 31-54, shall post at conspicuous points on the site of the Contract a Schedule showing all determined wage rates for all trades and all authorized deductions, if any, from wages to be paid.

10.2 The CMR shall maintain a monthly certified payrolls for all persons working on the site, to be provided to the Owner and to the Connecticut Department of Labor for its inspection.

**ARTICLE 11**  
**CONSTRUCTION SCHEDULES**

11.1 Unless otherwise specified in the Contract Documents, within thirty (30) Days from the Construction Phase Start Date, the CMR shall submit the following to the Owner for approval:

11.1.1 A comprehensive Schedule of Submittals required by the Specifications. Said Schedule shall include Submittal dates, required approval dates and date material must be on site.

11.1.2 The CMR shall allow a minimum of fifteen (15) Days for the Owner and its agents' review of Submittals. No extension of the Contract Time shall be granted for revisions and resubmission. Further, the CMR shall allow a minimum of eight weeks for testing and Acceptance of the Work by the Owner.

11.1.3 When the Contract Documents specify a "CPM Schedule" a detailed Critical Path Method Schedule is required using software approved by the Owner and/or Owner's Representative with as many activities as necessary to make the Schedule an effective tool for planning and monitoring the progress of the Work. The CMR shall show all pertinent activities requiring coordination between trades.

11.1.4 When the Contract Documents specify a "Construction Schedule" a detailed "CPM Schedule" is required in accordance with the requirements Section 01 32 16.13 "CPM Schedules - CMR" of Division 01 General Requirements".

11.2 Unless otherwise specified under the Contract Documents, the CMR shall provide a monthly update of the CPM Schedule in the format required by the Owner as well as a disk of the updated Schedule and program. If, in the opinion of the Owner, the Work is falling behind Schedule, the CMR's shall submit a revised Schedule demonstrating a recovery plan to ensure Substantial Completion of the Work within the Contract Time.

11.2.1 Requisitions for partial payment will not be processed until the CMR has complied with all of the requirements of Section 11.2.

11.3 Overtime, increased manpower, and additional shifts: If ordered by the Owner in writing, the CMR shall work overtime, and/or add additional manpower and/or shifts:

11.3.1 If the CMR is not behind Schedule, the Owner will pay the CMR the actual additional premium portion of the wages for overtime or additional shift work not included in the Contract price, but the CMR shall not be entitled to Overhead and Profit.

11.3.2 If the CMR, through its sole or partial fault or neglect is behind Schedule, the Owner may order the CMR, at the CMR's expense, to increase its manpower or to work any overtime or additional shifts or take other action necessary to expedite the Work to meet the Project Schedule.

11.3.3 If the Schedule is shown to be more than twenty-one (21) Days behind in any critical activity, overtime, increase manpower and/or additional shifts shall be implemented immediately regardless of who is at fault. A disagreement over the cause of the impact will not relieve the CMR from the obligation of complying with this Article. Once liability for the impact is determined, compensation will be determined in accordance with 11.3.1 or 11.3.2.

11.3.4 The Owner reserves the right to suspend activity under Paragraph 11.3. Suspension shall be in writing and at the sole discretion of the Commissioner.

**ARTICLE 12**  
**PREFERENCE IN EMPLOYMENT**

12.1 Should this Contract be for the construction or repair of any building, then in the employment of labor to perform the Work specified herein, preference shall be given to citizens of the United States in the following order:

12.1.1 who are, and continuously for at least three (3) months prior to the date hereof have been residents of the labor market area, as established by the State of Connecticut Labor Commissioner in which such Work is to be done;

12.1.2 to citizens who have continuously resided in the county in which the Work is to be performed for at least three (3) months prior to the date hereof;

12.1.3 to citizens of the state who have continuously resided in the State at least three (3) months prior to the date hereof.

12.2 Should this Contract be for a Public Works Project other than for the construction, remodeling or repairing of public buildings covered by Connecticut General Statutes 31-52, then in the employment of mechanics, laborers or workmen to perform the Work specified herein, preference will be given to residents of the state who are, and continuously for at least six (6) months prior to the date hereof have been residents; of this State; If no such person is available then to residents of other states.

12.3 The provisions of this Article shall not apply where the state or any subdivision thereof may suffer the loss of revenue granted or to be granted from any Agency or Department of the federal government as a result of this Article or regulations related thereto.

**ARTICLE 13  
COMPENSATION FOR CHANGES IN THE WORK**

13.1 At any time, without invalidating the Contract and by a written order and without notice to the sureties, the Owner, through the Owner's Representative, may order modifications in the Work consisting of additions, deletions or other revisions.

13.2 Modifications to the Work will be authorized by a written Change Order, or if necessary to expedite the Work, a written Construction Change Directive, issued by the Owner as provided in Article 25 "All Work Subject to Control of the Commissioner". Change Orders and Construction Change Directives shall be processed in accordance with the terms of the Contract Documents. Upon receipt of the written Change Order, the CMR shall proceed with the Work when and as directed.

13.3 If a Change Order makes the Work less expensive for the CMR, the proper deductions shall be made from the Contract Sum, said deductions to be computed in accordance with the provisions listed in this Article 13. When both additions and credits covering related Work are involved in a change, the allowance for overhead and profit for the Subcontractors shall be calculated on the basis of the net increase, if any, with respect to that change. In the event a Change Order results in a net decrease, the amount of the credit from the Subcontractor shall be the actual net cost, without any overhead and profit percentage.

13.4 The CMR shall not be entitled to an extension of time if in the opinion of the Owner the Additional Work in conjunction with the Work can be performed without impact on the Contract Time.

13.5 The CMR may request, and the Owner may grant additional Contract Time when, in the opinion of the Owner, the CMR has demonstrated that the Additional Work cannot be performed in conjunction with the Work without impact on the original Substantial Completion and/or Acceptance of the Work (if applicable) date.

13.6 The CMR's compensation for any Additional or Deleted Work that results in a Change Order is limited to the CMR's fee as set forth in Article 5 "Compensation For Construction Phase Services" of the CMR Agreement. The CMR shall not be entitled to any overhead and profit percentages or any additional Construction Phase Services Costs except that if a Change Order results in an increase in the overall Days provided under the CMR Agreement, or if a Change Order requires additional resources from the CMR, the CMR may receive, upon prior review and approval by the Owner, additional Construction Phase Services Costs based

upon a construction rate schedule previously approved by the Owner plus necessary, reasonable and verified costs.

13.7 In the event a Change Order results in Deleted Work as described in Article 14, "Deleted Work" herein, the CMR shall not be permitted to retain its fee for such Deleted Work.

13.8 The CMR's proposal for a Change in the Work shall be itemized completely, submitted in a detailed format acceptable to the Owner and shall include itemized cost components to be determined in one of the following manners:

13.8.1 Unit Price: As stated in the Contract Documents.

13.8.2 Unit Price: As subsequently agreed upon by the CMR and Owner.

13.8.3 Lump Sum: Agreed upon sum by the Owner and the CMR. The Owner may rely on costs, prices, and documentation provided by the CMR or Subcontractor in agreeing to a Lump Sum. If the Owner believes that additional information is necessary to substantiate the accuracy of the cost, the Owner reserves the right to request and receive additional information from the CMR. The Lump Sum must be based upon the following itemized costs:

1 Labor: (Subcontractor's own forces) No Change Order Proposal shall be negotiated if the request is solely for the increased labor rate over those originally carried by the Subcontractor in its original bid. Additional foreman hours shall not be included unless additional crews are added and/or a compensable time extension is granted. Subcontractor's Project Executive time shall not be included as a direct cost as it is part of the overhead mark-up allowed. Subcontractor's Project Manager hours shall not be included unless a compensable time extension is granted.

2 Material: (Actual cost to the Subcontractor) Cost shall not be based upon list pricing unless it reflects the actual prices being paid and no discounts or other offsets are being received by the Subcontractor. No Change Order Proposal shall be negotiated if the request is solely for the escalation of material prices over those originally carried by the Subcontractor in its original bid. If a trade discount by the actual supplier is available to the CMR or Subcontractor, it shall be credited to the State. If the materials are obtained from a supply or source owned wholly or in part by the CMR or Subcontractor, payment therefor will not exceed the current wholesale price for such materials. If, in the opinion of the State, the cost of materials is excessive, or if the CMR or Subcontractor fails to furnish satisfactory evidence of the cost from the actual

suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The State reserve the right to furnish such materials as they deem advisable, and the CMR and Subcontractor shall have no claim for costs or profits on material furnished by the State.

**13.8.4 Rented Equipment:** (Used directly on the Work and by the Subcontractor's own forces).

**13.8.5 Owned Equipment:** (Used directly on the Work and by the Subcontractor's own forces). Daily rate is not to exceed 3% of the monthly rental rate as identified by a nationally recognized construction cost estimating guide or service.

**13.8.6 Small Tools:**

Include items such as shovels, picks, rakes, ladders, and power tools which are expected to be utilized on a project. Trade related equipment, hand tools, and power tools normally supplied with the labor or are normally expected to be owned in the performance of the typical work for a trade are not compensable. These costs shall not be approved as part of the Direct Cost of a Change Order as they are included in the Subcontractor's overhead mark-up percentage.

**13.9** The amount of compensation to be paid for any Additional or Deleted Work performed by a Subcontractor or a Sub-subcontractor that results in a Change Order shall be determined as follows:

**13.9.1 Overhead And Profit Percentages:** (Maximum allowable percentages for the performance of the changed Work) Subcontractor's mark-up for Work performed by its own forces:

Change Order Amount	Overhead and Profit
\$0 to \$ 5,000	20%
\$5,001 to \$15,000	17%
\$15,001 to \$25,000	15%
\$25,000 and greater	12%

**13.9.2 Overhead And Profit Percentages:** (Maximum allowable percentages for the performance of the changed Work).

.1 Subcontractor's mark-up for Work performed by its Sub-subcontractor's forces and not allowable for any subsidiary in which the Subcontractor has a majority ownership:

Change Order Amount	Overhead and Profit
\$0 and greater	6%

.2 The Owner does not recognize any Overhead and Profit Percentage Markups on any changed Work performed by a Sub-subcontractor.

**13.10 Bond Costs:**

**13.10.1** Actual additional bonding costs associated with the value of the Change Order will be compensable only when supported by written documentation by the bonding company that the Change Order requires an increase to the original Performance, Payment, Labor or Material Bond.

**13.10.2** The CMR shall notify the bonding company at each \$500,000 increase to the contract value as the cumulative result of change orders. A copy of the Consent of Surety must be provided to the Owner prior to the execution of any change order which exceeds each cumulative \$500,000.

**13.11** Trade discounts, rebates, and amounts received from the sales by the CMR of surplus materials and equipment shall accrue to the Owner.

**13.12** If the parties cannot agree upon a Lump Sum, then the Commissioner, through the Project Manager, may at the option of the Commissioner take the following action(s):

**13.12.1** Issue a Construction Change Directive for the Additional or Deleted Work. The amount of compensation shall be computed by the actual net costs to the CMR determined by time and material or Unit Prices based upon the same information required in Subparagraphs 13.12.1.1 through 13.12.1.5:

.1 Labor: (Subcontractor's own forces).  
.2 Material: (Used by Sub-contractor's own forces).  
.3 Benefits: (The established rates of the following benefit costs inherent to the particular labor involved):

.1 Workers Compensation;  
.2 Federal Social Security;  
.3 Connecticut Unemployment Compensation.  
.4 Fringe Benefits.

.4 Rented Equipment: (Used directly on the Work and by the Subcontractor's own forces).

.5 Owned Equipment: (Used directly on the Work and by the Subcontractor's own forces). Daily rate is not to exceed 3% of the monthly rental rate that can be identified by a nationally recognized construction cost estimating guide or service.

**13.12.2** Issue a Change Order adjusting the Contract Sum in the amount as determined by the Commissioner.

**13.13** For any Change Order or Construction Change Directive the CMR shall, when requested, promptly furnish in a form satisfactory to the Owner's Representative and the Owner a complete detailed accounting of all costs relating to

the Additional Work, including but not limited to certified payrolls and copies of accounts, bills and vouchers to substantiate actual costs. Further, the Owner reserves the right to access and make copies of the CMR's records at any time upon written request from the Commissioner.

13.14 Failure of the CMR to negotiate in good faith issues of time and costs or failure to provide requested documentation within fourteen (14) Days, or a time period accepted by the Commissioner, shall constitute a waiver by the CMR of any claim. In such cases the Owner may elect to issue a unilateral Change Order in an amount deemed to be fair and equitable by the Commissioner. The provisions hereof shall not affect the power of the CMR to act in case of emergency, threatened injury to persons, or damage to Work on any adjoining property. In this case the Owner, through the Project Manager, shall issue a Change Order for such amount as the Commissioner finds to be reasonable cost of such Work.

**ARTICLE 14  
DELETED WORK**

14.1 Without invalidating any of the terms of the Contract, the Commissioner may order deleted from the Contract any items or portions of the Work deemed necessary by the Commissioner.

14.2 The compensation to be deducted from the Contract Sum for such deletions shall be determined in the manner provided for under the provisions of Article 13 Compensation For Changes In The Work or in the event none of the provisions of Article 13 Compensation For Changes In The Work are applicable then by the value as estimated by the Owner.

**ARTICLE 15  
MATERIALS: STANDARDS**

15.1 Unless otherwise specifically provided for in the Specifications, all equipment, materials and articles incorporated in the Work are to be new and of the best grade of their respective kinds for the purposes. Wherever in the Contract Documents a particular brand, make of material, device, or equipment is shown or specified, the first manufacturer listed in the specification section is to be regarded as the standard. When the specification is proprietary and only one manufacturer is listed, the CMR shall use the named manufacturer and no Substitutions or Equals will be allowed.

15.2 Any other brand, make of material, device, equipment, procedure, etc. which is a deviation from the specified requirement is prohibited from use, but may be considered by the Owner for approval as an Equal or Substitution. The CMR is to adhere to the specific requirements of the Contract Documents. Substitutions are

discouraged and are only approved by the Commissioner as an exception.

15.3 **Submittals – Equals and Substitution Requests:**  
15.3.1 Substitution of Materials and Equipment before the opening of the bids for the Project Elements. The Owner will consider requests for Equals or Substitutions, if made prior to the receipt of the Bid(s). The information on all materials shall be consistent with the information herein.

.1 **Statement of Variances:** A statement of variances must list all features of the proposed Substitution which differ from the Drawings, Specifications and/or product(s) specified and must further certify that the Substitution has no other variant features. A request will be denied if submitted without sufficient evidence.

.2 **Substitution Denial:** Any Substitution request not complying with the above requirements will be denied. Substitution request sent after the deadline established in the Notice to Bidder will be denied.

.3 **Addendum:** An addendum shall be issued to inform all prospective Bidders of any accepted Substitution in accordance with Owner's addenda procedures.

15.3.2 **Substitution of Materials and Equipment After GMP Agreement Date:** Subject to the Architect or Engineer's determination, if the material or equipment is Equal to the one specified or pre-qualified and the DPW Project Manager's approval of such determination, Substitution of Material or Equipment may be allowed after the GMP Agreement Date only:

.1 If the specified or pre-qualified item is delayed by unforeseeable contingencies beyond the control of the CMR which would cause a delay in the Project completion;

.2 If any specified or pre-qualified item is found to be unusable or unavailable due to a change by the manufacturer or other circumstances; or

.3 If the CMR desires to provide a more recently developed material, equipment, or manufactured model from the same named manufacturer than the one specified or pre-qualified; or

.4 If the specified material and/or equipment inadvertently lists only a single manufacturer.

15.4 The CMR shall submit each request for Equal or Substitution to the Architect or Engineer who shall review each request and make the following recommendations to the Owner:

15.4.1 Acceptance of the Work or non-acceptance of the adequacy of the submission and required back-up,

15.4.2 Determination of the category of the request for Substitution or Equal, and

15.4.3 Overall recommendation for approval or rejection of the Substitution or Equal. The determination of the category as a Substitution may be grounds for an immediate rejection by the Owner.

15.5 Approval of the Owner for each Equal or Substitution shall be obtained before the CMR proceeds with the Work. The decision of the Commissioner, in this regard, shall be final and binding on the CMR.

15.6 No extension of time will be allowed for the time period required for consideration of any Substitution or Equal. No extension of time will be allowed and no responsibility will be assumed by the Owner when the CMR submits a request for Substitution or Equal, whether such request be approved or denied, and the CMR shall not be entitled to any claim for damages for delay.

15.7 If the CMR submits any request for an Equal or a Substitution, then he it shall bear the burden of proof that such requested Equal or Substitution meets the requirements of the Plans and Specifications.

15.8 The CMR shall purchase no materials or supplies for the Work which are subject to any chattel mortgage or which are under a conditional sale or other agreement by which an interest is retained by the seller. The CMR warrants that the CMR has good title to all materials and supplies used by it or any of its Subcontractors in the Work.

15.9 All products and systems supplied to the State as a result of a purchase by a CMR or any of its Subcontractors shall be certified that, to the best of the supplier's knowledge, there are no materials that are classified as hazardous materials being used within the assembly. Hazardous materials include, but are not limited to, products such as asbestos, lead, and other materials that have proven to cause a health risk by their presence.

## ARTICLE 16 INSPECTION AND TESTS

16.1 The purpose of the inspections will be to assure that the Work is performed in accordance with the Contract Documents. These inspections shall include, but not be limited to, all inspections and testing as required by the Owner, and any authorities have jurisdiction.

16.2 All material and workmanship, if not otherwise designated by the Specifications, shall be subject to inspection, examination and testing by the Commissioner at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or

construction is carried on. The Contract Documents additionally identify the parties responsible for performing and paying for the required testing and inspections. All required tests performed in a laboratory will be obtained and paid for by the Owner, except when the tests show the Work to be defective. The CMR shall pay all costs associated with re-tests and re-inspections for all tests and inspections which fail. The Owner will issue a deduct Change Order to recover said retesting costs from the CMR. All other tests, unless otherwise specified, shall be made at the CMR's expense. Notice of the time of all tests to be made at the site shall be given to all interested parties, including the Owner.

16.3 Without additional cost to the Owner, the CMR shall promptly furnish facilities, labor and materials necessary to coordinate and perform operational tests and checkout of the Work. The CMR shall furnish promptly all reasonable facilities, labor, and materials necessary to make all such testing safe and convenient.

16.4 If, at any time before final payment and Acceptance of the Work, the Commissioner considers it necessary or advisable to examine of any portion of the Work already completed by removing or tearing out the same, the CMR shall, upon request, furnish promptly all necessary facilities, labor, and materials. If such Work is found to be defective in any material respect, as determined by the Owner, because of a fault of the CMR or any of the CMR or any of its Subcontractors, or if any Work shall have been covered without the approval or consent of the Commissioner (whether or not it is found to be defective), the CMR shall be liable for testing costs and all costs of correction, including removal and/or demolition of the defective Work. Such costs shall include labor, material, testing, re-testing, re-inspecting, services of required consultants, additional supervision, the Commissioner's and the Owner's Representative's administrative costs, and other costs for services of other consultants.

16.5 **Cost of Commissioning (Cx) Retesting:** The cost to retest a pre-functional or Functional Test, if the CMR is responsible for the deficiency, shall be the CMR's. If the CMR is not responsible, any cost recovery for retesting costs shall be negotiated with the CMR.

16.5.1 For a deficiency identified, not related to any pre-functional checklist or start-up fault, the following shall apply: The Commissioning Agent (CxA) and Owner's Representative will direct the retesting of the equipment once at no "charge" to the CMR for their time. However, the Commissioning Agent (CxA) and Owner's Representative's time for additional testing will be charged to the CMR.

16.5.2 The time for the Commissioning Agent (CxA) and Owner's Representative to direct any retesting required because a specific pre-functional checklist or start-up test item, reported to have been successfully completed, but determined during functional testing to be faulty, will be back charged to the CMR.

16.5.3 Any required retesting by any Subcontractor shall not be considered a justified reason for a claim of delay or for a time extension by the CMR.

**ARTICLE 17  
ROYALTIES AND PATENTS**

17.1 If the CMR desires to use any design, device, material or process covered by a patent or copyright, the CMR shall provide for such use by suitable legal agreement with the holder of said patent or copyright. The CMR shall furnish a copy of this legal agreement to the Owner.

17.2 The CMR shall indemnify and hold harmless the Owner and Owner's Representative for any costs, expenses and damage which it may be obliged to pay by reason of any infringement of a patent or a copyright, at any time during the prosecution or after the Final payment of the Work.

**ARTICLE 18  
SURVEYS, PERMITS, AND REGULATIONS**

18.1 Unless otherwise provided for, the CMR shall furnish surveys necessary for the execution of the Work. The Owner will furnish the CMR with two base lines and a benchmark.

18.2 Other than the "Building Permit" the CMR shall obtain and pay for all permits and licenses required for the execution of the Work, and the occupancy and use of the completed Work.

18.3 The CMR shall give all notices and comply with all laws, ordinances, rules and regulations including building and fire safety codes relating to the performance of the Work.

18.4 If underground utilities may be involved in part of the Work the CMR is required to request "Call-Before-You-Dig" to verify the location of underground utilities at least five (5) Days prior to the start of any excavation. The CMR shall also notify the Owner and Agency at least five (5) Days prior to the start of any excavation. If "Call-Before-You-Dig" fails or refuses to respond to the CMR's request, then the CMR shall obtain the services of a qualified underground utility locating firm, at no additional cost to the Owner, to verify locations of underground utilities prior to the start of any excavation. The CMR shall be held responsible for providing safety, protecting the Work and protecting workers as necessary to perform the Work. The CMR shall be responsible for maintaining and protecting all original utility mark-out at no additional cost to the Owner.

**ARTICLE 19  
PROTECTION OF THE WORK,  
PERSONS AND PROPERTY**

19.1 The CMR shall continuously and adequately protect the Work against damage from any cause, and shall protect materials and supplies furnished by the CMR or Subcontractors, whether or not incorporated in the Work, and shall make good any damage unless it be due directly to errors in the Contract Documents or is caused by agents or employees of the Owner.

19.2 To the extent required by law, by public authority, or made necessary in order to safeguard the health and welfare of the personnel or occupants of any of the state institutions, the CMR shall adequately protect adjacent property and persons, and provide and maintain all facilities, including but not limited, to passageways, guard fences, lights, and barricades necessary for such protection.

19.3 The CMR shall take all necessary precautions for the safety of employees on the Work and shall comply with applicable provisions of federal and state safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. The CMR shall also comply with the applicable provisions of the Associated General Contractors' "Manual of Accident Prevention in Construction", the standards of the Connecticut Department of Labor Occupational Safety and Health (CONN-OSHA). A Subcontractor shall also comply with the provisions of the CMR's own safety plan and comply with whichever of the above-mentioned standards are the most stringent.

19.4 The CMR shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of employees of the State and the public, and shall post danger signs warning against any dangerous condition or hazard created by such things as protruding nails, well holes, elevator hatchways, scaffolding, window openings, excavations, tripping hazards or slipping, stairways and falling materials.

19.5 The CMR shall designate a qualified and responsible on-site staff person, whose duty shall be the prevention of accidents. The name and position of the designated person shall be reported to the Owner by the CMR at the commencement of the Contract.

19.6 The CMR shall at all times protect excavations, trenches, buildings, and all items of Work from damage by rain, water from melted snow or ice, surface water run off and subsurface water usual for the vicinity at the time of operations; and provide all pumps and equipment and enclosures to insure such protection.

19.7 The CMR shall construct and maintain all necessary temporary drainage and provide all pumping necessary to keep excavation, basements, footings and foundations free of water.

19.8 The CMR shall remove all snow and ice as may be required for access to the site and proper protection and prosecution of the Work.

19.9 The CMR shall install bracing, shoring, sheathing, sheet piling, caissons and any other underground facilities as required for safety and proper execution of the Work, and shall remove this portion of the Work when no longer necessary.

19.10 During cold weather the CMR shall protect all Work from damage. If low temperature makes it impossible to continue operations safely in spite of cold weather precautions, the CMR may cease Work upon the written approval of the Commissioner.

#### ARTICLE 20 TEMPORARY UTILITIES

20.1 Unless expressly provided for otherwise in Contract Documents, the CMR shall include in its proposed Construction Phase Services Costs, as stated in its Total Cost Proposal on its CMR Cost Proposal Form, the costs of all temporary utilities required for Project completion and protection of the Work. Said temporary utilities include, but are not limited to, lighting, heating, cooling, electrical power, water, telephone, sanitary facilities, and potable water.

#### ARTICLE 21 CORRECTION OF WORK

21.1 The CMR shall promptly and without expense to the Owner remove from the premises all materials rejected by or unacceptable to the Commissioner as failing to conform to the Contract Documents, whether incorporated in the Work or not.

21.2 The CMR shall promptly and without expense to the Owner replace any such materials, which do not conform to the Contract Documents, and shall bear the expense of making good all Work of other Subcontractors or Sub-subcontractors destroyed or damaged by such removal or replacement.

21.3 If the CMR, after receipt of notice from the Owner, shall fail to remove such rejected or unacceptable materials within a reasonable time as fixed in said notice, the Owner may remove and store such materials at the expense of the CMR.

21.4 Such action shall not affect the obligation of the CMR to replace and complete assembly and installation of the Work and to bear the expenses referred to above. Prior to the correction of rejected or unacceptable Work or if the Commissioner deems it inexpedient or undesirable to correct any portion of the Work which was rejected, deemed unacceptable, or not done in accordance with the Contract Documents, the Contract Sum shall be reduced by such amount as, in the judgment of the Commissioner, shall be equitable.

21.5 No extension of time will be given to the CMR for correction of rejected or unacceptable Work. All significant punchlist Work shall be completed before Substantial Completion is determined. The remaining minor punchlist Work, as determined by the Commissioner, shall be completed within ninety (90) Days of established Substantial Completion date.

21.6 Final Payment shall not relieve the CMR of responsibility for the defects in material or workmanship.

21.7 Unless expressly provided for otherwise in the Contract Documents, the CMR shall remedy any rejected or unacceptable Work, and any Work found to be not conforming to the Contract Documents which is discovered within eighteen (18) Months after the date of Substantial Completion. The CMR shall pay for any damage to other Work caused by such nonconforming Work or any damage created in correcting the nonconforming Work.

#### ARTICLE 22 GUARANTEES and WARRANTIES

22.1 Unless expressly provided for otherwise in the Contract Documents, the CMR shall provide a Warranty on the Work for an eighteen (18) Month period from the date of Substantial Completion. The CMR shall warrant that the equipment, materials and workmanship are of good quality and new, unless permitted elsewhere by the Contract Documents, and that the Work shall be free from defects not inherent in the quality required or permitted and that the Work conforms to the Contract Documents.

22.2 Disclaimers and limitations from manufacturers, Subcontractors, Sub-subcontractors, suppliers or installers to the CMR shall not relieve the CMR of the Warranty on the Work. The Contract Documents detail the related damages, reinstatement of Warranty, replacement cost and Owner's recourse.

#### ARTICLE 23 CUTTING, FITTING, PATCHING, AND DIGGING

23.1 The CMR will perform or will cause the Subcontractors to perform all cutting, fitting, or patching of the portion(s) of the Work that may be required to make the several parts thereof joined and coordinated in a manner satisfactory to the Commissioner and in accordance with the Plans and Specifications.

23.2 The responsibility for defective or ill-timed Work shall be with the CMR, but such responsibility shall not in any way relieve the Subcontractor who performed such Work. Except with the consent of the Commissioner, neither the CMR nor any of its Subcontractors shall cut or alter the Work of any other Contractor or Subcontractor.

**ARTICLE 24  
CLEANING UP AND  
CONSTRUCTION WASTE MANAGEMENT**

24.1 The CMR shall, on a daily basis, keep the premises free from accumulations of construction waste material and/or rubbish.

24.2 **Construction Waste Management:** The CMR shall comply with all of the requirements of Section 01 74 19 "Construction Waste Management & Disposal - CMR", Division 01 "General Requirements", for the Project's waste management goals, waste management plan and waste management plan implementation and required submittals.

24.3 Prior to Acceptance of the Work, the CMR shall remove from and about the site of the Work, all construction waste, rubbish, all temporary structures, tools, scaffolding, and surplus materials, supplies, and equipment which may have been used in the performance of the Work. If the Commissioner in his sole discretion determines that the CMR has failed to clean the work site, the Owner may remove the construction waste, rubbish, all temporary structures, tools, scaffolding, and surplus materials, supplies, and equipment and charge the cost of such removal to the CMR. A deduct Change Order will be issued by the Owner to recover such cost.

**ARTICLE 25  
ALL WORK SUBJECT TO CONTROL OF THE  
COMMISSIONER**

25.1 The Commissioner hereby declares that the DPW Project Manager is the Commissioner's only authorized representative to act in matters involving the Owner's, and/or Architect's or Engineer's, ability to revoke, alter, enlarge or relax any requirement of the Contract Documents; to settle disputes between the CMR and the Owner's Representative; and act on behalf of the Commissioner. In all such matters, the provisions of Articles 13 "Compensation for Changes in the Work" and 14 Deleted Work herein shall guide the DPW Project Manager.

25.2 In no event may the CMR act on any instruction of the Agency without written consent of the Owner. In the event the CMR acts without such consent, it does so at its own risk and at its own expense, not only for the Work performed, but for the removal of such Work as determined necessary by the Commissioner.

25.3 In the performance of the Work, the CMR shall abide by all orders, directions, and requirements of the Commissioner at such time and places and by such methods and in such manner and sequence as the Commissioner may require.

25.4 The Commissioner shall determine the amount, quality, acceptability and fitness of all parts of the Work, shall interpret the plans, Specifications, Contract Documents and

extra work orders and shall decide all other questions in connection with the Work.

25.5 The CMR shall employ no plant, equipment, materials, methods, or persons to which the Commissioner objects and shall remove no plant materials, equipment, or other facilities from the site of the Work without the permission of the Commissioner. Upon request, the Commissioner shall confirm in writing any oral order, direction, requirement or determination.

25.6 In accordance with Section 4b-24 of the Connecticut General Statutes, the Public Auditors of the State of Connecticut and the auditors or accountants of the Commissioner of Public Works shall have the right to audit and make copies of the books of any CMR employed by the Commissioner.

**ARTICLE 26  
AUTHORITY OF THE OWNER'S REPRESENTATIVE**

26.1 The Owner's Representative employed by the Commissioner is authorized to inspect all Work for conformance to the Contract Documents. The Owner's Representative is authorized to reject all Work found to be defective, unacceptable and nonconforming to the Contract Documents. Such inspections and rejections may extend to all or any part of the Work, and to the preparation or manufacture of the material to be used.

26.2 The Owner's Representative is not empowered to revoke, alter, enlarge, or relax any requirements of the Contract Documents, or to issue instructions contrary to the Contract Documents. The Owner's Representative shall in no case act as foreman or perform other duties for the CMR, nor shall the Owner's Representative interfere with the management of the Work by the CMR. Any advice, which the Owner's Representative may give the CMR, shall in no way be construed as binding the Commissioner or Owner in any way, nor releasing the CMR from the fulfillment of the terms of the Contract.

26.3 In any dispute arising between the CMR and the Owner's Representative with reference to inspection and rejection of the Work, the Owner's Representative may suspend Work on the non-compliant portion of the Work until the dispute can be referred to and decided by the Commissioner, which includes the CMR.

**ARTICLE 27  
SCHEDULE OF VALUES,  
APPLICATION FOR PAYMENT**

27.1 Immediately after the signing of the Contract, the CMR shall furnish for the use of the Commissioner, as a basis for estimating partial payments, a certified Schedule of Values, totaling the Contract Sum and broken down into quantities and unit costs, as outlined in the Contract Documents and as directed by the Owner. The Schedule of Values must reflect true costs and be in sufficient detail to be an effective tool for monitoring the progress of the Work Upon request of the Commissioner; the CMR shall supply copies of signed Contracts, vendor quotations, etc. as back up to the Schedule of Values.

27.2 Approval of the Schedule of Values by the Commissioner is required prior to any payment by the Owner.

27.3 The Schedule of Values shall include a breakdown of the CMR's Construction Phase Services Costs.

27.3.1 Non-recurring costs, (i.e. Mobilization costs, utility hook-ups, temporary heat) will be paid at the time of occurrence.

27.3.2 Reoccurring costs will be paid in proportion to the percent of completion of the Project.

27.3.3 Further detail can be found in the Division 01 General Requirements, Section 01 29 76 "Progress Payment Procedures - CMR"; Subsection 1.3 Schedule Of Values for this project.

27.4 The Schedule of Values shall include a breakdown of Contract closeout costs including Commissioning Testing and Certification and Acceptance, training, Warranties, Guarantees, As-Built Drawings and attic stock.

27.5 The CMR shall make periodic applications for payment, which shall be subdivided into categories corresponding with the approved Schedule of Values and shall be in such numbers of copies as may be designated by the Commissioner.

**ARTICLE 28  
PROGRESS PAYMENTS**

28.1 Commissioner will examine the CMR's Applications For Payments to determine, in the opinion of the Commissioner, the amounts that properly represent the value of the Work completed and the materials suitably stored on the site.

28.2 In making such Application For Payment for the Work, there shall be withheld seven and five tenths (7.5%) percent of the amount of each Application for Payment to be retained by the Owner as Retainage until Acceptance of the Work.

28.2.1 The Commissioner has the sole discretion in the determination of reduction in Retainage,

including retainage on a Subcontractor. The following criteria shall be utilized in the reduction of Retainage withheld on a per Subcontractor package basis:

.1 At fifty percent (50%) completion of the Work the Owner shall issue a "Contractor's Performance Evaluation". If the CMR receives a performance evaluation score of "Good" or better, then the Retainage withheld may be reduced to five percent (5%). All subsequent Applications for Payment shall be subject to five percent (5%) Retainage. Upon Substantial Completion, the Retainage may be reduced at the request of the CMR and recommendation of the DPW Project Manager. In the event of a reduction in Retainage to below five percent (5%), the minimum Retainage withheld shall not be less than the DPW Project Manager's estimate of the remaining Work or two and five tenths percent (2.5%), which ever is greater. All requests for Retainage Reduction shall be done on DPW CMR Retainage Reduction Request Form, a Sample which can be found at the end of these General Conditions.

28.2.2 Subsequent to Substantial Completion, in limited circumstances, at the sole discretion of the Commissioner, a reduction of Retainage below Two and five tenths percent (2.5%) may be considered.

28.2.3 A "Good" Contractor's Performance Evaluation score shall be defined as a minimum total score of sixty percent (60%).

28.3 The decision of the Commissioner to reduce the Retainage rate will be based upon the "Contractor's Performance Evaluation" score for completed portions of the Work as set out above and other factors that the Commissioner may find appropriate as follows:

28.3.1 The CMR's timely submission of an appropriate and complete CPM Schedule or Construction Schedule and Schedule of Values, in compliance with the Contract requirements and the prompt resolution of the Owner's and/or Architect's or Engineer's comments on the submitted material resulting in an appropriate basis for progress of the Work.

28.3.2 The CMR's timely and proper submission of all Contract Document required submissions: including, but not limited to, Shop Drawings, material certificates and material samples and the prompt resolution of the Owners and/or Architect's or Engineer's comments on the submitted material, resulting in an appropriate progress of the Work.

28.3.3 The CMR's provision of proper and adequate supervision and home office support of the Project.

28.3.4 The Work completed to date has been installed or finished in a manner acceptable to the Owner.

28.3.5 The progress of the Work is consistent with the approved CPM Schedule.

28.3.6 All approved credit change orders have been invoiced.

28.3.7 All Change Order requests for pricing are current.

28.3.8 The CMR has and is maintaining a clean worksite and managing construction waste in accordance with the Contract Documents.

28.3.9 All Subcontractor payments are current at the time of reduction request.

28.3.10 CMR is compliant with set-aside provisions of the contract.

28.4 No payments will be made for improperly stored or protected materials or unacceptable Work.

28.5 At his or her sole discretion, the Commissioner may allow to be included in the monthly requisitions payment requests for materials and equipment stored off the site.

28.5.1 In the event of special circumstances, and only when approved by the Commissioner, the CMR shall be allowed to include in its requisitions payment requests for materials and equipment suitably stored off the site. The CMR shall submit an Off-Site Storage Authorization Request, on a form required by the Owner, that lists all additional bonds and/or insurance certificates relating to materials and equipment suitably stored off-site, and follow all procedures as may be required by the State to obtain the Commissioner's written approval of such Off-Site Storage requests.

28.5.2 The Architect or Engineer, or Owner's Representative shall have inspected said materials and equipment and recommended payment therefore. The CMR shall pay for the cost of the Architect's or Engineer's, or Owner's Representative's time and expense in performing these inspection services.

#### ARTICLE 29

##### DELIVERY OF STATEMENT SHOWING AMOUNTS DUE FOR WAGES, MATERIALS, AND SUPPLIES

29.1 For each Application for Payment under this Contract, the Owner reserves the right to require the CMR and every Subcontractor to submit a written verified statement, in a form satisfactory to the Owner, showing in detail all amounts then due and unpaid by such CMR or Subcontractor for daily or weekly wages to all laborers employed by it for the performance of the Work or to other persons for materials, equipment or supplies delivered at the site.

29.2 The term "laborers" as used herein shall include workmen, workwomen, and mechanics.

29.3 Failure to comply with this requirement may result in the Owner withholding the Application for Payment pursuant to Article 28 Progress Payments.

#### ARTICLE 30

##### SUBSTANTIAL COMPLETION, FUNCTIONAL COMPLETION, AND ACCEPTANCE OF THE WORK

#### 30.1 Substantial Completion:

30.1.1 When the CMR considers that the Work or a portion thereof is Substantially Complete, except for Functional Testing and controls training, the CMR shall request an inspection of said Work in writing to the Owner's Representative. The request shall certify that the CMR has completed its own inspection prior to the request and that the CMR is compliant with all requirements of 01 77 00 "Closeout Procedures - CMR", Division 01 General Requirements. The request must also include a statement that a principal or senior executive of the CMR is ready, willing and able to attend a walk through inspection with the Architect and/or Engineer, Owner, Owner's Representative, and Agency Representative.

30.1.2 Upon receipt of the request, the Architect or Engineer, Owner, and Owner's Representative, and Agency Representative will make an inspection to determine if the Work or designated portion thereof is Substantially Complete, except for Functional Testing and controls training. A principal or senior executive of the CMR shall accompany the Architect or Engineer during each inspection/re-inspection. If the inspection discloses any item, whether or not included on the inspection list, which is not in accordance with the requirements of the Contract Documents, the CMR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item.

30.1.3 The CMR shall then submit a request for another inspection. The determination of Substantial Completion is solely within the discretion of the Owner. Any costs for re-inspection beyond one, shall be at the expense of the CMR and such costs will be recovered by issuance of a credit Change Order. When the Work or designated portion thereof is determined to be Substantially Complete, except for Functional Testing and controls training, the CMR will be provided a Certificate of Substantial Completion from the Owner. The Certificate of Substantial Completion shall establish the date when the responsibilities of the CMR for security, maintenance, heat, utilities, damage to the Work, and insurance, are transferred to the Owner and shall fix the time within which the CMR shall finish all items on the inspection list accompanying the Certificate. If the punch list is not complete in ninety (90) Days, the Owner reserves the right to complete the outstanding punch list items with their own forces or by awarding separate contracts and to

deduct the cost thereof from the amounts remaining due to the CMR.

30.1.4 The Certificate of Substantial Completion shall be signed by the Owner's Representative, Owner, and Architect or Engineer. Upon Substantial Completion of the Work or designated portion thereof, except for Functional Testing and controls training, and upon application by the CMR and certification by the Owner's Representative and Architect or Engineer, the Owner shall make payment reflecting adjustment in Retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

**30.2 Functional Completion: Prerequisites To Functional Completion:**

30.2.1 All TAB work and the commissioning requirements, Section 01 91 00 "Commissioning - CMR" of Division 01 "General Requirements" must be complete prior to Functional Completion, unless approved in writing by the DPW Project Manager. This includes for all systems, but is not limited to:

1. Completed and signed start-up and Pre-Commissioning checklist documentation;
2. Requested trending report data;
3. Submission of final approved TAB report;
4. Completion of all Functional Testing;
5. Required training of Agency personnel completed and approved;
6. Submission of the approved O&M manuals;
7. All identified deficiencies have been corrected or are approved by the Owner to be excepted from this milestone;
8. Exceptions to the Prerequisites to Functional Completion are the planned control system training performed after occupancy and any required Seasonal or Approved Deferred Functional Performance Testing.

**30.3 Acceptance of the Work:**

30.2.1 Upon completion of the Work, including Functional Completion the CMR shall forward to the Owner's Representative a written notice that the Work is ready for inspection and Acceptance of the Work.

30.2.2 When the Work has been completed in accordance with terms and conditions of the Contract Documents as determined by the Owner a Certificate of Acceptance shall be Issued by the Owner.

31.1 The Owner reserves the right to retain for a period of thirty (30) Days after filing of the Certificate of Acceptance and Certificate of Functional Completion the amount therein stated less all prior payments and advances whatsoever to or for the account of the CMR.

31.2 All prior estimates and payments, including those relating to extra or additional Work, shall be subject to correction by the Final Payment.

31.3 No Application for Payment, Final or Partial, shall act as a release to the CMR or the CMR's sureties from any obligations under this Contract.

31.4 The Architect or Engineer and Owner's Representative will promptly issue the Certificate for Payment, stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the CMR and noted in said Final Payment is due and payable.

31.5 Final Payment shall not be released until all of the following have been issued:

- 31.5.1 Certificate(s) of Occupancy;
- 31.5.2 Certificate(s) of Compliance;
- 31.5.3 Certificate of Acceptance;
- 31.5.4 Certificate of Function Completion (including all required Deferred and Seasonal Commissioning Testing & Functional Completion);
- 31.5.5 LEED Certification.

31.6 Neither Final Payment nor any Retainage shall become due until the CMR submits to the Owner the following:

31.6.1 An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied.

31.6.2 A certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire without at least thirty (30) Days prior written notice to the Owner.

31.6.3 A written statement that the CMR knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.

31.6.4 Written consent of surety, if any, to Final Payment.

31.6.5 If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as

**ARTICLE 31  
FINAL PAYMENT**

may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMR may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the CMR shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

**ARTICLE 32**  
**OWNER'S RIGHT TO WITHHOLD PAYMENTS**

**32.1** The Commissioner may withhold a portion of any Payment due the CMR that may, in the judgment of the Commissioner, be necessary:

**32.1.1** To assure the payment of just claims then due and unpaid to any persons supplying labor or materials for the Work.

**32.1.2** To protect Owner from loss due to defective, unacceptable or non-conforming Work not remedied by the CMR.

**32.1.3** To protect the Owner from loss due to Injury to persons or damage to the Work or property of other Contractors, Subcontractors, or others caused by the act or neglect of the CMR or any of its Subcontractors.

**32.1.4** To assure that CMR performs the required Seasonal and/or Approved Deferred Functional Performance Testing Certifying Functional Completion of those systems.

**32.2** The Owner shall have the right to apply any amount withheld under this Article as the Owner may deem proper to satisfy protection from claims. The amount withheld shall be considered a payment to the CMR.

**32.3** The Owner has the right to withhold payment if the CMR fails to provide timely and accurate submissions and submission updates of all required submittals, and reports, including but not limited to the following:

**32.3.1** As-Built Drawings;

**32.3.2** Request For Information (RFI) Logs;

**32.3.3** CPM Schedules;

**32.3.4** Submittal Logs;

**32.3.5** Change Order Log;

**32.3.6** Certified Payrolls;

**32.3.7** Construction Waste Management Calculations and/or Reports and/or Plans;

**32.3.8** Lien Waivers;

**32.3.9** Daily Reports; and

**32.3.10** All other requirements of the Contract Documents.

**32.4** If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMR may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the CMR shall refund to the Owner all money that the

Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

**ARTICLE 33**  
**OWNER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

**33.1** The Commissioner shall have the authority to suspend the Work wholly or in part, for such period or periods as the Commissioner considers being in the best interests of the State, or in the interests of public necessity, convenience or safety. During such periods the CMR shall store all materials and equipment, in such a manner to prevent the materials and equipment from being damaged in any way, and the CMR shall take precautions to protect the Work from damage.

**33.1.1** If the Commissioner, in writing, orders the performance of all or any portion of the Work to be suspended or delayed for an unreasonable period of time (i.e. not originally anticipated, customary, or inherent in the construction industry) and the CMR believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the CMR shall submit to the Commissioner in writing a request for a Contract adjustment within seven (7) Days of receipt of the notice to resume Work. The request shall set forth the specific reasons and support for said adjustment.

**33.1.2** The Commissioner shall evaluate any such requests received. If the Commissioner agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and that the suspension was caused by conditions beyond the control of and not the fault of the CMR, its suppliers, or Subcontractors, and was not caused by weather, then the Commissioner will make a reasonable adjustment, excluding profit, of the Contract terms. The Commissioner will notify the CMR of the determination as to what adjustments of the Contract, if any, that the Commissioner deems warranted.

**33.1.3** No Contract adjustment will be made unless the CMR has submitted the request for adjustment within the time prescribed.

**33.1.4** No Contract adjustment will be made under this Article to the extent that performance would have been suspended or delayed by any other cause within the CMR's control or by any factor for which the CMR is responsible under the Contract; or that such an adjustment is provided for or excluded under other term or condition of this Contract.

**33.2** Notwithstanding any provision or language in the Contract to the contrary, the State may terminate the Contract whenever the Commissioner determines at his sole discretion that such termination is in the best interests of the State. Any such termination shall be effected by delivery to the CMR of a written Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination shall be effective.

33.2.1 In the event of such termination, the CMR shall be entitled to reasonable compensation as determined by the Commissioner, however, no claim for lost Overhead or Profits shall be allowed.

33.2.2 All Work and materials obtained by the CMR for the Work, that have been incorporated into the Work, inspected, tested as required, accepted by the Commissioner, and paid for by the State, shall become the property of the State.

33.2.3 Materials obtained by the CMR for the Work that have been inspected, tested as required, and accepted by the Commissioner, and that are not incorporated into the Work, shall, at the option of the Commissioner, be purchased from the CMR at actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the Commissioner, as shown by actual cost records.

33.2.4 Termination of the Contract shall not relieve the CMR or its Surety of their responsibilities for the completed Work, nor shall it relieve the CMR's Surety of its obligations to ensure completion of the Work and to pay legitimate claims arising out of Work.

**ARTICLE 34**  
**SUBLETTING OR ASSIGNING OF CONTRACT**

34.1 The Contract or any portion thereof, or the Work provided for therein, or the right, title, or interest of the CMR therein may not be sublet, sold, transferred, assigned, or otherwise disposed of to any person, firm, or corporation without the written consent of the Commissioner.

34.2 No person, firm, or corporation other than the CMR to whom the Contract was awarded shall be permitted to commence Work at the site of the Contract until such consent has been granted.

**ARTICLE 35**  
**CONTRACTOR'S INSURANCE**

35.1 The CMR shall not start Work under the Contract until they have obtained insurance as stated in in the Contract Documents and until the insurance has been approved by the Owner. The CMR shall not allow any Subcontractor to start Work until the CMR's insurance provides coverage on behalf of the Subcontractor or the Subcontractor obtains insurance with sufficient coverage that is approved by the Owner. The CMR shall send Certificates of Liability Insurance to the Procurement Unit, Department of Public Works, 165 Capitol Avenue, Room G-35, Hartford, CT 06106 unless otherwise directed in writing. For insurance definitions see Article 1 herein. Presented below is a narrative summary of the insurance required.

35.1.1 Commercial General Liability Insurance including contractual liability,

products/completed operations, broad form property damage and independent Contractors. The limits shall be no less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate. Coverage for hazards of explosion, collapse and underground (X-C-U) and for asbestos abatement when applicable to this Contract, must also be included when applicable to the Work to be performed. The State of Connecticut, the Department of Public Works, and their respective officers, agents, and employees shall be listed as an Additional Insured. This coverage shall be provided on a primary basis.

35.1.2 Owner's and Contractor's Protective Liability Insurance: Insurance providing a total limit of \$1,000,000 for all damages arising out of bodily injury or death of persons in any one accident or occurrence and for all damages arising out of injury or destruction of property in any one accident or occurrence and subject to a total (aggregate) limit of \$2,000,000 for all damages arising out of bodily injury to or death of persons in all accidents or occurrences and out of injury to or destruction of property during the policy period. This coverage shall be for and in the name of the State of Connecticut.

35.1.3 Automobile Liability: The operation of all motor vehicles including those owned, non-owned and hired or used in connection with the Contract shall be covered by Automobile Liability Insurance providing for a total limit of \$1,000,000 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 \$2,000,000. This coverage shall be provided on a primary basis. Should the Contractor not own any automobiles, the automobile & liability requirement shall be amended to allow the Contractor to maintain only hired and non-owned liability coverage.

35.1.4 Umbrella Liability Insurance: Umbrella Liability Insurance, including a drop down provision covering any exhausted underlying aggregate limits in the specified amount shown below of combined single limit each occurrence in excess of the coverages described in subsections 35.1.1 Commercial General Liability, 35.1.3 Automobile Liability, and 35.1.5 Workers' Compensation and Employer's Liability. The State of Connecticut shall be named as an additional insured. The Umbrella Liability Insurance Limits for the CMR are based on the Contract Value as specified in the following table.

Umbrella Liability Insurance Table:

Contract Value		Umbrella Limit
\$1.00	\$500,000.00	\$1,000,000.00
\$500,000.01	\$1,000,000.00	\$2,000,000.00
\$1,000,000.01	to \$10,000,000	\$5,000,000.00
\$10,000,000.01	to \$30,000,000	\$10,000,000.00
\$30,000,000.01	to \$80,000,000	\$15,000,000.00
\$80,000,000.01	to \$150,000,000	\$20,000,000.00
\$150,000,000.01	to \$300,000,000	\$25,000,000.00

**35.1.5 Workers' Compensation and Employer's Liability:** As required by Connecticut Law and Employers' Liability with a limit of not less than \$100,000 per occurrence, \$500,000 disease policy limit and \$100,000 disease each employee. When Work is on or contiguous to navigable bodies of waterways and ways adjoining, the Contractor shall include the Federal Act endorsement for the U.S. Longshoremen's and Harbor Workers Act.

**35.1.6 Special Hazards Insurance:** If required, will be stated in the Contract Documents. This includes coverage for explosion, collapse or underground damage ((X-C-U) and for asbestos abatement when applicable to this Contract and shall be no less than \$1,000,000 each occurrence.

**35.1.7 Builder's Risk Insurance:** Is required and will include coverage in accordance with the limits set forth in the Contract Documents.

**35.1.8 Inland Marine/Transit Insurance:** With respect to property with values in excess of \$100,000 which is rigged, hauled or situated at the site pending installation, the Contractor shall maintain inland marine/transit insurance provided the coverage is not afforded by a Builder's Risk policy.

**35.1.9** When required to be maintained, the Builder's Risk and/or Inland Marine/Transit Insurance policy shall endorse the State of Connecticut as a Loss Payee and the policy shall state it is for the benefit of and payable to the State of Connecticut.

**35.2 Satisfying Limits Under an Umbrella Liability Insurance Policy:** If necessary, the CMR may satisfy the minimum limits required above for 35.1.1 Commercial General Liability, 35.1.3 Automobile Liability, and 35.1.5 Workers' Compensation and Employer's Liability coverage under an Umbrella Liability Insurance policy. The underlying limits may be set at the minimum amounts required by the Umbrella Liability Insurance policy provided the combined limits meet at least the minimum limit for each required policy. The Umbrella Liability Insurance policy shall have an Annual Aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required above for any of the required coverages. The State of Connecticut shall be

specifically endorsed as an Additional Insured on the Umbrella Liability Insurance policy, unless the Umbrella or Liability Insurance policy provides continuous coverage to the underlying policies on a complete "Follow-Form" basis.

**35.3** The CMR shall, at its sole expense, maintain in full force and effect at all times during the life of the Contract or the performance of Work hereunder, insurance coverage as described herein. Certificates shall include a minimum thirty (30) Day endeavor to notify requirement to the Owner prior to any cancellation or non-renewal.

**35.4** The CMR shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention, including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

**35.5** The requirement contained herein as to types and limits of insurance coverage to be maintained by the CMR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the CMR.

**35.6 Hold Harmless Provisions:** The CMR shall at all times indemnify and save harmless the State of Connecticut, the Department of Public Works, and their respective officers, agents, and employees, on account of any and all claims, damages, losses, litigation, expenses, counsel fees and compensation arising out of injuries (including death) sustained by or alleged to have been sustained by the officers, agents, and employees of said State or Department, or of the CMR, his Subcontractor, or materialmen and from injuries (including death) sustained by or alleged to have been sustained by the public, any or all persons on or near the Work, or by any other person or property, real or personal (including property of said State or Department) caused in whole or in part by the acts, omissions, or neglect of the CMR including, but not limited to, any neglect in safeguarding the Work or through the use of unacceptable materials in constructing the Work of the CMR, any Subcontractor, materialman, or anyone directly employed by them or any of them while engaged in the performance of the Contract, including the entire elapsed time from the date of the Notice to Proceed or the actual Commencement Of The Work whichever occurs first until its completion as certified by the Department of Public Works.

**ARTICLE 36  
FOREIGN MATERIALS**

**36.1 North American Free Trade Agreement (NAFTA):** Preference shall be given to articles or materials manufactured or produced in the United States, Canada, and Mexico, (the members of the North American Free Trade Agreement (NAFTA); and the products shall meet all of the referenced standards and Specifications for conditions of performance, quality, and price with duty being equal.

**36.2** Only articles or materials manufactured or produced in the United States, Canada, and Mexico, (the members of

the North American Free Trade Agreement (NAFTA)), will be allowed. The foregoing provisions shall not apply to foreign articles or materials required by the Contract Documents.

**36.3 Buy American Act (BAA):** Any "public building" or "public work," project funded by the American Recovery and Reinvestment Act of 2009 ("ARRA") require that "all of the iron, steel, and manufactured goods used in the project" must be "produced in the United States" in accordance with the requirements of the Buy American Act (BAA).

#### ARTICLE 37 HOURS OF WORK

**37.1** No person shall be employed to work or be permitted to work more than eight (8) hours in any Day or more than forty (40) hours in any week for any Work provided in the Contract, in accordance with Connecticut General Statute Section 31-57.

**37.2** The operation of such limitation of hours of work may be suspended during an emergency, upon the approval of the Commissioner, in accordance with Connecticut General Statute Section 31-57.

#### ARTICLE 38 CLAIMS

**38.1 General:** When filing a formal claim under Section 4-61 (referred to as "Section 4-61" below) of the Connecticut General Statutes (as revised), either as a lawsuit in the Superior Court or as a demand for arbitration, the CMR must follow the procedures and comply with the requirements set forth in this Article. This Section does not, unless so specified, govern informal claims for additional compensation which the CMR may bring before the Department. The CMR should understand, however, that the Department may need, before the Department can resolve such a claim, the same kinds of documentation and other substantiation that it requires under this Article. It is the intent of the Department to compensate the CMR for actual increased costs caused by or arising from acts or omissions on the part of the Department that violate legal or contractual duties owed to the CMR by the Department.

**38.2 Notice of Claim:** Whenever the CMR intends to file a formal claim against the Department under Section 4-61, seeking compensation for additional costs, the CMR shall notify the Commissioner in writing (in strict compliance with Section 4-61) of the details of said claim. Such written notice shall contain all pertinent information described in Paragraph 38.5 below.

**38.2.1** Once formal notice of a claim under Connecticut General Statutes Section 4-61(b) (as revised) has been given to the Commissioner, the claimant may not change the claim in any way, in either concept or monetary amount,

.1 without filing a new notice of claim and demand for arbitration to reflect any such change; and

.2 without the minimum period of six (6) months after filing of the new demand commencing again and running before any hearing on the merits of the claim may be held. The only exception to this limitation will be for damages that continue to accrue after submission of the notice, in ways described and anticipated in the notice.

**38.3 Record Keeping:** The CMR shall keep daily records of all costs incurred in connection with its Work on behalf of the Department. The daily records shall identify each aspect of the Project affected by matters related to any claim for additional compensation that the CMR has filed, intends to file, or has reason to believe that it may file against the Department; the specific Project locations where Project work has been so affected; the number of people working on the affected aspects of the Project at the pertinent time(s); and the types and number of pieces of equipment on the Project site at the pertinent time(s). Any potential or anticipated effect on the Project's progress or Schedule which may result in a claim by the CMR shall be noted contemporaneously with the cause of the effect, or as soon thereafter as possible.

**38.4 Claim Compensation:** The payment of any claim, or any portion thereof, that is deemed valid by the Department shall be made in accordance with the following provisions of this Article:

**38.4.1 Compensable Items:** The liability of the Department for claims will be limited to the following specifically identified items of cost, insofar as they have not otherwise been paid for by the Department, and insofar as they were caused solely by the actions or omissions of the Department or its agents (except that with regard to payment for extra work, the Department will pay to the CMR the Overhead and profit percentages provided for in Article 13, Compensation for Changes in the Work):

- .1 Additional Project-site labor expenses.
- .2 Additional costs for materials.
- .3 Additional, unabsorbed Project-site Overhead (e.g., for mobilization and demobilization).
- .4 Additional costs for active equipment.
- .5 For each Day of Project delay or suspension caused solely by actions or omissions of the Department either:

.1 an additional ten percent (10%) of the total amount of the costs identified in Subparagraphs 38.4.1.1 through 38.4.1.4 above; except that if the delay or suspension period prevented the CMR from incurring enough Project costs under Subparagraphs 38.4.1.1 through

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38.4.1.4 during that period to require a payment by the Department that would be greater than the payment described in Subparagraph 38.4.1.5.2 below, then the payment for affected home office Overhead and profit shall instead be made in the following per diem amount:

.2 six percent (6%) of the original total Contract amount divided by the original number of Days of Contract Time. Payment under either 38.4.1.5.1 or 38.4.1.5.2 hereof shall be deemed to be complete and mutually satisfactory compensation for any unabsorbed home office overhead and any profit related to the period of delay or suspension.

.6 Additional equipment costs. Only actual equipment costs shall be used in the calculation of any compensation to be made in response to claims for additional Project compensation. Actual equipment costs shall be based upon records kept in the normal course of business and in accordance with generally-accepted accounting principles. Under no circumstances shall Blue Book or other guide or rental rates be used for this purpose (unless the CMR had to rent the equipment from an unrelated party, in which case the actual rental charges paid by the CMR, so long as they are reasonable, shall be used). Idle equipment, for instance, shall be paid for based only on its actual cost to the CMR.

.7 Subcontractor costs limited to, and determined in accordance with, Subparagraphs 38.4.1.1 through 38.4.1.5 above and applicable statutory and case law. Such Subcontractor costs may be paid for by the Department only: (a) in the context of an Informal claims settlement; or (b) if the CMR has itself paid or legally assumed, present unconditional liability for those Subcontractor costs.

**38.4.2 Excusable But Not Compensable Items:** The CMR may be allowed Days but the Department will have no liability for the following non-compensable items:

- .1 Abnormal or unusually severe weather;
- .2 Acts of God;
- .3 Force Majeure;
- .4 Concurrent Delay.

**38.4.3 Non-Compensable Items:** The Department will have no liability for the following specifically-identified non-compensable items:

- .1 Profit, in excess of that provided for herein.
- .2 Loss of anticipated profit.
- .3 Loss of bidding opportunities.
- .4 Reduction of bidding capacity.
- .5 Home office overhead in excess of that provided for in Subparagraph 38.4.1.5 hereof.
- .6 Attorneys fees, claims preparation expenses, or other costs of claims proceedings or resolution.
- .7 Subcontractor failure to perform.
- .8 Any other consequential or indirect expenses or costs, such as tort damages, or any other form of expense or damages not provided for in these specifications or elsewhere in the Contract.

**38.5 Required Claim Documentation:** All claims shall be submitted in writing to the Commissioner, and shall be sufficient in detail to enable the Department to ascertain the basis and the amount of each claim, and to investigate and evaluate each claim in detail. As a minimum, the CMR must provide the following information for each and every claim and sub-claim asserted:

**38.5.1** A detailed factual statement of the claim, with all dates, locations and items of Work pertinent to the claim.

**38.5.2** A statement of whether each requested additional amount of compensation or extension of time is based on provisions of the Contract or on an alleged breach of the Contract. Each supporting or breached Contract provision and a statement of the reasons why each such provision supports the claim must be specifically identified or explained.

**38.5.3** Excerpts from manuals or other texts which are standard in the industry, if available, that support the CMR's claim.

**38.5.4** The details of the circumstances that gave rise to the claim.

**38.5.5** The date(s) on which any and all events resulting in the claim occurred, and the date(s) on which conditions resulting in the claim first became evident to the CMR.

**38.5.6** Specific identification of any pertinent document, and detailed description of the substance of any material oral communication, relating to the substance of such claim.

**38.5.7** If an extension of time is sought, the specific dates and number of Days for which it is sought, and the basis or bases for the extension sought. A critical path method, bar chart, or other type of graphical schedule that supports the extension must be submitted.

**38.5.8** When submitting any claim over \$50,000, the CMR shall certify in writing, under oath and in

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accordance with the formalities required by the contract, as to the following:

- .1 That supporting data is accurate and complete to the CMR's best knowledge and belief;
- .2 That the amount of the dispute and the dispute itself accurately reflects what the CMR in good faith believes to be the Department's liability;
- .3 The certification shall be executed by:

- .1 If the CMR is an individual, the certification shall be executed by that individual.
- .2 If the CMR is not an individual, the certification shall be executed by a senior company official in charge at the CMR's plant or location involved or an officer or general partner of the CMR having overall responsibility for the conduct of the CMR's affairs.

**38.6 Auditing of Claims:** All claims filed against the Department shall be subject to audit by the Department or its agents at any time following the filing of such claim. The CMR and its Subcontractors and suppliers shall cooperate fully with the Department's auditors. Failure of the CMR, its Subcontractors, or its suppliers to maintain and retain sufficient records to allow the Department or its agents to fully evaluate the claim shall constitute a waiver of any portion of such claim that cannot be verified by specific, adequate, contemporaneous records, and shall bar recovery on any claim or any portion of a claim for which such verification is not produced. Without limiting the foregoing requirements, and as a minimum, the CMR shall make available to the Department and its agents the following documents in connection with any claim that the CMR submits:

- 38.6.1 Daily time sheets and foreman's daily reports.
- 38.6.2 Union agreements, if any.
- 38.6.3 Insurance, welfare, and benefits records.
- 38.6.4 Payroll register.
- 38.6.5 Earnings records.
- 38.6.6 Payroll tax returns.
- 38.6.7 Records of property tax payments.
- 38.6.8 Material invoices, purchase orders, and all material and supply acquisition contracts.
- 38.6.9 Materials cost distribution worksheets.
- 38.6.10 Equipment records (list of company equipment, rates, etc.).
- 38.6.11 Vendor rental agreements.
- 38.6.12 Subcontractor invoices to the CMR, and the CMR's certificates of payments to Subcontractors.
- 38.6.13 Subcontractor payment certificates.
- 38.6.14 Canceled checks (payroll and vendors).
- 38.6.15 Job cost reports.
- 38.6.16 Job payroll ledger.

38.6.17 General ledger, general journal (if used), and all subsidiary ledgers and journals, together with all supporting documentation pertinent to entries made in these ledgers and journals.

38.6.18 Cash disbursements journals.

38.6.19 Financial statements for all years reflecting the operations on the Project.

38.6.20 Income tax returns for all years reflecting the operations on the Project.

38.6.21 Depreciation records on all company equipment, whether such records are maintained by the company involved, its accountant, or others.

38.6.22 If a source other than depreciation records is used to develop costs for the CMR's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.

38.6.23 All documents which reflect the CMR's actual profit and overhead during the years that the Project was being performed, and for each of the five years prior to the commencement of the Project.

38.6.24 All documents related to the preparation of the CMR's Subcontractor Bids and GMP, including the final calculations on which their GMP was based as stated in all of their Subcontractor Bid Proposal Forms.

38.6.25 All documents which relate to the claim or to any sub-claim, together with all documents that support the amount of damages as to each claim or sub-claim.

38.6.26 Worksheets used to prepare the claim, which indicate the cost components of each item of the claim, including but not limited to the pertinent costs of labor, benefits and insurance, materials, equipment, and Subcontractors' damages, as well as all documents which establish the relevant time periods, individuals involved, and the Project hours and the rates for the individuals.

38.6.27 The name, function, and pertinent activity of each CMR's or Subcontractor's official, or employee, involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.

38.6.28 The amount(s) of additional compensation sought and a break-down of the amount(s) into the categories specified as payable under Paragraph 38.4 above.

38.6.29 The name, function, and pertinent activity of each Department official, employee, or agent involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.

**ARTICLE 39**  
**DIESEL VEHICLE EMISSIONS CONTROL**

39.1 The CMR shall be responsible for compliance with the following provisions:

39.1.1 All CMR and Subcontractor diesel powered non-road construction equipment with engine horsepower (HP) ratings of 60 HP and above, that are on the Project or are assigned to the Contract for a period in excess of 30 consecutive Days, shall be retrofitted with emission control devices in order to reduce diesel emissions. In addition, all motor vehicles and/or construction equipment (both on-highway and non-road) shall comply with all pertinent State and Federal regulations relative to exhaust emission controls and safety.

39.1.2 Retrofit emission control devices shall consist of oxidation catalysis, or similar retrofit equipment control technology that is:

.1 Included on the U.S. Environmental Protection Agency (EPA) "Verified Technology List," as may be amended from time to time <http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm> and

.2 Verified by EPA to provide a minimum emissions reduction of 20% particulate matter (PM10), 40% carbon monoxide (CO), and 50% hydrocarbons (HC).

39.1.3 Construction shall not proceed until all diesel powered non-road construction equipment meeting the criteria in provision 39.1.1 have been retrofitted, unless the Commissioner grants a waiver under provision 39.2.

39.1.4 The CMR shall at least monthly, assess which diesel powered non-road construction equipment are subject to these provisions. The CMR shall notify the DPW Project Manager of any violations of these provisions.

39.1.5 Idling of delivery and/or dump trucks, or other diesel powered equipment shall be limited to three (3) minutes during non-active use in accordance with the Regulations of Connecticut State Agencies Section 22a-74-18(b)(3)(C), which states, in part:

*"[N]o person shall cause or allow a Mobile Source to operate for more than three (3) consecutive minutes when such Mobile Source is not in motion, except as follows:*

*When a Mobile Source is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control,*

*When it is necessary to operate defrosting, heating or cooling equipment to ensure the safety or health of the driver or passengers;*

*When it is necessary to operate auxillary equipment that is located in or on the Mobile Source to accomplish the intended use of the Mobile Source (To bring the Mobile Source to the manufacturer's recommended);*

*When a Mobile Source is in queue to be inspected by U.S. military personnel prior to gaining access to a U.S. military installation."*

39.1.6 All Work shall be conducted to ensure that no harmful effects are caused to adjacent Sensitive Receptor Sites. Diesel powered engines shall be located away from fresh air intakes, air conditioners, and windows.

39.1.7 If any diesel powered construction equipment is found to be in non-compliance with these provisions by the DPW Project Manager, the CMR will be issued a Non-Conformance Notice and given a twenty-four (24) hour period in which to bring the equipment into compliance or remove it from the Project. The CMR's failure to comply with these provisions shall be reason to withhold payment as described in Article 33 Owner's Right To Stop work or Terminate Contract.

39.1.8 Any costs associated with these provisions shall be included in the general cost of the contract. In addition, there shall be no time granted to the CMR for compliance with these provisions. The CMR's compliance with these provisions and any associated regulations shall not be grounds for a Change Order.

39.2 The Commissioner reserves the right to waive all or portions of these provisions at his/her discretion. The CMR may request a waiver to all or portions of these provisions with written justification to the Commissioner as to why the CMR cannot comply with these provisions. A waiver, to be effective, must be granted in writing by the Commissioner.

END



State of Connecticut

# Construction Manager at Risk (CMR) Retainage Reduction Request SAMPLE



Department of Public  
Works

To: Allen V. Herring, P.E., DPW Chief Engineer  
Room 265, 165 Capitol Avenue, Hartford, CT 06106

From: (Insert CMR's Name ), Construction Manager at Risk (CMR)

Subject: Project No. ( ) Reduction of Retainage at ( )% project completion

In accordance with the General Conditions, Article 28 Progress Payments, (insert CMR's name) hereby requests a reduction of retainage to an amount of insert written percent Percent insert numerical percent%. The following list of items required under the General Conditions is in compliance with the terms of the contract and has been verified by the CMR.

- DAS Contractor Performance Evaluation Score s a minimum of Sixty (60%) Percent.
- Timely submission of an appropriate and complete CPM Schedule and Schedule of Values, in compliance with the Contract requirements and the prompt resolution of the Owner's and/or A/E's comments on the submitted material resulting in an appropriate basis for progress of the Work.
- Timely and proper submission of all Contract Document required submissions; including but not limited to Shop Drawings, material certificates and material samples and the prompt resolution of the Owner's and/or Architect's or Engineer's comments on the submitted material resulting in an appropriate progress of the Work.
- Proper and adequate supervision and home office support of the Project.
- The Work completed to date has been installed or finished in a manner acceptable to the Owner.
- The progress of the Work is consistent with the approved CPM Schedule.
- All approved credit Change Orders have been invoiced.
- All Change Order requests for pricing are current.
- The CMR has and is maintaining a clean worksite in accordance with the Contract Documents.

All Subcontractor payments are current at the time of reduction request.

CMR is compliant with set-aside provisions of the contract.

CMR Certification:

\_\_\_\_\_  
(Written Name) (Signature) (Date)

Project Manager Recommendation:

\_\_\_\_\_  
(Written Name) (Signature) (Date)

Approved:

Allen V. Herring, P.E., DPW Chief  
Engineer

\_\_\_\_\_  
(Signature) (Date)

### EXHIBIT D

#### WORK AUTHORIZATION ORDER

Work Authorization Order No. [redacted] ("WAO") dated [redacted] is hereby issued pursuant to Section 2.1.6.7 of the Construction Manager at Risk Agreement dated [redacted] ("Agreement") between the State of Connecticut, acting by its Commissioner of the Department of Public Works under the provisions of Sections 4-8, 4b-1 and 4b-103 of the Connecticut General Statutes, as revised ("Owner") and [redacted] ("CMR").

All terms used herein shall have the same meaning as defined in the Agreement unless otherwise noted. In consideration of the mutual covenants and agreements set below, Owner and CMR agree as follows:

- 1. Project:  
Additions & Renovations to  
H. C. Wilcox Technical High School  
Meriden, CT
- 2. Services and Scope of Work (See Attachment No. 1 setting forth scope of work):
- 3. Cost of the Work \*:  
For Services and Scope of Work identified in Paragraph No. 2, above:

(\$ \_\_\_\_\_)

*\*Said cost shall be factored into and made a part of the GMP.*

- 4. Schedule of Work:
  - a. The Work identified in Paragraph No. 2, above shall start on \_\_\_\_\_
  - b. The Work identified in Paragraph No. 2, above shall be completed on \_\_\_\_\_
- 5. Schedule of Values: (See Attachment No. 2):
- 6. Payment Bond: (See Attachment No. 3):
- 7. Performance Bond: (See Attachment No. 4):
- 8. Attachments (List all Attachments to this WAO):
  - No. 1: Summary Scope of Make Ready Work dated: [redacted]
  - No. 2: Schedule of Values
  - No. 3: Payment Bond
  - No. 4: Performance Bond
 Additional Attachments identified by number, as required

State of Connecticut

By: [redacted]	[redacted]	[redacted]
Title Of the Department of Public Works	Signature	Date

CMR

By: [redacted]	[redacted]	[redacted]
Typed or printed name of authorized representative	Signature	

**APPENDIX I****Administrative and Statutory Requirements**

For the purposes of this Appendix I, the word "contractor" is substituted for and has the same meaning and effect as if it read, Construction Manager at Risk ("CMR"). References to "contract" shall mean this CMR Agreement.

**1. Nondiscrimination And Affirmative Action Provisions:**

- (a) The following subsections are set forth here as required by section 4a-60 of the Connecticut General Statutes:
- (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut. The contractor further agrees to take affirmative action to insure 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, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved; (2) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission; (3) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f; (5) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56.
- (b) If the contract is a public works contract, the contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.
- (c) "Minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise and (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.
- (d) Determination of the contractor's good faith efforts shall include but shall not be limited to the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (e) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.

- (f) The contractor shall include the provisions of sections (a) and (b) above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.
- (g) The following subsections are set forth here as required by section 4a-60a of the Connecticut General Statutes:
- (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; and (4) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.
- (h) The contractor shall include the provisions of section (g) above in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.
- (i) For the purposes of this entire Non-Discrimination section, "contract" includes any extension or modification of the contract, "contractor" includes any successors or assigns of the contractor, "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced, and "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders. For the purposes of this section, "contract" does not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

**2. Executive Orders:**

The contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the contract as if they had been fully set forth in it. At the contractor's request, the Client Agency shall provide a copy of these orders to the contractor. The contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions.

- 2.1 The contractor agrees to abide by such Executive Orders.
- 2.2 The State Contracting Standards Board may review this contract and recommend termination of the contract for a violation of the State Ethics Code (Chapter 10 of the General Statutes) or Section 4a-100 of the General Statutes, or wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in such contract or state contracting agency.
- 2.3 This contract may be cancelled, terminated, or suspended by DPW or the State Labor Commissioner for violation of or noncompliance with Executive Orders No. Three or Seventeen or any State or federal law concerning nondiscrimination, notwithstanding that the State Labor Commissioner is not party to this contract. The State Labor Commissioner shall have continuing jurisdiction regarding contract performance concerning nondiscrimination and listing all employment openings with the Connecticut State Employment Service until the contract is completed or until the contract is terminated prior to completion.
- 2.4 The contractor agrees, as part consideration hereof, that this contract is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. Three, and that the contractor will not discriminate in its employment practices or policies, will file all reports as required, and will fully cooperate with the State of Connecticut and the State Labor Commissioner.
- 2.5 This contract may be cancelled, terminated, or suspended by DPW or the State for violation of or noncompliance with Executive Order Sixteen. In addition, the contractor agrees to include a copy of Executive Order Sixteen, and the requirement to comply with said order, in all contracts with its contractors, subcontractors, consultants, subconsultants, and vendors.

**3. Sexual Harassment:**

This contract is subject to the provisions of the Department of Public Works Sexual Harassment Policy ("Policy") and, as such, the contract may be cancelled, terminated, or suspended by the State in the event that the contractor, its employees, contractors, subcontractors, consultants, subconsultants, or vendors engage in behavior prohibited by the provisions of the Policy. The contractor agrees to include a copy of the Policy, and the requirement to prevent behavior as defined in such Policy, in all contracts with its contractors, subcontractors, consultants, subconsultants, and vendors.

**Sexual Harassment Policy Statement**

All personnel of the Department of Public Works have the responsibility for maintaining high standards of honesty, integrity, impartiality, and conduct to assure proper performance and maintenance of public trust. Sexual harassment violates these standards, especially with regards to principles of equal opportunity, and specific acts of such misconduct will result in the severest of disciplinary action that can be taken.

Acts of sexual harassment are illegal and prohibited by the Civil Rights Act, Title VII as amended and Connecticut General Statutes 46a-60 as a discriminatory practice.

As the Commissioner of the Department of Public Works, I will under no circumstances tolerate any incidents of this type of behavior. Specifically, any supervisors, who use implicit or explicit sexual behavior to control, influence, or affect the career, pay or job of an employee is engaging in sexual harassment. Similarly, any employee who makes deliberate or repeated offensive verbal comments, gestures, or physical contact of a sexual nature in the work environment is also engaging in sexual harassment.

Sexual harassment can include verbal abuse such as sexual insults, lewd or suggestive comments, or unwelcome jokes of a sexual nature. Sexually suggestive objects or sexually explicit posters, calendars, photographs, cartoons, drawings or other explicit materials are inappropriate in a state workplace and can contribute to creating a hostile or offensive work environment.

Individuals who are sexually harassed by supervisors, co-workers, or peers should make it clear that such behavior is offensive. Individuals can file a sexual harassment complaint to the appropriate source(s) for investigation of the matter, so that action can be taken to ensure a work environment free of sexual harassment. Sexual harassment is totally unacceptable conduct; it undermines the integrity of the employment relationship, debilitates morale, and interferes with the work productivity of the organization.

I shall expect every manager and supervisor to ensure that any instance of sexual harassment is dealt with swiftly, fairly, and effectively. All substantiated complaints will result in the strongest disciplinary action available to the Department.

- 3.1 Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- 3.2 Submission to or rejection of such conduct by any individual is used as the basis for employment decisions affecting such individual; or
- 3.3 Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

You may file a complaint with your supervisor, the Human Resources Office at (860) 713-5304 or the Office of Diversity Programs at (860) 713-5308.

*Signed by Commissioner Raeanne V. Curtis on September, 21, 2007*

**4. Summary of State Ethics Laws:**

Pursuant to the requirements of section 1-01qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

**5. Large State Government Contracts**

If the CMR is a Large State Contractor, the CMR shall comply with the provisions of Section 4-61dd of the Connecticut General Statutes as may be revised.

- A. "Large state contract" and "Large state contractor" shall have the same meanings as set forth in Section 4-61dd (g) of the Connecticut General Statutes, as may be revised.
- B. Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee, or appointing authority of a large state 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 subsection (a) of Section 4-61dd of the Connecticut General Statutes, 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 distinct offense. The executive head of the state or quasi-public agency may request the Attorney General to bring a civil action in the Superior Court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.
- C. Each large state contractor shall post a notice of the provisions of Section 4-61dd relating to large state contractors in a conspicuous place that is readily available for viewing by the employees of the contractor.

**6. Set-Aside Program**

CMR shall award not less than 25% of the cost of construction to Subcontractors who are certified and eligible to participate under the State of Connecticut Set Aside Program for small, minority and women owned business enterprises including 6.25% that must be awarded to certified and eligible minority/women owned enterprises, in accordance with Connecticut General Statutes Section 4a-60g through 4a-60j. This requirement must be met even if CMR is certified and eligible to participate in the Small Business Set-Aside Program. CMR shall draft and submit for approval an affirmative action plan in accordance with the rules and regulations of the Connecticut Human Rights and Opportunities Commission ("CHRO"). The affirmative action plan must be approved by the CHRO as a condition precedent to approval of the Guaranteed Maximum Price and the GMP Amendment to this Agreement.

**7. Confidentiality of Documents**

The CMR agrees on behalf of the CMR and the CMR's principals, employees, agents, heirs, successors and assigns that they shall only utilize drawings, specifications, maps, reports, records, or other documents to the extent necessary for the performance of the CMR's work and duties under this Agreement. This limitation on use applies to those items produced by the CMR, as well as to those items received by the CMR from the Owner or others in connection with the CMR's work and duties under this Agreement.

The CMR further agrees that said drawings, specifications, maps, reports, records, and other documents may not be released to any other entity or person except for the sole purpose of the Work described in this Agreement. No other disclosure shall be permitted without the prior written consent of the Owner.

The CMR further agrees that each of its subcontracts and any relevant sub-subcontracts, as appropriate shall contain the following provision:

Any and all drawings, specifications, maps, reports, records or other documents associated with the contract Work shall only be utilized to the extent necessary for the performance of the Work and duties under this contract. Said drawings, specifications, maps, reports, records and other documents may not be released to any other entity or person except for the sole purpose of the Work described in this contract. No other disclosure shall be permitted without the prior written consent of the State of Connecticut Department of Public Works (Owner). When any such drawings, specifications, maps, reports, records or other documents are no longer needed, they shall be destroyed.

**8. Annual Certification**

If the aggregate value of this Agreement exceeds Fifty Thousand Dollars (\$50,000.00), including all amendments, then the CMR shall annually submit, on or within two (2) weeks of the anniversary date of the execution of this Agreement, a completed annual contract certification to: Room 437, 165 Capitol Avenue, Hartford, CT 06106, to the attention of the Legal Unit Secretary. For the purposes of this section, the execution date of this Agreement shall be the date the Owner signs this Agreement. The form is found at <http://www.ct.gov/opm/site/default.asp> and is titled, Gift and Campaign Contribution Certification (OPM Ethics Form 1.)

**9. Campaign Contribution Restriction Provision**

For all State contracts as defined in Section 1(g)(i)(c) of Public Act 07-1 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 ("Notice") advising state contractors, as defined in Public Act 07-1, of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of such Notice. The Notice issued by the State Elections Enforcement Commission, SEEC Form 11, is appended as "Attachment" and incorporated herein by reference.

**10. Construction Safety and Health Course**

Pursuant to the requirements of Section 31-53b of the Connecticut General Statutes, as revised, the CMR shall furnish proof to the Labor Commissioner at such time as the weekly certified payroll form is completed for the first week each person begins work on such project, that any such person performing manual labor on the Project, pursuant to this Agreement, has completed a course of at least ten (10) hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, in the case of telecommunications employees, have completed at least ten (10) hours of training in accordance with 29 CFR 1910-268. Any person required to complete such course or program shall be subject to removal from the worksite if the person does not provide documentation of having completed such course or program by the fifteenth day after the date the person is found to be in noncompliance. The Labor Commissioner shall enforce this provision.

**11. Freedom of Information Act**

The Owner is a "public agency" for purposes of the Connecticut Freedom of Information Act, Sections 1-200 to 1-241 of the General Statutes, as amended (the "FOIA"). Information relating to the CMR, its Subcontractors and their affairs received or maintained by the Owner may constitute "public records or files" for purposes of the FOIA subject to public access and disclosure in the manner provided in the FOIA, unless a specific exemption from the public access and disclosure requirements of the FOIA is available in connection with particular records or files. Accordingly, the Owner is relieved from any confidentiality obligations under this Agreement that would be in conflict with its obligations under the FOIA.

**12. State's Rights of Inspection, Audit and Collection; Maintenance of Records**

- (a) All services performed by and material supplied by the Contractor under this contract shall be subject to the inspection and approval of the State at all times, and Contractor shall furnish all information concerning such material and services as may be requested by the State.
- (b) The Contractor shall maintain, and shall require each of its subcontractors hereunder to maintain, accurate and complete records, books of account and other documents that delineate the nature and extent of the State's, Contractor's, and, in the case of each subcontract, the applicable subcontractor's, performance hereunder. The Contractor shall maintain all such documentation and any and all other of its records (whether stored in electronic or other form) that in any way pertain or relate to this contract and/or the actual or alleged performance and/or lack of performance by any party hereunder (individually and collectively, "Records") at the Contractor's address provided on the first page of this contract or such other location as is approved in writing in advance by the State.
- (c) The Contractor agrees to make all of its Records available for inspection and/or examination by the State's authorized representatives during reasonable hours. The State and its representatives also shall have the right, at reasonable hours, to inspect and examine all of the part(s) of the Contractor's and its subcontractors' plant(s) and/or place(s) of the businesses which, in any way, are related to, or involved in, the performance of this contract and/or any subcontract to ensure compliance with the same. Except in the case of suspected fraud or other abuse or in the event of an emergency, the State will give the Contractor at least twenty-four (24) hours notice of any intended inspections or examinations.
- (d) At the State's request, the Contractor shall provide the State with hard copies of or electronic media containing any data or information in the possession or control of the Contractor which pertains to the State's business or this contract.
- (e) The Contractor agrees that it will keep and preserve or cause to be kept and preserved all of its Records until three (3) years after the latter of (i) final payment under this contract, or (ii) the expiration or earlier termination of this contract, as the same may be extended or renewed, and any holdover period.
- (f) The Contractor also agrees that it will require each subcontractor under this contract to maintain all of its Records until three (3) years after the expiration or earlier termination of said subcontract or other agreement, as the same may be renewed or extended.
- (g) If any litigation, claim or audit is started before the expiration of said three (3) year periods, such records shall be (and shall be required to be) retained until all litigation, claims or audit findings have been resolved.
- (h) The Contractor shall incorporate the provisions of this Section, including this subsection (h), verbatim into any contract or other agreement it enters into with any subcontractor under this contract.

**13. Disclosure of Records**

This Agreement may be subject to the provisions of Section 1-218 of the Connecticut General Statutes, as revised. In accordance with this Section, each contract in excess of Two Million Five Hundred Thousand Dollars between a public agency and an entity or person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to the Freedom of Information Act and may be disclosed by the public agency pursuant to the Freedom of Information Act. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with the Freedom of Information Act. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General statutes as revised.

**14. Forum and Choice of Law**

The Parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by the Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of

Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

**15. Sovereign Immunity**

The parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

ATTACHMENT

STATE OF CONNECTICUT  
 STATE ELECTIONS ENFORCEMENT COMMISSION  
 20 Trinity Street Hartford, Connecticut 06106 – 1628



SEEC FORM 11

NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 7-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

Campaign Contribution and Solicitation Ban

No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

Duty to Inform

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

Penalties for Violations

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties—\$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties— Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or \$5000 in fines, or both.

Contract Consequences

Contributions made or solicited in violation of the above prohibitions may result, in the case of a state contractor, in the contract being voided.

Contributions made or solicited in violation of the above prohibitions, in the case of a prospective state contractor, shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State will not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information and the entire text of P.A 07-1 may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "State Contractor Contribution Ban."

**Definitions:**

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.