

 **AIA** Document A121™ CMC – 2003 and AGC Document 565

**Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor**

The following document, AIA A121 CMC as modified by the State of Connecticut Department of Public Works.

Modification Dated: May 8, 2009

Project No. BI-CTC-409 CMR

AGREEMENT made as of the 18<sup>th</sup> day of May in the year of 2009  
(Paragraphs deleted)

BETWEEN :

State of Connecticut  
Department of Public Works  
165 Capitol Avenue, 4th Floor  
Hartford, CT 06106

(Paragraphs deleted)

Acting herein by its Commissioner of the Department of Public Works, 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

Dimeo Construction Company  
1211 Chapel Street  
New Haven, CT 06511

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

The Project is:

Gateway Community College  
New Haven, CT  
Project Number BI-CTC-409 CMR

and is hereinafter referred to as the Project

The Project number is: BI-CTC-409 CMR

The Architect is:

(Paragraph deleted)  
Perkins + Will Architects, P.C.  
215 Park Avenue South, 4th Floor  
New York, NY 10003-1603

And is hereinafter referred to as the Architect

The Owner and CMR agree as set forth below:

**ADDITIONS AND DELETIONS:**

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

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

The 1997 Edition of AIA Document A201, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

CORE CT #:09DPW1081AA

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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, Department of Public Works, State of Connecticut, Section 00 72 23 (the "DPW General Conditions"), a copy of which is attached hereto as Exhibit C and incorporated herein in its entirety by this reference. For the Project, the DPW General Conditions shall apply. The term "Contractor" as used in DPW General Conditions shall mean the CMR, as that term is defined under Article 1.23 of the DPW General Conditions.

If a conflict exists between this document and the DPW General Conditions, the terms and conditions of this document shall govern. If a conflict exists between Amendment No.1 to this Agreement and this document, the terms and conditions of Amendment No. 1 shall govern, with the Assumptions and Clarifications (Exhibit C to Amendment No. 1) having the highest level of priority of all the Contract Documents. Thereafter, the order of precedence of Contract Documents shall be in accordance with Article 3 of the DPW General Conditions. The term "Contract Documents" as used in this Agreement and as further defined in Article 1.24 of the DPW General Conditions shall include this Agreement, the DPW General Conditions, Supplementary Conditions, if appropriate, the Department of Public Works Division 1 General Requirements (the "General Requirements"), Drawings, Specifications, and addenda, as required. The Contract Documents are incorporated herein and made a part of this Agreement. The term "Contract Sum" as used in the DPW General Conditions shall mean the Guaranteed Maximum Price ("GMP") when it is established in accordance with this Agreement. The form of Amendment No. 1 is attached hereto as Exhibit A.

**§1.3** The Construction Manager shall identify key staff to be assigned to the Project and list them in Exhibit B to this Agreement. 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.

## ARTICLE 2 CMR'S 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.

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### § 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 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 DPW General Conditions and Article 7.2 of this Agreement. 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, as that term is described and defined in Article 1.73 of the DPW General Conditions within its control 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.~~

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§2.1.3.1 The CMR shall prepare a project Construction Schedule as defined and described in Section 01315 of the General Requirements, 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 PRELIMINARY COST ESTIMATES

~~§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements described in Section 3.1.1 herein and the Architect has prepared other basic design criteria, the CMR shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate spreadsheet utilizing a format and form acceptable to the Owner.~~

§ 2.1.5.2 When Schematic Design Documents have been completed by the Architect and approved by the Owner, the CMR shall prepare, for the review of the Architect and approval of the Owner, a more detailed cost estimate with supporting data. During the preparation of the Design Development Documents, the CMR shall update and refine this more detailed cost estimate at appropriate intervals agreed to by the Owner, Architect and CMR.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the CMR shall prepare a detailed cost estimate with supporting data for review by the Architect and approval by the Owner. The detailed cost estimate shall follow the example for form and format provided by the Owner unless the Owner agrees in writing to the use of the CMR's own form and format. During the preparation of the Construction Documents, the CMR shall update and refine this detailed cost estimate at appropriate intervals agreed to by the Owner, Architect and CMR. The CMR shall prepare a detailed cost estimate with supporting data at the fifty percent (50%) Contract Documents stage.

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~~§2.1.5.4 The CMR shall prepare a detailed construction cost estimate with supporting data for review by the Architect and approval of the Owner prior to the bidding and award of Subcontracts.~~

The CMR shall conduct a detailed audit of the latest cost estimate provided by Owner with recommendations, as appropriate, for corrective or preventative action to avoid cost overruns. CMR shall prepare very detailed bid scopes. 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.

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§ 2.1.5.5 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.

§2.1.5.6 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, state and applicable requirements as provided to CMR by Owner. The term Project Elements as used herein shall refer to the components 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 as that term is defined in Article 1.51 of the DPW General Conditions. The CMR shall use all reasonable means and efforts to develop the interest of qualified Subcontractors in the Project. The CMR shall be permitted to include in its subcontractor bid documents the requirement that the bidder possess experience with projects of a similar nature and scope. The bid documents may also require bidders to submit information regarding their litigation and claim history for purposes of objectively evaluating the responsibility and integrity of the bidder.

§2.1.6.2 The CMR shall publicly advertise for trade sub contractor bids in accordance with the provisions of Connecticut General Statutes Section 4b-91(a) by advertising, at least once, in one or more newspapers and construction trade publications having broad 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.

§2.1.6.3 The CMR shall conduct pre-bid conferences, as directed by the Owner, 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 coordinated with the Owner's Procurement Department.

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 bidders comply with the provisions of Connecticut General Statutes Section 4a-100 and that bidders meet all CMR's criteria to the extent that it is in the best interest of the Project. The CMR shall, after consultation with and approval by the Owner, award any related contracts for Project Elements to the responsible, qualified, approved subcontractor submitting the lowest bid in compliance with the bid requirements and procedures. The CMR shall not be eligible to submit a bid for any such contract.

§2.1.6.4 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.

§2.1.6.5 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

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of any bid must be approved by the Owner.

**§2.1.6.6** 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 site preparation and demolition prior to submission and approval of the GMP. The CMR will make recommendations and upon approval by the Owner, may award the Work in accordance with Section 2.1.6.5, above. Cost of the Work, time and schedule for performing the Work shall be substantiated by documentation satisfactory to Owner and shall be included as a basis for the GMP as described in Subsection 2.2.4 herein.

#### **§ 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 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, including but not limited to, the administrative and statutory requirements more particularly set forth in Appendix I attached hereto and made a part hereof.

#### **§ 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, 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 estimated Cost of the Work 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 shall not exceed the Owner's maximum budget and schedule for the Project, as shown in Exhibit A and Exhibit C to Amendment No. 1 attached to this Agreement.

**§ 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.

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§ 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 Exhibit C to Amendment No. 1. Such changes, if required, are excluded because they would warrant an adjustment to the GMP by Change Order.

§2.2.3 The estimated Cost of the Work shall include the CMR's Contingency, which shall be a sum equal to **two and one-half percent (2.5%)** of the estimated Cost of the Work 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 the CMR's Contingency shall be to cover costs described in this Section. 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: (1) estimating errors; (2) trade buy-out differentials; (3) unanticipated market conditions, including price escalation after the GMP is accepted through a written Amendment to this Agreement; (4) labor and material market conditions; (5) interface and coordinating omissions between various Subcontractor packages; (6) overtime and/or premium time; (7) acceleration and/or expediting; (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; (9) design errors or omissions that are the responsibility of the CMR; (10) bidder, Subcontractor, and vendor defaults; (11) legal expenses; and (12) losses not covered by insurance, including insurance deductibles not resulting from the neglect or negligence of the CMR or its Subcontractors..

The CMR's Contingency shall not, however, be used to fund changes in the Work as described in Article 13 of the DPW General Conditions, 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 Article 25.6 of the DPW General Conditions. 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.

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 change in excess of **Twenty Thousand Dollars (\$20,000)** to any subcontract. For subcontract changes less than **Twenty Thousand Dollars (\$20,000)**, 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.

- .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.
  - .4 Notwithstanding compliance with Paragraph 2.2.3 above, any use that is for the sole use, benefit or convenience of the CMR, and that would not create any additional benefit or difference to the final Work beyond that which the original Construction Documents would have provided.

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- .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.

#### § 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

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

- .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 A list of allowances and a statement of their basis.
- .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 See Amendment No. 1, Exhibit C.
- .4 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, other verified costs and the CMR Fee, as defined in Section 5.1.1 herein.
- .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.
- .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.
- .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 of Eleven Thousand Five Hundred Dollars (\$11,500.00) per day for each calendar day beyond the established Substantial Completion Date that the CMR fails to achieve Substantial Completion.
- .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 Six Thousand Five Hundred Dollars (\$6,500.00) per day for each calendar day beyond the ninety (90) calendar days of the established Substantial Completion Date that the CMR fails to complete all of the work required for Acceptance of the Work.

§ 2.2.5 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 discover 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.

§ 2.2.6 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 2.2.5, above, and so notifies the CMR, the GMP proposal shall not be effective without written acceptance by the CMR.

§ 2.2.7 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 Section 2.1.7.

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§ 2.2.8 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 Amendment No. 1. 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.

§ 2.2.9 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 Amendment No. 1. 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.

§ 2.2.10 The State of Connecticut is tax exempt pursuant to Connecticut General Statutes Section 12-242. 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.

§ 2.2.11 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.  
*(Paragraphs deleted)*

§ 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 DPW General Conditions Articles 21, 25 and 26 shall apply.

§ 2.3.1.4 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

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§ 2.3.2.1 The Work shall be performed under subcontracts or by other appropriate agreements with the  
(Paragraphs deleted)

CMR. The CMR shall obtain competitive public bids in accordance with the provisions of Sections 2.1 6.1 through 2.1.6.4 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 Subcontractors conditioned upon disbursement of the progress payment next due and owing; (5) the Subcontractor or the Subcontractor's subcontractor's mark-up on change orders to have committed maximum overhead and profit pursuant to DPW General Conditions Article 13 (6) 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; (7) 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; (8) 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; (9) require each Subcontractor to satisfactorily remove or stockpile all debris created by its activity pursuant to the discretion of the CMR; (10) provide that the subcontract should be assignable to the Owner; (11) require all performance and payment bonds issued by a Subcontractor on the Project name the Owner and the CMR as dual obligees; (12) 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; (13) 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; (14) 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; (15) 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 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 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.3 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. Formal weekly project meetings shall be tape recorded by the CMR. Owner may also schedule meetings at such times as it deems necessary.

§ 2.3.2.4 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 into the schedules described in Article 11 of the DPW General Conditions, including the Owner's occupancy requirements.

§ 2.3.2.5 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,

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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.

**§ 2.3.2.6** 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

**2.3.2.7** 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.

**2.3.2.8** The CMR will at all times monitor and update the Project Construction Schedules, consistent with Article 11 of the DPW General Conditions.

**2.2.2.9** The CMR will provide regular monitoring of the approved GMP showing actual costs for activities in progress and estimates for uncompleted  
*(Paragraphs deleted)*  
tasks.

**2.3.2.10** 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.

## 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.  
*(Paragraphs deleted)*

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 3.1.3.7 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,

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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, ground corrosion and resistivity tests, 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.

3.1.4 The CMR, in conjunction with the Architect, shall incorporate the United States Green Building Council's Leadership in Energy & Environment Design ("LEED") Green Building Rating system (latest version) to achieve the LEED Gold level of certification throughout the design, construction, and operation of the Project. This LEED certification shall be upheld by commissioning to ensure that the long-term operation of the Project complies with this standard.

3.1.5 The services of a Commissioning Agent. However, the CMR shall cause the Mechanical, Electrical and Plumbing (MEP) Subcontractors to provide commissioning support services and testing services per the LEED Commissioning Agent's requirements, as part of their respective positions relative to the Work.

## § 3.2 OWNER'S DESIGNATED REPRESENTATIVE

*(Paragraphs deleted)*

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.

## § 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.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

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

### § 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the CMR's compensation shall be calculated as follows:

CMR shall be compensated for Preconstruction Services in the total amount of One Hundred Sixty-Eight Thousand One Hundred Eighty Dollars (\$168,180.00) for all preconstruction services up to and through September 9, 2009. If

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Preconstruction Services extend beyond September 9, 2009, further services shall be considered additional services and billed at hourly rates in accordance with the following rate schedule:

#### Preconstruction Rate Schedule

Personnel	Rate (\$/hour)
Project Executive	\$115.74/hr.
Project Manager	\$94.05/hr.
Lead Superintendent	\$102.05/hr.
Scheduling Engineer	\$67.32/hr.
Administrative Assistant	\$31.37/hr.
VP of Preconstruction Services	\$139.76/hr.
Sr. Estimator	\$112.65/hr.
Purchasing Agent	\$89.32/hr.
Purchasing Administrative Assistant	\$34.37/hr.
Mechanical Coordinator	\$87.20/hr.
Electrical Coordinator	\$83.19/hr.

All rates include cost plus burden.

Reimbursable expenses, as determined in accordance with Exhibit B, are included in the above lump sum amount. Any such reimbursable expenses incurred after September 9, 2009 for Preconstruction Services shall be billed at cost plus an administrative mark up of Five percent (5%).

Preconstruction Services shall be billed monthly, pro-rated over the preconstruction period. Otherwise, billings will be based on costs incurred. Payments shall be due within thirty (30) days after invoicing. No Retainage, as that term is defined in DPW General Conditions Article 1.54, shall be withheld on Preconstruction Services.

§ 4.1.2 The hourly rates above shall be equitably adjusted by three percent (3%) annually after September 9, 2010. CMR's compensation for Preconstruction Services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.

*(Paragraph deleted)*

#### § 4.2 PAYMENTS

§ 4.2.1 Payments shall be made monthly following presentation of the CMR's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable

*(Paragraphs deleted)*

thirty (30) days from the date the CMR's invoice is received and approved by the Owner in accordance with Articles 27 and 28 of the DPW General Conditions.

#### ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

#### § 5.1 COMPENSATION

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§ 5.1.1 For the CMR's performance of the Work as described in Section 2.3, the Owner shall pay the CMR in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the CMR Fee determined as follows:

The CMR Fee shall be one and 35/100 percent (1.35%) of the Cost of the Work, excluding General Conditions Costs.

The CMR shall be reimbursed for General Conditions Costs as defined in Exhibit B in the lump sum amount of Five Million One Hundred Two Thousand Seventy-Three Dollars (\$5,102,073.00), conditioned upon an anticipated schedule not to exceed nine hundred ninety 990 calendar days (900 days to Substantial Completion and 90 days to Acceptance). Each scheduled payment shall be subject to the prior approval of the Owner.

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 Article 4 of the DPW General Conditions.

## § 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 Amendment No. 1, subject to additions and deductions by 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.

*(Paragraphs deleted)*

## § 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 Amendment No. 1 may be determined by any of the methods listed in Article 13 of the DPW General Conditions.

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

§ 5.3.3 Adjustments to subcontracts shall be determined as provided in Article 13 of the DPW General Conditions.

§ 5.3.4 Notwithstanding any provision of the DPW 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 Article 5.1.1, above. The CMR shall not be entitled to any overhead and profit percentages or any additional general conditions costs except that if a Change in the Work results in an increase in the overall calendar days provided in Article 5.1.1 above, 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 general conditions costs based upon the construction rate schedule set forth below and necessary, reasonable and verified costs.

### Construction Rate Schedule

Personnel	Rate (\$/hour)
Project Executive	\$115.74/hr.
Project Manager	\$94.05/hr.
Lead Superintendent	\$102.05/hr.
Superintendent	\$93.77/hr.
MEP Superintendent	\$79.98/hr.
Project Engineer	\$74.49/hr.
Scheduling Engineer	\$67.32/hr.
Administrative Assistant	\$31.37/hr.

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Site Safety Manager

\$68 91/hr.

The hourly rates above shall be equitably adjusted by three percent (3%) annually after September 9, 2010.

If, however, a Change in the Work results in deleted work as provided in Article 14 of the DPW General Conditions, 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 COSTS TO BE REIMBURSED

§ 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 be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The parties agree that the general conditions expense items are hereby fixed (subject to adjustment in accordance with the terms of the Contract Documents) at the lump sum amount set forth in Article 5.1.1, above. If a conflict exists between this Article 6 and Exhibit B to this Agreement titled "CMR Allocation Costs", the terms and conditions of Exhibit B, "CMR Allocation Costs" shall take precedence. The lump sum general conditions expense items shall be paid to the CMR monthly on an agreed upon payment schedule.

### § 6.1.2 LABOR COSTS

- .1 Wages or salaries of the CMR's supervisory and administrative personnel when stationed at the site with the Owner's agreement including but not limited to those categories set forth on Exhibit B attached hereto. Said costs are included in the lump sum general conditions costs under this Agreement.

*(Table deleted)*

- .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.
- .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 that such costs are not already included in the rates set forth in Section 4.1 and provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3. Said costs are included in the lump sum general conditions costs under this Agreement.

### § 6.1.3 SUBCONTRACT COSTS

Payments made by the CMR to Subcontractors in accordance with the requirements of the subcontracts. CMR will obtain quote for payment and performance bonds from Subcontractors. Payment and/or performance bonds are required and the costs of same shall be included as a Cost of the Work. Notwithstanding the foregoing, at the sole discretion and with the prior approval of the Owner, the CMR may waive the requirement of a Subcontractor bond.

### § 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Section 6.1.4.1 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

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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.

#### § 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .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.
- .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.
- .3 Costs of removal of debris from the site.
- .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.
- .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.

#### § 6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds, subject to the provisions of Article 35 of the DPW General Conditions.
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the CMR is liable.
- .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.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work, in accordance with DPW General Conditions Article 16.
- .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 Data processing and computer costs related to project support for the Work, including but not limited to project scheduling and tracking programs, shall be included in the lump sum general conditions costs.
- .7 Data processing and computer costs related to business or corporate overhead shall be reimbursable under Cost of the Work.

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- .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.
- .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.

**§ 6.1.7 OTHER COSTS**

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

**§ 6.1.8 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:

- .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 Article 19 of the DPW General Conditions, provided that such threatened damage, injury or loss was not caused by the negligent acts, omissions, or failure to fulfill a responsibility to the Owner set forth in the Contract Documents of the CMR, the CMR's foremen, engineers or superintendents, or other supervisory, administrative managerial personnel or Subcontractors of the CMR, or the failure of the CMR's personnel to adequately supervise, coordinate or manage the work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the CMR from their insurance, Subcontractors or suppliers.

**§ 6.1.9** The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of the DPW General Conditions or other Conditions of the Contract which may require the CMR to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

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.

**§ 6.2 COSTS NOT TO BE REIMBURSED**

**§ 6.2.1** The Cost of the Work shall not include:

- .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 Sections 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the CMR's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- .4 The CMR's capital expenses, including interest on the CMR's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- .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.
- .7 Costs incurred in the performance of Preconstruction Phase Services since they are to be paid for separately pursuant to Article 4.

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- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.
- .9 Costs which would cause the GMP to be exceeded.
10. Losses not covered by insurance, including deductibles.

### § 6.3 DISCOUNTS, REBATES AND REFUNDS

§ 6.3.1 Cash discounts obtained on payments made by the CMR shall accrue to the Owner if (1) before making the payment, the CMR included them in an Application for Payment and received payment therefor from the Owner, or (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; the 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, 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 Articles 27 through 29 of the DPW General Conditions, 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. The CMR shall submit an Application for Payment for General Conditions on a monthly basis separate from subcontract work, with the lump sum general conditions costs set forth in Section 5.1.1 herein, pro rated for the duration of the Contract Time. The CMR shall submit an Application for Payment for subcontract work on a monthly basis.

§ 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 Articles 27 through 29 of the DPW General Conditions 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.

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§ 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 Article 7.1.4, above and Articles 27 through 29 of the DPW General Conditions. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the CMR Fee and CMR Contingency shall be shown as a single separate item, and the lump sum General Conditions Cost shall also be shown as a separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect 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 Articles 27 through 29 of the DPW General Conditions:

- .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.
- .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.
- .3 Add the CMR Fee, less Retainage of seven and 50/100 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
- .4 Subtract an additional two percent (2%) of the total contract price per month pending the State Commission on Human Rights and Opportunities' ("CHRO") approval of the CMR's Affirmative Action Plan, in the event that CHRO authorizes the award or execution of this Agreement in advance of CHRO's approval of the CMR's Affirmative Action Plan
- .5 Subtract the aggregate of previous payments made by the Owner.
- .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 Subtract amounts, if any, for which the Owner has withheld a proportion of any payment due the CMR pursuant to Article 32 of the DPW General Conditions.
- .8 There shall be no Retainage held on CMR's general conditions 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 50/100 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 Article 28 of the DPW General Conditions, the determination in the reduction of Retainage as described in DPW General Conditions Article 28.2 shall be made on a per trade subcontractor package basis.

- .1 The CMR within fifteen (15) 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.
- .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,

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within fifteen (15) 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 on Exhibit A (Amendment No. 1) to this Agreement and in accordance with Article 30.1.1 through 30.1.4 of the DPW General Conditions. Substantial Completion shall mean the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents.

*(Paragraph deleted)*

### §7.2.2 Acceptance:

Acceptance shall be achieved within the time frame set forth in Exhibit A (Amendment No. 1) to this Agreement and in accordance with Article 30.2.1 through 30.2.2 of the DPW General Conditions. Acceptance shall mean the Owner's acknowledgement of the Work from the CMR upon certification by the DPW Project Manager and Architect that all Work has been completed.

## § 7.3 FINAL PAYMENT

§ 7.3.1 Final payment shall be made by the Owner to the CMR when: (1) the Contract has been fully performed by the CMR and accepted by the Owner in accordance with Article 7.2, above, and Article 30 of the DPW General Conditions, except for the CMR's responsibility to correct nonconforming Work as provided in Article 21 of the DPW General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; (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; (3) a Certificate of Compliance, as defined in DPW General Conditions, Article 1.16, has been issued along with the Certificate of Acceptance, as defined in DPW General Conditions, Article 1.15 and described in DPW General Conditions, Articles 30.2.1 through 30.2.2; (4) any other documentation required pursuant to Article 31 of the DPW General Conditions 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 (5) any and all other requirements set forth in Article 31 of the DPW General Conditions have been fully satisfied.

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

- .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.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Article 32 of the DPW General Conditions or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.
- .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.

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§ 7.3.4 If, subsequent to final payment and at the Owner's request, the CMR incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, 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

(Paragraphs deleted)

§ 8.1 INSURANCE REQUIRED OF THE CMR

Except for Builders Risk Insurance, the CMR shall purchase and maintain insurance as set forth in Article 35 of the DPW 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 (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

- .1 Statutory Workers' Compensation and Employers Liability:
  - i. Workers' Compensation: Statutory Limits
  - ii. Employers' Liability:
    - Bodily injury per occurrence \$100,000 per occurrence
    - Bodily injury by illness \$100,000 each employee
    - \$500,000 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):

- \$ 1,000,000 Each Occurrence
- \$ 2,000,000 Annual Aggregate
- \$ \_\_\_\_\_ Personal and Advertising Injury
- \$ \_\_\_\_\_ Products-Completed Operations Aggregate

- .1 Owner shall be listed as an additional insured.
- .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.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Article 35.6 of the DPW General Conditions.

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

- Combined Single Limit \$1,000,000 each occurrence  
\$1,000,000 annual aggregate

§ 8.1.4 Other coverage:

(Paragraph deleted)

- .1 **Umbrella Excess Liability.** The CMR shall maintain coverage in the amount of \$25,000,000. 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 Excess Liability policy described in Section 8.1.4.1, above. The underlying limits may be set at the minimum amounts required by the Umbrella Excess Liability policy provided the combined limits meet at least the minimum limit for each required policy. The Umbrella Excess 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 Excess Liability policy, and the Umbrella Excess Liability policy shall provide continuous coverage to the underlying policies on a complete "Follow-Form" basis.

(Paragraphs deleted)

- .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 \$5,000,000 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 \$5,000,000. The insurance shall remain in effect during the entire duration of this contract and for five (5) 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.
- .3 **Valuable Paper and Record Loss.** \$25,000 each occurrence
- .4 **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 CMR shall maintain inland marine/transit insurance provided the coverage is not afforded by a Builder's Risk policy.
- .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.

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	\$ 5 Million
Limits for Flood	\$ 10 Million
Limits of Earthquake	\$ 10 Million
Toppling of Crane	\$ 1 Million
Theft or Destruction of Materials at Job Site	\$ 500 Thousand
Mold, Mildew, Fungus, Dry Rot, Wet Rot	\$ 500 Thousand
Loss of Use	\$ 5 Million
Landscaping	\$ 100 Thousand
Storage	\$ 500 Thousand
Business Interruption	\$ 5 Million
Inland Marine/Transit	\$ 500 Thousand
Terrorism	Value of Project
Deductibles	
"Significant" Loss (equal to greater than \$2.0 mil)	\$ 25,000
"Minor Loss" (less than \$2.0 mil)	
Period	900 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 DPW General Conditions, the CMR shall cause each Subcontractor to

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effect and maintain insurance for not less than the limits, and in accordance with the provisions, set forth below:

Coverage	Amount
a) Commercial General Liability 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.	\$1,000,000. Combined Single Limit Each Occurrence \$2,000,000. General Aggregate/On a per Project Basis
b) Commercial Automobile Liability including Bodily Injury and Property Damage (Owned, Hired and Non-Owned)	\$1,000,000. Combined Single Limit Each Occurrence No Aggregate
c) Professional Liability	Not Required
d) Workers Compensation. Coverage applies in the state work is performed.	\$1,000,000 Minimum Employers Liability. W/C Statutory Limits Required.
e) Umbrella Liability	Contract amounts of \$1 to \$2,000,000 \$3,000,000 Each Occurrence \$3,000,000 General Aggregate
	Contract amounts of \$2,000,000 to \$10,000,000 \$5,000,000 Each Occurrence \$5,000,000 General Aggregate
	Contract amounts of \$10,000,000 to \$30,000,000 \$10,000,000 Each Occurrence \$10,000,000 General Aggregate

*(Paragraphs deleted)*

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:

1. CG2010 (11/85), or
2. CG2010 (10/01) when used with CG2037 (10/01), or
3. CG2033 (10/01) when used with CG2037 (10/01), or

The commercial general liability policy 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 REPRESENTATTIVES" shall be deleted from the certificate form's cancellation provision.

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

1. A statement that the policies evidenced meet all the insurance requirements provided under the subcontract agreement between CMR and the named insured Subcontractor.
2. A list of all additional insureds required by the Contract Documents.
3. A statement that the worker's compensation policy provides coverage in the State of Connecticut.
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 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., Amendment No. 1, 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: <http://www.ctdol.state.ct.us/wgwkstnd/forms/contractwage>

## 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 Article 38 of the DPW General Conditions 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 DPW 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.

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- .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

Article 17 of the DPW General Conditions shall apply to this Agreement.

- .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, sub-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, Sub-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.
- .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 Article 34 of the DPW General Conditions, 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 Article 35.6 of the DPW General Conditions.

#### § 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

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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 Contract at any time without cause, as provided under Article 33 of the DPW General Conditions.

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 Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the CMR shall be compensated 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 4.1.1 and shall not include any anticipated overhead or profit on any work that was not executed.

*(Paragraph deleted)*

- .1 All work and materials obtained by the Contractor 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.

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*(Paragraphs deleted)*

Materials obtained by the Contractor for the Work that have been inspected, tested as required, and accepted by the Commissioner, and that are not incorporated into the Work, may, at the option of the Commissioner, be purchased from the Contractor 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.

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

§ 10.1.3 If the Owner or CMR terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the rights and obligations of the parties shall be governed by Article 33 of the DPW General Conditions. 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 Amendment No. 1, the Contract may be terminated as provided in Article 33.2 of the DPW General Conditions.

*(Paragraph deleted)*

### § 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 33.1 of the DPW General Conditions.

## 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 Amendment No. 1 to this Agreement and in the dollar amounts set forth in Article 2.2.4 of this Agreement and in accordance with Article 8 of the DPW General Conditions. Notwithstanding the foregoing, it is understood that the tasks necessary to complete the LEED 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

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§ 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

*Raeanne V. Curtis*  
(Signature)

By: **Raeanne V. Curtis**  
Its Commissioner of the Department of Public Works

Date **5/18/2009**  
(Rows deleted)

CONSTRUCTION MANAGER

*[Signature]*  
(Signature)  
By **STEPHEN F. WITKEDGE**  
(Printed name and title)

**EXECUTIVE VICE PRESIDENT / CMIF ORGANIZING OFFICER**

Date **5/12/09**

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STATE OF RI )  
 )  
COUNTY OF Bristol ) ss.:

On this the 12 day of May, 2009, before me, personally appeared Stephen Rithledge who, acknowledged that he/she is the EVP COO of Dimes Construction, a Corporation, and that he/she as such COO, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Company by himself/herself as COO

Sandra A. Barry  
Notary Public  
My Commission Expires: 4/11/10  
Commissioner of the Superior Court



OFFICIAL SEAL  
SANDRA A. BARRY  
NOTARY PUBLIC - RHODE ISLAND  
My Commission Expires April 11, 2010

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

On this the 18<sup>th</sup> day of MAY, 2009, before me, personally appeared Raeanne V. Curtis, Commissioner of the State of Connecticut Department of Public Works, known to me to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

Diane M. Chace  
Notary Public  
My Commission Expires:  
Commissioner of the Superior Court

DIANE M. CHACE  
NOTARY PUBLIC  
MY COMMISSION EXPIRES JULY 31, 2009

Approved as to form  
ATTORNEY GENERAL

By: [Signature]  
Associate Attorney General

Date: 5/21/09

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## 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")

#### Nondiscrimination And Affirmative Action Provisions

Section A of this appendix is inserted in connection with subsection (a) of Section 4a-60 of the Connecticut General Statutes, as revised. Section B of this appendix is inserted in connection with subsection (a) of Section 4a-60a of the Connecticut General Statutes, as revised.

- A. (a) For the purposes of this section, "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons. (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Conn. Gen. Stat. Sub-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.

For the purposes of this section, "Commission" means the Commission on Human Rights and Opportunities.

For the purposes of this section, "contract" means any agreement between any individual, firm, or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

- (b) (1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, 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, or physical disability, including, but not limited to, blindness, unless it is shown by the contractor that such disability prevents performance of the work involved; (2) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the contractor agrees to provide each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the contractor has a contract or understanding, a notice to be provided by the Commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the contractor agrees to comply with each provision of this section and Connecticut General Statutes Sub-Sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes Sub-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 they relate to the provisions of this section and Conn. Gen. Stat. Section 46a-56. 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) Determination of the contractor's good faith efforts shall include, but shall not be limited to, the following factors: The contractor's employment and subcontracting policies, patterns and

practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
  - (e) The contractor shall include the provisions of subsection (b) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and 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 Conn. Gen. Stat. Sub-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.
  - (f) The contractor agrees to comply with the regulations referred to in this section as they exist on the date of this contract and as they may be adopted or amended from time to time during the term of this contract and any amendments thereto.
- B.
- (a) (1) The contractor agrees and warrants that in the performance of the agreement 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 representatives 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 of the general statutes; (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 provisions of this section and Section 46a-56 of the general statutes.
  - (b) The contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Section 46a-56 of the general statutes; 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.
  - (c) Determination of the contractor's good faith efforts shall include, but shall not be limited to, the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

#### **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 Reil, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Reil, 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.

#### **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 Posted on the DPW Website

Summary of State Ethics Laws is posted on the DPW Website at [www.ct.gov/dpw](http://www.ct.gov/dpw), and as may be revised from time to time, is incorporated herein by reference as if fully set forth herein. This Summary may be found by clicking on the "Affidavits and Other Legal Forms" link.

- 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.

#### 5. 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 Amendment No 1 to this Agreement.

#### 6. 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 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.

#### 7. 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.)

**8. 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.

**9. 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.

**10. 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.

ATTACHMENT

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. 07-1, 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.

# EXHIBIT A

## STATE OF CONNECTICUT DEPARTMENT OF PUBLIC WORKS

### AMENDMENT No 1 To Agreement dated

Between the State of Connecticut and  
Dimeo Construction Company  
For Project No. BI-CTC-409-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

**Dimeo Construction Company**  
1211 Chapel Street  
New Haven, CT 06511

hereinafter called the CMR

#### WITNESSETH

Whereas the Owner and CMR entered into an Agreement on \*\*\*\*\* in connection with the project entitled Downtown Gateway Community College, 2 Church Street and 20 Church Street, New Haven, Connecticut, Project No. BI-CTC-409-CMR, (the "Agreement"); and

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

Now, therefore, in consideration of the mutual covenants, terms, and conditions herein contained, the parties hereto do hereby agree to amend the Agreement as follows:

1. The CMR's Guaranteed Maximum Price ("GMP") for the Work, including the estimated Cost of the Work as defined in Article 6 of the Agreement and the CMR Fee as defined in Article 5 of the Agreement, is:

Dollars (\$ \_\_\_\_\_ ).

2. The GMP is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F, as follows:

Exhibit A	Drawings, Specification, addenda and General, Supplemental and other Conditions of the Contract	On which the GMP is based, pages	through	, dated
Exhibit B	Allowance items, pages		through	, dated
Exhibit C	Assumptions and Clarifications made in preparing the GMP, pages		through	, dated
Exhibit D	Completion Schedule, pages		through	, dated
Exhibit E	Alternate Prices, pages		through	, dated
Exhibit F	Unit Prices, pages		through	, dated

3. The date of Substantial Completion established by this Amendment No. 1 is:
4. The dated of Acceptance established by this Amendment is:
5. All of the terms and conditions of the Agreement not hereby amended shall remain in full force and effect.
6. This amendment shall take effect upon its approval as to form as noted in Paragraph 7.
7. This 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.

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

Attested by:

State of Connecticut (the "Owner")

\_\_\_\_\_  
*Witness*

By: \_\_\_\_\_  
Raeanne V. Curtis  
Its Commissioner  
of the Department of Public Works

\_\_\_\_\_  
*Witness*

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

Attested by:

\_\_\_\_\_  
*Witness*

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

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

\_\_\_\_\_  
*Witness*

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

Approved as to form:

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

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

**EXHIBIT B**  
**CMR Allocation Of Costs Matrix**  
 May 11, 2009

Item Description	Pre-Construction Fee (Lump Sum)	Cost of the Work			Furnished By Owner	CM Fee	Remarks
		Lump Sum General Conditions	Reimbursable Expense	Supplied By Sub-Contractors			
<b>Preconstruction Services:</b>							
1. Consultation	X						
2. Cost Estimating	X						
3. Value Engineering	X						
4. Constructability Reviews	X						
5. Schedule with Updates	X						
6. Safety Plan	X						
7. Attendance at Info/Public/Client Mtgs.	X						
8. Advertising Expense	X						
9. Bid & GMP Preparation	X						
10. Bid Document Printing & Distribution	X						
11. Miscellaneous Expenses	X						
12. Travel & Expenses	X		+				Preapproved travel outside of CT is a reimburse-able expense
<b>Construction Services:</b>							
<b>1. Project Supervisory Staff – On Site</b>							
1.1 Home Office Staff except noted below						X	
1.2 Project Executive		X					
1.3 Project Manager(s)		X					
1.4 Project Superintendent(s)		X					
1.5 Project Engineer(s)		X					
1.6 MEP Specialists		X					
1.7 QC/Safety Specialist		X					
1.8 Project Accountant						X	
1.9 Project Coordinator						X	
1.10 General Superintendent						X	
1.11 Scheduler		X					
1.12 Admin. Asst./Project Secretary		X					

Item Description	Pre-Construction Fee (Lump Sum)	Cost of the Work			Furnished By Owner	CM Fee	Remarks
		Lump Sum General Conditions	Reimbursable Expense	Supplied By Sub-Contractors			
<b>X = Normal Cost Allocation</b> <b>+ = Prior Owner Approval Required</b>							
<b>Construction Services:</b>							
<b>2. Project Staff Support</b>							
2.1 Staff Travel & Out of Pocket Expenses		X	+				Preapproved travel outside of CT is a reimburse-able expense
2.2 Set Up Field Office		X					
2.3 Field Office Rental		X					
2.4 CM Shed & Storage Trailer Rental			X				
2.5 Furniture for Field Office		X					
2.6 Stationery & Supplies		X					
2.7 Postage & Shipping		X					
2.8 Field Office Equipment		X					
2.9 Field Computer Equipment		X					
2.10 Field Telephone Equipment		X					
2.11 Field Office Fax Machine		X					
2.12 Field Office line charges & usage		X					
2.13 Field Communication Equipment (Radios)		X					
2.14 Field Photocopying		X					
2.15 Field Office Utilities		X					
2.16 Field Drinking Water/Coffee		X					
2.17 Data Processing/Computer Time - Project Support		X					
2.18 Data Processing/Computer Business/corporate overhead			X				
2.19 Office & Phone for Owner's Rep.		X					
2.20 Field First Aid Supplies/Fire Extinguishers		X					
2.21 Field Office Maintenance & Repair		X					
2.22 Survey Equipment & Supplies				X			
2.23 Staff Small Gear Account			X				
2.24 Field Office Security System, if required		X					
2.25 Project Sign			X				
2.26 Records Storage			X				
2.27 Misc. General Expense		X					

Item Description	Pre-Construction Fee (Lump Sum)	Cost of the Work			Furnished By Owner	CM Fee	Remarks
		Lump Sum General Conditions	Reimbursable Expense	Supplied By Sub-Contractors			
<b>X = Normal Cost Allocation</b> <b>+ = Prior Owner Approval Required</b>							
<b>Construction Services:</b>							
<b>3. Temporary Construction</b>							
3.1 Temporary Toilets			X				
3.2 Construction Fencing & Gates				X			
3.3 Building Perimeter Protection				X			
3.4 Safety Compliance Material & Labor			X				
3.5 Ladders, Ramps & Stairs				X			
3.6 Temporary Building Enclosure				X			
3.7 Protect Finish Work				X			
3.8 Dust Partitions				X			
<b>4. Temporary Services &amp; Security</b>							
4.1 Temporary Water Consumption			X				
4.2 Temporary Electrical-Install & Maintain				X			
4.3 Temporary Electrical-Consumption			X				
4.4 Temporary Heat-Install & Maintain				X			
4.5 Temporary Heat-Fuel Consumption			X				
4.6 Watchman/Security Services			X				
<b>5. Temporary Roads &amp; Barricades</b>							
5.1 Temporary Roads-Install & Maintain				X			
5.2 Temporary Barricades				X			
5.3 Traffic Control				X			
5.4 Mud/Dust Control				X			
5.5 Temporary Parking			+				
<b>6. Construction Equipment</b>							
6.1 Temporary Elevator Service/Operators				X			
6.2 Personnel & Material Hoisting				X			
6.3 Hoisting, Rigging & Cranes				X			
6.4 CM Small Tools & Equipment			X				

Item Description	Pre-Construction Fee (Lump Sum)	Cost of the Work			Furnished By Owner	CMI Fee	Remarks
		Lump Sum General Conditions	Reimbursable Expense	Supplier By Sub-Contractors			
<b>X = Normal Cost Allocation</b> <b>+ = Prior Owner Approval Required</b>							
<b>Construction Services:</b>							
<b>7. General Cost Items</b>							
7.1 Building Permit			X		+		
7.2 Liability Insurance			X				
7.3 Builder's Risk Insurance		X					
7.4 Progress Photographs			X				
7.5 Shop Drawing Reproduction				X			
7.6 Legal Surveys					X		
7.7 Field Engineering Services				X			
7.8 Pest Control				X			
7.9 Trash Dumpsters & Disposal			X				Except dumpsters for demo work
7.10 Interim Clean-up				X			
2.11 "Broom Clean" Clean-up			X				
7.12 Trash Chutes & Hoppers				X			
7.13 Final Clean-up & Wash Glass			X				
7.14 Winter Protection				X			
7.15 General Weather Protection				X			
7.16 Snow Removal				X			
7.17 CM Payment & Performance Bond Premium			X				
7.18 Subcontractor Bonds				X			
<b>8. Other (list separately)</b>							
8.1 As-Built Drawings				X			CM printing is reimburse-able
8.2 Printing/Delivery of Documents			X				
8.3 Testing & Inspections					X *		
8.4 Architectural/ Engineering Fees					X		
8.5 Peer Review, if required					X		
8.6 Municipal, State or Federal bonds					X		
8.7 Commissioning Agent/authority					X		
8.8 Management of LEED Process		X					
8.9 LEED Certification					X		
8.10 "RediCheck" Services					X		
8.11 Preconstruction Survey of Existing Surrounding Properties			X				
8.12 Renovation Work in existing spaces				X			

\* Some exceptions

(G:) AI - Doc ,AllocationOfCosts-5 11.09

# EXHIBIT C

SECTION 00 72 23  
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION  
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**General Conditions of the Contract for Construction**  
**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:** The Owner's acknowledgement of the Work from the Contractor upon certification by the Construction Administrator and Architect or Engineer that all Work has been completed.
- 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, PARTIAL PAYMENT OR REQUISITION:** Contractor'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 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 Construction Administrator.
- 1.6 AS-BUILT DRAWINGS:** Construction Drawings revised by the Contractor to show all significant Modifications made during the construction process.
- 1.7 BASE BID:** Monetary value stated in the Bid Proposal Form as the sum for which the Bidder offers to perform the Work described in the Bidding Documents, exclusive of adjustments for Supplemental Bids.
- 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 Statute 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.
- 1.10 BIDDING DOCUMENTS:** Collectively, the Bidding Requirements and the proposed Contract Documents, including any addenda issued prior to receipt of Bids.
- 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 the Contract, will execute such Contract in accordance with the requirements of the Bidding Documents.
- 1.13 BUILDER'S RISK INSURANCE:** A specialized form of property insurance which provides coverage for loss or damage to the Work pursuant to the Contract Documents.
- 1.14 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.
- 1.15 CERTIFICATE OF ACCEPTANCE:** A document issued by the Owner to the Contractor stating that all Work specified in the Certificate of Acceptance has been completed and accepted by the Owner.
- 1.16 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.
- 1.17 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.
- 1.18 CERTIFICATE OF SUBSTANTIAL COMPLETION:** A document prepared by the Architect or Engineer and approved by the Owner on the basis of an inspection stating:
- 1.18.1** that the Work, or a designated portion thereof, is determined to be Substantially Complete;
  - 1.18.2** the date of Substantial Completion;
  - 1.18.3** the responsibilities of the Owner and the Contractor for security maintenance, heat, utilities, damage to the Work and insurance; and
  - 1.18.4** the time within which the Contractor shall complete the remaining Work.

**1.19 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.

**1.20 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.

**1.21 CONSTRUCTION ADMINISTRATOR:** A sole proprietor, partnership, firm, corporation or other business organization, under Contract or employed by the Owner commissioned and/or authorized to oversee the fulfillment of all requirements of the Contract Documents. The authorized Construction Administrator may be a Department of Public Works Assistant Project Manager, Department of Public Works Project Manager, a Clerk of the Works, an Architect, a Consulting Architect, a Consulting Construction Administrator, a Consulting Engineer, an Owner's Representative, etc. or any other designee as authorized and identified by the Owner

**1.22 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.

**1.23 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.

**1.24 CONTRACT DOCUMENTS OR CONTRACT:** The Agreement between Owner and Contractor, Conditions of the Contract (General Conditions, Supplementary Conditions, General Requirements and other Conditions), Drawings, Specifications, and Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract, all of which shall constitute the Contract.

**1.25 CONTRACTOR OR GENERAL CONTRACTOR:** A sole proprietor, partnership, firm or Corporation, under direct Contract with the Department of Public Works, responsible for performing the Work under the Contract Documents. Whenever the words "Contractor" or "General Contractor" are used in these General Conditions, it shall be understood to mean Construction Manager at Risk as defined in Article 1.23 of these General Conditions and as identified in the Construc-

tion Manager at Risk Agreement between Owner and Construction Manager.

**1.26 CONTRACTOR'S LIABILITY INSURANCE:** Insurance purchased and maintained by the Contractor that insures the Contractor for claims for property damage, bodily injury or death.

**1.27 CONTRACT START DATE OR DATE OF COMMENCEMENT OF THE WORK:** The date, specified by the Owner in the Notice to Proceed, on which the Contractor is required to start the Work.

**1.28 CONTRACT SUM:** The sum stated in the Contract, which is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**1.29 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.

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

**1.31 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.

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

**1.33 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.

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

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

**1.36 GENERAL CONDITIONS:** The General Conditions of the Contract for Construction, part of Division 00 of the Specifications.

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

**1.38 GUARANTEE:** See Warranty.

**1.39 GUARANTEED MAXIMUM PRICE (GMP):** The maximum price that the Owner and CMR agree upon as payment for managing and supplying and installing 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.

**1.40 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 Contractor's failure to complete the Work within the Contract Time.

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

**1.42 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.

**1.43 NON-WORKING DAYS:** All Saturdays, Sundays, Legal State Holidays (12), and any other Days identified in the Contract Documents that the Contractor is not permitted to execute the Work. The restriction of Non-Working Days may be suspended upon the approval or direction of the Commissioner.

**1.44 NOTICE TO BIDDER:** A notice contained in the Bidding Document informing prospective Bidders of the opportunity to submit Bids on a Project.

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

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

**1.47 OVERHEAD:** Indirect costs including: supervision (any position over the foreman), field and home office expense, insurance, and small tools and consumables.

**1.48 PAYMENT, BOND, LABOR BOND OR MATERIAL BOND:** A bond in which the Contractor and the Contractor's surety guarantee to the Owner that the Contractor will pay for labor and materials furnished for use in the performance of the Contract, as required by Connecticut General Statutes Section 49-41.

**1.49 PERFORMANCE BOND OR SURETY BOND:** A bond in which the Contractor and the Contractor's surety guarantee to the Owner that the Work will be performed in accordance with the Contract Documents, as required by Connecticut General Statutes Section 49-41.

**1.50 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.

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

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

**1.53 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.

**1.54 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.

**1.55 RETAINAGE:** A percentage of each Application for Payment and a percentage of the total Contract Sum retained by the Owner.

**1.56 SCHEDULE:** A Critical Path Method (CPM) or Construction Schedule as required by the Contract Documents which shall be a diagram, graph or other pictorial or written Schedule 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.

**1.57 SCHEDULE OF VALUES:** A document furnished by the Contractor 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 Contractor's Applications for Payment.

**1.58 SECONDARY SUBCONTRACTOR:** A sole proprietor, partnership, firm or Corporation under direct Contract with the Subcontractor to the General Contractor.

**1.59 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.

**1.60 SHOP DRAWINGS:** Drawings provided to Architect or Engineer and Owner by a Contractor 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.

**1.61 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.

**1.62 SUBCONTRACTOR:** A sole proprietor, partnership, corporation or other business organization under direct Contract with the Contractor supplying labor and/or materials for the Work at the site of the Project.

**1.63 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 Contractor for the purpose of approval or other action, as required by the Contract Documents.

**1.64 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.

**1.65 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.

**1.66 SUPERINTENDENT:** The Contractor'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 Contractor to the Owner and the Construction Administrator, for the prevention of accidents.

**1.67 SUPPLEMENTAL BID:** The monetary value stated in the Bid to be added to the amount of the Base Bid if the corresponding Work, as described in the Bidding Documents, is accepted.

**1.68 SUPPLEMENTARY CONDITIONS:** An extension in the Bid to be added to the amount of the Base Bid if the corresponding Work, as described in the Bidding Documents, is accepted.

**1.69 SYSTEMS COMMISSIONING AUTHORITY (SCA):** An independent entity under contract directly with the Owner or Owner's Representative responsible for performing the specified commissioning procedures.

**1.70 THRESHOLD LIMIT BUILDING:** Any proposed (new) structures or additions as defined by the Connecticut General Statutes Section 29-276b.

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

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

**1.73 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 Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## ARTICLE 2 CONDITIONS OF WORK

**2.1** The Contractor 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 Contractor shall report to the Construction Administrator all errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such errors, inconsistencies or omission and failed to report it to the Construction Administrator. If the Contractor performs any actions or construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without notice to the Construction Administrator, the Contractor 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 Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Construction Administrator at once; and it will be assumed that the Contractor 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 Contractor without additional compensation.

**2.4** In performing the Work, the Contractor 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 Contractor prior to Contract signing.

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

**2.7** The Contractor shall perform the Work in accordance with the Contract Documents and approved Submittals pursuant to Article 5.

## 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 Supplementary Conditions take precedence over the General Conditions.

**3.1.3** The General Conditions take precedence over the General Requirements.

**3.1.4** The Specifications shall take precedence over the Plans.

**3.1.5** Stated dimensions shall take precedence over scaled dimensions.

**3.1.6** Large-scale detail Drawings shall take precedence over small-scale Drawings.

**3.1.7** 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 Contractor shall give immediate written notification of any error or discrepancy discovered to the Construction Administrator, 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 Contractor shall then promptly proceed under the direction of the Owner and the provisions of Article 13. The Contractor's failure to provide immediate notice shall mean the Contractor 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 Contractor is a representation that the Contractor 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 Contractor 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 Contractor shall complete all the Work necessary for Final Payment, including but not limited to Substantial Completion, Contract close-out, testing and demonstration of all systems as required for Acceptance, punchlist Work, training and submission of Record Documents, manuals, Guarantees and Warranties as stated in the Contract Document.

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

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

4.4 The Contractor shall not be entitled to costs for delay due to Owner ordered Modifications or any other circumstances for the period of time between the Contractor'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 Contractor is delayed at any time in the progress of Work by acts of God, such as fire or flood or any action, in-

junction 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 Contractor'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 Contractor's sole remedy for such delay. No payment or compensation of any kind shall be made to the Contractor for damages because of hindrance in the orderly progress of Work caused by the aforesaid causes.

4.7 The Contractor 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.

4.9 The Contractor shall employ a competent project manager who shall represent the Contractor. Communications given to the project manager shall be binding as if given to the Contractor. 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 Contractor 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 Contractor shall review, approve, and submit to the Construction Administrator 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 Contractor 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 Contractor 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 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 Contractor 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 Contractor may cause other Contractors. If the Contractor 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 Contractor, the Contractor shall bear such loss.

6.4 Insofar as possible, the Contractor 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 Contractor 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 Contractor's failure to

coordinate the Work with any other Contractor or Subcontractor

#### ARTICLE 7 COOPERATION OF TRADES

7.1 The Contractor 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 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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:**

If the Contractor fails to complete all of the Work required for Acceptance of the Work within ninety (90) Days of Substantial Completion then the Contractor agrees to pay to the Owner Liquidated Damages for the dollar amount specified in the Cost Proposal Form in the Request for Proposals for each Day in excess of ninety (90) Days beyond the Substantial Completion Date that the Contractor fails achieve Acceptance. 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 Contractor to complete all of the Work required for Acceptance 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, Contractor agrees that Contractor 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 Contractor 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 Contractor 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 31-53 as amended by Public Act 02-69, "An Act Concerning Annual Adjustments to Prevailing Wages."

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 Contractor 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 Contractor shall provide weekly certified payrolls to the Owner for all persons working on the site.

**ARTICLE 11  
CONSTRUCTION SCHEDULES**

11.1 Unless otherwise specified in the Contract Documents, within twenty-one (21) Days from the Contract Start Date, the Contractor 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 Contractor shall allow a minimum of 14 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 Contractor 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 Construction Administrator with as many activities as necessary to make the Schedule an effective tool for planning and monitoring the progress of the Work. The Contractor shall show all pertinent activities requiring coordination between trades.

11.1.4 When the Contract Documents specify a "Construction Schedule" a detailed Construction Schedule is required using software approved by the Owner as a horizontal bar chart with a separate bar for each major portion of the Work or operation to make the Schedule an effective tool for planning and monitoring the progress of the Work.

11.2 Unless otherwise specified under the Contract Documents, the Contractor shall provide a monthly update of the CPM Schedule or Construction 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 Contractor shall submit a revised Schedule demonstrating a recovery plan to ensure Substantial Completion of the Work within the Contract Time.

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

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

11.3.2 If the Contractor, through its sole or partial fault or neglect is behind Schedule, the Owner may order the Contractor, at the Contractor'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 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 Contractor 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.

11.4 Requisitions for partial payment will not be processed until the Contractor has complied with this requirement

## 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, 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, and if no such qualified person is available, then 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, and then to citizens of the state who have continuously resided in the State at least three 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, and 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 Construction Administrator, may order modifications in the Work consisting of additions, deletions or other revisions. Upon request, the Contractor shall supply the Con-

struction Administrator promptly with a detailed proposal for the same, showing quantities of and Unit Prices for the Work and that of any Subcontractor involved.

**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 for in Article 25. 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 Contractor shall proceed with the Work when and as directed.

**13.3** If a Change Order makes the Work less expensive for the Contractor, 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. Notwithstanding anything to the contrary contained within these General Conditions, 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 together with the appropriate profit percentage as set forth in these General Conditions.

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

**13.6** The amount of compensation to be paid to the Contractor for any Additional or Deleted Work that results in a Change Order shall be determined in one of the following manners:

**13.6.1 AMOUNT OF COMPENSATION FOR CHANGE ORDER COSTS: LABOR, EQUIPMENT, BENEFITS AND MATERIAL:**

**13.6.1.1** Unit Price: As stated in the Contract Documents.

**13.6.1.2** Unit Price: As subsequently agreed upon by the Contractor and Owner

**13.6.1.3** Lump Sum: Agreed upon sum by the Owner and the Contractor. The Owner may rely on costs, prices, and documentation provided by the Contractor or Subcontractor in agreeing to a Lump Sum. If the Owner be-

lieves 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 Contractor. The Lump Sum must be based upon the following itemized costs:

**13.6.1.3.1 Labor:** (Contractor's or 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 Contractor 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.

**13.6.1.3.2 Material:** (Actual cost to the Contractor or 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 Contractor or 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 Contractor in its original bid.

**13.6.1.3.3 Benefits:** (The established rates of the following benefit costs inherent to the particular labor involved):

**13.6.1.3.3.1** Workers Compensation

**13.6.1.3.3.2** Federal Social Security

**13.6.1.3.3.3** Connecticut Unemployment Compensation.

**13.6.1.3.3.4** Fringe Benefits

**13.6.1.4** Rented Equipment (Used directly on the Work and by the Contractor's or Subcontractor's own forces).

**13.6.1.5** Owned Equipment (Used directly on the Work and by the Contractor's or 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.

**13.6.1.6 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 Contractor's overhead mark-up percentage.

**13.6.2 OVERHEAD AND PROFIT PERCENTAGES:** (Maximum allowable percentages applied to labor, equipment, and material)

**13.6.2.1** Contractor'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%

**13.6.3 OVERHEAD AND PROFIT PERCENTAGES:**  
 (Maximum allowable percentages applied to labor, equipment, benefits and material)

**13.6.3.1** Contractor's mark-up for Work performed by its Subcontractor's forces and not allowable for any subsidiary in which the Contractor has a majority ownership:

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

**13.6.4 OVERHEAD AND PROFIT PERCENTAGES:**  
 (Maximum allowable percentages applied to labor, equipment, benefits and material)

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%

**13.6.5 OVERHEAD AND PROFIT PERCENTAGES:**  
 (Maximum allowable percentages applied to labor, equipment, benefits and material)

**13.6.5.1** Subcontractor's mark-up for Work performed by its Secondary Subcontractor's forces. Limited to one level (tier) below the Subcontractor and not allowable for any subsidiary in which the Subcontractor has a majority ownership.

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

**13.7 BOND COSTS**

**13.7.1** 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.

**13.7.2** The Contractor 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.

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

**13.9** 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):

**13.9.1** 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 Contractor determined by time and material or Unit Prices based upon the same information required in Subparagraphs 13.6.1.3.3.1 through 13.6.1.5:

**13.9.1.1** Labor (Contractor's or Subcontractor's own forces)

**13.9.1.2** Material (Used by Contractor's or Subcontractor's own forces).

**13.9.1.3** Benefits: (The established rates of the following benefit costs inherent to the particular labor involved):

**13.9.1.3.1** Workers Compensation.

**13.9.1.3.2** Federal Social Security.

**13.9.1.3.3** Connecticut Unemployment Compensation.

**13.9.1.3.4** Fringe Benefits.

**13.9.1.4** Rented Equipment (Used directly on the Work and by the Contractor's or Subcontractor's own forces).

**13.9.1.5** Owned Equipment (Used directly on the Work and by the Contractor's or 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.

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

**13.10** For any Change Order or Construction Change Directive the Contractor shall, when requested, promptly furnish in a form satisfactory to the Construction Administrator 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 Contractor's records at any time upon written request from the Commissioner.

**13.11** Failure of the Contractor 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 Contractor 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 Contractor to act in case of emergency, threatened injury to persons, or damage to Work on any adjoining property. In this case the Commissioner, 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 or in the event none of the provisions of Article 13 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 Contractor 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 Contractor 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 Bid Opening. The Owner will consider requests for Equals or Substitutions, if made prior to the receipt of the Bid. The information on all materials shall be consistent with the information herein.

**15.3.1.1** 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

**15.3.1.2** 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.

**15.3.1.3** 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 Bid Opening: 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 Letter of Award is issued only:

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

**15.3.2.2** 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

**15.3.2.3** If the Contractor 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

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

**15.4** Contractor 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 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 Contractor proceeds with the Work. The decision of the Commissioner, in this regard, shall be final and binding on the Contractor.

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 a Contractor submits a request for Substitution or Equal, whether such request be approved or denied, and the Contractor shall not be entitled to any claim for damages for delay.

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

15.8 The Contractor 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 Contractor warrants that the Contractor has good title to all materials and supplies used by him in the Work.

15.9 All products and systems supplied to the State as a result of a purchase by a Contractor 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 test 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 Contractor shall pay for all the 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 Contractor. All other tests, unless otherwise

specified, shall be made at the Contractor'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 Contractor shall promptly furnish facilities, labor and materials necessary to coordinate and perform operational tests and checkout of the Work. The Contractor 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 Contractor 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 Contractor or any of the Contractor's 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 Contractor shall be liable for testing costs and all costs of correction, including removal and/or demolition of the defective Work, including labor, material, and testing, including labor, material, re-testing or re-inspecting, services of required consultants, additional supervision, the Commissioner's and the Construction Administrator's administrative costs, and other costs for services of other consultants.

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

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

16.5.2 The time for the Systems Commissioning Authority and Construction Administrator 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 Contractor.

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 Contractor.

**ARTICLE 17**  
**ROYALTIES AND PATENTS**

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

17.2 The Contractor shall indemnify and hold harmless the Owner and Construction Administrator 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 Contractor shall furnish surveys necessary for the execution of the Work. The Owner will furnish the Contractor with two base lines and a benchmark.

18.2 The Contractor shall obtain and pay for permits and licenses necessary for the execution of the Work and the occupancy and use of the completed Work.

18.3 The Contractor 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 Contractor is required to request "Call-Before-You-Dig" to verify the location of underground utilities at least (3) Working Days, as further defined under Paragraph 1.71 herein, prior to the start of any excavation. The Contractor shall also notify the Owner and Agency at least (3) Working Days prior to the start of any excavation. If "Call-Before-You-Dig" fails or refuses to respond to the Contractor's request, then the Contractor 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 Contractor shall be held responsible for providing safety, protecting the Work and protecting workmen as necessary to perform the Work. The Contractor 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 Contractor shall continuously and adequately protect the Work against damage from any cause, and shall protect materials and supplies furnished by the Contractor 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 Contractor 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 Contractor 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 Contractor shall also comply with the applicable provisions of the Associated General Contractors' "Manual of Accident Prevention in Construction", the standards of the Connecticut Labor Department and Occupational Safety and Hazard Association (OSHA). A Subcontractor shall also comply with the provisions of the Contractor's own safety plan and achieve whichever of the above-mentioned standards are the most stringent.

19.4 The Contractor 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 Contractor 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 Contractor at the commencement of the Contract.

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

#### ARTICLE 20 TEMPORARY UTILITIES

20.1 Unless expressly provided for otherwise in the Contract Documents, the Contractor shall include in the proposed contract bid price as stated on the Bid 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 Contractor 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 Contractor 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 Contractors or Subcontractors destroyed or damaged by such removal or replacement.

21.3 If the Contractor, 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 Contractor.

21.4 Such action shall not affect the obligation of the Contractor 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 Contractor 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 Contractor of responsibility for the defects in material or workmanship.

21.7 Unless expressly provided for otherwise in the Contract Documents, the Contractor shall remedy any rejected or unacceptable Work, and any Work found to be not conforming to the Contract Documents which is discovered within 18 Months after the date of Substantial Completion. The Contractor 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 Contractor shall provide a Warranty on the Work for an 18-Month period from the date of Substantial Completion. The Contractor 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, suppliers or installers to the Contractor shall not relieve the Contractor 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 Contractor will perform or will cause the Subcontractors to perform all cutting, fitting, or patching of the por-

tion(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 Contractor, but such responsibility shall not in any way relieve the Subcontractor who performed such Work. Except with the consent of the Commissioner, neither the Contractor nor any of its Subcontractors shall cut or alter the Work of any other Contractor or Subcontractor.

**ARTICLE 24**  
**CLEANING UP**

**24.1** The Contractor shall, on a daily basis, keep the premises free from accumulations of waste material or rubbish.

**24.2** Prior to Acceptance of the Work, the Contractor shall remove from and about the site of the Work, all 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 Contractor has failed to clean the work site, the Owner may remove the rubbish and charge the cost of such removal to the Contractor. 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 Contractor and the Construction Administrator; and act on behalf of the Commissioner. In all such matters, the provisions of Articles 13 and 14 herein shall guide the DPW Project Manager.

**25.2** In no event may the Contractor act on any instruction of the Agency without written consent of the Owner. In the event the Contractor acts without such consent, he does so at his own risk and at his 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 Contractor shall abide by all orders, directions, and requirements of the Com-

missioner 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 Contractor 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 Contractor employed by the Commissioner.

**ARTICLE 26**  
**AUTHORITY OF THE CONSTRUCTION ADMINISTRATOR**

**26.1** The Construction Administrator employed by the Commissioner is authorized to inspect all Work for conformance to the Contract Documents. The Construction Administrator 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 Construction Administrator 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 Construction Administrator shall in no case act as foreman or perform other duties for the Contractor, nor shall the Construction Administrator interfere with the management of the Work by the Contractor. Any advice, which the Construction Administrator may give the Contractor, shall in no way be construed as binding the Commissioner or Owner in any way, nor releasing the Contractor from the fulfillment of the terms of the Contract.

**26.3** In any dispute arising between the Contractor and the Construction Administrator with reference to inspection and rejection of the Work, the Construction Administrator may suspend Work on the non-compliant portion of the Work until

the dispute can be referred to and decided by the Commissioner.

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

27.1 Immediately after the signing of the Contract, the Contractor 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 Contractor 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 Contractor's general condition 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 General Requirements 01027; paragraphs 1.3.B.4 for this project.

27.4 The Schedule of Values shall include a breakdown of Contract closeout costs including systems certification testing and acceptance, training, Warranties, Guarantees, As-Built Drawings and attic stock.

27.5 The Contractor 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**  
**PARTIAL PAYMENTS**

28.1 Commissioner will examine the Contractor'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 deducted seven and one-half percent (7.5%) of the amount of each Application for Payment to be retained by the Owner as Retainage until Final Completion.

28.2.1 The Commissioner has the sole discretion in the determination of reduction in Retainage. At fifty percent (50%) completion of the Work the Owner shall issue a "Contractor's Performance Evaluation". If the Contractor 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 Contractor 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 one-half percent (2.5%), which ever is greater. All requests for Retainage Reduction shall be done on DPW Form 748F Retainage Reduction Request, which can be found at the end of the 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 one-half 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 Contractor'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 Contractor'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 Contractor'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 or Construction 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 Contractor has and is maintaining a clean worksite in accordance with the Contract Documents.

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

28.3.10 Contractor 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 the Commissioner allows the Contractor to include in its requisitions payment requests for materials and equipment stored off the site, the Contractor shall also submit any additional bonds and/or insurance certificates relating to off-site stored materials and equipment, and follow such other procedures as may be required by the State to obtain the Commissioner's approval of such requests.

28.5.2 The Architect or Engineer, or Construction Administrator shall have inspected said materials and equipment and recommended payment therefore. The Contractor shall pay for the cost of the Architect's or Engineer's, or Construction Administrator'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 Contractor 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 Contractor 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.

#### ARTICLE 30

#### SUBSTANTIAL COMPLETION AND ACCEPTANCE

##### 30.1 Substantial Completion:

30.1.1 When the Contractor considers that the Work or a portion thereof is Substantially Complete, the Contractor shall request an inspection of said Work in writing to the Construction Administrator. The request shall certify that the Contractor has completed its own inspection prior to the request and that the Contractor is compliant with all requirements of Section 01770 of the General Requirements. The request must also include a statement that a principal or senior executive of the Contractor is ready, willing and able to attend a walk through inspection with the Architect or Engineer.

30.1.2 Upon receipt of the request, the Architect or Engineer, Construction Administrator and Owner, will make an inspection to determine if the Work or designated portion thereof is Substantially Complete. A principal or senior executive of the Contractor 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 Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item.

30.1.3 The Contractor 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 Contractor 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, the Contractor 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 Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, are transferred to the Owner and shall fix the time within which the Contractor shall finish all items on the inspection list accompanying the Certificate. If the punch list is not complete in 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 Contractor.

30.1.4 The Certificate of Substantial Completion shall be signed by the Construction Administrator, Owner, and Architect or Engineer. Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the Construction

Administrator 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 Acceptance:**

**30.2.1** Upon completion of the Work, the Contractor shall forward to the Construction Administrator a written notice that the Work is ready for inspection and Acceptance.

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

**ARTICLE 31**  
**FINAL PAYMENT**

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

**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 Contractor or the Contractor's sureties from any obligations under this Contract.

**31.4** The Architect or Engineer and Construction Administrator 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 Contractor and noted in said Final Payment is due and payable.

**31.5** Final Payment shall not be released until a Certificate of Acceptance and a Certificate of Compliance have been issued.

**31.6** Neither Final Payment nor any Retainage shall become due until the Contractor 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 30 Days prior written no-

tice to the Owner.

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

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

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

**32.1** The Commissioner may withhold a portion of any Payment due the Contractor 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 Contractor.

**32.1** 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 Contractor or any of its Subcontractors.

**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 Contractor.

**32.3** The Owner has the right to withhold payment if the Contractor fails to provide accurate submissions of Submittals, up date the status including but not limited to the following: As-Built Drawings, request for information (RFI) log, Schedule, submittal log, Change Order log, certified payrolls and daily reports and all other requirement of the Contract Documents.

**32.4** If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are

made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable 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 Contractor shall store all materials and equipment, in such a manner to prevent the materials and equipment from being damaged in any way, and the Contractor 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 Contractor believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the Contractor shall submit to the Commissioner in writing a request for a Contract adjustment within 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 Contractor, 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 Contractor 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 Contractor 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 Contractor's control or by any factor for which the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor or its Surety of their responsibilities for the completed Work, nor shall it relieve the Contractor'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 Contractor 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 Contractor 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 Contractor shall not start Work under the Contract until they have obtained insurance as stated in SECTIONS 00 62 16 CERTIFICATE OF INSURANCE and 00 40 13 BID PROPOSAL FORM, subsections 4.4.2 and 4.4.3, of the Project Manual and until the insurance has been approved by the Owner. The Contractor shall not allow any Subcontractor to

start Work until the Contractor's insurance provides coverage on behalf of the Subcontractor or the Subcontractor obtains insurance with equivalent coverage that is approved by the Owner. The Contractor shall send Certificates of Liability Insurance to the Bidding and Contracts Unit, Department of Public Works, 165 Capitol Avenue, Room G-35, Hartford, CT 06106 unless otherwise directed in writing. 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 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 Excess Liability** (Other than Umbrella Form) insurance in the amount of \$5,000,000 for bids of \$1,000,000 - \$10,000,000 and in the amount of \$10,000,000 for bids of \$10,000,001 - \$20,000,000. Refer to Section 00 92 00

Amendments of the Project Manual for Excess Liability insurance requirements for bids exceeding \$20,000,000.

**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 SECTION 00 40 13 BID PROPOSAL FORM, subsection 4.4.2 of this Project Manual. This includes coverage for explosion, collapse or underground damage 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**, if required, will be stated in Section 00 40 13 Bid Proposal Form, subsection 4.4.3 of this Project Manual.

**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 Policy:** If necessary, the Contractor may satisfy the minimum limits required above for either Commercial General Liability, Automobile Liability, and Employer's Liability coverage under an Umbrella or Excess Liability policy. The underlying limits may be set at the minimum amounts required by the Umbrella or Excess Liability policy provided the combined limits meet at least the minimum limit for each required policy. The Umbrella or Excess Liability 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 or Excess Liability policy, unless the Umbrella or Excess Liability policy provides continuous coverage to the underlying policies on a complete "Follow-Form" basis.

35.3 The Contractor 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 Contractor 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 Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor.

**35.6 Hold Harmless Provisions:** The Contractor 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 Contractor, 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 Contractor including, but not limited to, any neglect in safeguarding the Work or through the use of unacceptable materials in constructing the Work of the Contractor, 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 which ever occurs first until its completion as certified by the Department of Public Works.

#### ARTICLE 36 FOREIGN MATERIALS

36.1 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.

#### 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 Contractor 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 Contractor may bring before the Department. The Contractor 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 Contractor 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 Contractor by the Department.

**38.2 Notice of Claim:** Whenever the Contractor intends to file a formal claim against the Department under Section 4-61, seeking compensation for additional costs, the Contractor 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.

Once formal notice of a claim under 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) with-

out the minimum period of six 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 Contractor 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 Contractor 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 Contractor 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 Contractor the Overhead and profit percentages provided for in Article 13.):

**38.4.1.1** Additional Project-site labor expenses.

**38.4.1.2** Additional costs for materials.

**38.4.1.3** Additional, unabsorbed Project-site Overhead (e.g., for mobilization and demobilization).

**38.4.1.4** Additional costs for active equipment.

**38.4.1.5** For each Day of Project delay or suspension caused solely by actions or omissions of the Department either:

**38.4.1.5.1** 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 Contractor from incurring enough Project costs under Subparagraphs 38.4.1.1 through 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 af-

ected home office Overhead and profit shall instead be made in the following *per diem* amount :

**38.4.1.5.2** 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.

**38.4.1.6** 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 Contractor had to rent the equipment from an unrelated party, in which case the actual rental charges paid by the Contractor, 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 Contractor.

**38.4.1.7** 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 Contractor has itself paid or legally assumed, present unconditional liability for those Subcontractor costs.

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

**38.4.2.1** Abnormal or unusually severe weather

**38.4.2.2** Acts of God

**38.4.2.3** Force Majeure

**38.4.2.4** Concurrent Delay

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

**38.4.3.1** Profit, in excess of that provided for herein.

**38.4.3.2** Loss of anticipated profit.

**38.4.3.3** Loss of bidding opportunities.

**38.4.3.4** Reduction of bidding capacity.

**38.4.3.5** Home office overhead in excess of that provided for in Subparagraph 38.4.1.5 hereof.

**38.4.3.6** Attorneys fees, claims preparation expenses, or other costs of claims proceedings or resolution.

38.4.3.7 Subcontractor failure to perform

38.4.3.8 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 Contractor must provide the following information for each and every claim and sub-claim asserted:

38.5.1A 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 Contractor'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 Contractor.

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 Contractor shall certify in writing, under oath and in accordance with the formalities required by the contract, as to the following:

38.5.8.1 That supporting data is accurate and complete to the Contractor's best knowledge and belief;

38.5.8.2 That the amount of the dispute and the dispute itself accurately reflects what the Con-

tractor in good faith believes to be the Department's liability;

38.5.8.3 The certification shall be executed by:

38.5.8.3.1 If the Contractor is an individual, the certification shall be executed by that individual.

38.5.8.3.2 If the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor'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 Contractor and its Subcontractors and suppliers shall cooperate fully with the Department's auditors. Failure of the Contractor, 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 Contractor shall make available to the Department and its agents the following documents in connection with any claim that the Contractor 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 Contractor, and the Contractor'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 Contractor'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 Contractor'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 Contractor's bid, including the final calculations on which the total proposed Contract bid price as stated in the Bid Proposal Form was based.

**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 Contractor'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 Contractor shall be responsible for compliance with the following provisions:

**39.1.1** All Contractor 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 catalysts, or similar retrofit equipment control technology that is:

**39.1.2.1** 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

**39.1.2.2** Verified by EPA to provide a minimum emissions reduction of 20% particulate matter (PM<sub>10</sub>), 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 Contractor shall at least monthly, assess which diesel powered non-road construction equipment are subject to these provisions. The Contractor 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 auxiliary 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 non-road construction equipment is found to be in non-compliance with these provi-

sions by the DPW Project Manager, the Contractor will be issued a Non-Conformance Notice and given a 24 hour period in which to bring the equipment into compliance or remove it from the Project. The Contractor's failure to comply with these provisions shall be reason to withhold payment as described in Article 33.

**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 Contractor for compliance with these provisions. The Contractor'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 Contractor may request a waiver to all or portions of these provisions with written justification to the Commissioner as to why the Contractor cannot comply with these provisions. A waiver, to be effective, must be granted in writing by the Commissioner.

**END**



State of Connecticut



Department of Public Works

## Retainage Reduction Request

To: David O'Hearn, P.E., Deputy Commissioner  
Room 473B, 165 Capitol Avenue, Hartford, CT 06106

From: ( ), General Contractor

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

In accordance with the General Conditions, Article 28, (type general contractor's name) hereby requests a reduction of retainage to an amount of XX %. 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 Contractor.

- Performance Evaluation is a minimum of 60%
- 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 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 or Construction Schedule
- All approved credit Change Orders have been invoiced.
- All Change Order requests for pricing are current.
- The Contractor has and is maintaining a clean worksite in accordance with the Contract Documents.
- All Subcontractor payments are current at the time of reduction request.
- Contractor is compliant with set-aside provisions of the contract.

**Contractor  
Certification**

\_\_\_\_\_ name \_\_\_\_\_ signature \_\_\_\_\_ date

**Project Manager  
Recommendation**

\_\_\_\_\_ name \_\_\_\_\_ signature \_\_\_\_\_ date

**Approved**

Deputy Commissioner David O'Hearn \_\_\_\_\_ signature \_\_\_\_\_ date