

# **WATERBURY BOARD OF EDUCATION**

## **Special Meeting**

Thursday, May 30, 2019 – 6:45 p.m.

Waterbury Arts Magnet School, 16 South Elm Street, Waterbury, CT

***Silent Prayer***

***Pledge of Allegiance to the Flag***

***Roll Call***

***Public Addresses the Board*** - Special Meeting Items Only.

**1. *Committee on Building & School Facilities*** – Commissioner J. Van Stone

1.1 Approval of an Agreement with Newfield Construction Group, LLC for Construction Manager at Risk Services for the Wendell Cross School Construction Project.

**2. *Committee on Finance*** – Commissioner Awwad

2.1 Request approval of transfers in the 2018-2019 Fiscal Year Budget.

***Adjournment***

# **BOARD OF EDUCATION**

*Waterbury, Connecticut*

## **COMMITTEE ON BUILDING & SCHOOL FACILITIES**

Item #1.1

March 7, 2019

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Committee on Building and School Facilities recommends the Board of Education approve an Agreement with Newfield Construction Group, LLC, for construction manager at risk services for the Wendell L. Cross Pre-K to 8<sup>th</sup> School Construction Project.

Approved:

---

Jason Van Stone



OFFICE OF THE DIRECTOR OF FINANCE  
**THE CITY OF WATERBURY**  
CONNECTICUT

Date: May 24, 2019

To: Paul Pernerewski, President, Board of Aldermen  
Members, Board of Aldermen  
Board of Education Commissioners  
Mayor Neil M. O'Leary  
Dr. Verna Ruffin, Superintendent of Schools  
William Clark, Waterbury Public Schools Chief Operating Officer

From: Michael LeBlanc, Director of Finance *ML*

Subject: Agreement with Newfield Construction Group, LLC for Construction Manager at Risk Services for the Wendell L. Cross Pre-K to 8<sup>th</sup> Grade School Construction Project – RFP No. 6337

Kindly give favorable consideration by approving the attached Agreement with Newfield Construction Group, LLC to provide construction manager at risk services for the construction of the Pre-K to 8<sup>th</sup> Grade School Wendell L. Cross School. The contract value includes fixed Staffing Fees, Construction Manager (CM) fees as a percentage of the pre-construction phase and construction phase costs, and agreed to Reimbursables that are summarized as follows:

1. Staffing for Pre-Construction Services – Fixed Fee	\$176,000
2. CM Fee on Pre-Construction Services – 1.2% Cost Percentage	\$19,592*
3. Staffing for Construction Services – Fixed Fee	\$1,392,685
4. CM Fee on Construction Services – 1.2% Cost Percentage	\$436,668*
5. Reimbursables (Phase I & II)	\$1,139,971

*\* CM Fee for pre-construction and construction services will be based on 1.2% of the final approved pre-construction and construction costs. The \$19,592 CM for Pre-Construction Services is based upon an estimated pre-construction cost of \$1,633,000. The \$436,668 CM Fee on Construction Services is based upon an estimated construction phase cost of \$38,639,000.*

The responses to the request for proposals for Construction Manager at Risk Services for the Construction of the Wendell Cross Pre-K to 8<sup>th</sup> Grade School, RFP No. 6337, were received on April 17, 2019.

The Selection Committee was comprised of the following ten (10) members:

- Dr. Verna D. Ruffin, Superintendent of Schools
- Will Clark, Chief Operating Officer
- Charles (Chuck) Pagano, Board of Education Board Member
- Ann Sweeney, Board of Education School Building Committee
- Charles Stango, Board of Education School Building Committee
- Jason Van Stone, Board of Education School Building Committee
- Michael LeBlanc, Director of Finance
- Linda Wihbey, Corporation Counsel
- Kevin McCaffery, Director of Purchasing
- Rocco Orso, Retired - Director of Purchasing

Responses were received from five (5) Construction Managers (CM). Each of the CM's responses were thoroughly reviewed and discussed by the Selection Committee. Four (4) CM's were given the opportunity to provide presentations to the Selection Committee on April 30, 2019 and to address specific follow up questions. Each respondent's experience, project management approach, pre-construction & construction services, comparable project experience & expertise, value added services and other factors were considered by the Selection Committee. Two finalists were identified by the Selection Committee and asked to return for second interviews on May 2, 2019. Each of two finalists were invited to submit updated fee proposals at the second interview. The Selection Committee met on May 8<sup>th</sup> to complete the evaluation process and make a selection. The Selection Committee voted unanimously to award the Wendell L. Cross Elementary School – Construction Manager at Risk Services contract to Newfield Construction.

Representatives from Newfield Construction, Friar Architecture, Inc., the assigned Project Manager from the Waterbury Development Corporation (Santiago Bolanos), the City's Director of Finance and the Board of Education's Chief Operating Officer will be attending the Board of Education's meeting on May 30, 2019 and the Board of Aldermen's meeting on June 3, 2019 to address any questions.

**AGREEMENT  
(RFP NO. 6337)**

**BETWEEN**

**THE CITY OF WATERBURY, CONNECTICUT (“CITY”)**

**AND**

**NEWFIELD CONSTRUCTION GROUP, LLC**

**FOR**

**CONSTRUCTION MANAGER AT RISK SERVICES**

**FOR THE**

**CONSTRUCTION OF WENDELL L. CROSS PRE-K to 8<sup>th</sup> GRADE SCHOOL**

**AGREEMENT  
(RFP NO. 6337)**

**BETWEEN**

**THE CITY OF WATERBURY, CONNECTICUT**

**AND**

**NEWFIELD CONSTRUCTION GROUP, LLC**

**FOR**

**CONSTRUCTION MANAGER AT RISK SERVICES**

**FOR THE**

**WENDELL L. CROSS PRE-K TO 8<sup>TH</sup> GRADE SCHOOL CONSTRUCTION PROJECT**

**THIS AGREEMENT**, effective on the date signed by the Mayor, is by and between the **CITY OF WATERBURY**, City Hall Building, 235 Grand Street, Waterbury, Connecticut 06702 (the “City”) and Newfield Construction Group, LLC located at 225 Newfield Avenue, Hartford, Connecticut 06106, a duly registered limited liability company in the State of Connecticut (the “Construction Manager”) (the City and the Construction Manager each being a “Party” and collectively, the “Parties”).

**WHEREAS**, the State of Connecticut has committed a Grant to the Waterbury Board of Education for the Wendell L. Cross Pre-K to 8<sup>th</sup> Grade School Construction Project (the “Project”), subject to plan approval;

**WHEREAS**, the Board of Education has established a Board of Education Building Committee to participate in the Project;

**WHEREAS**, the Construction Manager submitted a qualifications proposal in response to the City’s RFP No. 6337 (the “RFP”) for Construction Management At Risk Services for the construction of the Pre-K to 8<sup>th</sup> Grade Wendell L. Cross School;

**WHEREAS**, the City desires to engage a Construction Manager at Risk to provide construction services and manage the Project, as described in the Scope of Work in Article 3 of this Agreement (the “Scope of Work”);

**WHEREAS**, the City accepted the Construction Manager's Qualifications & Proposed Construction Manager At Risk Services for **RFP No. 6337**;

**WHEREAS**, the City has designated the Waterbury Development Corporation (WDC) as its representative and Project Manager for the Project; and

**WHEREAS**, in accordance with the terms of the RFP, upon determination of its qualifications, the City and Construction Manager negotiated a scope of services and compensation for the Project, as defined in this Agreement.

**NOW THEREFORE**, THE PARTIES AGREE AND COVENANT, AS FOLLOWS:

**ARTICLE 1**  
**GENERAL PROVISIONS AND DEFINITIONS**

**1.1. GENERAL**

**1.1.1 ORGANIZATION OF THIS AGREEMENT.**

The captions, numbers and index appearing herein are inserted as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any "Article", nor in any way affect the Agreement. The word "Article" is used when referencing articles, paragraphs, sub-paragraphs, and clauses. All words used in this Agreement, regardless of the number or gender in which they are used will be construed to include any other number or gender, as the context or sense may require.

**1.1.2 INTERPRETATION OF THE CONTRACT.**

(a) In the interest of brevity, the Agreement may omit modifying words such as "all" and "any" and articles such as "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement; (b) the words "include", "includes", and "including", as used in the Agreement, shall be deemed to be followed by the phrase "without limitation"; (c) unless the context clearly indicates to the contrary, words such as "hereunder," "hereto," "hereof," and "herein", refer to the whole of the Agreement and not to any particular article, paragraph, sub-paragraph or clause; (d) unless specifically noted otherwise, imperative text in this Agreement is directed to the Architect and shall be interpreted as the responsibility of the Architect with the words "the Architect shall" included by inference; (e) to "insure" means to procure an insurance policy, "ensure" is to make certain or sure in a way that eliminates the possibility of error, and "assure" is to give confidence to or convince a person of something; and (f) "shall" is used as an imperative in reference to services or work required of the Architect, and "will" is used in connection with acts or actions required of the City.

**1.1.3 CAPITALIZATION.**

The terms capitalized in the Agreement include those that are (a) specifically defined herein or elsewhere in the Contract Documents or (b) the titles of numbered Articles and identified references to Articles in the Document.

**1.2. DEFINITIONS.**

**1.2.1 Agreement or Contract.** Agreement or Contract shall mean this contract, including all attachments and exhibits appended hereto and all other documents

incorporated by reference herein, as may be amended from time to time. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. In the event of any conflict between this Agreement and the General Conditions attached hereto as **Attachment 2** the provisions of this Agreement shall govern.

**1.2.2 Applicable Laws.** Applicable Laws shall mean all laws, ordinances, codes, statutes, rules, regulations, orders, rulings, and decisions of local, county, state, federal and other authorities having jurisdiction as may be modified, including the regulations and requirements of the Occupational Safety and Health Administration ("OSHA"), the United States Environmental Protection Agency ("EPA"), the State of Connecticut Department of Administrative Services-Office of School Construction Grant Review ("DAS-OSCG&R") the State of Connecticut Department of Energy and Environmental Protection ("DEEP"), and all provisions of any federal, state, county, or municipal health, safety and building codes and environmental laws and regulations applicable to the performance of the services and the work. Applicable Laws includes but are not limited to the following:

(a) CGS 16a-38k, 10-285a and 29-256a High Performance Standards for Certain State and School Buildings, including Building Construction Standards for New Construction of Certain State Facilities and any amendments thereof.

(b) Any and other pertinent State applicable legislation, regulations, and guidelines, including but not limited to Connecticut State Regulations 16a-38k-1 –16a-38k-9; Connecticut Building Standard Guidelines Compliance Manual for High Performance Buildings; Indoor Air Quality Requirements - Public Act No. 03-220, CGS 10-220(a) and (d), 10-282(19), 10-283(b), 10-286 (a)(9) and (c)(2), and 10-231-(e) and (f); Connecticut State Department of Administrative Services Office of School Construction Services (DAS-OSCG&R), Department of Construction Services, Construction Document Guidelines for School Districts and Design Professionals, as amended; Comparable To New Guidelines (See C.G.S. §10-282(18) and State and local building codes, and any revisions or amendments to the said statutes, regulations, guidelines, codes or standards.

(c) In addition, Construction Manager acknowledges the following statutes and any amendment thereof and shall adhere to their applicability to costs and fees in connection with the Project:

(1) CGS 10-283(a) (2) limits the number of Project Budget increases to two.

(2) CGS 10-286(c) governs eligibility for Change Orders and provides that for project costs over \$10 million dollars, if total construction Change Orders or other change directives otherwise eligible for grant assistance exceed 5% of the total authorized project cost, such Change Orders or other change directives in excess of five percent shall be ineligible for grant assistance.



(3) CGS 10-286f disallows an increase in professional fees as a result of increased construction material costs.

(4) CGS 10-290e pertains to service agreements with consultants.

**1.2.3 Application for Payment.** Application for Payment shall mean Construction Manager's monthly requisition, which shall be submitted on an AIA Document G-702, G-703 or such other form as may be agreed upon by the City and Construction Manager.

**1.2.4 Architect.** Architect shall mean the engineer or architect hired by the City to design the various components of the Project pursuant to a separate agreement. Friar Architecture Inc. is the Project Architect and is providing building and industrial equipment programming, conceptual design, subsurface investigation, schematic design, design development, construction documents, industrial equipment design, bidding assistance and construction administration services. For purposes of this Agreement, "Architect" shall be deemed to include all of the Architect's Consultants and Subcontractors identified in the respective agreements and any other Architect's Consultants or Subcontractors approved by the City, as a written amendment to said agreements, where appropriate. The City reserves the right to change the Architect.

**1.2.5 Architect's Consultants or Subcontractors.** Architect's Consultants or Subcontractors shall mean engineers and specialty consultants retained directly by the Architect, as shall be specifically identified, when identified, in **Attachment 1** to be provided prior to execution.

**1.2.6 Change.** Change means an agreed-upon modification to Construction Manager's Scope of Work which affects the price and/or the timing of the Work.

**1.2.7 Change Order and Changes in the Work.** Change Order shall mean a written instrument prepared by Construction Manager, and signed by the City, the Architect and Construction Manager, describing a Change and specifying any accompanying adjustment in the Guaranteed Maximum Price and/or time extension. Changes in the Work shall be governed by Article 6.3. Change Order requests shall be prepared and submitted in strict compliance with the procedures described in **Attachment 9** to this Agreement, as may be modified by the State of Connecticut Department of Administrative Services, in addition to any and all requirements in this Agreement.

**1.2.8 Change Order Proposal.** Change Order Proposal shall mean a written proposal by Construction Manager for Change Order Work.

**1.2.9 City or Owner.** The City or Owner shall mean the City of Waterbury and/or its Authorized Representative.

**1.2.10 City Furnished Equipment.** City-furnished Equipment shall mean equipment provided and/or installed by vendors engaged by the City and coordinated by the Architect.

**1.2.11 Claim.** Claim shall mean a disputed request for additional compensation and/or time extension.

**1.2.12 Constructability.** Constructability shall mean that quality of a proposed assembly or component of a building which affects the means and methods of; procuring subcomponents, working the constituent materials, and assembling them in place in a manner that is safe, efficient, and in accordance with the plans and specifications, the construction budget and time limits established for the proposed Work.

**1.2.13 Construction Change Directive.** Construction Change Directive shall mean a written order, prepared by the Architect and signed by the Architect and the City, directing a change in the work prior to agreement with Construction Manager on an adjustment, if any, in the Guaranteed Maximum Price and/or the Project Schedule.

**1.2.14 Construction Contingency.** Construction Contingency shall have the meaning set forth in paragraph 6.2.1.

**1.2.15 Construction Cost Estimate.** Construction Cost Estimate shall mean a line item calculation prepared by Construction Manager of the anticipated Construction Cost to build the Architect's design.

**1.2.16 Construction Documents.** Construction Documents shall mean the drawings, specifications and other documents, prepared by the Architect, which set forth in detail the information which the Architect deems necessary to construct the Work and the General Conditions.

**1.2.17 Construction Manager.** Construction Manager shall mean the Construction Manager at Risk hired by the City to construct the Project in accordance with this Agreement and all attachments hereto.

**1.2.18 Construction Schedule.** Construction Schedule shall have meaning set forth in paragraph 8.2 of this Agreement.

**1.2.19 Contract Documents.** The Contract Documents consist of this Agreement and attachments hereto; Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to this Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in this Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or Invitation to

Bid, Instructions to Bidders, sample forms, the Construction Manager's bid or portions of addenda relating to bidding requirements).

**1.2.20 Contract Time.** Contract Time shall have the meaning set forth in paragraph 8.1.

**1.2.21 Cost of the Work.** Construction Cost or Cost of the Work shall have the meaning as set forth in Article 7.

**1.2.22 Day.** Day shall mean calendar day unless specifically provided otherwise herein.

**1.2.23 Documents.** Documents shall mean, collectively, all Drawings, Specifications, sketches, analyses, reports, notes, study models, prototypes, renderings and similar items prepared by the Architect and the Architect's Consultants in connection with the Project.

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

**1.2.25 Environmental Laws.** Environmental Laws shall mean any statutory, regulatory or decisional law adopted by any governmental entity or authority with jurisdiction, pertaining to the protection of the natural environment, or to any contaminant, including (without limiting the generality of the foregoing) any of the following: the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. 103 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §6901 et seq; the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq.; and Title 22a of the Connecticut General Statutes, as any of them may be or have been amended from time to time, together with all regulations promulgated thereunder.

**1.2.26 Fee.** Fee shall mean the fee which is part of Construction Manager's construction phase compensation for services, as set forth in Articles 5 and 6.

**1.2.27 Final Completion.** Final Completion shall mean that Construction Manager has satisfactorily completed all of the Work in conformity with the requirements of the Contract Documents and the Work has finally been accepted by the City.

**1.2.28 Final Completion Date.** Final Completion Date shall mean the date on which the Work has been completed and finally accepted by the City.

**1.2.29 Final Payment.** Final Payment for the Project shall mean the last payment to Construction Manager, including retainage, in connection with the Project.

1.2.30 **Force Majeure Event.** A Force Majeure Event shall mean acts of God and other similar casualties beyond the reasonable control of the parties, as described in paragraph 8.6 hereof.

1.2.31 **General Conditions.** General Conditions shall mean the general conditions of the contract for construction attached to this Agreement as **Attachment 2**.

1.2.32 **General Requirements.** General Requirements shall mean those sections as contained in the Project Manual, which specify the administrative and procedural requirements and temporary facilities required for the Work.

1.2.33 **Guaranteed Maximum Price or GMP.** Guaranteed Maximum Price or GMP shall have the meaning as set forth in Article 6.

1.2.34 **Hazardous Materials.** Hazardous Materials shall mean any material or substance which is toxic, ignitable, reactive, or corrosive or which otherwise is regulated by or under Environmental Laws Hazardous Materials also include without limitation: (a) any and all materials or substances that are defined as "hazardous waste," "extremely hazardous waste," "hazardous substance," "hazardous material," or "contaminated debris" pursuant to Environmental Laws; (b) asbestos and friable asbestos containing materials; (c) polychlorinated biphenyls ("PCBs") in any medium or substance; (d) petroleum, petroleum products and derivatives; and (e) special wastes; and (f) radioactive materials.

1.2.35 **Preliminary Schedule.** Preliminary Schedule shall mean the schedule attached to this Agreement as **Attachment 6** and as set forth in Section 1.3.5 herein.

1.2.36 **Progress Payment.** Progress Payment shall mean monthly payments to Construction Manager based on the percentage of Work completed, as measured against Construction Manager's Work, including any approved revisions or updates thereto.

1.2.37 **Project.** Project shall mean pre-construction and construction of the Wendell L. Cross Pre-K to 8<sup>th</sup> Grade School, including any swing space requirements necessitated thereby, as set forth in this Agreement.

1.2.38 **Project Manual.** The Project Manual is the volume usually assembled for the work, which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2.39 **Project Milestones.** The Project Milestones shall mean the tasks and services listed on the Preliminary and Master Project Schedules with associated dates for achievement.

1.2.40 **Project Schedule or Master Project Schedule.** Project Schedule or Master Project Schedule or Master Schedule shall mean the schedules in the CPM format, prepared by Construction Manager, and approved by the City, detailing the sequence and time durations (including milestones) for Construction Manager's work and the work of

the Owner and Architect, including any approved, revisions or updates thereto for all matters assigned to Construction Manager under this Agreement. The Construction Manager shall be responsible for coordinating the individualized construction schedules of the Trade Contractors and Subcontractors. Until a Project Schedule is established a Preliminary Schedule shall be developed as set forth in this Agreement.

1.2.41 **Project Site(s).** Project Site(s) shall mean that area where the Project is to be constructed, as delimited in the Construction Documents.

1.2.42 **Project Team.** Project Team shall mean the City, the Program Manager, the Construction Manager, and the Architect assigned to the particular matter.

1.2.43 **Program Manager.** The Program Manager shall be the Waterbury Development Corporation, as set forth in this Agreement.

1.2.44 **Punch List.** Punch List shall mean a list, compiled by Construction Manager and the Architect at Substantial Completion and approved by the City, which identifies items of Work that remain to be completed or corrected prior to Final Payment.

1.2.45 **RFI.** RFI shall mean a request for information or clarification submitted to the Architect by Construction Manager.

1.2.46 **Sample.** Sample shall mean a physical example that illustrates material, equipment or workmanship, and which establish standards by which the Work will be evaluated

1.2.47 **Services of Construction Manager or Services.** Services of Construction Manager or "Services" shall mean all efforts, actions, and activities which are required of Construction Manager during the course of the Project.

1.2.48 **Shop Drawings.** Shop Drawings shall mean drawings, diagrams, illustrations, schedules and other data prepared by Construction Manager or Trade Contractors or Subcontractors to illustrate how specified portions of the Work will be constructed.

1.2.49 **Site(s).** Site(s) shall mean the place where the Project will be constructed.

1.2.50 **Specifications.** Specifications shall mean that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.2.51 **Submittal.** Submittal shall mean a Shop Drawing, Sample, catalog cut or similar item submitted by Construction Manager for review or approval by the Architect.

1.2.52 **Submittal Log.** Submittal Log shall mean a log maintained by the Architect indicating the dates of submission of Shop Drawings and other Submittals by Construction Manager for review and the dates of their return by the Architect.

**1.2.53 Submittal Schedule.** Submittal Schedule shall mean the schedule, prepared by Construction Manager and approved by the Architect and the City, outlining the sequence and timing of the submission of Shop Drawings and other Submittals for review by the Architect.

**1.2.54 Substantial Completion.** Substantial Completion shall mean that stage in the progress of the Work when the Project (or any designated portion thereof) is sufficiently complete in accordance with the Contract documents so that the City can occupy or utilize the Project or that designated portion) for its intended use.

**1.2.55 Substantial Completion Certificate.** Substantial Completion Certificate shall mean the certificate issued by the Architect and approved by the City indicating the date upon which the Project (or a designated portion thereof) is Substantially Complete.

**1.2.56 Substantial Completion Date.** Substantial Completion Date shall mean the date identified in the Architect's Substantial Completion Certificate when the Work (or a designated portion thereof) is Substantially Complete.

**1.2.57 Substitution.** Substitution shall mean a replacement or alternative to an item of material or equipment identified in the Construction Documents which is proposed by Construction Manager, evaluated by the Architect and authorized by Change Order.

**1.2.58 Trade Contractor, Trade Contracts and Subcontractors.**

(a) Trade Contractor shall mean any contractor or material supplier who has entered into a contract or purchase order with Construction Manager for the performance of any portion of the work or the furnishing of any material or equipment with respect to the Project Work.

(b) Trade Contracts shall mean a written agreement between Construction Manager and any Trade Contractor with respect to the Project.

(c) Subcontractor shall mean any contractor or material supplier who has entered into a contract or purchase order with a Trade Contractor for the performance of any portion of the Work or the furnishing of any material or equipment with respect to the Project.

**1.2.59 Value Engineering.** Value engineering means the process by which members of the Project Team evaluate the Architect's design with a view to potential cost savings including; but not limited to, identifying alternate materials and systems that can satisfy the City's goal relative to use, life, operating/maintenance costs and aesthetics.

**1.2.60 Work.** Work shall mean all construction and related services and tasks required by the Contract Documents to be performed by or through Construction Manager, including all labor, materials, and equipment necessary therefor.

### **1.3. ADDITIONAL GENERAL PROVISIONS.**

**1.3.1 Relationship of the Parties.** Construction Manager accepts the relationship of trust and confidence established with the City by this Agreement, and covenants with the City to furnish its reasonable skill and judgment and to cooperate with the Architect and the Program Manager employed by the City in furthering the interests of the City. Construction Manager shall furnish construction administration and management services and use Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the City as stated in the Contract Documents. The City shall endeavor to promote harmony and cooperation among the members of the Project Team, as defined in sub-paragraph 1.3.2, below.

#### **1.3.2 The Project Team.**

(a) **Coordination and Cooperation.** The City, the Program Manager, the Architect and the Architect's Consultants, and Construction Manager are members of the Project Team.

(b) **Project Team and Other Required Meetings.** In coordination with the City, the Architect shall organize and chair regular meetings of the Project Team during the Design Phases, and shall prepare detailed written agendas and minutes of each such meeting. Agendas shall be provided to all interested parties at least five business (5) Days before each meeting, and minutes shall be circulated within two business (2) Days after each meeting.

In addition to Project Meetings during the Design Phase, the Architect shall give timely notice to the Project Team and any third party or parties of any and all Project-related meetings desired, required or scheduled with educational or funding entities, utility companies, or local, state, federal, regional or other governmental regulatory agencies and authorities. The scheduling of such meetings is to be arranged and noticed by the Architect, after consultation with the Project Team as to the time and date of such meetings and the required participants in each such meeting. The Architect will distribute any materials required or desired to be reviewed in advance of said meetings. Construction Manager shall attend and participate in the following meetings, hearings and presentations, included but not limited to (collectively, "Meetings"): Project status meetings with the Project Manager, Architect, City, Board of Education Building Committee, the Waterbury Board of Education, the Waterbury Board of Aldermen, and meetings with members of the community in which the Project is located, City Plan Commission hearings, Planning/Zoning/Engineering staff meetings, Preliminary/Site Approval Hearings, Zoning Board of Appeals Hearings, meetings with the State of Connecticut; High Performance Building Design charrettes, City of Waterbury Standards compliance charrettes, Historic Commission presentations if applicable, cost estimating reconciliation meetings, Change Order Meetings and all other related meetings as requested by the City. Construction Manager shall coordinate, as requested by the City, and attend all meetings with the DAS-OSCG&R of the State Department of Administrative Service as well as attend necessary follow up meetings for each phase of design. Scope of Services includes preparing for and

participating in all regulatory approval processes. A representative of the Construction Manager shall be present at all Board of Education Building Committee Project meetings.

Construction Manager will conduct Project Team meetings during the Bidding/Negotiation, Pre-Construction and Construction Phases, and shall prepare and circulate agendas and meeting minutes.

(c) **Authorized Representative of the City.** Day-to-day responsibilities for City's decisions on matters concerning estimates and schedules, construction estimate, and Changes in the Work may be delegated to the Authorized Representatives of the City; including the Program Manager. The Waterbury Development Corporation ("WDC") shall be City's Program Manager for this Project.

The Program Manager will be responsible, under the supervision of the City, for managing and overseeing the activities of the Architect and Construction Manager during the duration of the Project. For all matters under this Agreement, Construction Manager shall report and take final direction from the Project Manager. All changes to any of the services specified under this Agreement must be approved by City under the direction of the City Authorized Representatives. All day-to-day matters shall be brought to the attention of the Program Manager. This supervision does not relieve Construction Manager of the responsibilities it has agreed to undertake under this Agreement as a Construction Manager at Risk.

Construction Manager agrees to this relationship and shall cooperate with the Program Manager and the various Architects (and their Consultants) harmoniously and in good faith in an effort to promote the speedy and efficient construction of the Project. Construction Manager agrees it has anticipated the cost of this relationship and shall not request additional compensation except as specifically provided herein.

Unless otherwise set forth in this Agreement, where a decision of the City is required to effectuate the purposes of this Agreement, an Authorized Representative of the City shall make said decisions.

(d) **Construction Manager's Representative.** Construction Manager's Authorized Representative in connection with the Project or a designee approved in writing by City. Construction Manager shall cooperate fully with and confer with the City, its Program Manager as well as any consultant, architect or other professional identified by the City in connection with this Project.

1.3.3 **General Conditions.** The General Conditions which are attached to this Agreement as **Attachment 2** shall apply to all phases and aspects of this Agreement. The term "Contractor" as used in the General Conditions shall mean Construction Manager.

1.3.4 **The Contract Time.** The Contract Time is the duration from the date of the Notice to Proceed to Substantial Completion. Changes in the Work shall be governed by Section 6.3 of this Agreement.



### 1.3.5 **Special Considerations.**

(a) **Applicable Law and Professional Practice.** Construction Manager shall perform all Services in connection with the Project in a timely and efficient manner, and in accordance with Applicable Law and standards of good professional practice.

(b) **Preliminary Schedule.** Construction Manager acknowledges that pending preparation and approval of the Master Project Schedule pursuant to this Agreement, the Construction Manager shall be required to provide services in accordance with the Preliminary Schedule attached hereto and made a part hereof as **Attachment 6**.

(c) **Project Delivery Method.** The Project delivery method contemplated by this Agreement is a Construction Manager at Risk with a guaranteed Completion Date and Guaranteed Maximum Price. Construction Manager shall issue individual bid packages for various trades and supplies and materials to Trade Contractors (including, suppliers) in a competitive bidding process which shall include all local & state requirements under Applicable Laws.

(d) **No Conflicts of Interest.** Except with the City's knowledge and written consent, Construction Manager shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably compromise Construction Manager's professional judgment with respect to the Project.

(e) **Purpose of the City's Review of Documents.** Any review of Documents by the City shall not be for the purpose of determining their accuracy and technical sufficiency, and the City shall not be under any obligation to inspect the Project. The review, approval, or acceptance by the City of data, surveys, studies, designs, Specifications, calculations, plans, Drawings, or any other Documents furnished hereunder by Architect and reviewed by Construction Manager shall in no way relieve the contracting parties of responsibility for the adequacy, completeness, and accuracy of the Construction Documents, within the scope of responsibility in this Agreement. In no event shall the City's review, approval, acceptance of or payment for the Services of Construction Manager or the Architect be construed as a waiver of any of the City's rights under this Agreement or of any cause of action it may have, arising out of the performance of this Agreement.

(f) **No City Representations.** Construction Manager hereby acknowledges that the City has not made any representations to Construction Manager or created any warranties, express or implied, by virtue of the information contained in the original request for qualifications issued by the City. Construction Manager further acknowledges that Construction Manager, alone, is responsible for the quality and technical sufficiency of all Services provided by Construction Manager under this Agreement, and that information provided by the City does not relieve, release, or in way whatsoever diminish Construction Manager's ultimate responsibility for the construction and management of the Project.

(g) **Cooperation with the City and Governmental Entities.** Construction Manager shall be responsible for coordinating all the contracting parties obligated to furnish information and reports, and shall otherwise facilitate their cooperation, as requested by the City, with the pertinent regulatory and policy boards or commissions, the Planning and Zoning Commissions and other Governmental Entities including, but not limited to, allowing access, upon reasonable notice and during business hours, to the Project and all accounting records relating thereto.

(h) **Attendance at Meetings and Hearings.** Construction Manager shall assist with and attend presentations, public hearings and other municipal and other governmental meetings or hearings on or relating to the Project.

(i) **Familiarity with Requirements of Funding Source(s).** Construction Manager, in cooperation with the Program Manager and the City, shall become familiar with the requirements and restrictions imposed by governmental funding sources for the Project to ensure that all such terms are complied with in the performance of Services and ensuring eligible cost determinations for maximum reimbursement under the Project grant.

#### **1.3.6 Professional Support Services.**

The City shall furnish the required information and services and shall render approvals and decisions as expeditiously as is reasonably necessary for the orderly progress of Construction Manager's services and Work of the Trade Contractors and Subcontractors.

#### **1.3.7 City's Responsibilities.**

The City will provide information in its control or custody regarding the Project which is reasonably necessary to enable Construction Manager to satisfy its obligations under this Agreement. The furnishing of such information in good faith by the City to Construction Manager shall be for the limited purpose of providing Construction Manager with information which is in the City's possession or control, and shall in no way constitute a warranty by the City of the completeness or accuracy of any such documentation or otherwise release in whole or in part any obligation of the Construction Manager under this Agreement, or create any liability on the part of the City for any error or inconsistency or mistake that may later be found in such documentation. In the event of any incomplete or inaccurate information, which results in a change in the Work or an unforeseen condition, the Agreement's change order provision shall control. City will, at the request of Construction Manager, request the provider of any such information to provide Construction Manager with independent rights of reliance, enforceable against the provider only, on the information provided.

**ARTICLE 2**  
**CONSTRUCTION MANAGER'S ROLES AND RESPONSIBILITIES**

**2.1. REPRESENTATIONS AND WARRANTIES.**

The Construction Manager represents and warrants:

2.1.1 It is a limited liability company duly organized and validly existing under the laws of the State of Connecticut; that it is in good standing and qualified to do business in the State of Connecticut; and that it has all the necessary corporate power to execute and deliver this Agreement and perform all its obligations hereunder;

2.1.2 It has the requisite skills, personnel and business capacity to fulfill the requirements of this Agreement, and that there are no pending legal actions, claims or, obligations that could prevent Construction Manager's timely delivery of the Work of this Agreement, including but not limited to knowledge of State Department of Administrative Services compliance requirements for state funded projects in the area of education, including PK-12 facilities;

2.1.3 All equipment furnished by Construction Manager, the Trade Contractors and the Subcontractors shall be suitable for the services to be rendered hereunder; and,

2.1.4 Construction Manager shall obtain and/or require each Trade Contractor and Subcontractor to apply for and obtain all necessary permits, licenses, authorizations, and required DAS-OSCG&R approvals in order to perform the Work and the Work shall be performed in full compliance with the permits and Applicable Laws. If any permits or other authorizations (the "Permits") from local permitting authorities, the State of Connecticut or federal government are required, Construction Manager shall apply and secure said Permit and pay all costs associated with the obtaining of said Permit. A construction budget line item will be set aside, by the City, for same. With respect to professional licenses required to perform the Work, Construction Manager shall require each Trade Contractor and Subcontractor to produce all licenses necessary to perform the Work and the Work shall be performed in full compliance with the licenses and Applicable Laws. As additional permits and licenses are required or existing permits and licenses are renewed, Construction Manager agrees to promptly furnish copies of same to the City. Construction Manager shall notify the City immediately upon the revocation, termination, or expiration of any of said permits or licenses.

**2.2. ROLE OF THE CONSTRUCTION MANAGER AT RISK.**

2.2.1 Construction Manager shall have the responsibility to perform the Services and construct the Work in accordance with the Contract Documents, within the Contract Time for each component of the Project and for no more cost to the City than the Guaranteed Maximum Price, unless otherwise adjusted by an approved change order, for entire scope and duration of the Project, all in a manner consistent with the best interests of the City.

2.2.2 Construction Manager shall perform its services with the professional care, expertise, and diligence prevailing in the construction management industries among nationally recognized companies, with skilled and fully qualified personnel in the execution of projects of similar size, value, complexity and quality to the Project, and in accordance with Applicable Laws.

2.2.3 Construction Manager shall furnish efficient business administration and construction services to assure prompt and complete performance by all Trade Contractors and Subcontractors retained in connection with the Work. Construction Manager recognizes that it is engaged as an independent contractor and shall not act as the agent of the City unless otherwise notified in the Contract Documents. Construction Manager, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself in a manner that is consistent with such status, and that it will neither hold itself out as, nor claim to be, an officer, partner, employee or agent of the City by reason hereof.

2.2.4 Acceptance of appointment as Construction Manager creates a relationship of trust and confidence between Construction Manager and the City. The City reposes trust and confidence in Construction Manager and the performance of Construction Manager's duties, and Construction Manager shall take reasonable steps to guard the City's interest at all times.

## **2.3. RESPONSIBILITIES OF THE CONSTRUCTION MANAGER AT RISK.**

2.3.1 The responsibilities of Construction Manager to construct the Work and provide other designated Services and coordinate the relationships of the Project Team shall be as defined in this Agreement and the General Conditions. Construction Manager shall provide sufficient organization, skilled personnel, and management to carry out the requirements and intent of this Agreement.

2.3.2 Construction Manager shall perform all administrative, management, and related services required to construct the Work in accordance with the Contract Documents, and shall coordinate the work of the Trade Contractors and Subcontractors with each other, and with the efforts of Construction Manager, the City, and the respective Architect(s).

## **2.4. KEY PERSONNEL.**

2.4.1 **Key Personnel.** The Project Executive, Construction Manager Project Manager, Site Supervisor, and other key staff or consultants to be assigned to the Project by Construction Manager are listed in **Attachment 5** ("Key Personnel"). Construction Manager Project Manager shall fully represent and be duly authorized to act on the behalf of and bind Construction Manager. The individuals or consultants listed in **Attachment 5** shall remain in their respective assignments for the duration of the Project (so long as they remain in the employ of Construction Manager), unless the City approves their removal or change of duties, in writing. The City has the right to approve any individual

or consultant proposed by Construction Manager to replace any of the employees or consultants for the Project. The City shall have the right to require the removal of any member of the Project Team.

**2.4.2 Replacement of Key Personnel.** All persons assigned to the Project by Construction Manager shall be qualified to perform their assigned tasks. No person deemed by the City to be incompetent, careless, unqualified, or otherwise unsatisfactory to City, shall be permitted to perform Services in connection with the Project after such a determination is made by City and communicated in writing to Construction Manager. Upon notice by the City, Construction Manager shall immediately remove the unsatisfactory individual and replace him or her with an individual acceptable to the City.

**2.4.3 Equal Opportunity.** Construction Manager shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, marital status, sex, disability, sexual preference or age. Construction Manager shall take such actions as are reasonably necessary to ensure that employees and applicants for employment are treated without regard to their race, creed, color, national origin, marital status, sex, sexual preference or age. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

**2.4.4 Trade Contracting and Subcontracting.** Notwithstanding the subparagraph 2.4.1, above, Construction Manager shall not otherwise, without the prior written approval of the City, subcontract, in whole or in part, any of its services. Any Trade Contractor or Subcontractor so approved shall be required to secure and maintain insurance coverage of the types set forth in Article 13, below. Construction Manager shall use good business judgment in establishing coverage limits for the Trade Contractors or Subcontractors, which shall be mutually agreeable to the City. Said insurance coverage provided by the Trade Contractors or Subcontractors shall name the City as an additional insured party in accordance with the requirements found in Article 13 and said Trade Contractors or Subcontractors shall deliver to Construction Manager a certificate of insurance evidencing such coverages, which Construction Manager, in turn, will transmit to the City. At the City's sole discretion, and with written notice from the City to Construction Manager, the insurance requirements for a specific Trade Contractor or Subcontractor may be modified or waived. All Trade Contractors or Subcontractors shall comply with all federal, state and local, laws, regulations and ordinances but such requirement shall not relieve Construction Manager or its Trade Contractors or Subcontractors from its obligation that all services provided hereunder shall comply with all federal, state and local, laws, regulations and ordinances.

**2.4.5 Responsibility of Construction Manager.** Construction Manager shall be as fully responsible to the City for the acts and omissions of its Consultants, Trade Contractors, Subcontractors, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by Construction Manager.

## **2.5. REVIEW OF DOCUMENTS AND THE PROJECT SITE.**

2.5.1 Since the Contract Documents are complimentary, Construction Manager represents that it shall have a continuing obligation to thoroughly review the Contract Document and make careful inspection of the Project Site(s) and other materials provided or offered to Construction Manager and, consistent with industry standards applicable to construction management services, it will assure the City that the Work as described in the Contract Documents is (a) appropriate for the construction of the Project on the Project Site; (b) sufficient to construct the Work without any unusual difficulties; and, (c) consistent with the physical conditions and circumstances required to perform the Work, and that the Contract Documents facilitate the coordination and sequencing of the Work between disciplines, are consistent with the means and methods of construction selected for the Work, and are sufficiently complete and detailed for Construction Manager to perform the Work within the guaranteed Project Schedule and the amount of the Guaranteed Maximum Price. Construction Manager further represents that it is not aware of any defects, omissions, or inconsistencies in the Contract Documents of which it has not made the City and the Architect aware. In this regard:

(a) **Review of contract documents.** Construction Manager shall carefully study and compare the various drawings and other Contract Documents, and the information furnished by the City and the Architect, and shall at once report to the city, all errors, inconsistencies, or omissions discovered.

(1) Construction Manager shall not be liable to the City for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless Construction Manager recognized such error, inconsistency or omission and failed to report it or, failed to recognize such error, inconsistency or omission in contravention of the reasonable standard of care of a Construction Manager at Risk.

(2) If Construction Manager performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without such notice, Construction Manager shall assume appropriate responsibility for such performance and shall bear any increase in the cost to correct such error, inconsistency or omission above what the cost would have been if Construction Manager had promptly notified the Architect and the City and awaited direction before proceeding with the affected work.

(3) Construction Manager further represents that, during the Design Phase, it will work with the City and Architect and will provide advice in the development of Contract Documents that: are designed to facilitate the coordination and sequencing of the Work between disciplines; will be consistent with the means and methods of construction selected for the Work; and, will be sufficiently complete and detailed for Construction Manager to perform the Work within the Construction Schedule and the amount of the Guaranteed Maximum Price. Construction Manager shall develop its own construction cost estimates

and reconcile those estimates with the Architect's construction costs estimates at 30%, 60%, 80%, and 100% design progress development.

(b) **Review of the Project Site and Field Conditions.** Construction Manager shall examine the Project Site(s) and surroundings and satisfy itself as to the nature of the Project Site, the conditions under which the work will be carried out and has reviewed all the matters affecting the performance of the work, the existing access and communications with and to the Project Site(s), the risk of injury or damage to the property adjacent to the Project Site(s) it occupies, and has reviewed all necessary information in order to assume the risks and contingencies as defined herein which may affect its performance of the work.

Construction Manager further represents, at the time of execution of this Agreement, that it is not aware of any defects, omissions, or inconsistencies in the Contract Documents of which it has not made the City and the Architect aware and will during the term of this Agreement have a continuing obligation to inform the City and the Architect of any defects, omissions or inconsistencies, if any, as they may arise. With respect to the representations at the time of execution, Construction Manager makes this statement to its best knowledge and belief and without assuming any design responsibilities.

2.5.2 Construction Manager shall carefully review all Construction Documents that are developed for the Work after the date of this Agreement to verify that the Project remains constructible within the Guaranteed Maximum Price and Project Schedule as they may be modified for any additional work. To the extent Construction Manager cannot so verify, it shall immediately notify the City and Architect in writing of any error, omission, or inconsistency, shall make prompt and economical recommendations regarding the resolution thereof, and shall coordinate closely with the City and the Architect in the final resolution of each such issue.

2.5.3 Notwithstanding any provision of the Contract Documents to the contrary, Construction Manager's review of the Construction Documents and the Project Site shall not make Construction Manager responsible for the Project design or otherwise relieve the respective Architects of any obligation they may have to the City for the completeness and adequacy of the Construction Documents under the respective Architect Agreements, Applicable Law, or otherwise.

### **ARTICLE 3**

#### **THE SERVICES OF THE CONSTRUCTION MANAGER**

##### **3.1. PRELIMINARY CONSIDERATIONS.**

3.1.1 The Services of the Construction Manager consist of those described in paragraphs 3.1 through 3.9 and any other services identified in this Agreement. Each component of the Project will consist of separate Phases. No work shall be undertaken by Construction Manager hereunder in connection with the Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding or Negotiation Phase or Construction Phase until it receives written authorization to proceed with each

such Phase from the City or Program Manager. No termination penalties are to be payable in the event the City does not proceed with any Phase.

**3.1.2 Scope of Work.** The Scope of Work is generally set forth in the delineation of Services set forth in this Article and throughout this Agreement. The Construction Manager shall furnish all of the Services, including but not limited to labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc. necessary to complete the Project, to maximum reimbursement, as specified in this Agreement and all such shall be completed in a satisfactory manner, as reasonably determined by the City. All labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc. shall comply with any and all applicable local, state and federal laws, statutes, ordinances and regulations, DAS-OSCG&R Grant and program requirements and with generally accepted professional standards. Construction Manager shall make such revisions or modifications to its work, at its own cost and expense, as the City or DAS-OSCG&R may require in order to be deemed complete.

**3.1.3 Extent of Responsibility.** Construction Manager shall organize the Work into logical groups of relevant trades in sequences to minimize the effects of multiple tier mark-ups and maximize coordination efficiencies, unless otherwise authorized in advance by the City, at its sole discretion. Construction Manager shall be solely responsible for the performance of each of the Trade Contractors and Subcontractors and shall indemnify and hold harmless the City from and against any and all additional costs and liability in excess of the Guaranteed Maximum Price for each component of the Project, incurred as a result of the failure of any Trade Contractor or Subcontractor to perform in accordance with its applicable Contract or Subcontract, or by the performance of its subcontract in a negligent manner. In no event will any cost or expense resulting in any manner from the negligence, fault, breach or failure of Construction Manager or any Trade Contractor or Subcontractor be considered a Cost of the Work.

Construction Manager shall require each Trade Contractor or Subcontractor, to the extent of the Work to be performed by the Trade Contractor or Subcontractor, to be bound to Construction Manager in a manner which imposes Construction Manager's obligations and abilities under this Agreement upon the Trade Contractor or Subcontractor and preserves and protects the rights of the City under the Agreement.

Each contract or subcontract shall contain specific, enforceable terms regarding contract time. These terms shall be expressed in a manner which will ensure adherence to the Project Schedule without subjecting the City to undue delay claims in the event of untimely starts.

The recommendations and advice of Construction Manager concerning design alternatives shall be subject to the review and approval of the City, Program Manager, and the Architect.

**3.1.4 Equal Employment Opportunity and Affirmative Action.** Construction Manager shall comply with applicable state and local laws, the Charter and Ordinances of the City and purchasing requirements, regulations and special



requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. It is the responsibility of Construction Manager to familiarize himself with these requirements and enforce compliance with regard to reporting by its Trade Contractors or Subcontractors. Construction Manager will coordinate with its Trade Contractors and Subcontractors the reporting of employment statistics to a City-assigned contract compliance representative, if any.

### **3.2. SCHEMATIC DESIGN PHASE.**

3.2.1 The first phase shall be Schematic Design Phase, which shall include the development of all management plans, schedules, cost estimates and analyses and reports required. During the Schematic Design Phase, Construction Manager shall be responsible for those matters set forth in this Agreement as well as those which within the professional judgment of Construction Manager should be conducted during this Phase.

3.2.2 The Schematic Design Phase shall commence upon receipt of a Notice to Proceed from the City.

3.2.3 **Preliminary Evaluation.** Construction Manager shall provide a preliminary evaluation of the City's program, Project budget and schedule requirements each in terms of the other with respect to the component of the Project.

3.2.4 **Consultation.** During this Phase, Construction Manager shall schedule and attend weekly conference calls and regular meetings to be held as often as reasonably necessary but in no event less frequently than once each month with the City's Program Manager and the Architect. Construction Manager shall consult with the City and the Architect regarding Site use and improvements, and the selection of materials, building systems and equipment.

Without assuming the design responsibilities of the Architect, Construction Manager shall:

(a) Make recommendations as to construction feasibility; actions designated 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 economies.

(b) Assist the City, the Architect and any other persons or entities designated by the City in ascertaining the requirements of the Project and the DAS-OSCG&R Approved Project Grant Application and any subsequent Grant changes or modifications. These reviews may include identifying the legal requisites for the following for the successful completion of the Project: DAS-OSCG&R; Department of Energy and Environmental Protection; Department of Health; Building and Fire Codes; local ordinance and zoning mandates; land use requirements; criterion for approval by governmental agencies and authorities having jurisdiction; and, permit and approval requirements (as required by Applicable Law and by this Agreement). Upon request the

Construction Manager shall attend meetings and assist the Architect and the City in discussions and reviews with DAS-OSCG&R.

**3.2.5 Project Management:** The Construction Management Plan. Construction Manager shall prepare a Construction Management Plan for the Project. In preparing the Construction Management Plan, Construction Manager shall consider the City's schedule, cost, and design requirements for the Project to be provided by the City. Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the City. The Construction Management Plan shall also include a description of the various bid packages recommended for the Project. The Construction Management Plan shall be presented to the City for acceptance.

**3.2.6 Time Management.**

(a) **Phased Construction:** Construction Manager shall make recommendations to the City regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Work, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

**3.2.7 Cost Management.**

(a) **Construction Market Survey:** Construction Manager shall continually conduct a review of construction market to provide current information regarding the general availability of local construction services, labor, materials and equipment cost and other economic factors related to the Project and utilize such knowledge with respect to its responsibilities under this Agreement.

(b) **Preliminary Project and Construction Estimates:** Construction Manager shall prepare Construction Cost Estimates based on complete Schematic Design Documents prepared by the Architect. Construction Manager shall coordinate with the Architect to facilitate the development of the Construction Cost Estimates during this Phase, and shall assist the City in reviewing and evaluating the Construction Cost Estimates.

(c) **Cost Analysis:** Construction Manager shall review the Architect's analysis and report to the City the cost of various design and construction alternatives. In this respect, Construction Manager shall review the Architect's cost analysis costs relating to efficiency, usable life, maintenance, and operation and report any concerns to the City.

**3.2.8 Management Information Systems ("MIS").**

(a) **Establishing the Project MIS:** Construction Manager shall develop a MIS to establish communication between the City, Design Professional and other parties on the Project. The MIS shall be based upon Procore, Oracle Aconex or Autodesk BIM

360 or equivalent if approved by the City. Specific reporting requirements shall be as requested by the City.

(b) **Design Phase Procedures:** As part of the MIS, Construction Manager shall establish procedures for reporting, communications and administration during the Design Phase.

3.2.9 Construction Manager shall review with the City and the Architect each task furnished by the City. Construction Manager shall assist the Program Manager and the Architect in identifying for the City all the requirements necessary to obtain the approvals and to complete the tasks; as well as all consultants required in connection with the Project.

### **3.3. DESIGN DEVELOPMENT PHASE.**

3.3.1 Upon the City's written approval of the Schematic Design Phase the Design Development Phase shall commence upon receipt of a Notice to Proceed from the City.

3.3.2 **Project Management Responsibilities during the Design Development and Construction Document Phases.** Construction Manager shall be responsible for the following functions during the Design Development and Construction Document Phases.

(a) **Revisions to the Construction Management Plan.** Construction Manager shall make recommendations to the City regarding revisions to the Construction Management Plan. Revisions approved by the City shall be incorporated into the Construction Management Plan and accepted by the City.

(b) **Project Conference.** At the commencement of the Design Development and Construction Documents Phases, Construction Manager shall conduct a project conference attended by the City, the City's Program Manager, the Architect and others. During the Project Conference, Construction Manager shall review the Construction Management Plan, the Master Project Schedule, the Budget Estimates and the MIS.

(c) **Design Phase Information.** Construction Manager shall monitor the Design Professional's compliance with the Construction Management Plan and the MIS and Construction Manager shall coordinate and expedite with the City, the flow of information between Construction Manager, the City, the City's Program Manager, the Architect and others.

(d) **Project Meetings.** Construction Manager shall conduct periodic Project meetings attended by the City, the Program Manager, the Architect and others. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of design progress. Construction Manager shall prepare and distribute minutes of these meetings to the City, the Program Manager, the Architect and others.

(e) **Review of Design Documents.** Construction Manager shall review the design documents for clarity, consistency, constructability and coordination among the

Contractors and Subcontractors. This shall involve reviewing the Architect's scope; schematic, design development, and final construction documents and estimates of cost. The results of the review shall be provided in writing and as notations on the documents. Construction Manager is not responsible for providing, nor does Construction Manager control, the Project design and contents of the design documents. In so doing, Construction Manager shall comment thereon and make recommendations as to such factors as construction methods and materials, suggested economies, availability of materials and labor, time requirements for installation and construction, and cost.

(f) **Design Recommendations.** Construction Manager shall make recommendations to the Architect and the City with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work. Construction Manager shall review the plans and specifications with the City and the Architect regarding the division of the work for the purpose of bidding, possible trade conflicts and overlapping jurisdictional issues, and community relations.

(g) **Project Funding.** Construction Manager shall assist the City in preparing documents concerning the Project and Budget Estimates and for use in obtaining or reporting on project funding. The documents shall be prepared in a form approved by the City.

(h) **Construction Cost Estimates.** The Architect will prepare four (4) construction cost estimates at 30%, 60%, 80% and 100% design development. The Construction Manager will develop its own set of construction cost estimates at 30%, 60%, 80% and 100% design development and coordinate with the Architect to reconcile both sets of construction cost estimates at each phase of design development. The Construction Manager and Architect shall cooperatively assist the City in reviewing and evaluating the Construction Manager's and Architect's Construction Cost Estimates pertaining to the tasks. If Construction Manager's Construction Cost Estimates exceed the Construction Budget, the Architect shall, as part of Services, develop alternates, participate in Value Engineering with the Project Team, or otherwise revise the design as necessary to bring the estimated Construction Cost within the Construction Budget. Agreed-upon revisions to 100% complete Design Development Documents shall be made during the following Phase so as not to delay the Project.

### 3.3.3 Time Management.

(a) **Master Project Schedule:** In accordance with the Construction Management Plans, Construction Manager shall prepare a Master Schedule, for the construction for each component of the Project, in Primavera P3 CPM PDM format or comparable software. The Master Schedule shall specify the proposed start and finish dates for each project activity and the dates by which certain construction activities must be complete. Construction Manager shall coordinate with and integrate into its Master Schedule the services and activities of the City. As the design proceeds, Construction Manager shall update the Master Schedule in order to indicate proposed activity

sequences and durations, milestone dates for receipt and approval of pertinent information, delivery of cost proposals, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, City's occupancy requirements showing phased portions of the project having occupancy priority, and proposed date of Substantial Completion. If Master Schedule updates indicate that a particular schedule cannot be met, Construction Manager shall make appropriate recommendations to the City. Construction Manager shall submit the Master Schedule to the City for acceptance. Construction Manager shall have a continual obligation to recommend, to the City, revisions to the Master Project Schedule.

(b) **Pre-Bid Project Schedules:** Prior to transmitting Contract Documents to bidders, Construction Manager shall prepare a Pre-Bid Project Schedule for each part of the Project and make the schedule available to the bidders during the Bid and Award Phase. In particular, at this phase, Construction Manager shall recommend to the City and the Architect a schedule for procurement of long-lead items which will constitute part of the Work as required meeting the Project Schedule. The Construction Manager acknowledges that certain items may be bid early as part of Pre-Construction Services.

#### 3.3.4 **Cost Management.**

(a) **Project and Budget Estimate Revision:** Construction Manager shall make recommendations to the City concerning design changes that may result in cost reductions to the Project and Budget Estimates and divisions of the Work required for the Project.

(b) **Cost Analysis:** Construction Manager shall prepare Construction Cost Estimates for each submittal of design drawings and specifications from the Architect, based on the latest documents prepared by the Architect. The estimate for each submittal shall be accompanied by a report to the City identifying variances from each phase and the original Project and Budget Estimates. Construction Manager shall coordinate and expedite the activities of the City and the Architect when changes to the design are required to remain within the Budget Estimates.

(c) **Value Analysis Studies:** Construction Manager shall provide value analysis studies for major construction components. The results of these studies shall be in report form and distributed to the City.

#### 3.3.5 **Management Information Systems ("MIS").**

(a) **Schedule Reports:** In conjunction with the services provided by subparagraph 3.2.8(a) above, Construction Manager shall prepare and distribute Schedule Maintenance Reports to the City. The reports shall contrast actual progress against scheduled progress for the Design Phase and the overall Project.

(b) **Project Cost Reports:** Construction Manager shall prepare and distribute project cost reports that shall indicate estimated costs compared to the Project and Budget Estimate.

(c) **Cash Flow Report:** Construction Manager shall periodically prepare and distribute a Cash Flow Report to the City.

3.3.6 Construction Manager shall review, and the City shall approve, the Architect's Design Development Documents.

### **3.4. CONSTRUCTION DOCUMENTS PHASE.**

3.4.1 Upon the City's written approval of the Design Development Phase, the Construction Document Phases shall commence upon receipt of a written Notice to Proceed from the City.

3.4.2 Project Management Responsibilities during the Design Development and Construction Documents Phase. See sub-paragraph 3.3.2, above.

3.4.3 Time Management. See sub-paragraph 3.3.3(b), above.

3.4.4 Cost Management. See, sub-paragraph 3.3.4, above.

3.4.5 Management Information Systems ("MIS"). See, sub-paragraph, 3.3.5, above.

3.4.6 As and when reasonably requested by the City, the Architect shall provide Drawings and Specifications for the City's and Construction Manager's review. The Architect shall be responsible for coordination of all Project drawings and specifications with the plans and specifications for any design furnished by the Architect's Consultants.

3.4.7 Upon completion of the Construction Documents Phase, the Architect shall provide Construction Documents for the City's approval and Construction Manager's information and use.

### **3.5. [NOT USED]**

### **3.6. BIDDING OR NEGOTIATION PHASE: PROCUREMENT SERVICES.**

3.6.1 **Procurement Plan.** Construction Manager shall be responsible for managing and scheduling the competitive request for qualification & bid process for Trade Contractors and Subcontractors and shall develop a plan to obtain goods and services consistent with the scope, schedule and budget of each component of the Project and pursuant to a Procurement Plan reviewed with the City in advance. Construction Manager is responsible for issuance of contracts and subcontracts to Trade Contractors or Subcontractors (including suppliers) in order to provide compliance with the Contract Documents. Where appropriate and with the approval of the City through its Purchasing Agent and the State Department of Administrative Services, Construction Manager may bid or perform building construction with its own personnel, within the parameters of the Guaranteed Maximum Price.

In the qualification, bidding and award of the contracts, subcontracts and material supply, Construction Manager is responsible for meeting all applicable requirements of the City, State Department of Administrative Services, Connecticut General Statutes and the Charter and Ordinances of the City concerning the advertising, qualifying, bidding, and award of the construction contracts, subcontracts and material supply, subject to any modifications to those requirements or set forth in this Agreement. Construction Manager shall notify the City, in writing, prior to advertising packages for bid where such restrictions may apply and shall clearly state such restrictions in both the notice to bid and the bidding documents. During the bidding process and prior to final contract award, Construction Manager shall provide City Purchasing with copies of the bid tab sheets, a copy of the bid advertisement, a statement of where the bid advertisements were published, and any other requested bid information.

**3.6.2 Specific Representations of Construction Manager Pertaining to the Bidding or Negotiation Phase.** Construction Manager acknowledges its responsibilities to examine and to be thoroughly familiar with the Project for the duration of this Agreement. Construction Manager hereby warrants and represents that under the provisions of this Agreement it shall review all Project Drawings and Specifications prepared by the Architect and the Project facility and Site; review all services essential and/or material to the satisfactory performance of the services required of Construction Manager hereunder.

Further, Construction Manager shall represent to the best of its knowledge and belief, in writing, at the conclusion of the Construction Document Phase, with respect to the aforementioned Drawings and Specifications, that the Project facility and Site and services which are required by this Agreement, as follows, that:

(a) Construction Manager, prior to the Bidding or Negotiation Phase, conducted or had opportunity to conduct a diligent review of the Project and all items and documents pertaining to the Project that will be distributed to prospective bidders in accordance with the provisions of paragraph 3.4.

(b) Construction Manager's failure or omission to make reasonable review of information or conditions required for the completion of the Project by Construction Manager under this Agreement prior to that time, shall, in no way, be cause for future claim of ignorance of such information or conditions nor shall such failure to review be the basis for any claim whatsoever, monetary or otherwise; unless such review would not discover any concealed defects or conditions;

(c) Construction Manager is solely responsible for resolving any issues, as may be reasonably determined by the City, resulting from its failure to adhere to its obligations pertaining to paragraph 3.4.

(d) Construction Manager has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state

and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of its Services;

(e) Construction Manager shall give the City written notice of any conflict, error or discrepancy that Construction Manager discovers prior to the Bidding or Negotiation Phase; and,

(f) Construction Manager, prior to the Bidding or Negotiation Phase, agrees to inform the City that the documents, including the Plans and Specifications prepared by the Architect, are sufficient in scope and detail to indicate and convey understanding of all the terms and conditions for the performance of the Work required under this Agreement.

Construction Manager's representations shall be based upon its reasonable knowledge and belief, consistent with its obligations as the construction manager. In the event Construction Manager is unable to make any of the foregoing representations at the conclusion of the Bidding or Negotiation Phase or, where required earlier in accordance with the sub-paragraphs 3.4.2(a), (e) and (f), above, Construction Manager shall provide a timely written response explaining in detail and supported by sufficient documentation, its reasons therefore. It is recognized that Construction Manager's representations herein are made in Construction Manager's capacity as the Construction Manager and not as a licensed design professional. Accordingly, nothing herein contained shall be construed so as to impose upon Construction Manager any liability for the design of the Project; moreover, Construction Manager is not responsible for the preparation of engineering and architectural Construction Documents and is not expected to substitute its judgment for those responsible for said documents but rather, advise the City pertaining to the adequacy of the Construction Documents with respect to constructability.

**3.6.3 Administration.** In accordance with the provisions of the Connecticut General Statutes applicable to public construction projects and all applicable City Charter Sections, Ordinances, Purchasing requirements and regulations, Construction Manager shall advertise and publicly obtain bids from Trade Contractors and from suppliers of materials or equipment fabricated. Bids shall be received, opened and read publicly by Construction Manager at its offices and a recommendation shall be prepared by Construction Manager for the City's final approval prior to final award to the lowest, responsible bidder. Prior to awarding contracts, if Construction Manager has any objections to specific contract awards, it will be the responsibility of the Construction Manager to provide written objection to the City and the Program Manager setting forth the basis of its objections. Rejection of any bids by Construction Manager or award to any bidder other than the lowest bidder must first be approved by the City, in writing:

(a) if the Guaranteed Maximum Price has been established and a specific bidder whose bid meets the requirement of lowest, responsible bidder along with other applicable provisions of the City Charter, Ordinances, and Purchasing requirements and regulations, and (1) is recommended to the City by Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the City



requires that another bid be accepted, then Construction Manager may require that a change in the Work be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City by Construction Manager and the amount of the Subcontract or other agreement actually signed with the person or entity designated by the City.

Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the retainage and advance payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior written approval of the City.

#### **3.6.4 Project Management Responsibilities.**

(a) **Pre-Qualification.** Construction Manager shall pre-qualify and seek bids from Trade Contractors and Subcontractors in accordance with the procurement requirements of the City and the State Department of Administrative Services requirements including but not limited to: (1) submit a list of prospective bidders for the City's review for each phase of the Work; (2) develop and issue to all such prospective bidders pre-qualification questionnaires in a form that is acceptable to the City; (3) review and evaluate all pre-qualification questionnaire responses and make recommendations to the City; (4) interview all possible bidders, bonding agents and financial institutions; and, (5) verify the suitability and qualifications of all bidders and review their qualifications with the City and the Architect. At the conclusion Construction Manager shall prepare and provide summary reports regarding this activity to the City and shall also prepare a bidders list for each bid package.

(b) Proposed bidders shall have an EMR rating less than or equal to 1.0 (exceptions will be approved by the City). Where reasonably practicable, Construction Manager shall then recommend at least three (3) potential Trade Contractors to be bidders for each bid package prior to bidding. The City shall have absolute discretion to reject any of the potential Trade Contractors that are so recommended, and to propose additional Trade Contractors acceptable to Construction Manager. No such approval, rejection or recommendation shall make the City liable for a subsequent failure of the Trade Contractor selected to perform its allotted portion of the Work.

(c) **Bid Process Notification.** Construction Manager shall notify and provide bid packages to the pre-qualified and accepted bidders, conduct pre-bid meetings, conduct walk-throughs and receive proposals. All proposals shall be opened and reviewed jointly with the City and the Architect when required or as set forth in the agreement with the Architect. The bidders shall pay for the first set of Bid Documents. The City will pay for any Addendums to the Bid Documents.

(1) **Notices and Advertisements:** Construction Manager shall prepare and place notices and advertisements to solicit bids for the Project.

(2) **Delivery of Bid Documents:** Construction Manager shall expedite the delivery of bid documents to the bidders. Construction Manager shall obtain

one set of reproducible bidding documents at no cost from the City and provide for printing, binding, wrapping and delivery to the bidders. Construction Manager shall maintain a record of bidders receiving documents.

(3) **Pre-Bid Conference:** In conjunction with the City, the Architect and the Program Manager, Construction Manager shall conduct Pre-bid Conferences. These conferences shall be forums for Construction Manager and the Architect to explain to the bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, the project administrative requirements and technical information.

(4) **Information to Bidders:** Construction Manager shall develop and coordinate procedures to provide answers to bidders' questions.

(5) **Addenda:** Through the City, Construction Manager will receive a copy of all Addenda from the Architect. Construction Manager shall review Addenda for clarity, consistency and coordination among the bidders. By performing the reviews described herein, Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design or the content of the design documents. Construction Manager shall also distribute a copy of all Addenda to each bidder receiving documents.

(6) **Bid Opening:** Construction Manager shall conduct the bid openings and shall evaluate and analyze all bids to verify that the proposals are complete, responsive, and cost-effective and that no unacceptable qualifications are made. The Architect and the City shall be invited to observe or participate in any additional scope review meetings deemed appropriate to clarify the nature of the Work. When negotiations are complete, Construction Manager shall submit to the City a summary of terms and conditions and make recommendations concerning the acceptance or rejection of bids, prior to the award of the contract. All Trade Contractor Bids must be opened at the Waterbury City Hall Building located at 235 Grand Street in Waterbury CT and be witnessed by a representative of the City Purchasing Department.

(7) **Contracts Documents:** At the direction of the City, Construction Manager shall prepare and deliver the Contract Documents between the City and Construction Manager. Construction Manager shall also issue the notices to proceed with the consent of the City.

(8) **Availability of Bid Documents.** During the bidding process, all bid documents are to be made available at Waterbury City Hall Building, 235 Grand Street in Waterbury CT. Bids are to be received, opened, and read publicly at Waterbury City Hall Building, 235 Grand Street in Waterbury CT. Awards of Subcontracts shall be to the lowest responsive and responsible bidder.

### 3.6.5 Time Management.

(a) **Pre-bid Project Schedule:** Construction Manager shall inform the bidders of their responsibilities regarding the Pre-bid Project Schedule specified in the Instructions to Bidders or Contract Documents.

(b) **Contractor's Project Schedule:** Construction Manager shall provide a copy of the Master Project Schedule to the bidders when it is available. As part of the Notice of Award, Construction Manager shall inform each Trade Contractor of the Trade Contractor's obligations under the Project Schedule. Each Trade Contractor shall prepare its own schedule pertaining to its role in the Project, in accordance with the requirements of the Contract Documents, including but not limited to the Project Schedule.

### 3.6.6 Cost Management.

(a) **Estimates for Addenda:** Construction Manager shall prepare an order of magnitude of value of scope items and estimate of costs for all Addenda and shall submit the estimates to the City for approval.

(b) **Analyzing Bids:** Upon receipt of bids, Construction Manager shall evaluate the bids, including alternate prices and unit prices and shall make a recommendation to the City regarding the award of the construction contract.

### 3.6.7 Management Information Systems ("MIS").

(a) **Schedule Maintenance Reports:** Construction Manager shall prepare and distribute Schedule Maintenance Reports during the Bid and Award Phase. The Reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.

(b) **Project Cost Reports:** Construction Manager shall prepare and distribute the Project Cost Reports during the Bid and Award Phase. The Reports shall specify actual award prices and construction costs for the Project, compared to the Project and Budget Estimate.

(c) **Cash Flow Reports:** Construction Manager shall prepare and distribute Cash Flow Reports during the Bid and Award Phase. The Reports shall be based on actual award prices and construction costs for the Project and the Reports shall specify actual cash flow compared to projected cash flow.

3.6.8 **Purview of the City as Owner.** The City shall have the right to select any Trade Contractor or Subcontractor, or purchase directly any of the materials for the Work provided that the City can perform this obligation in such a time and manner as not to delay or interfere with Construction Manager in the execution of the Work. If the costs based on such selection or purchase by the City are at variance with the costs for which Construction Manager could have subcontracted such work, as evidenced by

competitive bids from qualified vendors for an identical scope of work obtained before the commencement of the respective work, then the Guaranteed Maximum Price shall be adjusted by Change Order to reflect such variance.

**3.6.9 Long Lead-Time Items.** Construction Manager shall recommend to the City and the Architect a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the Project Schedule for each component. If the City chooses to separately procure such long-lead time items and intends to assign responsibility to Construction Manager for installation of such items, they shall be procured on terms and conditions acceptable to Construction Manager. Upon the City's acceptance of Construction Manager's Guaranteed Maximum Price for each component of the Project, all contracts for such items are hereby assigned by the City to Construction Manager, who shall accept responsibility for such items as if procured by Construction Manager. In all cases, Construction Manager shall have the responsibility for expediting the delivery of long-lead time items.

**3.6.10 Preparation of Guaranteed Maximum Price.** Following the completion of the bidding process under this paragraph 3.6 and approval by the City of the contract awards, Construction Manager shall propose a Guaranteed Maximum Price, as set forth in Article 4 and as defined in sub-paragraph 1.2.32 which shall consist of the sum of the bids for the Cost of the Work and the Construction Manager's Fee, as defined in section 6.1 of this Agreement and a Construction Contingency as defined under paragraph 6.2.1. The GMP shall, upon approval by the City, be incorporated into this Agreement by an Amendment.

**3.6.11 Phased Bidding.** If the work is bid in phases, and if the Drawings and Specifications for all phases are not completed at the time the Guaranteed Maximum Price proposal is required under Article 4 and sub-paragraph 3.4.8, Construction Manager shall with the City's approval either provide a Guaranteed Maximum Price for each phase, or include cost allowances in the Guaranteed Maximum Price pending further development of the Drawings and Specifications by the Architect that are consistent with the Contract Documents. Such allowances shall not include items such as, changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by an Amendment to this Agreement. Following completion of the bidding and allowing for the use of reasonable minor allowances approved by the City, Construction Manager shall revise and resubmit a GMP in accordance with Article 4 and subparagraph 3.6.8. This revised Guaranteed Maximum Price shall supersede any previous submittal and include all items required under Article 4.

### **3.7. CONSTRUCTION PHASE.**

**3.7.1 Compliance with this Agreement and the Conditions.** Construction Manager shall fully comply with all the terms and conditions of this Agreement and the General Conditions. During the Construction Phase, Construction Manager is responsible for the sequencing, management and duration of all construction activities

and shall, inter alia, to that end, provide a competent field staff and necessary home office support to supervise the activities of Trade Contractors and Subcontractors. Construction Manager shall provide an onsite field office for the duration of the Construction Phase and for the duration of the Additional Pre-Construction Services as provided for in Section 5.1.2 of this Agreement unless otherwise agreed to by City. The onsite field office will include dedicated space for the Owner's representative's use at their discretion.

### **3.7.2 Project Management Responsibilities.**

(a) **Pre-Construction Conference:** In connection with the City and the Architect, Construction Manager shall conduct a Pre-Construction Conference during which Construction Manager shall review the reporting procedures and other rules.

(b) **Permits, Bonds and Insurance:** Construction Manager shall verify that the Trade Contractors and Subcontractors have secured the required building permits, bonds, insurance, labor affidavits and waivers.

(c) **Management and Construction Phase Communication Procedures:** Construction Manager shall provide and maintain a management team to provide contract administration and Construction Manager shall establish and implement coordination and communication procedures among Construction Manager, the Architect, the City, and Trade Contractors or Subcontractors. In furtherance of this responsibility Construction Manager shall prepare and submit to the City an organization chart of proposed staffing, and all resumes of proposed staff. Such staffing, once approved, shall not be removed or reduced without prior written approval of the City. Failure to notify the City in a timely manner will be considered a material breach of this Agreement.

(d) **Construction Administration Procedures:** Construction Manager shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, Contract Schedule adjustments, Change Orders, substitutes, payment requests and the maintenance of logs. Construction Manager shall maintain daily job reports. Construction Manager shall be the party who requests information, submittals, Contractor schedule adjustments, substitutes, and Change Order requests. In addition, Construction Manager shall establish an organization and lines of communication to effectively carry out all phases of the Project on a totally coordinated basis. Construction Manager shall obtain all required DAS-OSCG&R approvals required including, if necessary for Change Orders requested.

(e) **Project Site Meetings:** On a weekly basis, Construction Manager shall conduct meetings at the Project Site with each Trade Contractor or Subcontractor. Construction Manager shall also conduct coordination meetings with all contractors, the City, the Program Manager and the Architect on a biweekly basis. Construction Manager shall record, transcribe and distribute minutes to all attendees, the City and the Architect.

(f) **Coordination of other Independent Consultants:** Technical inspection and testing provided by the Architect or others shall be coordinated by Construction

Manager. Construction Manager will be provided a copy of all inspection and testing reports on the day of the inspection or test to the extent possible. Construction Manager shall, at least monthly, provide a report on the status of testing and inspection activities provided by Construction Manager and each Contractor. Except as provided for elsewhere in this Agreement, Construction Manager is not responsible for providing, nor does Construction Manager control, the actual performance of technical inspection and testing. Construction Manager is performing a coordination function and is not acting in a manner so as to assume responsibility or liability (including costs for these services) in whole or in part, for all or any part of such inspection and testing. However, Construction Manager is responsible for ensuring that such inspections are satisfactorily performed. Notwithstanding the foregoing, Construction Manager is responsible to ensure timely testing of all equipment in accordance with manufacturer's requirements and construction documents and to provide testing reports to the City and to all pertinent agencies as required.

(g) **Review of Requests for Changes to the Contract Time and Price:** Construction Manager shall review the contents of a request for changes to the contract time or price submitted by a Trade Contractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where Construction Manager's analysis reveals that the request is valid, Construction Manager shall prepare a detailed report to the City for approval. Construction Manager shall prepare the necessary change order documents for signing by the Trade Contractor or the City.

(h) **Quality Assurance:** Construction Manager shall establish and implement a program to monitor the quality of the construction in accordance with the Contract Documents. The purpose of the program shall be to guard the City against defects and deficiency in the work of the Trade Contractor. Construction Manager shall reject work and transmit to the Contractor or Subcontractor a notice of non-conforming work when it is the opinion of Construction Manager that the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, Construction Manager is not authorized as part of this service to change, evoke, 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.

(i) **Contract Conformance and Interpretation:** Construction Manager shall provide technical inspection and coordination of the Work of the Trade Contractors and Subcontractors on the Project until Final Completion and acceptance of the Project by the City, verifying that the materials furnished and work performed are in accordance with the plans and specifications and other contract documents, and that the work on the Project is progressing on schedule. In the event the interpretation of the meaning and intent of the plans and specifications becomes necessary during construction; Construction Manager shall, through the City and on behalf of the City, consult with the Architect, ascertain the Architect's interpretation and transmit said interpretation back to the Trade Contractor copied to the City. To facilitate the coordination effort, Construction Manager shall:

(1) **Contract Nonconformance:** Take such actions as required to prevent installation of work, material or equipment which has not been properly approved or otherwise does not conform to contract document requirements and inform the City and the Architect promptly of such action and the reason for and outcome of such action.

(2) **Labor Disputes:** Render assistance where required, to minimize delays to the Project caused by labor disputes during construction.

(3) **Coordination:** Coordinate the work of all trades on Site and be responsible for assuring that their efforts are directed toward the harmonious assembly, construction, and conclusion of all systems for the Project. Construction Manager shall hold Coordination Meetings as necessary, generating Coordination Documents as required prior to Shop Drawings to verify that all trades have a clear path for their respective systems, and that no hits, conflicts, or other disparity occur within or through such respective systems.

(4) **Safety:** Review the safety program as developed by each of the Trade Contractors or Subcontractors and monitor the adherence of each Trade Contractor or Subcontractor to such program. If Construction Manager observes non-compliance with an applicable safety regulation, he shall promptly notify the City and the appropriate Trade Contractor or Subcontractor. Construction Manager shall be responsible for prescribing, instituting, and maintaining a safety program. The foregoing does not relieve the Trade Contractors or Subcontractors of their responsibility for the safe performance of their work and the Construction Manager shall hold them strictly accountable for their performance.

(5) **Progress Reports:** Keep accurate and detailed written records of the progress of the Project during all stages of planning and construction. Submit written reports to the City on a monthly basis including, but not limited to, information concerning the work of each of the various contractors, the percentage completion, the status of all open and approved change orders, status of all requisition, updated schedule, and all items requiring resolution and the possible time-frames for resolution.

(6) **Default:** Determine the need for, and advise the City of, the institution of partial or complete default proceedings against Trade Contractors or the assessment of liquidated damages; advise the City of the need to select alternate Trade Contractors to perform defaulted work; and evaluate back charges or other penalties to be assessed.

(7) **Claims:** In the event any claim is made or any action brought in any way relating to the design or construction of the Project, Construction Manager shall diligently render to the City all assistance which the City may require. Such services shall be rendered by Construction Manager without additional fee or other compensation except for the costs and expenses of

personnel who were assigned to the Project as job-site or management staff, or comparable personnel if those who were assigned to the Project are no longer employed by Construction Manager which costs and expenses shall be payable by Change Order if agreed to by the City in accordance with the terms of this Agreement.

(8) **Operation and Maintenance Materials:** Construction Manager shall receive from the Trade Contractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project and As-Built documents.

(9) **Project Records:** Maintain for the project orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproductions or original contract documents including all addenda, change orders, supplemental drawings and all other project related documents. Organize such files in accordance with City requirements.

(j) **Substantial Completion:** Construction Manager shall inspect the Project jointly with the Architect at forty-five (45) days prior to the time the City is to take over, use, or occupy any part or all of the Project and furnish a detailed report to the City of discrepancies and deficiencies in the work performed by any Trade Contractor or Subcontractor, prepare all necessary punch lists and expedite execution of same. Architect shall determine when the Project and the Trade Contractors' or Subcontractors' work is substantially complete. The punch list shall be attached to the Certificate of Substantial Completion.

(1) **Guarantee:** Prior to the end of the guarantee period provided in the contracts of the various Trade Contractors and Subcontractors, furnish a detailed report to the City of discrepancies and deficiencies applicable to such guarantee.

(2) **Final Completion:** Architect shall determine when the Project and the Trade Contractors' or Subcontractors' work is finally completed and, following completion of corrections, shall issue a Certificate of Final Completion to the City. Following receipt of payment from the City, Construction Manager shall make all payments due to the Trade Contractors. Receipt of payment from the City is a condition precedent to payment to the Trade Contractors.

### 3.7.3 Time Management.

(a) **Master Project Schedule:** Construction Manager shall adjust and update the Master Project Schedule and distribute copies to the City and the Architect. All adjustments to the Master Project Schedule shall be made for the benefit of the Project.

(b) **Contractor's Construction Schedule:** Construction Manager shall verify that each Trade Contractor's construction schedule is prepared in accordance with the



requirements of the Contract Documents, shall ensure that it establishes completion dates that comply with the requirements of the Master Project Schedule, and shall administer such schedule with the Trade Contractors.

(1) To permit the detailed monitoring of the Trade Contractor's progress immediately following the completion of Bid Documents for each Phase, a final detailed review shall be made of the Project Specifications and a final list shall be prepared of all significant submittals, approvals, City/Engineer/Architect reviews and other special conditions required as an adjunct to actual Project construction. This list is to be submitted to the City for distribution to the Architect and City for approval.

(2) In addition, work activities requiring special tests or inspections shall be identified so that these operations can be clearly flagged on the Project Schedule for close monitoring by Construction Manager. Based upon a review of the Project plans, a specific list shall be prepared of all areas requiring the preparation of layout and coordination drawings. This list will be cross referenced to the list of major equipment submittals in order to establish those equipment items which must be approved as a prerequisite to the preparation of final layout drawings.

(3) These lists and interrelationships shall be submitted to the City for review and will be coordinated between Construction Manager and the Architect to establish the final level of detail and the interrelationships necessary between equipment submittals and construction coordination. At this time, submittal and coordination sequences will be assigned preliminary priorities based upon their relative time of need on the Project and estimates of the time required for preparation and review. In addition, appropriate sequencing shall be developed to incorporate, as an integral part of the final schedule, reasonable staggering of the review effort to preclude the development of unacceptable evaluation requirements due to delayed Trade Contractor submittals.

(4) Following development of a suitable level of procurement and coordination detail, sequencing, and interrelationships, a preliminary coordination and procurement schedule shall be prepared and transmitted to all Trade Contractors for their review, revision and estimation of time durations. Construction Manager, the Architect and the City will participate in all necessary meetings with the Trade Contractors and Subcontractors to assist in this process. In parallel with the development of the procurement and coordination section of the CPM Schedule, all Trade Contractors shall be required to perform a detailed review of the Pre-Bid Schedule in order to identify any changes to logic or activity time durations necessary to reflect the manner in which they intend to perform the work required by their contracts.

(5) Upon completion of the Preliminary Working CPM Schedule, it will be merged with the Procurement and Coordination Schedule so that the

impact on actual construction of all required drawings, approvals, permits, licenses, DAS-OSCG&R approvals and equipment and material fabrication and delivery is clearly reflected on the merged Schedule.

(6) Joint review meetings will be held with all parties, as necessary, to finalize logic and incorporate all changes desired by the Trade Contractors which do not violate Specification Requirements or the Schedule from the original bid documents.

(7) Upon completion of duration estimates, Construction Manager shall incorporate the information into the CPM Schedule systems and generate a detailed schedule listing of all activities appearing on the network diagrams. This listing shall contain, for each activity, the following information:

- Contract Phase
- Trade Responsibility
- I-J Activity Identification Number
- Estimated Time Duration in Working Days
- Percent Complete for Partially Complete Activities
- Activity Description
- Early Start Date
- Early End Date
- Late Start Date
- Late End Date
- Total Float (Allowable Slippage)

(8) Once the initial CPM computer schedule listing has been generated, these documents shall be reviewed by Construction Manager and the Trade Contractor in order to ensure that all required milestone dates and sequencing requirements have been met.

(9) After this review and the incorporation of all necessary corrections, a new computer schedule shall be generated. These listings and a revised copy of the CPM network diagrams shall be submitted to the Subcontractors who shall certify that the resultant schedule their own Project Schedule.

In order to ensure full Trade Contractor cooperation with the Construction Management effort, all Trade Contractors will be advised both at the pre-bid meeting and during the post-bid contract negotiations that no Progress Payments will be made until an approved Master Project Schedule has been officially implemented. Once the Master Schedule is completed, it will constitute the definitive basis for evaluating Project status and assessing the impact of change orders and/or delays.

(c) **Updating.**

(1) Once each month, or more often as required, after approval of the CPM system, Construction Manager shall meet with representatives of each Trade Contractor and the City in order to review Project progress and update the CPM system. At each meeting, the current network diagrams shall be annotated with the following information for each applicable work activity:

- Percent of completion for work in progress
- Estimated time duration remaining for partially completed work
- Actual start date for work started during the reporting period
- Actual completion date for work completed during the reporting period

(2) Completion percentages shall be confirmed by Construction Manager's Inspectors and, in the event of a dispute, an immediate site inspection shall be made so that an agreed upon completion percentage can be entered into the CPM system.

(3) In addition to this progress information, current Project delays and change orders shall be discussed and appropriate revisions will be made to the CPM schedule to incorporate these items into the system. Immediately following the update meeting, Construction Manager shall update the CPM. Within two working days following this meeting, an updated cost requisition listing shall be transmitted to each Trade Contractor and the City along with computer generated field level bar chart schedules for each Trade showing the work required to be performed during the coming month.

(4) Within five (5) working days following the monthly update meeting, Construction Manager shall issue an updated total Project CPM schedule reflecting progress for the past month. This updating will consist of:

- Revised and updated network diagrams;
- Revised and updated computer generated schedule listings and bar charts; and
- A detailed narrative summary report.

(5) The Monthly Summary Report shall present the following information:

- Detailed analysis of progress for the month;
- An analysis of the major critical paths and an evaluation of priority;
- areas and action required to resolve current problems;
- An analysis of procurement shop drawing status;
- A detailed analysis of the impact of delays and change orders on the Project;

- Statistical analysis of Trade Contractor performance in terms of activities completed in comparison with initial projections;
- An evaluation of potential future problem areas;
- An evaluation of the adequacy of Trade Contractor mobilization and priorities; and
- Recommendations for corrective action, where applicable.

(6) The Monthly Summary Reports will constitute a complete and detailed historical record of the Project and will analyze in detail each significant Project problem, delay and change order; who was responsible; how the issue was resolved; and the timeliness of the corrective action.

(7) **Construction Manager Review of Time Extension Requests:** Construction Manager shall, prior to the issuance of a Change Order, determine the effect on the Master Schedule of time extensions requested by the Trade Contractors.

(8) **Recovery Schedules:** Construction Manager may require the Trade Contractors to prepare and submit a Recovery Schedule as specified in the Contract Documents.

#### 3.7.4 **Cost Management.**

(a) **Schedule of Values (Each Contract):** Construction Manager shall with the participation of the Trade Contractor, determine a Schedule of Values for each of the construction contracts. The Schedule of Values shall be the basis for the allocation of the contract price to the activities shown on the Trade Contractor construction schedule.

(b) **Change Order Control:** Construction Manager shall establish and implement a Change Order control system to ensure full compliance with City and DAS-OSCG&R change order requirements. All proposed City initiated changes shall first be described in detail in writing by Construction Manager in a request for proposal issued to the appropriate Trade Contractor accompanied by technical drawings and specifications prepared by the Architect. In response to the request for a proposal, the Trade Contractor shall submit to Construction Manager for evaluation detailed information concerning the costs (including, but not limited to overhead and profit) and time adjustments, if any, necessary to perform the proposed change order work. Construction Manager shall discuss the proposed change order with the Trade Contractor and endeavor to determine the Trade Contractor's basis for the cost to perform the work. Construction Manager shall make recommendations to the City prior to the City's acceptance of change orders and, following City acceptance, shall prepare for signature by Construction Manager and Trade Contractor or the City the change order documents. Construction Manager shall verify that the Work and any adjustment of time required by approved change orders has been incorporated into the Trade Contractor's construction schedule.

(c) **Cost Records:** In instances where a lump sum or unit price is not determined prior to performing work described in a request for proposal as provided in sub-paragraph 3.4.4(b), above, Construction Manager shall request from the Trade Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractors incurred by the Trade Contractor in performing the work.

(d) **Project Site Meetings:** On a weekly basis, Construction Manager shall conduct meetings at the Project Site with each Trade Contractor. Construction Manager shall also conduct coordination meetings on a biweekly basis with all Trade Contractors, the City, the Program Manager and the Architect. Construction Manager shall record, transcribe and distribute minutes to all attendees, the City and the Architect.

(e) **Progress Payments:** Construction Manager shall review the payment applications submitted by each Trade Contractor. The monthly updating of the schedule shall dictate the percentage complete of activities. Construction Manager shall forward to the City a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by Construction Manager, reviewed by the Architect and the Program Manager and delivered to the City.

#### 3.7.5 Management Information Systems ("MIS").

(a) **Schedule Maintenance Reports:** In conjunction with the services provided by sub-paragraph 3.2.8(a), above, Construction Manager shall prepare and distribute Schedule Maintenance Reports during the Construction Phase. The Report shall compare the actual construction dates to scheduled construction dates of each separate construction contract and to the Master Schedule for the Project.

(b) **Project Cost Reports:** Construction Manager shall prepare and distribute Project Cost Reports during the Construction Phase. The Reports shall specify actual Project and construction costs compared to the Project and the GMP.

(c) **Project and Guaranteed Maximum Price Revisions:** Construction Manager shall make recommendations to the City concerning construction changes that may result in revisions to the Project and the Guaranteed Maximum Price.

(d) **Cash Flow Reports:** Construction Manager shall prepare and distribute Cash Flow Reports during the Construction Phase. The Reports shall specify actual cash flow as compared to projected cash flow.

(e) **Change Order Reports:** Construction Manager shall periodically prepare and distribute Change Order Reports during the Construction Phase. The Report shall specify actual cash flow as compared to projected cash flow.

(f) **Progress Payment Reports (Each Contract):** Construction Manager shall prepare and distribute the Progress Payment Reports. The Reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this Report shall be a Certificate of Payment that shall be signed by Construction Manager and delivered to the City for use by the City in making payments to Construction Manager.

(g) **Contractor's Safety Program Report:** Construction Manager shall review the safety programs of each Trade Contractor as required by the Contract Documents and coordinate the safety programs for the Project.

3.7.6 **Bonding.** A 100 percent Performance Bond and a 100 percent Payment Bond with a surety, and in a form, acceptable to the City must be provided. In the City's sole discretion, it may also require additional security with a surety, and in a form, acceptable to the City.

(a) Prior to finalizing the proposed budget, the City shall require Construction Manager and/or its Subcontractors, Sub-subcontractors or consultants to furnish bonds covering faithful performance of the Agreement and payment of obligations arising thereunder as stipulated in bidding requirements or otherwise specifically required. The Construction Manager shall work with the City (including but not limited to its Purchasing Agent and Risk Management Officer) and recommend prudent performance and payment bond requirements, in order to safeguard the City's interests in this Project. The form and substance of such bonds shall be in accordance with the Performance Bond and Payment Bond forms to be provided.

(b) Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

### 3.8. POST-CONSTRUCTION PHASE.

3.8.1 **Generally.** Construction Manager shall provide services to the City in order to complete the management and documentation of the activities associated with finalizing the construction work for each component of the Project.

#### 3.8.2 **Project Management Responsibilities.**

(a) **Record Documents:** Construction Manager shall coordinate and expedite submittals of information from the Trade Contractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Record Documents to the City.

(b) **Organize and Index operations and Maintenance Materials:** Prior to Final Completion of the Project, Construction Manager shall compile manufacturers, operations and maintenance manuals, warranties and guarantees and bind such

documents in an organized manner. This data is to be forwarded to the City for review and approval.

(c) **Use Permit:** Construction Manager shall assist the City in obtaining a certificate of occupancy by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.

### 3.8.3 **Cost Management.**

(a) **Change Orders:** Construction Manager shall continue to provide services related to change orders as specified in sub-paragraph 3.7.4(b), above.

### 3.8.4 **Management Information Systems ("MIS").**

(a) **Close-out Reports:** At the conclusion of the Project, Construction Manager shall prepare final Project accounting and close-out reports in order to fully comply with the City's and the DAS-OSCG&R closeout requirements.

## 3.9. **TRADE CONTRACTORS AND SUBCONTRACTORS.**

3.9.1 **Organization.** Construction Manager shall organize the Work into logical groups of relevant trades in sequences to minimize the effects of multiple tier mark-ups and maximize coordination efficiencies, unless otherwise authorized in advance by the City at its sole discretion. All work shall be competitively bid and awarded to Trade Contractors or Subcontractors in accordance with procurement with procurement plan described in paragraph 3.6.

3.9.2 **Relationships.** In accordance with the General Conditions attached hereto as **Attachment 2**, Construction Manager shall require each Trade Contractor or Subcontractor to the extent of the Work to be performed by the Trade Contractor or Subcontractor to be bound to Construction Manager in a manner which imposes Construction Manager's obligations and responsibilities under this Agreement upon the Trade Contractor or Subcontractor and preserves and protects the rights of the City under the Agreement.

3.9.3 **Timely Performance.** Each contract or subcontract shall contain specific enforceable terms regarding contract time which will ensure adherence to the Project Schedule without subjecting the City to undue delay claims.

3.9.4 **Construction Manager's Obligation to the City.** Construction Manager shall be solely responsible to the City for the performance of each of the Trade Contractors or Subcontractors and shall indemnify and hold harmless the City from and against any and all additional costs, claims and liability in excess of the Guaranteed Maximum Price incurred as a result of the failure of any Trade Contractor or

Subcontractor to perform in accordance with its applicable subcontract, or by the performance of its subcontract in a negligent manner.

3.9.5 **Privity.** Notwithstanding any of the City's rights hereunder, nothing herein shall create any duty or obligation by the City to any Trade Contractor or Subcontractor or any privity of contract with any Trade Contractor or Subcontractor, or render any Trade Contractor or Subcontractor a third party beneficiary of this Agreement.

3.9.6 **City/Owner's Documentation.** Construction Manager shall prepare an indexed binder or filing system acceptable to the City, and shall make available to the City at all times organized and complete copies of all subcontracts, subcontract change orders, certificates of insurance, bonds, purchase orders and all other records relating to the Project.

## **ARTICLE 4**

### **GUARANTEED MAXIMUM PRICE**

#### **4.1. BASIS OF THE GUARANTEED MAXIMUM PRICE.**

Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, consistent and in conformance with the terms and requirements of this Agreement, which shall include:

4.1.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

4.1.2 A list of any allowances and a statement of their basis.

4.1.3 A list of the clarifications and assumptions made by Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications. Such clarifications and assumptions shall be reviewed and approved by the City when the Guaranteed Maximum Price is submitted.

4.1.4 The proposed Guaranteed Maximum Price, including the bids by trade categories, allowances, Construction Contingency, and other items and the fee that comprise the Guaranteed Maximum Price.

4.1.5 The date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the construction contract award and on-site mobilization dates upon which the date of Substantial Completion is based.

4.1.6 A list of billing rates for Construction Manager's onsite and home office support personnel and other Site support cost items within Construction Manager's Cost of Work.



The scope of work upon which the Guaranteed Maximum Price is based shall be consistent with the Scope of Work developed during the Pre-construction Phase, and shall include all work reasonably required to complete the Project. Any Work required but not shown in the Architect's documents shall be identified in the clarifications, assumptions and mutually agreed allowances.

#### **4.2. REVIEW OF THE GUARANTEED MAXIMUM PRICE PROPOSAL.**

4.2.1 Construction Manager shall meet with the City and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the City or the Architect discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

4.2.2 Unless the City accepts the Guaranteed Maximum Price Proposal in writing on or before the date specified in the proposal for such acceptance and so notifies Construction Manager, the Guaranteed Maximum Price proposal shall not be effective.

4.2.3 Prior to the City's acceptance of Construction Manager's Guaranteed Maximum Price proposal and issuance of a written Notice to Proceed, Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work for Trade Contractors, except as the City may specifically authorize in writing.

4.2.4 Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in an Amendment substantially in the form set forth in **Attachment 3**. The Guaranteed Maximum Price shall be subject to additions and deductions by a Change in the Work as provided in the Contract Documents.

4.2.5 The City shall authorize and cause the Architect to revise the Drawings and Specifications to the extent that the clarifications and assumptions contained in the Guaranteed Maximum Price Amendment require such revisions. Such revised Drawings and Specifications shall be furnished to Construction Manager in accordance with schedules agreed to by the City, Architect and Construction Manager. Construction Manager shall promptly notify the Architect and the City if such revised Drawings and Specifications are inconsistent with the clarifications and assumptions.

4.2.6 The City is a non-profit, tax-exempt entity. The Guaranteed Maximum Price shall not include any sales taxes in the Cost of the Work on any items that are not subject to sales tax at the time the Guaranteed Maximum Price is established.

**ARTICLE 5**  
**COMPENSATION AND PAYMENTS FOR PRE-CONSTRUCTION PHASE SERVICES**

**5.1. COMPENSATION AND REIMBURSEMENT.**

5.1.1 The City shall compensate and make payments to Construction Manager for all Pre-Construction Phase services as described in Sections 3.2 through 3.6 of this Agreement and the Additional Pre-Construction Services described in Section 5.1.2 of this Agreement as follows:

(a) Construction Manager shall be reimbursed up to one hundred and seventy six thousand dollars (\$176,000) for the Pre-Construction Staffing Matrix Costs as provided for in Article 7.2 and in Attachment 5 to this Agreement.

(b) For Construction Manager's performance of the pre-construction Work as set forth in this Agreement the City shall pay Construction Manager an amount equal to one and one fifth of a percent (1.2%) of the Cost of the Pre-Construction Work. This percentage Pre-Construction Manager's Fee shall be converted to a lump sum amount when the Pre-Construction Phase Guaranteed Maximum Price is established.

(c) Payment for the Pre-Construction Reimbursables will be made up to the amounts provided for in Attachment 5 – Schedule of Reimbursables (Phase I & II).

5.1.2 Additional Pre-Construction Services.

(a) The Additional Pre-Construction Services shall consist of the Work described in Article 3, including but not limited to Section 3.7 for the following tasks and services which shall be completed within five (5) months of issuance of a written Notice to Proceed by the City:

- (1) pre-demolition abatement of Hazardous Materials;
- (2) demolition of buildings and/or portions of buildings; and
- (3) disposal and management of demolition debris

(collectively the "Additional Pre-Construction Services"). The Additional Pre-Construction Services shall be performed in accordance with specifications to be developed and provided to Construction Manager by the Architect and with the Project Milestones contained in the Preliminary Schedule.

5.1.3 The Parties acknowledge and agree that additional tasks and services such as site work that are part of the Construction Phase Services may become available for performance due to the early availability of certain bid packages prior to the Construction Phase. As directed by the City, the Construction Manager will work cooperatively with the City and the Architect to effectuate the performance of any such additional tasks and services during and immediately after the Additional Pre-Construction Services by mutual agreement under terms consistent with this Agreement. Construction Manager

shall provide the City with budget estimates and proposed schedule modifications for any such services prior to proceeding with same. In the event such services require work prior to a time when the scope of such work can be ascertained, Construction Manager may perform the services on a cost plus a fee basis as approved by the City in writing but shall not perform such work until the City provides a written notice to proceed.

The City shall pay Construction Manager in current funds for the Trade Contractor Costs as described in Section 7.3 of this Agreement and the Materials and Equipment Costs as described in Section 7.5 of this Agreement as are required for the Work of the Additional Pre-Construction Services.

All payments will be made as Progress Payments in accordance with Sections 9.3, 9.4, 9.5 and 9.6 of the General Conditions and as provided in this Agreement Sections 6.5 & 6.6.

Construction Manager shall be responsible for obtaining all authorizations, licenses, permits and approvals required for the Pre-Construction and Additional Pre-Construction Services including but not limited to DAS-OSCG&R approvals prior to proceeding with the work. Copies of all such materials will be provided to the City and the Architect upon receipt by the Construction Manager.

## **ARTICLE 6**

### **COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

The City shall compensate Construction Manager for Construction Phase services as follows:

#### **6.1. COMPENSATION.**

6.1.1 The City shall compensate and make payments to Construction Manager for all Construction Phase services as described in Sections 3.7, 3.8 and 3.9 of this Agreement as follows:

a) Construction Manager shall be reimbursed up to one million three-hundred and ninety-two thousand, six-hundred and eighty-five dollars (\$1,392,685) for the Construction Staffing Matrix Cost as provided for in Article 7.2 and in Attachment 5 to this Agreement.

b) For Construction Manager's performance of the Work as set forth in this Agreement, the City shall pay Construction Manager in current funds for the Cost of the Work as defined in Article 7 and the Construction Manager's Fee determined as follows: An amount equal to one and one fifth percent (1.2%) of the Cost of the Construction Work, exclusive of

(1) payments made for the Pre-Construction & Additional Pre-Construction Services;

- (2) the Pre-Construction Staffing Matrix Cost; and
- (3) change orders, except as set forth in Paragraph 6.1.2.

This percentage Construction Manager's Fee shall be converted to a lump sum amount when the Construction Phase Guaranteed Maximum Price is established.

c) Payment for the Construction Reimbursables will be made up to the amounts provided for in Attachment 5 – Schedule of Reimbursables (Phase I & II).

6.1.2 There shall be no Fee paid on approved Changes in the Work with an aggregate total value less than \$500,000 or on any Changes in the Work solely attributed to unanticipated disposal fees associated with Hazardous Materials. Thereafter, the Construction Manager's Fee shall be adjusted on account of approved Changes in the Work by an amount equal to one and one fifth percent (1.2 %) of the Cost of the Change as determined in accordance with Subparagraph 7.3.3. of the General Conditions.

The City shall pay Construction Manager in current funds for the Trade Contractor Costs as described in Section 7.3 of this Agreement and the Materials and Equipment Costs as described in Section 7.5 of this Agreement as are required for the Work of the Construction Services.

All payments will be made as Progress Payments in accordance with Sections 9.3, 9.4, 9.5 and 9.6 of the General Conditions and as provided in this Agreement Sections 6.5 & 6.6.

Construction Manager shall be responsible for obtaining all authorizations, licenses, permits and approvals required for the Construction Services including but not limited to DAS-OSCG&R approvals prior to proceeding with the work. Copies of all such materials will be provided to the City and the Architect upon receipt by the Construction Manager.

## **6.2. GUARANTEED MAXIMUM PRICE AND CONSTRUCTION CONTINGENCY.**

6.2.1 The Sum of the Cost of the Work, a Construction Contingency as provided for in Section 6.2.2 of this Agreement, and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in the Guaranteed Maximum Price Amendment, subject to additions and deductions for Changes in the Work and other adjustments as provided for in the Contract Documents. Such maximum sum as adjusted by approved Changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs, which would cause the Guaranteed Maximum Price to be exceeded, shall be paid by Construction Manager without reimbursement by the City, unless Construction Manager is entitled to an adjustment therefor in the Guaranteed Maximum Price, as provided for in this Agreement.

6.2.2 A Construction Contingency in an amount of one (1%) percent of the Trade Contractor Costs (the "Construction Contingency") will be established. Use of the Construction Contingency by Construction Manager will be for purposes of paying for items included in the Cost of the Work and other items necessary for Construction Manager to meet its obligations under this Agreement, as specifically set forth herein.

Construction Manager shall advise the City, in writing, a minimum of five (5) business days in advance of making any expenditure from the Construction Contingency in the amount of ten thousand dollars (\$10,000) or more. Failure of the City to object, in writing, within five (5) business days following notice by Construction Manager shall be deemed acceptance by the City. For subcontract changes less than \$10,000 the City's prior approval is not required. Construction Manager shall account to the City for the allocation of the Construction Contingency as part of each monthly cost report. Except to the extent such work qualifies as a Cost of the Work, the Construction Contingency shall not be used to pay for remedial work for which Construction Manager or a Trade Contractor or Subcontractor is responsible, or claims (or the defense thereof) made by a Trade Contractor or Subcontractor. The Construction Contingency shall not be used to pay for work that qualifies for a Change Order.

Construction Manager shall keep a current accounting of any expenditure of contingency funds and shall report monthly to the City on the status of the contingency account.

The City may utilize a reasonable share of any anticipated savings in the Construction Contingency for its use to pay for out of scope changes or cost increases due to unforeseen conditions. Any amount of the Construction Contingency remaining at the completion of the Project shall belong to the City.

## **6.3. CHANGES IN THE WORK.**

6.3.1 The City may, at any time, without invalidating this Agreement, make additions, deletions, or changes in the Services or Work within the general scope of this agreement, as provided in the General Conditions. The City may change or issue additional instructions, specifications, and/or drawings, and change, omit, or require additional Work to be performed by Construction Manager. In such event, the City has

full authority to specify the amount and kind of Work to be performed or omitted, the materials to be used, and the equipment to be furnished as fully as though such changes had been originally incorporated in the Agreement.

6.3.2 Adjustments to the Guaranteed Maximum Price on account of Changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in the General Conditions.

6.3.3 In calculating adjustments to Subcontracts (except those awarded with the City's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in the General Conditions and the terms "costs" and "a reasonable allowance for overhead and profit" as used in the General Conditions shall have the meanings assigned to them in that document and shall not be modified by this Article 6. Adjustments to Subcontracts awarded with the City's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those Subcontracts.

#### **6.4. CONTINUING PERFORMANCE.**

Failure of the parties to agree on the cost of the proposed change shall not delay the performance of the changed Work or Services, which Construction Manager shall undertake and proceed to complete promptly at the direction of the City and proposed changes shall be handled in accordance with the General Conditions.

#### **6.5. CONSTRUCTION PHASE PROGRESS PAYMENTS.**

6.5.1 Based upon Applications for Payment submitted to the Architect by Construction Manager and Certificates for Payment issued by the Architect, the City shall make progress payments on account of the Guaranteed Maximum Price to Construction Manager as provided below and elsewhere in the Contract Documents.

6.5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

6.5.3 Provided an Application for Payment and Certificate for Payment is submitted to the City not later than the 10th of the month for Work completed through the end of the prior month, the City shall make payment to Construction Manager not later than thirty (30) days thereafter.

6.5.4 With each Application for Payment, Construction Manager shall submit a partial waiver of bond claim rights for payments received through the prior Application for Payment and evidence to demonstrate that cash disbursements to Trade Contractors have been made by Construction Manager on account of the Cost of the Work for progress payments already received by Construction Manager.

6.5.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by Construction Manager in accordance with the Contract

Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee and General Conditions shall be shown as separate items. 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, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

6.5.6 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.

6.5.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(a) Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the City of Changes in the Work, Construction Manager shall be entitled to include in the Application for Payment the value of Work completed and for which payment is due.

(b) Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and, if approved in advance by the City, suitably stored off the Site at a location agreed upon in writing.

(c) Add the Construction Manager's Fee. Construction Manager's Fee shall be computed based upon the Cost of the Work described in the two preceding clauses at the amount which bears the same ratio to that lump sum fee as the Cost of the Work in the two preceding clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.

(d) Subtract the aggregate of previous payments made by the City.

(e) Subtract the shortfall, if any, indicated by Construction Manager in the documentation required by Subparagraph 6.5.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City's accountants in such documentation.

(f) Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

6.5.8 Payments to Construction Manager and the Trade Contractor and Subcontractors shall be subject to retention of five percent (5%). Upon Substantial Completion by a Trade Contractor, Construction Manager may submit a payment request

that allows for a reduction in the amount of retention based on satisfactory performance. Such requests shall be specifically noted and approved by City prior to payment.

6.5.9 Except with the City's prior approval, Construction Manager shall not make advance payments to suppliers for materials or equipment, which have not been delivered and stored at the Site.

6.5.10 In taking action on Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 6.5.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the City, will be performed by the City's accountants acting in the sole interest of the City.

## **6.6. FINAL PAYMENT.**

6.6.1 Final Payment shall be made by the City to Construction Manager when (1) the Agreement has been fully performed by Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in the General Conditions, and to satisfy other requirements, if any, which necessarily survive Final Payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by Construction Manager and reviewed by the City's accountants; (3) the City of Waterbury Board of Education has certified to the City, that all necessary Project close out documentation has been provided by the Architect and the Construction Manager; and (4) a final Certificate for Payment has then been issued by the Architect; such Final Payment shall be made by the City not more than forty-five (45) business days after the issuance of the Architect's final Certificate for payment, or as follows:

6.6.2 The amount of the Final Payment shall be calculated as follows:

(a) Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee; but not more than the Guaranteed Maximum Price.

(b) Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of the General Conditions or other provisions of the Contract Documents.

(c) Subtract the aggregate of previous payments made by the City. If the aggregate of previous payments made by the City exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the City.



6.6.3 The City's accountants will review and report in writing on Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect by Construction Manager. Based upon such Cost of the Work as the City's accountants report to be substantiated by Construction Manager's final accounting, and provided the other conditions of Subparagraph 6.6.1 have been met, the Architect will, within seven business days after receipt of the written report of the City's accountants, either issue to the City a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and City in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the General Conditions. The time periods stated in this Paragraph 6.6.3 supersede those stated in Subparagraph 9.4 1 of the General Conditions.

6.6.4 If the City's accountants report the Cost of the Work as substantiated by Construction Manager's final accounting to be less than claimed by the Construction Manager, Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation of the disputed amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the City's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the City shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

## **6.7. TRUST FUNDS.**

All funds paid by the City to Construction Manager shall be trust funds placed in the custody of Construction Manager solely for the payment of those Project-related obligations set forth in the Application for Payment submitted by Construction Manager, including but not limited to the payment of Trade Contractors, Subcontractors, laborers, material men, and suppliers. Construction Manager shall not use such funds paid by the City for any other purpose whatsoever, with the sole exception of the Fee earned by Construction Manager after fulfillment of all of its financial obligations under the Agreement. This is not intended to prevent Construction Manager from withholding funds from a Trade Contractor or Subcontractor, and potentially disbursing those funds to another, if during the payment period the Trade Contractor or Subcontractor has failed to perform any of its obligations, or is otherwise in default under its contract with Construction Manager.

## **6.8. REQUIREMENT FOR WAIVERS OF BOND CLAIM RIGHTS AND RELEASES.**

As a condition to the City's obligation to make Progress Payments and Final Payment, and in consideration of such Payments, Construction Manager shall submit signed Partial Waivers of Bond claim rights and Release from all Trade Contractors or Subcontractors in connection with each invoice, and a Final Waiver of Bond claim rights and Release, on account of prior payments from each of the Trade Contractors or Subcontractors. The Trade Contractors

or Subcontractors shall use the Waiver of Bond claim rights and Release forms as set forth in **Attachment 4**.

## **ARTICLE 7 COST OF THE WORK**

**7.1. Cost of the Work.** The term “Cost of the Work” shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work and thus reimbursable by the Owner pursuant to this Agreement. The Cost of the Work shall include only the items set forth in this Article 7.

## **7.2. CONSTRUCTION MANAGER'S PERSONNEL COSTS.**

The Construction Manager's personnel that are reimbursable under this provision and included in the Cost of the Work are identified by position and billable rates in the Construction Phase Staffing Matrix which is attached hereto as part of **Attachment 5**. The billable rates are all inclusive and Construction Manager shall have no further claim against the City regarding the cost of its personnel.

## **7.3. TRADE CONTRACTOR COSTS.**

Payments made to all Trade Contractors (including material suppliers and other vendors) or Subcontractors in accordance with approved contracts and subcontracts let in connection with the Work; payment and performance bonds for Trade Contractors (including, material suppliers and other vendors) or Subcontractors are approved costs (the "Trade Contractor Costs"). Said Trade Contractor or Subcontractor costs shall be set forth in detail in the GMP.

## **7.4. FIELD AND HOME OFFICE EXPENSES AND RELATED MATERIALS AND EQUIPMENT.**

Reimbursable costs for field and home office expenses and related materials and equipment shall be limited to the items and established rates as set forth in the Reimbursables Schedule which is attached hereto as part of Attachment 5. The Construction Manager shall have no further claim against the City regarding the costs contained therein.

## **7.5. COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.**

7.5.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction (the "Materials and Equipment Costs").

7.5.2 Costs of materials described in the preceding Clause 7.5.1 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 City at the completion of the Work or, at the City's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the City as a deduction from the Cost of the Work.

## **7.6. MISCELLANEOUS COSTS.**

7.6.1 **Performance and Payment Bonds.** The cost of a performance and payment bonds satisfactory to the City, for 100% of the Guaranteed Maximum Price as provided for in the Reimbursables Schedule which is attached hereto as part of Attachment 5. The Construction Manager shall have no further claim against the City regarding the costs contained therein.

7.6.2 **Permits.** The cost of all permits required for the proper execution and completion of the Work. Permits required to be obtained directly by the various Trade Contractors shall have their costs separately identified in subcontract proposals, and be reported under a separate sub-entry.

7.6.3 **General Liability Insurance.** The cost of commercial general liability and umbrella liability insurance as provided for in the Reimbursables Schedule which is attached hereto as part of Attachment 5. The Construction Manager shall have no further claim against the City regarding the costs contained therein.

7.6.4 **Sales and Use Tax.** The City is exempt from sales and use tax. Construction Manager shall be familiar with the current tax regulations of the Department of Revenue Service and pay all applicable taxes, but shall not pay those taxes exempted under such regulations by virtue of the City's status. Exempted taxes shall not be included in the Cost of the Work.

## **7.7. CORRECTIVE WORK.**

Costs of the Work shall include costs incurred by Construction Manager to repair, correct or replace nonconforming, damaged or defective Work executed by Trade Contractors or Subcontractors, or to enforce such performance by Trade Contractors or Subcontractor, during construction or under warranty, or other costs arising from the failure, negligence or default of Trade Contractors or Subcontractors, provided that:

7.7.1 Such damaged, nonconforming or defective Work was not caused by negligence or failure to fulfill a specific responsibility to the City by Construction Manager or any entity for whom it is responsible (including, its foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel) other than a Trade Contractor or a Subcontractor or the failure of Construction Manager's personnel to supervise adequately the Work of its Trade Contractors, Subcontractors or suppliers; and,

7.7.2 Only to the extent that the cost of repair or correction is not recovered by Construction Manager from insurance, Trade Contractors, Subcontractors or suppliers (upon evidence satisfactory to the City that Construction Manager has pursued reasonable courses of remedy with the manufacturer, supplier and its Trade Contractor and after exhaustively considering all other remedies); and,

7.7.3 Construction Manager obtains the City's prior written authorization, which authorization will not be unreasonably withheld.

## **7.8. OTHER COST TO BE INCLUDED.**

Wherever the Contract Documents state that Construction Manager shall perform any work or incur any expense, it shall be understood to mean that the referenced cost, when approved by the City in writing, shall be included in the Cost of the Work payable by the City. Such costs shall be identifiable to the Project and incurred in connection with the Work and the

protection of the City's interest, and provided that such costs did not result from the negligence or willful misconduct of Construction Manager or Construction Manager's personnel or the breach of this Agreement by Construction Manager.

#### **7.9. EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK**

The Cost of the Work shall also include costs described below that are incurred by the Construction Manager upon written approval by the City:

7.9.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, provided that such damage injury or loss in case of emergency was not caused by the negligence or failure by Construction Manager to fulfill a specific responsibility to the City set forth in this Agreement, and only to the extent that the cost of repair or correction is not recovered by Construction Manager from insurance, Trade Contractors, Subcontractors or suppliers.

7.9.2 In repairing or correcting damaged or nonconforming Work executed by Construction Manager or its Trade Contractors, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure by Construction Manager to fulfill a specific responsibility to the City set forth in this Agreement, and only to the extent that the cost of repair or correction is not recovered by Construction Manager from insurance, Trade Contractors, Subcontractors or suppliers.

#### **7.10. CREDITS TO COST.**

The Cost of the Work shall be credited with:

7.10.1 Trade discounts received by Construction Manager;

7.10.2 Cash discounts earned through advanced or prompt payment;

7.10.3 Rebates or credits realized on deposits, insurance premiums, or otherwise;

7.10.4 Proceeds from the sale of surplus materials and equipment; and the fair market value of any tools, supplies, or equipment transferred to Construction Manager at the completion of the Work. The fair market value shall be equal to the residual value of the item, but not less than the salvage value.

7.10.5 Any costs incurred by the City associated with inspections or testing of damaged, nonconforming or defective work and measures taken to cure or otherwise address.

#### **7.11. COSTS NOT INCLUDED.**

The Cost of the Work as defined in this Agreement shall not include the following costs which shall be borne by Construction Manager unless noted otherwise:

7.11.1 Royalty and License fees paid for the use of a particular design, process or product required by the Contract documents.

7.11.2 Salaries of the corporate officers of Construction Manager except when acting as a rostered billable member of the Project team;

7.11.3 Administrative or general overhead expense of Construction Manager's main or regularly established branch offices, including salaries of all persons located in such offices whose time is devoted to the general conduct of Construction Manager's business (this provision shall not apply to time of persons located off-site specifically allocable to the Project, as approved by the City);

7.11.4 Human resource expenses including the cost of recruitment, employment, relocation and temporary living allowances, retention, and separation of personnel;

7.11.5 Interest on capital employed;

7.11.6 Costs resulting from the breach of this Agreement by Construction Manager including its negligence or willful misconduct, and any act or omission which Construction Manager is obligated to indemnify the City hereunder;

7.11.7 Fees, costs and expenses, including reasonable legal fees, for staff or outside counsel to handle any dispute, settlement, or litigation in connection with the Work, without the City's prior written approval which the City may condition or withhold in its reasonable discretion; and

7.11.8 Costs that would cause the GMP to be exceeded, which are not approved changes to the Work, in accordance with this Agreement.

## **ARTICLE 8**

### **TIME**

#### **8.1. THE CONTRACT TIME: SUBSTANTIAL COMPLETION.**

At the outset, the Contract Time shall be the period during which Construction Manager agrees to achieve Substantial Completion of the Work, commencing on the date of this Agreement ("Effective Date") and ending on the date established for Substantial Completion of each component of the Project as set forth in **Attachment 6** to this Agreement, as may be amended in accordance with the provisions contained herein. Notwithstanding the foregoing, Substantial Completion of the Project shall be accomplished by July 15, 2021.

#### **8.2. PROJECT SCHEDULE.**

For each component of the Project not already completed, Construction Manager shall submit a detailed Project Schedule (which may also be referred to as a Construction Schedule or the Construction Manager's Project Schedule) which shall be coordinated with the Master Project Schedule and Attachment 6 at the time it submits the Guaranteed Maximum Price, which shall be attached hereto as a supplement to **Attachment 6**. The Project Schedule shall integrate the responsibilities of Construction Manager, the City and the Architect and upon approval by the City shall supersede the Preliminary Schedule agreed to by the Architect and the City.

### **8.3. TIMELY PERFORMANCE.**

Time is of the essence of this Agreement, and Construction Manager shall proceed expeditiously with adequate forces to achieve Substantial Completion within the Contract Time which shall include a final Substantial Completion date of the Work by July 15, 2021. Construction Manager shall endeavor to substantially complete the Work at the earliest date possible, consistent with good workmanship and the economical conduct of the Work. Subject to any extensions of time permitted in full compliance with this Agreement, the Construction Manager further agrees that the Project shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between the Construction Manager and City, that the Contract Time is reasonable for the completion of the Project.

### **8.4. ADJUSTMENTS TO THE TIME.**

The Contract Time shall be adjusted in accordance with this Agreement and the General Conditions.

### **8.5. TERM OF AGREEMENT.**

The term of this Agreement shall be the Contract Time, plus the close-out period between Substantial Completion and Final Completion, plus the one-year Contractor Warranty period. Surviving obligations under the Contract Documents include, but are not limited to, indemnification (including underlying insurance obligations), Audits Rights, Records, Claims (to the extent of outstanding Claims), and Confidentiality.

### **8.6. FORCE MAJEURE.**

Construction Manager shall not be held responsible for delays nor be subject to liquidated damages when such delays are caused by conditions beyond its control, including without limitation:

8.6.1 Acts of God, fire, explosion, epidemic, cyclone, flood, war, strikes, revolution, civil commotion, or acts of public enemies; and

8.6.2 Change of law and order, proclamation, regulation, ordinance, or governmental requirement.

Upon cessation of work for reason of force majeure delays, Construction Manager shall use best efforts to mitigate the delays and meet Project Milestones, Substantial Completion Date and the Final Completion Date for the Project.

#### **8.7. LIQUIDATED DAMAGES.**

8.7.1 Construction Manager agrees that time is and shall be of the essence for the timely completion of all Project Phases, Project Milestones, the Substantial Completion Date and the Final Completion Date for the Project in order for the completed construction and occupancy of the Wendell L. Cross Elementary School by July 15, 2021. The Construction Manager further agrees that the Project shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between the Construction Manager and City, that the Project Milestones, the Substantial Completion Date and the Final Completion Date are reasonable for the completion of the Project.

8.7.2 The Construction Manager shall pay to the City the sum of the greater of Three Thousand and Five Hundred Dollars (\$3,500.00) per calendar day for each and every calendar day for which the Construction Manager is in default in completing the work beyond the Project Milestones, the Substantial Completion Date and the Final Completion Date or the actual damages incurred by the City caused by the delay. The preceding sum is hereby agreed upon not as a penalty, but as delay damages for the delay that the City shall suffer due to such default.

8.7.3 The City shall have the right to recover all damages pursuant to any remedy at law or equity including but not limited to deducting the amount of any such damages from any monies due the Construction Manager under this Contract. The Construction Manager understands that if Substantial Completion (as evidenced by issuance of a certificate of occupancy consistent with the provisions of the Contract Documents) under each of the Construction Schedules of the entire Work or of any portion of the Work that the City has agreed to accept separately, if any, is not attained by the applicable Substantial Completion Dates as set forth herein and in **Attachment 6**, the City will suffer damages, which are difficult to specify accurately and ascertain. Delay damages based upon delay shall be assessed to compensate the City for all actual loss sustained by the delay, including, but not limited to, loss of use, costs associated with renting and appropriately outfitting and commissioning alternate facilities during the delay period, increased transportation expenses, increased cost of material or services to complete the project, loss of State funding, all other another actual expense, and all other damages allowed by law, including attorney's fees.

#### **8.8. NO DAMAGE FOR DELAY.**

In no event shall the Construction Manager be entitled to any compensation or recovery of any damages in connection with any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity,



or (4) similar claims (collectively "Delay"), including, without limitation, consequential damages, lost opportunity damages or other, similar remuneration.

## **ARTICLE 9**

### **CONSTRUCTION MANAGER'S ACCOUNTING AND PROJECT RECORDS**

#### **9.1. PROJECT RECORDS.**

9.1.1 **Records.** Construction Manager shall keep full, and detailed records and exercise such controls as may be necessary for proper management under this Agreement including but not limited to drawings, specifications, reports, maps, correspondence, instructions, books, receipts, trade contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement until the issuance of a Final Project Audit Report by the State Department of Administrative Services and for a minimum of three (3) years thereafter or for a longer period as may be required by law. Accounting systems shall be capable of demonstrating satisfactory financial controls to the City.

9.1.2 **Access to Records.** The City or its designee shall be afforded access to Construction Manager's records, during normal working hours, for the purpose of inspection and audit, whether such records are held on-site or at Construction Manager's branch and home offices.

9.1.3 **Records Retention and Preservation.** Prior to Final Payment, Construction Manager shall furnish the City with a detailed inventory of the records maintained and thereafter shall preserve these records until the issuance of a Final Project Audit Report by the State Department of Administrative Services and for a minimum of three (3) years or for such longer period as may be required by law. If, after the end of this period, Construction Manager wishes to destroy or dispose of said records, the City shall be given the option to take possession of such records prior to destruction or disposal.

9.1.4 **Public Access to Documentation.** Construction Manager shall allow Governmental Entities access to Project documentation and accounting records as required by law.

#### **9.2. FINAL COST STATEMENT.**

At the conclusion of the Work and prior to Final Payment, Construction Manager shall submit to the City a detailed cost statement, prepared and certified by Construction Manager financial officer, confirming the actual costs incurred by Construction Manager and allowable under the terms of this Agreement including but not limited to (a) Construction Manager's payroll identifying in detail the variance between Construction Manager's actual payroll costs expended under this Agreement and the amounts paid to Construction Manager for same; (b) work performed under allowances, unit prices, or on an hourly basis; and (c) work performed under Trade Contractor agreements. Construction Manager shall not be entitled to Final Payment until the Final Cost Statement has been submitted (and audited, if the City so desires).

Construction Manager shall immediately return any amounts paid by the City which are in excess of actual costs as allowed herein. Alternatively, the City may immediately set-off any credit determined to be due and owing in the Final Cost Statement against any monies otherwise due and owing to Construction Manager.

**9.2.1 Audit of Final Cost Statement.** In addition to its audit rights reserved in paragraph 9.3, the City shall have the right, but not the obligation, to audit Construction Manager's Final Cost Statement, within forty-five (45) days of its delivery to the City and prior to making the Final Payment to Construction Manager. Such audit shall be conducted in accordance with paragraph 9.3.

### **9.3. AUDIT RIGHTS.**

The City reserves the right to audit, from time to time, Construction Manager's contract and all financial records related thereto. This audit right shall include but is not limited to, (a) all transactions made on behalf of this Project; (b) verification of actual direct costs for Construction Manager's salaries and payroll expenses as allowed herein; and (c) all contracts between Construction Manager and Trade Contractors and Subcontractors. This audit right shall be in addition to the City's right to audit the Final Cost Statement as set forth herein. The City additionally reserves the right to conduct on-site and branch office inspection of accounting records as well as home office records related to the Project. Said audit(s) may be conducted at any time during construction, or within four (4) years from date of Substantial Completion. In the event any such audit reveals that any costs, for which Construction Manager has received or sought reimbursement, exceed the actual costs incurred by Construction Manager (after year-end adjustments, if any, for such items as insurance costs), then the City shall immediately be entitled to offset such differential against any monies otherwise due and owing, or, if no monies are due and owing, Construction Manager shall immediately refund such differential. In the event any audit or audits reveal a variance between the aggregate amounts paid by the City and the aggregate amounts payable to Construction Manager, in addition to its right of reimbursement of any amounts improperly paid to Construction Manager, the City shall be entitled to interest on the amount improperly paid at a rate of one percent (1%) per month, commencing from the date of the audit.

## **ARTICLE 10 SUSPENSION OR TERMINATION**

### **10.1. TERMINATION.**

**10.1.1 Termination of Contract for Cause.** If for any cause, the Construction Manager shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Construction Manager shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Construction Manager of such termination and specifying the effective date thereof, at least five (5) business days before the effective date of such termination.

(a) In the event of a termination, all finished or unfinished documents, data, studies, reports, plans, specifications, drawings, supplies, services, etc. prepared by the Construction Manager under this Contract shall, at the option of the City, become the City's property, and the Construction Manager shall be entitled to receive just and equitable compensation for any satisfactory work completed for such.

(b) Notwithstanding the above, the Construction Manager shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by the Construction Manager, and the City may withhold any payments to the Construction Manager for the purpose of setoff until such time as the exact amount of damages due the City from the Construction Manager is determined.

**10.1.2 Termination for Convenience of the City.** The City may terminate this Contract at any time for the convenience of the City, by a notice in writing from the City to the Construction Manager. If this Contract is terminated by the City as provided herein, the Construction Manager will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Construction Manager covered by this Contract, less payments of compensation previously made.

**10.1.3 Termination for Non-Appropriation or Lack of Funding.** The Construction Manager acknowledges that the City is a municipal corporation and that this Contract is subject to the appropriation and disbursement of funds by the City sufficient for this Contract for each budget year in which this Contract is in effect. The Construction Manager therefore agrees that the City shall have the right to terminate this Contract in whole or in part without penalty to the City in the event that sufficient funds to provide for City payment(s) under this Contract is not appropriated, not authorized, or not made available, or such funding has been reduced pursuant to law.

(a) **Effects of Non-Appropriation.** If funds to enable the City to effect continued payment under this Contract are not appropriated, authorized or otherwise made available by law, the City shall have the right to terminate this Contract without penalty at the end of the last period for which funds have been appropriated, authorized or otherwise made available by law by giving written notice of termination to the Construction Manager.

(b) **Effects of Reduced Levels of Funding.** If funding is reduced by law, or funds to pay the Construction Manager for the agreed to level of the products, services and functions to be provided by the Construction Manager under this Contract are not appropriated, authorized or otherwise made available by law, the City may, upon seven (7) business days written notice to the Construction Manager, reduce the level of the products, services or functions in such manner and for such periods of time as the City may elect. The charges payable under this Contract shall be equitably adjusted to reflect such reduced level of products, services or functions and the parties shall be afforded the rights set forth in this Contract.

**10.1.4 No Payment for Lost Profits.** In no event shall the State of Connecticut, DAS, or the City be obligated to pay or otherwise compensate the Construction Manager for any lost or expected future profits.

**10.1.5 Termination Deemed to be for Convenience.** In the event any notice of termination provided pursuant to Sections 10.1.1 or 10.1.3 is determined to be improper, such notice shall be deemed to be a Termination for Convenience pursuant to Section 10.1.2 herein.

## **10.2. RIGHTS UPON TERMINATION.**

**10.2.1 Termination for Cause.** In the event the City terminates this Contract for cause, the Construction Manager shall relinquish to the City any applicable interest, title and ownership including, but not limited to, perpetual use of any proprietary rights in and to the products and deliverables delivered to, in possession of and properly invoiced and paid for by (except to the extent such invoiced amount is disputed) the City. With regard to third party products, the Construction Manager shall transfer all licenses which it is permitted to transfer in accordance with the applicable third party license. The City shall have no financial obligation to compensate the Construction Manager for such terminated products unless payment is otherwise approved by the City prior to such termination. The Construction Manager shall be liable for costs incurred by the City, including but not limited to reasonable attorney fees and all court awarded fees and costs incurred in terminating this Contract in whole or in part.

**10.2.2 Termination for Lack of Funding or Convenience.** In the event of termination by the City for lack of funding or convenience, the City shall pay Construction Manager for all products and deliverables performed, installed and delivered to the City as of the Termination Date and Construction Manager shall relinquish to the City any applicable interest, title and ownership including, but not limited to perpetual use of any proprietary rights in and to said products and deliverables delivered to, in possession of and paid for by the City (except to the extent any invoiced amount is disputed). The Construction Manager shall be required to exercise commercially reasonable efforts to mitigate damages. In the event of a termination for Lack of Funding or Convenience the City and the Construction Manager may negotiate a mutually acceptable payment to the Construction Manager for reasonable demobilization expenses. Said demobilization expenses, if any, shall be handled in accordance with the provision of this Contract pertaining to changes in the Project.

**10.2.3 Termination by Construction Manager.** The Construction Manager may, by written notice to the City, terminate this Agreement if the City materially breaches, provided that the Construction Manager shall give the City thirty (30) Days prior written notice and an opportunity to cure by the end of the said thirty (30) day period. In the event of such termination the Construction Manager will be compensated by the City for work performed prior to such termination date and the Construction Manager shall deliver to the City all deliverables as otherwise set forth in this Agreement.

**10.2.4 Assumption of Subcontracts.** In the event of termination, the City shall have the right to assume, at its option, any and all subcontracts for products, services and functions provided exclusively under this Contract, and may further pursue completion of the work under this Contract by replacement contract or otherwise as the City may in its sole judgment deem expedient.

**10.2.5 Delivery of Documents.** In the event of termination, (i) the Construction Manager shall promptly deliver to the City, in a manner reasonably specified by the City, all documents and other tangible items furnished by, or owned, leased, or licensed by, the City, and (ii) the City shall pay the Construction Manager for all services performed and deliverables completed and accepted (pro-rated for deliverables partially completed) prior to the effective date of the termination (except to the extent any invoice amount is disputed).

## **ARTICLE 11 CLAIMS AND DISPUTES**

**11.1. Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Agreement terms, payment of money, extension of time or other relief with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between the City and Construction Manager arising out of or relating to the Agreement. The responsibility to substantiate a Claim shall rest with the party making the Claim.

**11.2. Notification of Claims.** All Claims must be made by written notice; Claims shall be presented directly to the party identified in the Claim as being responsible for the required action as set forth in paragraph 14.6 of the Agreement. Construction Manager shall promptly notify the City of any and all claims submitted by any Subcontractor or other third party; shall review and evaluate any such claims in consultation with the City; and shall provide evaluations to the City concerning the merits of such claims. The City shall be given copies of all communication relating to any claims.

**11.3. Time Limits on Claims.** Any Claim or dispute that requires negotiation or may require litigation ("Claim") shall be asserted in writing to the other party within twenty one (21) days of the event giving rise to the Claim.

**11.4. Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Agreement documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement documents, then written notice by the observing party shall be given to the other party promptly before said conditions are disturbed. The City will promptly investigate said conditions and, if they differ materially and are cause for an increase or decrease in Construction Manager's cost of, or time required for, performance of any part of the Work, then Construction Manager shall file a Claim in accordance with Subparagraph 11.2 and/or 11.3. If the City determines that the conditions at the Site are not materially different from those indicated in the Agreement documents and that no change in the terms of the Agreement is justified, the City shall so notify

Construction Manager in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the City has given notice of the decision, Construction Manager shall have no claims against the City in connection with any concealed or unconcealed condition, which does not differ materially from those conditions discovered, or which reasonably should have been discovered based on careful inspection of the Site, detailed examination of the Agreement documents and other information provided or made available to Construction Manager, and other investigations which Construction Manager reasonably should have performed prior to or after execution of the Agreement.

**11.5. Claims for Additional Cost.** If Construction Manager wishes to make claim for an increase in the Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the Work. If Construction Manager believes additional cost is involved based on actions of the City or Architect, or other reasonable grounds, a Claim shall be filed in accordance with the procedure established herein.

**11.6. Claims for Additional Time.** If Construction Manager is delayed at any time in the progress of the Work by an act or neglect of the City, or by changes ordered in the Work, or by other causes which were unforeseeable and beyond the control of Construction Manager and any other entity for which it is responsible, and Construction Manager wishes to make a claim for an increase in the Contract Time, written notice must be provided as provided herein. Construction Manager's Claim shall fully substantiate the impact of any delay including furnishing details of specific activities allegedly affected by such delay, and the effect on the Project Schedule. In the case of a continuing delay only one Claim is necessary. In no event will any time extension be given on account of delay which could have been anticipated by Construction Manager or in circumstances where performance of the Work is, was or would have been delayed by any other cause for which Construction Manager is not entitled to an extension. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

**11.7. Limitation on consequential damages.** The City shall not be held responsible or held liable for any consequential damages of any nature whatsoever, including without limitation, loss of future or anticipatory profits or other revenue, interest, loss of product, or business interruption, however said damages may be caused. This limitation on consequential damages includes damages incurred by Construction Manager for principal office expenses including compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

**11.8. RESOLUTION OF CLAIMS AND DISPUTES.** In the event a dispute arises between Construction Manager and the City regarding the application of any provision of this Agreement, the aggrieved party shall provide the other party with written notice of the claim or dispute, stating its position. The parties shall endeavor to resolve each claim or dispute by negotiation or mutual agreement. Should the parties fail to resolve the claim or dispute to their mutual satisfaction as set forth therein the parties shall follow the procedures set forth herein.

**11.9. NEGOTIATION.** The City and Construction Manager are fully committed to working with each other throughout the Project, and agree to communicate regularly as a means of avoiding or minimizing disputes. If disputes do arise, the City and Construction Manager each commit to resolving such disputes by negotiation by and among top executives of the parties in an amicable, professional and expeditious manner so as to avoid unnecessary loss, delay and disruption to the Project.

**11.10. LITIGATION.**

11.10.1 Any Claim or dispute that cannot be resolved by negotiation shall be subject to litigation in the Complex Litigation docket of the Superior Court of the State of Connecticut, Judicial District of Waterbury. Both parties hereby consent to the jurisdiction of such Court.

11.10.2 Construction Manager agreed that it waives trial by jury as to any and all Claims, causes of action or disputes arising out of this Agreement or services to be provided pursuant to this Agreement.

**11.11. CONTINUED PERFORMANCE.**

Notwithstanding any such claim, dispute or legal action, the Contractor shall continue to perform services under this Agreement in a timely manner, unless otherwise directed by the City.

**11.12. HISTORICAL DOCUMENTS.**

11.12.1 This Agreement represents the concurrence between the City and Construction Manager and governs all disputes between them. In the instance of a conflict or dispute over issues not specifically referenced within the Agreement, the following documents shall be used as historical documents, without regard to the order of precedence, to resolve such conflicts or disputes, as follows: (A) The City's RFP No. 6337; and, (B) Construction Manager's bid response to RFP No. 6337, dated April 17, 2019.

11.12.2 Said historical documents are attached hereto as Attachment 7. This provision pertaining to historical documents supersedes all statements to the contrary occurring either in proposals or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

11.12.3 This Agreement or any section thereof shall not be construed against any party due to the fact that the Agreement or any section thereof was drafted by such party.

**ARTICLE 12  
INDEMNIFICATION**

**12.1.** The Construction Manager shall indemnify, defend, and hold harmless the State of Connecticut, DAS-OSCG&R, the City, WDC, City's Boards, and the Board of Education,

commissions, agents, officers, officials and employees (collectively the "Indemnitees") from and against all claims, suits, damages, losses, judgments, costs and expenses including attorney's fees arising out of or resulting from the delivery of the labor, services, equipment, materials, reports, plans, specifications, design, drawings, deliverables, incidentals, etc. provided that any such claims, suits, damages, losses, judgments, costs or expenses (i) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the services itself) including the loss of use resulting there from, (ii) are alleged to be caused in whole or in part by any willful, intentional, negligent, or reckless act or omission of the Construction Manager, its employees, any subcontractor or consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder; (iii) enforcement action or any claim for breach of the Construction Manager's duties hereunder or (iv) claim for intangible loss(es) including but not limited to business losses, lost profits or revenue, regardless of whether or not it is caused in part by a party indemnified hereunder.

**12.2.** In any and all claims against the Indemnitees by Construction Manager or any employee of the Construction Manager, any Trade Contractor, subcontractor or consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 12.1 above, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager, its consultants, Contractors or any subcontractor under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

**12.3.** The Construction Manager expressly understands and agrees that any performance bond or insurance required by this Agreement, or otherwise provided by the Construction Manager, shall in no way limit the responsibility to indemnify, defend, keep and hold harmless the State of Connecticut, DAS-OSCG&R, the City, the Board of Education, WDC or any of City's boards, agents, employees as provided in this Agreement.

**12.4.** In the event this Agreement and/or the Construction Manager's, or its subcontractor, work and services provisioned hereunder is/are subject to the provisions of any federal or state statute or regulations, or the City Charter or City Ordinance, the Construction Manager shall indemnify, defend and hold harmless the City from any fine, penalty or other amounts imposed on the City under said statutes, regulations, Charter or Ordinances, if caused by Construction Manager, or its subcontractor, omission or commission.

**12.5.** Construction Manager's agreements with its consultants or Trade Contractors and Subcontractors shall contain similar provisions obligating each of them to indemnify, hold harmless and defend the Indemnitees in the manner and to the same extent in connection with the negligent acts, errors, or omissions of Construction Manager's Consultants and Trade Contractors and Subcontractors.

## **ARTICLE 13 INSURANCE REQUIREMENTS**

### **13.1. COVERAGE TYPES AND AMOUNTS.**



13.1.1 Construction Manager shall not commence work under this Agreement until all insurance required under this Article 13 has been obtained by Construction Manager and such insurance has been approved by the City. Construction Manager shall not allow any of its Consultants, Trade Contractors or Subcontractors to commence work on any Contract or subcontract until all insurance required of any such Consultant, Trade Contractor or Subcontractor has been so obtained and approved by the City. Insurance shall be provided by insurers that are satisfactory to the City, authorized to do business in the State of Connecticut, that have at least an "A-" Best's Rating, and are in an A.M. Best financial size category of VII or higher. The A.M. Best classifications are based on the most current A.M. Best Company ratings or an equivalent City approved rating system.

13.1.2 At no additional cost to the City, Construction Manager shall purchase and maintain the insurance coverages set forth below which shall protect the State of Connecticut, DAS-OSCG&R, the City, the Board of Education, and City's Boards from claims which may arise out of or result from the Construction Manager's obligation under this Contract, whether such obligations are Construction Manager's or a Trade Contractor, Subcontractor or person or entity directly or indirectly employed by said Construction Manager, its Consultants, Trade Contractors or Subcontractors, or by any person or entity for whose acts said Construction Manager, its Consultants, Trade Contractors or Subcontractor may be liable.

13.1.3 Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless. If any insurance required herein is to be issued or renewed on a claims made form as opposed to an occurrence form, the retroactive date for coverage shall be no later than the commencement date of this Contract and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims ("Tail Coverage") shall be available for at least 60 months.

13.1.4 The following policies with stated limits shall be maintained, in full force and effect, at all times during which the services are to be performed by Construction Manager:

(a) **General Liability Insurance:** \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate and \$2,000,000.00 Products/Completed Operations Aggregate.

Providing coverage to protect the State of Connecticut, DAS-OSCG&R, the City, the Board of Education, and City's Boards for all damages arising out of bodily injuries, sickness to or death of all persons in any one accident or occurrence and for all damages arising out of destruction of property in any one accident or occurrence

(b) **Automobile Liability Insurance:** \$1,000,000.00 combined single limit (CSL) each accident any auto, all owned and hired.

Providing coverage to protect the State of Connecticut, DAS-OSCG&R, the City, the Board of Education, and City's Boards with respect to claims for damage for

bodily injury and or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any auto including hired & non-owned autos.

(c) **Workers' Compensation:** Statutory Limits within the State of Connecticut. Said Workers Compensation shall comply with the laws of the State of Connecticut applicable to workers' compensation.

Employer Liability (EL) \$500,000.00  
EL Each Accident, \$500,000.00  
EL Disease Each Employee, \$500,000.00  
EL Disease Policy Limit

(d) **Excess/Umbrella Liability Insurance:** Excess or Umbrella insurance coverage that follows form or sits over General Liability, Automobile Liability, Professional Liability and Workers Compensation insurances. \$10,000,000.00 each occurrence and \$10,000,000.00 Aggregate.

(e) **Contractors Pollution Liability Insurance:** \$5,000,000.00 each Claim and \$5,000,000 Aggregate.

(f) **Professional Liability Insurance:** At least \$5,000,000.00 per occurrence/\$5,000,000.00 aggregate limit. Said Professional Liability (also known as errors and omissions) insurance providing coverage to Construction Manager, insuring the City against losses arising out of the delivery of professional services Construction Manager and its Consultants, Trade Contractors or Subcontractors. Construction Manager shall also require that each of its Consultants, Trade Contractors and Subcontractors shall maintain professional liability coverage with minimum limits of professional liability coverage not less than \$3,000,000.00 per occurrence/\$3,000,000.00 in aggregate, insuring the City against losses arising out of the provision of professional services by each in connection with the Project. The deductibles and/or other self-insurance retention associated with the professional liability insurance policies to be maintained by Construction Manager, its Consultants, Contractors and Subcontractors shall not exceed \$25,000.00. Construction Manager shall provide to the City certificates reflecting the City as a certificate holder with respect to the professional liability insurance policies maintained by Construction Manager, its Consultants, Trade Contractors and Subcontractors. Notwithstanding the above, Trade Contractors and Subcontractors shall not be required to provide Professional Liability Insurance if they are not rendering professional design or engineering services. For example, the Trade Subcontractor performing only painting services shall not be required to provide Professional Liability Insurance.

**13.2. Failure to Maintain Insurance:** In the event the Construction Manager fails to maintain the minimum required coverage as set forth herein, the City may at its option purchase same, and offset the Construction Manager's invoices for the cost of said insurance.

**13.3. Cancellation:** The City of Waterbury shall receive written notice of cancellation from the Construction Manager at least thirty (30) calendar days prior to the date of actual cancellation, regardless of the reason for such cancellation.

**13.4. Certificates of Insurance:** The Construction Manager's General, Automobile, Contractor's Pollution Liability and Excess/Umbrella Liability Insurance policies shall be endorsed to add State of Connecticut, DAS-OSCG&R, the City, the Board of Education, and City's Boards as an additional insureds and include a waiver of subrogation on all lines except Professional Liability. The insurance afforded the additional insureds shall be primary and non-contributory insurance and the coverage and limits provided under the Construction Manager's policies shall not be reduced or prorated by the existence of any other insurance applicable to any loss the additional insured may have suffered. At the time the Construction Manager executes this Contract, it shall furnish to the WDC and City, subject to City approval, certificate(s) of insurance, and Additional Insured Endorsement and Waiver of Subrogation Endorsement verifying the above coverages, including the naming of the WDC, City of Waterbury and the Board of Education as follows: **"The Waterbury Development Corporation, City of Waterbury, the Board of Education and the State of Connecticut, DAS-OSCG&R are listed as additional insureds as to all lines of coverage except Workers Compensation and Professional Liability and waiver of subrogation applies to all lines of coverage except Professional Liability as their interest may appear"**. The Certificates will be attached hereto as Attachment 8 to this Agreement. The Construction Manager must supply replacement/renewal certificates at least thirty (30) calendar days prior to the expiration of the policy (ies). Said certificates shall contain a provision that coverage afforded under the policies shall not be cancelled or reduced for any reasons unless notice of not less than thirty (30) calendar days has been mailed to the Office of Corporation Counsel, 235 Grand Street, Waterbury, CT 06702.

**13.5.** No later than thirty (30) calendar days after Construction Manager receipt, the Construction Manager shall deliver to the City a copy of the Construction Manager's insurance policies, endorsements, and riders.

**13.6. BUILDERS RISK INSURANCE.** City shall maintain coverage equaling the monetary value for the construction component of the Project and shall provide Construction Manager with a Certificate of Insurance verifying this coverage and naming Construction Manager as an additional insured.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**14.1. ENTIRE AGREEMENT.** This Agreement, when executed by the parties, shall be effective as of the date first stated above in this Agreement. All understandings and agreements heretofore had between the City and Construction Manager with respect to the Project are merged into, or superseded by, this Agreement. This Agreement fully and completely expresses the agreement of the parties with respect to the Services and the Project. Construction Manager acknowledges that no representations of any kind whatsoever have been made to Construction Manager other than as appear in this Agreement, that it has not relied on any such

representations, and that no claim that it has so relied on may be made at any time or for any purpose.

#### **14.2. AMENDMENT OF AGREEMENT.**

This Agreement may not be modified or amended except by a writing signed by both parties, in accordance with the ordinances of the City.

#### **14.3. SURVIVAL OF OBLIGATIONS.**

Except as specifically provided for herein, all obligations of Construction Manager survive the completion of the Services or termination of this Agreement

#### **14.4. ASSIGNABILITY.**

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the City; provided, however, that claims for money due or to become due the Construction Manager from the City under this Contract may be assigned to a bank, trust, company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

#### **14.5. INTENDED THIRD PARTY BENEFICIARIES.**

All agreements between Construction Manager and any Consultant or Trade Contractor in connection with the Project shall specifically provide that the City is the intended third party beneficiary under the terms of said agreements, and that the City shall have standing to enforce the provisions of same and to recover for the breach of said Construction Manager's agreements and contracts. Construction Manager shall also require that its Consultants, Trade Contractors and Subcontractors include the City as a certificate holder with respect to any insurance policies maintained by each of them.

#### **14.6. NOTICES.**

Except as otherwise specifically prohibited in this Agreement, whenever under this Agreement approvals, authorizations, determinations, notices, satisfactions or waivers are required or permitted, such items shall be effective and valid only when given in writing signed by a duly authorized officer of the City or Construction Manager, and delivered in hand or sent by mail, postage prepaid, to the party to whom it is directed, which until changed by written notice, are as follows:

Construction Manager:

With a copy to:

The City:

City of Waterbury  
City Hall Building  
235 Grand Street  
Waterbury, CT 06702  
Attention: Finance Director

With a copy to:

Office of the Corporation Counsel  
City of Waterbury  
235 Grand Street  
Waterbury, CT 06702  
Attention: Corporation Counsel

Waterbury Development Corporation  
83 Bank Street, 3<sup>rd</sup> Floor  
Waterbury, CT 06702  
Attention: Santiago Bolaños

#### **14.7. CONSTRUCTION OF LANGUAGE.**

The language in this Agreement shall be construed according to its customary meaning within the construction industry in the State of Connecticut, except where a specific definition is provided herein. Whenever used; the singular number shall include the plural, and the plural the singular, and the use of any gender shall be applicable to all genders.

#### **14.8. CAPTIONS AND TITLES.**

Captions and titles of the different Articles and Paragraphs of this Agreement are solely for the purpose of aiding and assisting in the location of different material in this Agreement, and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

#### **14.9. NO WAIVER.**

14.9.1 The failure of either party to exercise any right, option or remedy hereby reserved; or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof; or of any such right, option or remedy available to either party; or as a waiver for the future of any such provision, right, option or remedy; or as a waiver of a subsequent breach thereof.

14.9.2 The consent or approval by the City of any act by Construction Manager requiring the City's consent or approval shall not be construed to waive or render unnecessary the requirement for the City's consent or approval of any subsequent, similar act by Construction Manager. The payment by the City of any amount due hereunder with knowledge of a breach by Construction Manager of any provision of this Agreement shall not be a waiver of such breach. No provision of this Agreement affecting or relating to the City shall be deemed to have been waived unless such waiver shall be in writing signed by the City.

14.9.3 The consent or approval by Construction Manager of any act by the City requiring Construction Manager's consent or approval shall not be construed to waive or render unnecessary the requirement for consent or approval of any subsequent similar act by the City. No provision of this Agreement affecting or relating to Construction Manager shall be deemed to have been waived unless such waiver shall be in writing signed by Construction Manager.

#### **14.10. SUCCESSORS AND ASSIGNS.**

The City and Construction Manager each binds itself, its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party in respect of all covenants of this Agreement.

#### **14.11. SEVERABILITY.**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement, however, is held to be prohibited or invalid under applicable law, such provision shall be deemed restated to reflect the original intentions of the parties, as nearly as possible in accordance with applicable law, and if capable of substantial performance, the remaining provisions of this Agreement shall be enforced as if this Agreement was entered into without an invalid provision. If the ruling and/or controlling principle of law or equity leading to the ruling is subsequently overruled, modified or amended by legislation, judicial or administrative action, then the provision(s) in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

#### **14.12. RIGHTS AND REMEDIES.**

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to, and not in limitation of, any duties, obligations, rights and remedies otherwise imposed or available at law or in equity.

#### **14.13. GOVERNING LAW.**

This Agreement, its terms and conditions and any claims arising there from shall be governed by the laws of the State of Connecticut.

#### **14.14. INDEPENDENT CONTRACTOR RELATIONSHIP.**

The relationship between the City and Construction Manager is that of client and independent contractor. No agent, employee, or servant of Construction Manager shall be deemed to be an employee, agent or servant of the City. Construction Manager shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and Trade Contractors and Subcontractors during the performance of this Agreement.

#### **14.15. PROHIBITION AGAINST CONTINGENT FEES, PROPOSAL COSTS.**

14.15.1 Construction Manager expressly warrants that Construction Manager has not employed or retained any company or person, other than a bona fide employee working solely for Construction Manager, to solicit or secure this Agreement, and that Construction Manager has not paid or agreed to pay any person, company, corporation, individual or Construction Manager, other than a bona fide employee working solely for Construction Manager, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or execution of this Agreement. For the breach or violation of this paragraph, the City shall have the right to terminate this Agreement for default, and, at the City's discretion, to deduct Construction Manager's Fee or otherwise recover the full of such fee and other compensation paid by Construction Manager as a commission, percentage, gift, or consideration.

14.15.2 All costs of Construction Manager in preparing its proposal for RFP 6337 shall be solely borne by Construction Manager and are not included in the compensation to be paid by the City to Construction Manager under this Agreement or any other Agreement.

#### **14.16. INTEREST OF CONSTRUCTION MANAGER.**

Construction Manager covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in the project or any parcel of land therein or any other interest which would conflict in any manner or degree with the performance of its services hereunder. Construction Manager further covenants that in the performance of this Agreement no person having any such interest shall be employed.

#### **14.17. CITY CODE OF ORDINANCES, ETHICS AND CONFLICT OF INTEREST CODE PROVISIONS.**

The Person (the term "Person" shall herein be as defined in Section 38 of the City's Code of Ordinances) supplying the labor, services, equipment, materials, reports, plans, specifications, drawings, deliverables, incidentals, etc. under this Contract shall comply with all applicable Federal, State and Municipal statutes, regulations, charters, ordinances, rules, etc., whether or not they are expressly stated in this Contract, including but not limited to the following:

14.17.1 It shall be a material breach of this Contract, and, except as may be permitted by regulations or rulings of the City of Waterbury Board of Ethics it shall be a

violation of the City's Code of Ordinances, for any Public Official, City Employee or Member of a Board or Commission who is participating directly or indirectly in the procurement process as set forth in the City's Code of Ordinances, including those participating in exempt transactions, to become or be the employee of any person contracting with the governmental body by whom the Official, Employee, or Board or Commission member is employed or is a member.

14.17.2 It shall be a material breach of this Contract, and it shall be a violation of the City's Code of Ordinances for any Person to offer, give, or agree to give any current or former Public Official, Employee or Member of a Board or Commission, or for such current or former Public Official, Employee or Member of a Board or Commission to solicit, demand, accept or agree to accept from another Person, a gratuity or an offer of employment in connection with any: decision; approval; disapproval; recommendation; preparation of any part of a program requirement or a requisition; influencing the content of any specification or procurement standard; or rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a Contract or Purchase Order, or to any solicitation or proposal therefore.

14.17.3 It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for any payment, gratuity, or offer of employment to be made as an inducement for the award of a subcontract or order, by or on behalf of a subcontractor, the prime Contractor or higher tier subcontractor or any Person associated therewith, under a Contract or Purchase Order to the City.

14.17.4 The value of anything transferred or received in violation of the City's Charter, Code of Ordinances, and/or regulations promulgated there under, by any Person subject to said Charter and/or Ordinances may be recovered by the City.

14.17.5 Upon a showing that a subcontractor made a kickback to the City, a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the City and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

14.17.6 It shall be a material breach of this Contract and it shall be a violation of the City's Code of Ordinances for a Person to be retained, or to retain a Person, to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee; and every Person, before being awarded a City Contract, shall deliver to the City, on a City authored form, a representation that such Person has not retained anyone in violation of this subsection 34.6, the failure to deliver said form being a material breach of this Contract and a violation of the City's Code of Ordinances. Note, however, this subsection 34.6 shall not



apply to full-time Employees who, as a condition of their employment, may be entitled to bonuses or other fees in accordance with their employment relationship.

14.17.7 The Person hereby expressly represents that he/she/it has complied with those sections of the City's Code of Ordinances requiring that said Person has (i) delivered to the City an affidavit, on a City authored form, stating that the Person and its affiliates have no delinquent taxes or other financial obligations owed to the City; (ii) filed the City authored financial disclosure statement form as set forth in the City's Code of Ordinances regarding disclosure of financial interests; (iii) delivered to the City a written acknowledgement, on a City authored form, evidencing receipt of a copy of the "Ethics and Conflict of Interest" ordinance for the City of Waterbury and hereby expressly represents that said Person is in full compliance with the entirety of said Code of Ordinances; and (iv) filed a current list of all taxable personal and real property as required by the State of Connecticut General Statutes. Any violation of this subsection 14.17.7 shall be deemed a material breach of this Contract and shall be a violation of the City's Code of Ordinances.

14.17.8 The definitions set forth in the City's Code of Ordinances shall be the primary source for interpretation of the forgoing subsections 34.1-34.7.

14.17.9 The Construction Manager is hereby charged with the requirement that it shall have knowledge of, and shall fully comply with, all relevant provisions of the City's Charter and all relevant provisions of the City's Code of Ordinances, including without limitation Chapters 93, titled "Discriminatory Practices", Chapter 38 titled "Centralized Procurement System", and Chapter 39 titled "Ethics and Conflict of Interest", of said Code as may be amended from time to time.

14.17.10 The Construction Manager hereby acknowledges receipt of a copy of the Chapters 38 and 39 of City's Ordinance regarding Procurement, Ethics, and Conflicts of Interest and has familiarized itself with said Code and hereby agrees to adhere to said Code. The text of Chapters 38 and 39 of said Code may be obtained from the Office of the City Clerk of the City and on the internet at the City Clerk's web site: <http://www.waterburyct.org/content/458/539/default.aspx> [click link titled "The City of Waterbury Code of Ordinances Passed 8/24/2009". For Chapter 38, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 38: CENTRALIZED PROCUREMENT SYSTEM". For Chapter 39, click on "TITLE III: ADMINISTRATION", then click on "CHAPTER 39: ETHICS AND CONFLICTS OF INTEREST"].

14.17.11 The Construction Manager is hereby charged with the requirement that it shall have knowledge of, and shall fully comply with, the City's Ordinance Sections 34.15 through 34.99 entitled, "Ordinance Concerning the Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects," and the State of Connecticut Legislature's Special Act No. 01-1.

14.17.12 Every Person who conducts business with, contracts, with or provides commodities or services to the City, is charged with notice of the extent of the powers and authority, and the limitations thereon, of the Public Officials and Employees of the City, as set forth in the charter of the City, the Code of Ordinances and any Regulations or Policies pertaining thereto. In particular, and without implying any limitation as to its applicability, it applies to all Persons who participate in the procedures pertaining to the Centralized Procurement System as set forth in Chapter 38, and the Ethics and Conflict of Interest provisions set forth in Chapter 39 of the Code of Ordinances.

14.17.13 **Interest of City Officials.** No member of the governing body of the City, and no other officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the carrying out of the project, to which this agreement pertains, shall have any personal interest, direct or indirect, in this agreement.

14.17.14 **Prohibition Against Contingency Fees.** The Construction Manager hereby represents that it has not retained anyone to solicit or secure a contract with the City upon an agreement or understanding for a commission, percentage, brokerage or contingency fee.

14.17.15 **Freedom of Information Act Notice.** Pursuant to State statute, in the event the total compensation payable to the Construction Manager set forth in Section 6 of this Contract is greater than \$2,500,000.00, the City is entitled to receive a copy of any and all Construction Manager records and files related to the performance of this Contract and those records and files are subject to the Freedom of Information Act ("the Act") and may be disclosed by the City pursuant to the Act.

#### **14.18. CONFORMANCE WITH FEDERAL, STATE AND OTHER JURISDICTIONAL REQUIREMENTS.**

14.18.1 **Generally.** By executing this Contract, the Construction Manager represents and warrants that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with all applicable statutes, acts, ordinances, guidelines, resolutions, orders, judgments, decrees, injunctions, rules, and regulations of all government authorities applicable to performance by the Construction Manager of services hereunder, including those having jurisdiction over its registration and licensing to perform services hereunder; including, but not limited to, the following: EQUAL EMPLOYMENT OPPORTUNITY; COPELAND ANTI-KICKBACK ACT, as supplemented in the Department of Labor Regulations (29 CFR, Part 3); DAVIS BACON ACT as supplemented by Department of Labor Regulations (29 CFR Part 5); Section 103 and 107 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor Regulations (29 CFR Part 5); the HOUSING and COMMUNITY DEVELOPMENT ACT of 1974, as amended; TITLE 31 and Section 12-430(7) of the State of Connecticut General Statutes. All applicable sections of the City Charter and Code of Ordinances are incorporated by reference made a part hereof.

14.18.2       **Taxes Federal, State and Local.** The City is exempt from federal excise and transportation, state and local sales and use taxes, including without limitation, taxes that would otherwise be imposed upon the Construction Manager for transactions required or necessitated hereunder between it and its subcontractors, suppliers, etc. The Construction Manager remains liable, however, for any applicable tax obligations it incurs. Moreover, the Construction Manager represents that the bid and pricing contained in this Contract do not include the amount payable for said taxes.

14.18.3       **Labor and Wages-Federal and State.** The Construction Manager and its subcontractors shall conform to Federal and State of Connecticut labor laws, and all other laws, ordinances, and legal requirements affecting the work in Connecticut.

14.18.4       The Construction Manager is aware of, and shall comply with, the provisions of Title 31, §53 of the Connecticut General Statutes, latest revision (the "Act"), concerning the payment of minimum wages for work on public facilities. Construction Manager shall comply with the provisions of **Attachment 10** attached hereto and made a part hereto. The provisions of the Act are hereby incorporated by reference and made a part of this Contract. The Act provides that the Connecticut prevailing wage law applies to certain remodeling, refurbishing, alteration, repair and new construction. 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 Conn. Gen. Statute 31-53(i), 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 pay day.

14.18.5       The Construction Manager is aware of, and shall comply with, the provisions of both the Federal Davis-Bacon Act and the Federal American Recovery and Reinvestment Act of 2009, the provisions of both acts hereby incorporated by reference and made a part of this Contract. The Federal Davis-Bacon Act provides that Federal wage rate laws apply to certain federally funded contracts. The American Recovery and Reinvestment Act ("ARRA") provides that Federal wage rate laws apply to all ARRA funded contracts regardless of the contract's dollar value.

14.18.6       Compliance with Chapters 34, 38, and 39 of the Code of Ordinances of the City. By executing this Contract, the Construction Manager represents and warrants that, at all pertinent and relevant times to the Contract, it has been, is and will continue to be in full compliance with the provisions of Chapters 34, 38, and 39 of the Code of Ordinances of the City and well as any other relevant provisions of the Charter and the Code of Ordinances.

14.18.7 Compliance with CONN. GEN. STAT. § 4a-60g, as amended by June 2015 Special Session Public Act 15-5.

(a) Definitions – For purposes of this paragraph:

(1) “Small contractor” means any contractor, subcontractor, manufacturer, service company or nonprofit corporation (A) that maintains its principal place of business in the state, (B) that had gross revenues not exceeding fifteen million dollars in the most recently completed fiscal year prior to such application, and (C) that is independent. “Small contractor” does not include any person who is affiliated with another person if both persons considered together have a gross revenue exceeding fifteen million dollars.

(2) “Minority business enterprise” means any small contractor (A) fifty-one per cent or more of the capital stock, if any, or assets of which are owned by a person or persons who (i) exercise operational authority over the daily affairs of the enterprise, (ii) have the power to direct the management and policies and receive the beneficial interest of the enterprise, (iii) possess managerial and technical competence and experience directly related to the principal business activities of the enterprise, and (iv) are members of a minority, as such term is defined in subsection (a) of section 32-9n, or are individuals with a disability, or (B) which is a nonprofit corporation in which fifty-one per cent or more of the persons who (i) exercise operational authority over the enterprise, (ii) possess managerial and technical competence and experience directly related to the principal business activities of the enterprise, (iii) have the power to direct the management and policies of the enterprise, and (iv) are members of a minority, as defined in this subsection, or are individuals with a disability.

(3) “Municipal public works contract” means that portion of an agreement entered into on or after October 1, 2015, between any individual, Construction Manager or corporation and a municipality for the construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, which is financed in whole or in part by the state, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees but excluding any project of an alliance district, as defined in section 10-262u, as amended by this act, financed by state funding in an amount equal to fifty thousand dollars or less.

(b) The Construction Manager and subcontractors shall comply with the specific requirements of the State of Connecticut Set Aside Program, CONN. GEN. STAT. § 4a-60g, as amended by June 2015 Special Session Public Act 15-5, if the municipal public works contract awarded to the Contactor is funded in whole or in part by state funds.

(c) The Contactor shall be subject to the following set-aside requirements if the municipal public works contract, is funded in whole or in part by the State of Connecticut, and is in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), for the

construction, rehabilitation, conversion, extension, demolition, or repairing of a public building or highway, or other changes or improvements in real property.

(d) Set-Aside requirements – Any contractor awarded a municipal public works contract, on the basis of competitive bidding procedures, shall comply with the following Set –Aside requirements:

(1) set aside at least twenty-five per cent (25%) of the total value of the state's financial assistance for such contract for award to subcontractors who are small contractors, and

(2) of that portion to be set aside in accordance with Subparagraph (1). Of this subdivision, reserve a portion equivalent to twenty-five per cent (25%) of the total value of the contract or portion thereof to be set aside for awards to subcontractors who are minority business enterprises.

(e) Failure of the Construction Manager or subcontractor to comply with the State of Connecticut Set-Aside requirements shall be a material breach of this Contract.

**14.19. DISCRIMINATORY PRACTICES.** In performing this Contract, the Construction Manager shall not discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, sex, age, religious creed, disability, national origin or ancestry, marital status, family status, prior psychiatric treatment, health care, military status or source of income or because of a handicap that is unrelated to the employee's or the applicant's ability to perform the duties of a particular job or position. Subcontracts with each subcontractor shall contain a provision requiring nondiscrimination in employment as herein specified. This covenant is required pursuant to §93.04 of the Code of Ordinances of the City and any breach thereof may be regarded as a material breach of this Contract. Said provisions with subcontractors shall require conformity and compliance with all local, state and federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements.

**14.19.1 Discrimination Because of Certain Labor Matters.** No person employed on the work covered by this Contract shall be discharged or in any way discriminated against because such person has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or related to the labor standards applicable hereunder to its employer.

**14.19.2 Equal Opportunity.** In its execution of the performance of this Contract, the Construction Manager shall not discriminate and shall comply with Applicable Laws prohibiting discrimination on the grounds of race, color, religion, sex, national origin or citizenship status, age or handicap. The Construction Manager agrees to comply with all local, state and federal laws, rules and regulations and Executive orders pertaining to discrimination and equal opportunity requirements, and will require the same of all subcontractors.

14.19.3            **Affirmative Action.**

**Pursuant to CONN. GEN. STAT. § 4a-60, as amended by June 2015 Special Session Public Act 15-5, the following are required for every Municipal Public Works Contract:**

(a) Every contract to which an awarding agency is a party, every quasi-public agency project contract and every municipal public works contract shall contain the following provisions:

(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, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and 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, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved;

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

(3) The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission 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;

(4) The contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, as amended by this act, 46a-68e, 46a-68f and 46a-86; and

(5) The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and

permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56, as amended by this act.

(b) If the contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency project.

**Pursuant to CONN. GEN. STAT. § 4a-60a, as amended by June 2015 Special Session Public Act 15-5, the following are required for every Municipal Public Works Contract:**

(c) Every contract to which an awarding agency is a party, every contract for a quasi-public agency project and every municipal public works contract shall contain the following provisions:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) The contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) The contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56; and

(4) The contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.

**14.20. CONFORMANCE WITH AN ORDINANCE CONCERNING THE HIRING OF WATERBURY RESIDENTS ON CERTAIN PUBLICLY FUNDED CONSTRUCTION PROJECTS.**

14.20.1 The Contractors and its Subcontractors shall comply with the specific requirements of "An Ordinance Concerning the Hiring of Waterbury Residents on Certain Publicly-Funded Construction Projects" (the "Good Jobs Ordinance"), as may be amended from time to time and as set forth in Chapter 34 of the Code of Ordinances of the City. While the principal provisions of the ordinance are summarized as set forth in paragraphs C-H below, the Construction Manager does hereby acknowledge that it has reviewed a copy of the Good Jobs Ordinance and that it has read the Ordinance and that Construction Manager is familiar with the obligations imposed on the Construction Manager and each Subcontractor by the Good Jobs Ordinance.

14.20.2 Failure of the Construction Manager or its Subcontractors to comply with the Good Jobs Ordinance shall be a material breach of this Agreement.

14.20.3 This paragraph shall apply to a Covered Project, as that term is defined in the Good Jobs Ordinance, in the City with a value of \$500,000.00 or greater and only to the extent permitted by federal and state law.

14.20.4 **Definitions.** For purposes of this paragraph 14.20 only:

- i. "Administrator" shall be defined as it is in the Good Jobs Ordinance.
- ii. "Apprentice" shall be defined as it is in the Good Jobs Ordinance.
- iii. "Basic Skilled Worker" shall be defined as it is in the Good Jobs Ordinance.
- iv. "Construction Manager" shall be defined as "Contractor" in this paragraph 14.20.
- iv. "Contractor" shall be defined as it is in the Good Jobs Ordinance.
- v. "Covered Project" shall be defined as it is in the Good Jobs Ordinance.
- vi. "Hiring Goal" shall be defined as it is in the Good Jobs Ordinance.
- vii. "Resident" shall be defined as it is in the Good Jobs Ordinance.
- viii. "Subcontractor" shall be defined as it is in the Good Jobs Ordinance and shall include the Contractor's direct subcontractor providing construction work and all lower tiered (level) providers of construction work.

14.20.5 **Hiring Goals.** If this Agreement requires the Contractor to perform work on a Covered Project, the Contractor and each Subcontractor shall have as its hiring goals:

(a) at least thirty percent (30%) of its total worker hours performed by City Residents, and

(b) at least twenty-five percent (25%) of construction trade jobs shall go to Apprentices and/or Basic Skilled Workers, and



(c) at least seventy percent (70%) of all “new hires” (as that term is defined in the Good Jobs Ordinance) shall be “economically disadvantaged” individuals (as that term is defined in the Good Jobs Ordinance), and

(d) a minimum of five percent (5%) of the construction workforce labor hours will be local resident, minority artisans, and

(e) a minimum of five percent (5%) of the construction workforce labor hours will be women, and

(f) a minimum of ten percent (10%) of the total work hours shall be allocated for minorities, or

(g) as may otherwise be required by any superseding Federal or State employment discrimination prohibition laws.

14.20.6 **Good Faith Efforts.** The Contractor and each Subcontractor shall engage in Good Faith Efforts to comply with the Hiring Goals. For the purposes of this paragraph, the term “Good Faith Efforts” shall have the same meaning as it does in the Good Jobs Ordinance.

The Contractor and each Subcontractor shall individually implement Good Faith efforts to satisfy the Hiring Goals.

14.20.7 **Action Plan and Pre-Construction Meeting.** Not later than fourteen (14) business days prior to the scheduled commencement date for construction, the Contractor shall submit a written plan-of-action to the City and to the Administrator of the Good Jobs Ordinance defining how the Contractor, and each Subcontractor, shall implement Good Faith Efforts to fulfill the Hiring Goals. Each plan-of-action shall include the anticipated number of job positions required for the Work. Not later than five (5) business day prior to the commencement date of construction, the Contractor must attend a mandatory “pre-construction” meeting with the City to review all plans-of-action and other relevant materials. No construction work shall proceed absent this pre-construction meeting.

14.20.8 **Other Contractor Obligations.** In addition to the foregoing, the Contractor shall ensure that all Subcontractor contracts and agreements expressly set forth and state as binding obligations therein, subject to appropriate party name change, the above Hiring Goals and Good Faith Efforts. The Contractor shall be accountable for, and liable to the City for, Contractor and each Subcontractor's compliance with Hiring Goals and Good Faith efforts.

(a) The Contractor shall meet with the Administrator no less than four (4) weeks prior to the commencement of construction on a Covered Project and provide the Administrator with the number of job positions to be created by the project by trade and the qualifications by job tile.

(b) The Contractor shall be required to produce Contractor and Subcontractor documentation that may be required under the provisions of the Good Jobs Ordinance or that the City or the Administrator reasonably believes will assist the City or the Administrator with their evaluation of Hiring Goals and Good Faith Efforts.

(c) The Contractor shall deliver weekly certified payroll records to the City within five (5) working days of the end of each payroll period. Moreover, the Contractor shall require each Subcontractor to create weekly certified payroll records.

(d) The Contractor's and each Subcontractor's payroll records shall include the person-hours, the residential address, race, gender, hiring date, and apprentice (job) classification of all personnel employed under this Agreement and all Contracts and Sub-Contracts thereunder. The Contractor and each Subcontractor shall mark their respective final payroll period records as being final and be signed by an authorized officer or employee.

#### **14.21. LIQUIDATED DAMAGES APPLICABLE TO SECTION 14.20.**

14.21.1 If the City finds that the Construction Manager, or a Subcontractor, has failed to achieve Hiring Goals during any five (5) day work period (Monday through Friday), the City shall:

(a) issue a written notice to the Construction Manager specifying the matters constituting such failure and the time period within which Good Faith Efforts documentation must be delivered to the City for its evaluation.

(b) if the Good Faith documentation is not provided or, if provided, it fails to demonstrate compliance with Good Faith Efforts, the Construction Manager shall, for each failure by the Construction Manager or a Subcontractor to achieve the Hiring Goals during a full five day work period, pay to the City one thousand dollars (\$1,000.00) as liquidated damages.

14.21.2 If the City finds that the Construction Manager, or a Subcontractor, has failed to deliver weekly certified payroll records to the City within five (5) working days of the end of each payroll period the Construction Manager shall, as liquidated damages pay one thousand dollars (\$1,000.00) to the City for each week of ongoing violation.

14.21.3 The City shall provide the Construction Manager with an invoice identifying all sums due the City, as liquidated damages, as a result of the Construction Manager or a Subcontractor's failure to comply with the Good Jobs Ordinance as set forth above.

14.21.4 No portion of any invoice submitted by a Construction Manager that is subject to liquidated damages shall be paid by the City until such time as all liquidated damages relating to that invoice have been paid to the City.

14.21.5 The foregoing liquidated damages provisions shall be expressly set forth, subject to appropriate party name adjustments, as material provisions in all Contracts that the Construction Manager has with Subcontractors and the Construction Manager is obligated hereunder to enforce compliance in such Contracts with Subcontractors.

14.21.6 Any payment of liquidated damages hereunder shall not preclude a later claim, or any later finding of a breach, or any payment of additional damages related to such later claim.

#### **14.22. OWNERSHIP AND USE OF DOCUMENTS.**

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to Construction Manager, are for use solely with respect to this Project. They are not to be used by Construction Manager, Trade Contractors, 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 City and Architect. Construction Manager, Trade Contractors, 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 the Work under the Contract Documents.

All of the Services and resultant Work Products of Construction Manager are instruments of service to the City in support of this Project. All Work Products are confidential and shall be used for no purposes other than their expressed purpose in this Project. "Work Product" shall be defined as all project-specific documents, correspondence, reports, models, literature, methods, processes, photographs, plans, sketches, specifications or drawings that are prepared, conceived, developed, created or obtained by Construction Manager in connection with the performance of the Work, but excluding Construction Manager general business practices. All Work Products are the exclusive property of the City. Construction Manager may retain one copy of all Work Product for record purposes.

#### **14.23. REPRESENTATIONS OF CONSTRUCTION MANAGER.**

Construction Manager hereby represents and warrants to the City the following:

14.23.1 that Construction Manager is able to furnish any of the plant, tools, materials, supplies, equipment, key personnel and labor required to complete the services required hereunder and perform all of its obligations hereunder and has sufficient experience and competence to do so;

14.23.2 that Construction Manager is authorized to do business in Connecticut and properly licensed by all necessary governmental and public and quasi-

public authorities having jurisdiction over it and the services required hereunder and the Project itself;

14.23.3 that Construction Manager execution of this Agreement and its performance thereof is within its duly authorized powers; and

14.23.4 that Construction Manager duly Authorized Representative has visited or will visit the Project Site and generally familiarized himself with the local conditions under which the services required hereunder are to be performed and correlated his observations with the Contract Documents.

Construction Manager agrees said representations and warranties in this sub-paragraph 14.23 shall survive the execution and delivery of this Agreement.

#### **14.24. RECIPROCAL PROVISIONS WITH CONSTRUCTION MANAGER'S CONSULTANTS, TRADE CONTRACTORS AND SUBCONTRACTORS.**

Construction Manager shall obtain the consent of each of its Consultants and Trade Contractors and Subcontractors to the terms of Article 14 as a pre-condition to payment under this Agreement and shall include similar provisions in agreements with Construction Manager's Consultants obligating them to comply with Article 14.

**14.25** Wherever a Party's review, consent, acceptance or approval is required, it shall not be unreasonably withheld, delayed or conditioned.

**14.26 ATTACHMENTS.** A summary of the attachments to this Agreement is as follows:

**Attachment 1** – Architect's Consultants (to be provided prior to execution of this Agreement)

**Attachment 2** – General Conditions of the Contract

**Attachment 3** – Proposed GMP Exhibits and Form of GMP Amendment (to be provided prior to execution of this Agreement)

**Attachment 4** – Waiver Forms (to be provided prior to execution of this Agreement)

**Attachment 5** – Construction Manager's Pre-Construction Staffing Matrix, Construction Phase Staffing Matrix, and Schedule of Reimbursables

**Attachment 6** – Preliminary Schedule and Date for Substantial Completion

**Attachment 7** – Historical Documents (to be provided prior to execution of this Agreement)

**Attachment 8** – Construction Manager’s Certificates of Insurance (to be provided prior to execution of this Agreement)

**Attachment 9** – State of Connecticut Department of Administrative Service Change Order Requirements (to be provided prior to execution of this Agreement)

**Attachment 10** – State of Connecticut Department of Labor Wage and Workplace Standards

*[Remainder of Page Intentionally left Blank; Signature Page to Follow]*

**IN WITNESS WHEREOF**, the parties hereto execute this Agreement on the dates signed below.

WITNESS:

CITY OF WATERBURY

\_\_\_\_\_  
\_\_\_\_\_

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

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

Approved as to Form and Correctness:  
Corporation Counsel

\_\_\_\_\_  
Corporation Counsel

WITNESS:

[CONSTRUCTION MANAGER]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Its \_\_\_\_\_

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

*[Signature Page to Agreement Between City of Waterbury and ]*

**ATTACHMENT 1**  
**ARCHITECT'S CONSULTANTS**

**(To be provided prior to execution of this Agreement)**

**ATTACHMENT 2**  
**GENERAL CONDITIONS OF THE CONTRACT**



**ATTACHMENT 2**  
**GENERAL CONDITIONS OF THE CONTRACT**

**ATTACHMENT 2**  
**GENERAL CONDITIONS OF THE AGREEMENT**  
**BETWEEN**  
**THE CITY OF WATERBURY, CONNECTICUT (“CITY”)**  
**AND**  
**NEWFIELD CONSTRUCTION GROUP, LLC**  
**FOR**  
**CONSTRUCTION MANAGER AT RISK SERVICES**  
**WITH**  
**GUARANTEED MAXIMUM PRICE**  
**FOR THE WENDELL L. CROSS PRE-K TO 8<sup>TH</sup> GRADE SCHOOL**  
**CONSTRUCTION PROJECT**

**ARTICLE 1**  
**GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS.**

See Paragraph 1.2 of the Agreement between the City of Waterbury Connecticut (“City”) and Newfield Construction Group (“Construction Manager”) for Construction Management Services for the Wendell L. Cross Pre-K to 8<sup>th</sup> Grade School Construction Project (the “Agreement” or the “Contract”).

**1.2 EXECUTION, CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS.**

1.2.1 The execution of the Agreement by Construction Manager is a representation that Construction Manager has inspected the site as required under Paragraph 2.5 of the Agreement, become thoroughly familiar with the specific local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. No additional compensation will be allowed by reason of any difficulties which Construction Manager performing the Work could have reasonably discovered or anticipated in accordance with its due diligence obligation under the Agreement and these General Conditions.

1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of all Work by Construction Manager. The Contract Documents are complementary and what is required by one shall be as binding as if required by

## 5.21.2019 Final General Conditions

all. The words “include”, “includes”, and “including”, as used in the Contract Documents, shall be deemed to be followed by the phrase “without limitation”. Performance by Construction Manager shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to construct the Project.

1.2.3 In the event of conflicts or discrepancies within or among any of the Contract Documents, except Construction Manager’s Agreement with the City, Construction Manager shall request that the Architect resolve the conflict. The Architect shall notify the City and instruct Construction Manager of such resolution and the action to be taken. The Architect’s resolution and direction shall be based on the Architect’s intent and shall be reasonably inferable from the Contract Documents. Where a conflict within the Contract Documents exists, Construction Manager shall provide the better quality or greater quantity of Work in accordance with the Architect’s resolution without any increase in the Contract Sum. In the event of conflicts or discrepancies between Construction Manager’s Agreement with the City and any of the other Contract Documents, the Agreement shall take precedence including over these General Conditions.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Sections of Division I - General Requirements, upon mutual agreement of Construction Manager and each Architect, shall govern the execution of all sections of the Specifications.

1.2.5 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.

### **1.3 OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATION AND OTHER DOCUMENTS.**

1.3.1 The Drawings, Specifications and other documents prepared by the Architect are the property of the City, and are provided to Construction Manager solely as instruments through which the Work to be executed by Construction Manager is described. Neither Construction Manager nor any Subcontractor, Sub-subcontractor, material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect.

1.3.2 The Drawings, Specifications and other documents, and copies thereof, prepared by the Architect or furnished by the City and provided to Construction Manager, are for use solely with respect to this Project. They are not to be used by Construction Manager or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the City. Construction Manager, Subcontractors, sub-subcontractors and material or equipment 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. All copies made under this license shall bear the statutory copyright notice if shown on the Drawings, Specifications and other

documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of copyright or other reserved rights.

1.3.3 Upon completion of the Work, Construction Manager may retain one record set of documents. All other copies shall be returned, or suitably accounted for, to the City.

#### **1.4 CAPITALIZATION.**

The Terms capitalized in these General Conditions include those which are (1) specifically defined herein or elsewhere in the Contract Documents; or, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document.

#### **1.5 INTERPRETATION.**

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

#### **1.6 CONFIDENTIALITY.**

Construction Manager covenants that all information communicated or disclosed to it in connection with the Work or the Project shall be deemed confidential and shall not be communicated or disclosed to any third party without prior written consent of the City, or as may be required to perform the Work, or by any Applicable Law.

### **ARTICLE 2 THE CITY AS OWNER**

#### **2.1 DEFINITION.**

2.1.1 The City is the party identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “City” means the Owner or the City’s authorized representative and includes its officers, employees, or anyone acting for or on its behalf.

#### **2.2 CITY-FURNISHED INFORMATION.**

2.2.1 The City will furnish surveys in its possession and control which the City believes to describe the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. However, the City does not warrant the accuracy or completeness of such surveys and is providing such material solely for the purpose of furnishing Construction Manager with the same information that the City has. In no event will the City be liable to Construction Manager for any inaccuracies in the surveys.

2.2.2 Information or services under the City’s control shall be furnished by the City with reasonable promptness.

## 5.21.2019 Final General Conditions

2.2.3 Unless otherwise provided in the Contract Documents, Construction Manager will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.2.4 The foregoing are in addition to other duties and responsibilities of the City enumerated herein.

2.2.5 The City and the Architect will communicate with suppliers and subcontractors only through Construction Manager.

### **2.3 CITY'S RIGHT TO STOP THE WORK.**

2.3.1 If Construction Manager fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails to carry out Work in accordance with the Contract Documents, the City, by written order, may direct Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Construction Manager or any other person or entity.

### **2.4 CITY'S RIGHT TO CARRY OUT THE WORK.**

2.4.1 If Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Construction Manager the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to the City.

### **2.5 CITY'S RIGHT TO AUDIT.**

2.5.1 The City reserves the right to audit the Construction Manager's books of account in relation to these General Conditions including those as set forth in paragraph 9.3 any time during the period of these General Conditions or at any time during the twelve month period immediately following the closing or termination of these General Conditions. In the event the City elects to make such an audit, the Construction Manager shall immediately make available to the City all records pertaining to these General Conditions, including, but not limited to, payroll records, bank statements and canceled checks.

**ARTICLE 3**  
**THE CONSTRUCTION MANAGER AT RISK**

**3.1 GENERAL.**

3.1.1 The Construction Manager or the CMAR is the party identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "CMAR" means CMAR's authorized representative.

3.1.2 Construction Manager shall perform the Work in accordance with the Contract Documents, consistent with good and sound practices of the construction industry and all Applicable Laws.

3.1.3 Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons.

**3.2 REVIEW OF DOCUMENTS AND PROJECT SITE.**

See, Section 2.5 of the Agreement.

**3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.**

3.3.1 Construction Manager shall supervise and direct the Work, using Construction Manager's best skill and attention. Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.

3.3.2 Construction Manager shall be responsible to the City for acts and omissions of Construction Manager's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Construction Manager or its Subcontractors.

3.3.3 Nothing contained in the Contract Documents shall be interpreted to compel or require Construction Manager to employ construction means, methods, techniques, sequences or procedures to which Construction Manager has objection. Where the Contract Documents refer to a particular construction means, methods, techniques, sequences or procedures, or indicate or imply that such are to be used on the Work, such mention is intended only to indicate that the operations of Construction Manager shall produce at least the quality of work implied by the operations described. The actual determination of the suitability of an application, technique or situation shall remain the responsibility of Construction Manager. Work which is not in accordance with the Contract Documents as a result of, or arising out of the employment of any construction methods, means, technique, sequence or procedure, shall be corrected, and the cost borne by Construction Manager, as required by Paragraph 12.2.

3.3.4 Construction Manager shall attend job meetings with the City, WDC, the Architect and such other persons as the City may from time to time wish to have present.

Construction Manager shall be represented by the project executive, project manager, project superintendent, or other authorized representative. If the presence of any Subcontractor or sub-subcontractor is requested by the City, their authorized representatives shall also attend such meetings. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, Change Orders, time schedules and manpower. Any notices required or provided for under the provisions of the Contract Documents shall be deemed to have been properly served if delivered in writing to such representatives at such meetings.

3.3.5 Construction Manager shall inspect portions of Work already performed, under the Agreement, to determine that such portions are in proper condition to receive subsequent Work.

### **3.4 LABOR AND MATERIALS.**

3.4.1 Unless otherwise provided in the Contract Documents, Construction Manager shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 Construction Manager shall enforce strict discipline and good order among Construction Manager's employees and other persons or entities carrying out the Agreement. Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.3 Construction Manager may offer substitutions as provided in the Contract Documents. Substitutions may only be made with the consent of the City, after evaluation and recommendation by the Architect, and in accordance with a Change Order.

### **3.5 WARRANTY.**

3.5.1 Construction Manager warrants to the City that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective, and will be repaired or replaced by Construction Manager as set forth in Paragraph 12.2. Construction Manager's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Construction Manager, improper or insufficient maintenance, improper operation, or normal wear and tear and usage. If required by the City, Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 CMAR shall procure and assign to the City at the time of completion of the Work any and all manufacturer or supplier warranties relating to any materials and labor used in the Work and, at the request of the City, shall agree to enforce any such warranties. In the event the manufacturer or supplier fails to honor its warranty obligations, then Construction Manager shall

indemnify and hold the City harmless from any additional costs and expenses in excess of the Guaranteed Maximum Price incurred thereby.

### **3.6 TAXES.**

3.6.1 In the event that the tax on materials, supplies or services may be exempted by regulations of the Department of Revenue Services of the State of Connecticut, such tax shall not be included as part of the bid or the Guaranteed Maximum Price.

3.6.2 Construction Manager shall pay sales, consumer, use and similar taxes not exempted by the Department of Revenue Service for the Work or portions thereof, which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **3.7 PERMITS, FEES AND NOTICES.**

3.7.1 Unless otherwise provided in the Contract Documents, Construction Manager shall secure and pay for the building permit and other permits, including demolitions permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work (the "Permits") which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded, in accordance with paragraph 2.1.4 of the Agreement. Before commencing work, CMAR shall submit copies of the Permits to the City.

3.7.2 Construction Manager shall comply with and give notices required by laws, ordinances, rules, regulations, permits, authorizations and lawful orders of public authorities bearing on performance of the Work.

3.7.3 In the event Construction Manager observes that portions of the Contract Documents are at variance with Applicable Laws, Construction Manager shall promptly notify the City in writing, and necessary changes shall be accomplished using the processes and protocols contained in the Contract Documents.

3.7.4 If Construction Manager performs Work knowing it to be contrary to Applicable Laws without such notice to the City, Construction Manager shall assume full responsibility for such Work and shall bear all costs of altering such Work to be in accordance with Applicable Laws.

### **3.8 ALLOWANCES.**

3.8.1 Construction Manager shall include in the Guaranteed Maximum Price all allowances stated in the Contract Documents, Items covered by allowances shall be supplied for such amounts and by such persons or entities as the City may direct, but Construction Manager shall not be required to retain the services of persons or entities against which Construction Manager makes reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:



## 5.21.2019 Final General Conditions

- a. Materials and equipment under an allowance shall be selected promptly by the City to avoid delay in the Work;
- b. Allowances shall cover the cost to Construction Manager of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- c. CMAR's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Guaranteed Maximum Price and not in the allowances;
- d. Whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order in accordance with the Agreement. The amount of the Change Order shall reflect the difference between actual costs and the allowances.

### **3.9 SUPERINTENDENT.**

3.9.1 Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent Construction Manager, and communications given to the superintendent shall be as binding as if given to Construction Manager. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### **3.10 CMAR'S CONSTRUCTION SCHEDULES.**

3.10.1 Construction Manager, promptly after being awarded the Agreement, shall prepare and submit for the City's information a construction schedule for the Work as set forth in the Agreement.

3.10.2 Construction Manager shall prepare and keep current a schedule of submittals which is coordinated with Construction Manager's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 Construction Manager shall conform to the most recent schedules which have been accepted by the City and as provided for in the Agreement.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE.**

3.11.1 Construction Manager shall maintain at the site for the City one record copy of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order, up to date, and marked to record changes and selections made during construction and any other materials as provided for in the Agreement. Additionally, Construction Manager shall maintain record copies of approved Shop Drawings, Product Data, Samples and similar required submittals. They shall be available to the City at any time during the progress of the Work, and shall be delivered to the City upon completion of the Work.

### **3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.**

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

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

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

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the City is subject to the time allotments of Section 4.

3.12.5 Construction Manager shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by Construction Manager which are not required by the Contract Documents may be returned without action.

3.12.6 Construction Manager shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Construction Manager represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 Construction Manager shall not be relieved of responsibility for:

a. Deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless Construction Manager has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation.

b. Errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 No substitution shall be considered unless it is in the best interest of the City, and any cost savings from the price of the specified material or product shall accrue entirely to the City. Construction Manager shall bear sole responsibility for coordination of substitute materials and products with all other aspects of the Work and Construction Manager shall bear sole responsibility for any and all difficulties, additional costs, and delays resulting from such substitution.

3.12.10 Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals.

3.12.11 Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

3.12.12 When professional calculations or certification of the performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

### **3.13 USE OF SITE.**

3.13.1 Construction Manager shall confine operations at the site to areas within the Project Site and permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment.

3.13.2 Construction Manager shall produce a site mobilization plan for review and approval by the City before beginning operations on site. The plan shall indicate pertinent dates and times, logistics, traffic flow, environmental protection, and compliance with the General Requirements to a level of detail commensurate with the complexity of the construction and the sensitivity of the City's ongoing activities on site.

3.13.3 Neither Construction Manager nor any subcontractor shall erect any sign on the Project site without the prior written consent of the City.

3.13.4 Construction Manager shall not permit any workers to use any existing facilities at the Project site, including without limitation lavatories, toilets, entrances and parking areas, other than those designated by the City in writing for use by Construction Manager.

3.13.5 Construction Manager shall at all times so conduct the Work as to ensure the least possible obstruction to traffic and inconvenience to the general public and residences and businesses in the vicinity of the work and to ensure the protection of persons and property. Construction Manager shall familiarize itself with all traffic regulations and limitations and shall comply with the requests of all government authorities and the City regarding the use and operation of motor vehicles and other equipment are operated and other such matters. No road or street shall be closed to the public except by the permission of the authorities having jurisdiction. Fire hydrants adjacent to the Work shall be kept accessible for firefighting equipment at all times. Temporary provisions shall be made by Construction Manager to ensure the use of sidewalks and the proper function of all gutters, sewers, inlets, and drainage ditches.

### **3.14 CUTTING AND PATCHING.**

3.14.1 Construction Manager shall be responsible for any cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 Construction Manager shall not damage or endanger any portion of the Work or fully or partially completed construction of the City or separate sub-contractors or sub-sub-contractors by cutting, patching or otherwise altering such construction, or by excavation. Construction Manager shall not cut or otherwise alter such construction by the City or a separate CMAR except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. Construction Manager shall not unreasonably withhold from the City or a separate contractor Construction Manager's consent to cutting or otherwise altering the Work.

### **3.15 CLEANING UP.**

3.15.1 Construction Manager shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. The Project area shall be cleaned, and waste shall be removed on a daily basis and disposed of in a lawful manner. Burning or burying trash or debris on site is prohibited. At completion of the Work, Construction Manager shall remove from and about the Project, surplus and waste materials, rubbish, Construction Manager's tools, construction equipment, and machinery.

3.15.2 If Construction Manager fails to clean up as provided in the Contract Documents, the City may do so and the cost thereof shall be charged to Construction Manager.

### **3.16 ACCESS TO WORK.**

3.16.1 Construction Manager shall provide the City access to the Work in preparation and progress wherever located.

3.16.2 The City shall have access to the premises at all times for inspections and for occupancy preparations.

### **3.17 ROYALTIES AND PATENTS.**

3.17.1 Construction Manager shall pay all royalties and license fees necessary for the construction of the Work. Construction Manager shall defend suits or claims for infringement of patent rights and shall hold the City harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Construction Manager has reason to believe that the required design, process or product is an infringement of a patent, Construction Manager shall be responsible for such loss unless such information is promptly furnished to the City.

### **3.18 INDEMNIFICATION.**

See Article 12 of the Agreement.

### **3.19 WAIVER OF BOND CLAIM RIGHTS.**

In accordance with Article 6 of the Agreement, to the extent permitted by law, by execution of the Agreement, Construction Manager expressly and completely waives, releases and relinquishes any and all bond claim rights it may have under any applicable statute or law arising out of, resulting from, or relating to any Work performed or to be performed under this Agreement, except as such rights arise solely from the failure of the City to make payment, in accordance with the Contract Documents, of amounts to which Construction Manager's right of payment has been established. CMAR shall include this same provision in any contract or purchase order that CMAR enters with any subcontractor or supplier. Notwithstanding the aforementioned, in the event of any such bond claim, lien or encumbrances filed, CMAR and its surety agree to protect, indemnify and hold harmless the City therefrom; to cause any bond claim, lien or other encumbrance to be immediately removed by posting an appropriate bond or other procedure permitted by law at their own cost and expense (including attorney's fees); to defend all proceedings or suits to establish such bond claim, liens or other encumbrances; and to pay any which are established. Notwithstanding the foregoing, the City reserves the right to settle any disputed bond claim or mechanics or material liens by payment to the claimant or by such other means as the City, in the City's sole discretion, determines is the most economical or advantageous method in the best interest of the City and the Project. Construction Manager shall promptly reimburse the City, upon demand, for any payments so made and shall be barred from disputing the reasonableness of the City's actions in making such payment.

### **3.20 SAFETY PRECAUTIONS AND PROGRAMS.**

3.20.1 Construction Manager shall be fully responsible for providing all of its employees, subcontractors, and invitees, and all other authorized visitors to the site including Architect and City representatives with a safe place for the performance and observation of the Work. The City assumes no responsibility or liability for the physical condition or safety at the Project Site or any improvements located on the Project Site

3.20.2 Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Construction Manager shall carefully inspect the site to identify safety hazards. Prior to, and as a condition of mobilization on site, Construction Manager shall submit a Safety Plan to the City consisting of no less than the following information:

- a. Material Safety Data Sheets for all potentially harmful substances in accordance with Article 10 of these General Conditions.
- b. A list of CMAR, Architect, Subcontractors, City's Project Representatives and City personnel to be notified in the event of an emergency.
- c. A list of Construction Manager's personnel to be notified by the City in the event of an emergency during "off" hours.
- d. Evacuation plans.
- e. Emergency medical procedures.

- f. Locations of emergency medical equipment.

Construction Manager shall require its Subcontractors to comply with this provision and shall include such requirement in their sub-contracts.

### **3.21 SECURITY AND SAFETY OF PERSONS AND PROPERTY.**

3.21.1 Construction Manager shall secure the Project Site, and be responsible for security and protection within the Project Site, unless specifically provided otherwise in the Contract Documents. Construction Manager shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a. Employees on the Work and other persons who may be affected thereby.
- b. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of Construction Manager or Construction Manager's Subcontractors or sub-subcontractors.
- c. Other property at the site or adjacent thereto including adjoining private or municipal property, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- d. Property of the City, employees of the City, tenants or authorized visitors to the property located within areas of the property within which Construction Manager is performing work. Therefore, the Construction Manager will upon mobilization install a minimum of 3 site surveillance cameras at locations chosen by the Owner to record 24/7. This video will be web accessible for live streaming and recorded footage. These will be relocated as the construction advances and as directed by the Owner.

3.21.2 Construction Manager shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Construction Manager shall comply with the requirements of the Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969, as amended, including all standards and regulations which have been promulgated by the governmental authorities which administer such Acts, and enforce compliance with such regulations by Subcontractors their agents, employees, material men, and subcontractors.

- a. Construction Manager shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its own actions or by those of agents, employees, materialmen or subcontractors in any tier, or by reason of failure of any such party or entity to comply with lawfully enforced requirements, standards or regulations regarding life, health, or safety.
- b. Construction Manager shall indemnify the City and City's Project Representative, and save them harmless from any and all losses, cost and expenses, including fines and reasonable attorney's fees incurred by the City, by reason of real or

## 5.21.2019 Final General Conditions

alleged violation of such laws, ordinances, regulations and directives, federal, state and local, which are currently in effect, by Construction Manager, its Subcontractors or materialmen.

c. Construction Manager shall take prompt action to correct any hazardous conditions reported.

3.21.3 Construction Manager shall erect and maintain, as required by existing conditions and performance of the Agreement, reasonable safeguards for safety and protection, including installation of fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Construction Manager shall maintain the Work, materials and apparatus free from injury or damage from rain, wind, storms, frost, heat and other detrimental environmental conditions.

3.21.4 The use or storage of explosives on the City's premises is prohibited. When hazardous materials or equipment or unusual construction methods are necessary for prosecution of the work, Construction Manager should give the City reasonable advance notice and shall thereafter exercise the highest standard of care in performing such Work under the supervision of properly qualified personnel.

3.21.5 Construction Manager shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents to the extent of proceeds actually paid) to property as referred to in Clause 3.21.1 caused in whole or in part by Construction Manager, its Subcontractor(s) or Sub-subcontractor(s) or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Construction Manager may be responsible notwithstanding the fact that a portion of the damage or loss may be attributable to acts or omissions of the Owner or Architect. The foregoing obligations of Construction Manager are in addition to Construction Manager's obligations under the indemnification provisions of this Agreement.

3.21.6 Construction Manager shall designate a responsible member of Construction Manager's organization at the site whose duty shall be the prevention of accidents. This person shall be Construction Manager's superintendent unless otherwise designated by Construction Manager in writing to the City and Architect.

3.21.7 Construction Manager must promptly report in writing all accidents whatsoever arising out of, or in connection with, the performance of the Work whether on, or adjacent to the Project Site, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be immediately reported by telephone or messenger to the City. Subject to the confidentiality requirements of this Agreement, Construction Manager shall also file such reports and provide such other notices as required by its insurance carrier or other authorities under any applicable law or regulation.

3.21.8 Construction Manager shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

3.21.9 Construction Manager shall at all times supply all protective equipment (protective clothing, safety classes, hard hats, etc.) to all employees and any other individuals entering any work area including the City, WDC, Architect, and authorized visitors.

### **3.22 EMERGENCIES.**

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

3.22.2 In an emergency affecting safety of persons or property and in which Construction Manager does not act or is not able to act promptly, the City may act, at the City's discretion and without prior written notice to Construction Manager, to prevent or mitigate threatened damage, injury or loss. The City shall promptly give notice of such action to Construction Manager and to the Architect. If the Architect determines, on the basis of his investigations upon receipt of such notice from the City, that the proximate cause of the City's intervention lies in an act or failure to act by Construction Manager under the Contract, costs incurred by the City in acting to prevent damage, injury or less shall be deducted by Change Order from the Compensation as provided for in Article 5 and 6 of the Agreement and from payments then or thereafter due to Construction Manager.

3.22.3 The provisions of Paragraph 3.22.2 are intended for the sole benefit of the City, in providing a right to act in its perceived best interest. Nothing in said Paragraph shall be construed as giving rise to or creating any duty on the part of the City to supervise construction; to assume responsibility for any construction means, methods, techniques or sequences; or to provide a safe place for work for Construction Manager, its employees, agents, suppliers, subcontractors or sub-subcontractors.

### **3.23 REPAIR OF DAMAGES.**

3.23.1 In addition to its other obligations under this Article 3, Construction Manager shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs, and other property of the City or third parties, including utilities and municipalities, resulting from the performance of the Work.

## **ARTICLE 4 ADMINISTRATION OF THE AGREEMENT**

### **4.1 ARCHITECT.**

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in Section 1.2.4 of the Contract and is referred to throughout the Agreement as if singular in number. The term "Architect" means the Architect, the Architect's authorized representative, and consultants and subcontractors hired by the Architect.



4.1.2 The duties, obligations, and responsibilities of Construction Manager shall not be changed, altered, discharged, released, or satisfied by any duty, obligation, or responsibility of the Architect.

#### **4.2 ADMINISTRATION OF THE AGREEMENT.**

4.2.1 Construction Manager will provide administration of the Project as described in the Contract Documents. Construction Manager will advise and consult with the City and will have authority to act on behalf of the City only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Agreement.

4.2.2 At the request of Construction Manager, the Architect will visit the site at intervals appropriate to the stage of Construction Manager's operations to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. The City will work with Construction Manager to assure that provisions of the contract with the Architect will facilitate and permit the timely and orderly coordination of such site visits.

4.2.3 Communications among the City, Construction Manager and the Architect shall be direct and shall include the third party whenever their interests are affected. All communications which are material to the Agreement or a potential change to the Agreement shall be in writing, with a copy to the third party. Communications by and with the Architect's consultants shall be through the Architect, unless the Architect is not cooperating with the City and Construction Manager. Communications by and with Subcontractors and material suppliers shall be through Construction Manager.

4.2.4 Based on the Architect's observations and evaluations of the Work, and of Construction Manager's Applications for Payment, the Architect will review and certify the amounts due Construction Manager and will issue Certificates for Payment in such amounts.

4.2.5 The Architect will make recommendations to Construction Manager and City to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require inspection or testing of the Work in accordance with subparagraphs 15.5.2 and 15.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to Construction Manager, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.6 The Architect will review and approve or reject Construction Manager's submittals such as shop drawings, product data and samples with reasonable promptness (as dictated by the request, however, not to exceed an average of fifteen [15] days), in accordance with a standard to be established between the City and the Architect, with the participation of Construction Manager, in order to effectuate such standard. Said standard shall establish an

order of priority pertaining to said submittal review. Once established the Architect will respond in a timely fashion, as agreed upon, after receipt of any submittals, unless otherwise modified by Construction Manager and City, whose approval shall not be unreasonably withheld if such longer period is necessary for the careful review of the information submitted. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Construction Manager as required by the Contract Documents. The Architect's review of Construction Manager's submittals shall not relieve Construction Manager of its obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.7 Construction Manager will prepare Change Orders for changes in the Work. All changes to the Work shall be approved by the City, in its sole discretion, before being effective.

4.2.8 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the City for the City's review and records written warranties and related documents required by the Agreement and assembled by Construction Manager, and will issue a final Certificate for Payment upon Construction Manager's compliance with all requirements of the Contract Documents.

4.2.9 The Architect will interpret and decide matters concerning the requirements of the Construction Documents on written request of either the City or Construction Manager. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2.9 then delay shall not be recognized on account of failure by the Architect to furnish such interpretations except for time extension purposes.

4.2.10 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Document and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both City and CMAR, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

### **4.3 CLAIMS AND DISPUTES.**

4.3.1 Claims and disputes will be resolved in accordance with Article 11 of the Contract.

**ARTICLE 5**  
**SUBCONTRACTORS AND TRADE CONTRACTORS**

**5.1 DEFINITIONS.**

5.1.1 Subcontractor. A Subcontractor or Trade Contractor is a person or entity who has a direct contract with Construction Manager to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. A Trade Contractor as used and referred to in the Agreement is considered a Subcontractor under these General Conditions.

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

**5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.**

5.2.1 The CMAR shall award Contracts and Subcontracts as set forth in Article 3 of the Agreement. The Architect shall, in accordance with the provisions of its agreement with the City, promptly reply to Construction Manager in writing stating whether or not the City or the Architect, after due investigation, has reasonable objection to any such proposed product, person or entity. Failure of the City or Architect to reply promptly shall constitute notice of no reasonable objection. The City's failure to object to, or its approval of any subcontractor, shall not relieve Construction Manager of any responsibility or liability under the Agreement. Construction Manager shall be fully responsible for the acts, errors, omissions, defaults and conduct of all Subcontractors and Sub-subcontractors.

5.2.2 Construction Manager shall not contract with a proposed person or entity to whom the City or Architect has made reasonable and timely objection. Construction Manager shall not be required to contract with anyone to whom Construction Manager has made reasonable objection.

5.2.3 If the City or Architect has reasonable objection to a person or entity proposed by Construction Manager, Construction Manager shall propose another to whom the City or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Guaranteed Maximum Price shall be increased or decreased by the difference in cost, if any, occasioned by such change and an appropriate Change Order shall be issued. Upon request from the City, Construction Manager shall provide copies of the bids or proposals from the subcontractors, to verify the appropriate Change Order amount. However, no increase in the Guaranteed Maximum Price shall be allowed for such change unless Construction Manager has acted promptly and responsively in submitting names as required.

5.2.4 Construction Manager shall not change a Subcontractor, person or entity previously selected if the City or Architect makes reasonable objection to such substitute.

### **5.3 SUB CONTRACTUAL RELATIONS.**

5.3.1 By appropriate agreement written where legally required for validity, Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Construction Manager by the terms of the Contract Documents, and to assume toward Construction Manager all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which Construction Manager, by these Contract Documents, assumes toward the City. Each subcontract agreement shall preserve and protect the rights of the City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Construction Manager that Construction Manager, by the Contract Documents, has against the City. Construction Manager shall require each Subcontractor to enter into similar agreements with sub-subcontractors. If requested by a proposed Subcontractor, Construction Manager shall make available copies of the Contract Documents to which the Subcontractor will be bound, and upon written request by the Subcontractor will identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents, prior to the execution of the subcontract agreement. If requested, Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. All subcontracts shall contain a provision that the City is an intended third party beneficiary of such subcontract.

5.3.2 Construction Manager shall not enter into any subcontract, purchase order, or any other arrangement for any part of the Work with any party or entity related to or affiliated with Construction Manager through family ties, direct or indirect ownership or control, or other financial interest.

5.3.3 No material changes in, additions to, deletions from or modifications of the subcontract will be made without the prior approval of the City.

5.3.4 All subcontracts used for the performance of any portion of the Work shall contain the following provisions:

a. Waiver of all rights by the Subcontractor against the City for damages caused by fire or other risks covered by property insurance furnished under the Contract Documents; and

b. Waiver of all rights by the Subcontractor against the City and other indemnitees resulting in or from or in any way connected with any loss covered, or which should have been covered, by insurance, including the deductible portion thereof, maintained or required to be maintained by Construction Manager or its subcontractor pursuant to the Contract Documents; and

c. The Subcontractor shall furnish such certificates, licenses and waivers as the City may reasonably request; and

d. The Subcontractor will be bound to Construction Manager to the extent of the Work to be performed by the Subcontractor, by the terms of the Contract Documents and shall assume toward Construction Manager all the obligations and responsibilities which Construction Manager had assumed toward the City under the Contract Documents; and

e. The City shall have the right, but not the obligation, to cure any default by Construction Manager under any subcontract which default would give rise to a right of the Subcontractor to terminate the subcontract or to refuse or delay its performance thereunder. The Subcontractor shall expressly agree that it shall not exercise the right to terminate the subcontract for default, or delay performance thereunder, without first giving the City sixty (60) days prior notice in order to cure such defaults as they may then exist.

f. Each subcontract shall terminate upon the termination of the contract by the City for convenience and, in such event, the subcontractor shall be compensated for work actually performed prior to the effective date of termination. No loss of future or anticipatory profit or consequential or special damages shall be recoverable as the result of any such termination for convenience.

#### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**

5.4.1 Each subcontract agreement for a portion of the Work shall be assignable by Construction Manager to the City provided that:

a. Assignment is effective only after termination of the Agreement by the City for cause pursuant to Article 10 of the Agreement and only for those subcontract agreements which the City accepts by notifying the Subcontractor in writing; and

b. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement; and

c. The City will not be obligated to cure any default of Construction Manager under its subcontract.

5.4.2 In the event of a default by Construction Manager and the City's subsequent decision to take assignment of the subject subcontract, the City will be entitled to demand performance by any Subcontractor.

5.4.3 If the Work of the Subcontractor has been suspended for more than 30 days, and if the City accepts assignment of such subcontract after a default by Construction Manager, then the Subcontractor's compensation shall be equitably adjusted for any increase in the cost to perform the Work incurred by the Subcontractor solely as a result of such suspension.

5.4.4 Upon request, Construction Manager shall submit to the City contract forms of the Subcontractors, highlighting specific text that indicates compliance with the requirements of contract assignability.

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

### **6.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.**

6.1.1 The City reserves the right to perform construction or operations related to the Project with the City's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under General Conditions identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If Construction Manager claims that delay or additional cost is involved because of such action by the City, Construction Manager shall make such Claim as provided in Article 11 of the Agreement.

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

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

### **6.2 MUTUAL RESPONSIBILITY.**

6.2.1 Construction Manager shall afford the City and each separate contractor reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate Construction Manager's construction and operations with theirs as required by the Contract Documents. Construction Manager shall allow for this interrelationship in the planning and performance of his work.

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

6.2.3 The City shall be reimbursed by Construction Manager for costs incurred by the City which are payable to a separate contractor because of delays, improperly timed activities, or defective construction of Construction Manager. The City will be responsible to Construction Manager for costs incurred by Construction Manager because of delays, improperly timed activities, or defective construction of a separate contractor. Disputes between the parties shall be decided in accordance with Article 11 of the Agreement.

6.2.4 Construction Manager shall promptly remedy damage wrongfully caused by Construction Manager to completed or partially completed construction or to property of the City or separate contractors as provided herein.

### **6.3 CITY'S RIGHT TO CLEAN UP.**

If a dispute arises among Construction Manager, separate contractors and the City as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the City may perform the cleanup and allocate the cost among those responsible as the Architect determines to be just.

## **ARTICLE 7 CHANGES IN THE WORK**

### **7.1 GENERAL.**

7.1.1 Within fifteen (15) calendar days of receipt of any directive, order or other communication from the City, which Construction Manager considers to be an Out-of-Scope change to the Agreement, having an impact on its costs or compensation or the Project Schedule, Construction Manager shall notify the City of the claimed financial and time impact of said directive, order or communication. Failure of Construction Manager to notify the City within thirty (30) days of receipt of such directive, order or other communication shall constitute an absolute waiver of any and all rights of Construction Manager to any adjustment in compensation or the schedule.

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

7.1.3 A Change Order shall be based upon agreement among the City, Construction Manager and the Architect or as otherwise required by the specific terms of the Agreement; a Construction Change Directive requires agreement by the City and Architect and may or may not be agreed to by Construction Manager; an order for a minor change in the Work may be issued by the Architect with the consent of the City.

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

7.1.5 Any substitutions for specified materials, equipment, or systems proposed by or through Construction Manager shall be effected only upon acceptance and authorization by the Architect and City through the issuance of an Addendum, if prior to award of a Contract or by Change Order after award of a Contract. The approved substitution shall become part of the Contract Documents as if originally incorporated therein. If the substitute material, product, or system results in decreased cost, the savings shall accrue entirely to the City. Unless the substitution proposed by or through Construction Manager is offered to correct a defect in the Architect's documents or otherwise benefit the City without relieving Construction Manager of any obligation under the Contract Documents or otherwise conferring any benefit on Construction Manager, Construction Manager shall be solely responsible for any increased cost or time delay associated with the substitution and related impacts on the Work, and for coordinating and integrating the substitution into the remainder of the Work. A substitution which solely benefits the City without relieving Construction Manager of any obligation under the Contract Documents or otherwise conferring any benefit on Construction Manager shall be treated as a Change in the Work.

7.1.6 No claim by Construction Manager for an equitable adjustment hereunder shall be allowed after Construction Manager's submission of the final application for payment under the Agreement.

7.1.7 A failure to reach an agreement on price relative to any proposed change or claim for an equitable adjustment to the Agreement will not relieve Construction Manager of its obligation to continue at all times the diligent prosecution of the Work, as changed, in accordance with the approved Project Schedule.

## **7.2 CHANGE ORDERS.**

7.2.1 A Change Order is a written amendment to the Agreement, prepared by Construction Manager and signed by Construction Manager, City (in compliance with the applicable ordinances) and Architect, if applicable, stating their agreement upon the following:

- a. The change in the Work;
- b. The amount of the adjustment, if any, in the Guaranteed Maximum Price;
- c. The extent of the adjustment, if any, in the Contract Time; and
- d. The Contract Time.

7.2.2 Methods used in determining adjustments to the Guaranteed Maximum Price may include those listed in Subparagraph 7.3.3.

7.2.3 Construction Manager, by executing a Change Order, waives and forever releases any claim against the City for additional time or compensation beyond that set forth in the Change Order for matters relating to or arising from the Work included within or affected by the executed Change Order.



### **7.3 CONSTRUCTION CHANGE DIRECTIVES.**

7.3.1 A Construction Change Directive (CCD) is a written order prepared by Construction Manager, Architect or City and signed by the City, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Guaranteed Maximum Price or Contract Time, or both.

7.3.2 The City may by CCD, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions. Activities documented as Construction Change Directives shall be summarized as a Change Order on a monthly basis for the purpose of billing. Applications for Payment shall include only fully executed Change Orders.

7.3.3 If the CCD provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. Unit prices stated in the Contract Documents or subsequently agreed upon;
- c. Determine the cost in a manner agreed upon by the parties, or
- d. As provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a CCD, Construction Manager shall promptly proceed with the change in the Work involved and advise the City of Construction Manager's agreement or disagreement with the method, if any, provided in the CCD for determining the proposed adjustment in the Guaranteed Maximum Price or Contract Time.

7.3.5 A CCD signed by Construction Manager indicates the agreement of Construction Manager therewith, including adjustment in Guaranteed Maximum Price and Contract Time or the method for determining them. Construction Manager, by executing the CCD, waives and forever releases any claim against the City for additional time or compensation beyond that set forth in the CCD for matters relating to or arising from the Work included within or affected by the executed CCD. Such agreement shall be effective immediately.

7.3.6 If Construction Manager does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the method and the adjustment shall be determined by the City, subject to dispute by Construction Manager as provided in Paragraph 4.3 herein. The amount of the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Guaranteed Maximum Price, an allowance for overhead and profit in accordance with paragraph 7.5 in such case, and also under Clause 7.3.3, Construction Manager shall keep and present, in such form as the City may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to:

## 5.21.2019 Final General Conditions

- a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or written company personnel policy, and workers, or workmen's compensation insurance;
- b. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- c. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Construction Manager or others. In no event will the rental value of the Construction Manager's own equipment be more than seventy-five percent (75%) of the rates in the current edition of "Rental Rate Blue Book" the Agreement as published by Data Quest Incorporated of San Jose, California, and the total amount charged for such equipment shall not exceed sixty percent (60%) of the fair market value;
- d. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- e. Additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by Construction Manager to the City for a deletion or change which results in a net decrease in the Guaranteed Maximum Price shall be actual net cost. When both additions and credits covering related Work are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 When the City and CMAR agree concerning the adjustments in the Guaranteed Maximum Price and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.3.9 Rules for measurement, where necessary, in connection with any change shall be stipulated in the directive to proceed with the work.

### **7.4 MINOR CHANGES IN THE WORK.**

The City will have authority to order minor changes in the Work not involving adjustment in the Guaranteed Maximum Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be approved by the City. Construction Manager shall carry out such written orders promptly.

### **7.5 ALLOWANCE FOR OVERHEAD AND PROFIT.**

7.5.1 The maximum allowance for subcontractor overhead and profit ("OH&P") included in the total cost to the City for construction changes, or work or portions of work performed on an hourly basis shall not exceed fifteen percent (15%) on work performed by the subcontractor with its own forces, and a cumulative aggregate of twenty percent (20%) on work

performed by sub-subcontractors in any number of tiers. The allowance for overhead and profit, or fee, for Construction Manager shall be as contained in its Contract with the City.

a. Cost to which overhead and profit is to be applied shall be determined in accordance with subparagraph 7.3.6. Overhead and profit shall not be applied to lower tier mark-ups.

b. The proposed cost or credit to the City from a change shall be accompanied by a complete itemization of costs including labor, quoted or actual (not list) material prices, and subcontracts. Subcontract proposals in all tiers shall be itemized. All overhead and profit shall be clearly identified. In the absence of complete itemization, the cumulative aggregate limit for OH&P shall be applied based on the presumption that each lower tier subcontractor took the maximum OH&P allowed under its subcontract.

## **ARTICLE 8 TIME**

### **8.1 PROGRESS AND COMPLETION.**

8.1.1 Contract Time. The Contract Time shall have the meaning set forth in paragraphs 1.2.18 and Article 8 of the Agreement. Time limits stated in the Contract Documents are of the essence at the Agreement. Construction Manager shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. By executing the Agreement, Construction Manager confirms that the Contract Time is a reasonable period for performing the Work.

8.1.2 Commencement Date. The date of commencement of the Work is the date established in the Schedule attached to the Agreement pursuant to paragraph 8.2 thereof. Construction Manager shall not knowingly, except by agreement or instruction of the City in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 13 of the Agreement to be furnished by Construction Manager. The date of commencement of the Work shall not be changed by the effective date of such insurance, nor postponed by the failure to act of Construction Manager or of persons or entities for whom Construction Manager is responsible.

8.1.3 Date of Substantial Completion. The date of Substantial Completion is the date certified by the Architect and accepted by the City in accordance with the Contract Documents. The time allotted for Final Completion of the Work shall be stated in the Certificate of Substantial Completion.

**ARTICLE 9  
PAYMENTS AND COMPLETION**

**9.1 GUARANTEED MAXIMUM PRICE.**

The Guaranteed Maximum Price is the amount stated in the Agreement between City and Construction Manager, and including authorized adjustments, is the total amount payable by the City to Construction Manager for performance of the Work under the Contract Documents.

**9.2 SCHEDULE OF VALUES.**

As provided in Section 3.7.4 of the Agreement, Construction Manager shall submit to the Architect and City a Schedule of Values allocating the entire Guaranteed Maximum Price among the various portions of the Work, and prepared in such form and supported by such data to substantiate its accuracy as the Architect and City may require. This schedule, unless objected to by the Architect(s) or City, shall be used as a basis for reviewing Construction Manager's Application for Payment.

**9.3 APPLICATIONS FOR PAYMENT.**

9.3.1 On a monthly basis, unless another interval is established elsewhere in the Contract Documents, Construction Manager shall submit to the Architect for certification, an itemized Application for Payment for operations completed in accordance with the schedule of values. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Such application shall be submitted in triplicate, using AIA Document G-702, Application and Certification for Payment (notarized), and supported by AIA Document G-703, Continuation Sheet. The Application for Payment shall be accompanied by the following:

- a. Any additional information or material reasonably requested by the City to substantiate the Application for Payment such as copies of requisitions from Subcontractors and material suppliers; and
- b. Executed releases and bond claim waivers (in the form of a partial release and waiver of bond claim as contained in the Contract Documents) from Construction Manager and all subcontractors, sub-subcontractors, equipment suppliers and materials suppliers for the work performed on, and the equipment material supplied to, the Project as of the date of Application for Payment.

9.3.2 Such applications shall not include requests for payment on account of changes in the Work which have been authorized by Construction Change Directives but not yet included in a fully executed Change Order.

9.3.3 Such applications may not include requests for payment of amounts Construction Manager does not intend to pay to a subcontractor or material supplier because of a dispute or other reason.

9.3.4 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment for materials and equipment stored on site shall be conditioned upon compliance by Construction Manager with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest.

a. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site to encourage Construction Manager and Subcontractors to procure materials, specialties, etc., at an early date to alleviate delays due to slow deliveries or difficulty in obtaining critical items. To qualify for payment, Construction Manager and Subcontractors shall:

1. Store materials in a bonded warehouse, or on the property of Construction Manager or subcontractor. A certificate of property insurance showing coverage for stored materials not owned by the facility owner shall be provided to the City and name the City as an additional insured.
2. Physically separate, and suitably identify all materials within an appropriate storage facility.
3. Allow for inspection by representatives of the City during normal business hours.
4. Demonstrate that adequate arrangements have been made for transportation of material to the project site.
5. Deliver title to the material by a duly executed bill of sale.
6. Provide such additional evidence of title as may be reasonably requested by City in form and substance satisfactory to the City including, without limitation financing statements, UCC filings and UCC searches.

b. No provision of this paragraph shall be construed to relieve Construction Manager from sole responsibility for the care and protection of materials and Work installed in the building or materials stored on the site, for the restoration of damaged work and replacement of damaged or stolen materials, or as a waiver of right of the City to require fulfillment of all terms of the Agreement.

c. Although several of the items referred to herein may be covered by insurance under Article 13 of the Agreement, Construction Manager shall not forego any of this responsibility of care and protection hereunder for Items covered and not covered by said Insurance.

9.3.5 Construction Manager warrants that title to all Work covered by an Application for Payment will pass to the City no later than the time of payment. Construction Manager

further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the City, shall be free of bond claims, claims, security interests or encumbrances in favor of Construction Manager, Trade Contractors, Subcontractors, material suppliers, or other persons or entities making claim by reason of having provided labor, materials and equipment relating to the Work. Construction Manager shall indemnify and hold City harmless from any liens, claims, security interests or encumbrances filed by the Trade Contractors or Subcontractors or anyone claiming by, through or under them.

#### **9.4 CERTIFICATES FOR PAYMENT.**

9.4.1 The Architect will, within seven days after receipt of Construction Manager's Application for Payment, either issue to the City a Certificate for Payment, with a copy to Construction Manager, for such amount as the Architect determines is properly due, or notify Construction Manager and City in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the City, based on the Architect's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in strict accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to identified deviations from the Contract Documents which are minor and correctable prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that Construction Manager is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality of quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City to substantiate Construction Manager's right to payment or (4) made examination to ascertain how or for what purpose Construction Manager has used money previously paid on account of the Guaranteed Maximum Price, except for confirmation that the appropriate waivers of bond claims are submitted with the Application for Payment.

#### **9.5 DECISIONS TO WITHHOLD CERTIFICATION.**

9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the City, if in the Architect's opinion the representations to the City required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify Construction Manager and City as provided in Subparagraph 9.4.1. If Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the City. The Architect may also decide to withhold a Certificate for Payment because of subsequently discovered evidence or subsequent observations, and may nullify the whole or a part of a Certificate for Payment

previously issued, to such extent as may be necessary in the Architect's opinion to protect the City from loss for which Construction Manager is responsible, including loss resulting from acts of omissions described in Subparagraph 3.3.2, because of:

- a. Defective Work not remedied;
- b. Third party claims filed or reasonable evidence indicating probable tiling of such claims unless security acceptable to the City is provided by Construction Manager;
- c. Failure of Construction Manager to make payments properly to its Subcontractors or for labor, materials or equipment;
- d. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price and Construction Manager cannot demonstrate to the reasonable satisfaction of the Architect or Owner, as the case may be, that it is capable of and intends to complete the Work as required by the Contract Documents;
- e. Damage to the City or another contractor;
- f. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- g. Failure to carry out the Work in accordance with the Contract Documents;  
or
- h. Failure of Construction Manager to perform any of its material obligations, or other default under the Contract Documents.

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

9.5.3 Notwithstanding the Architect's decision to certify any payment under the Agreement, the City, for any or all of the reasons as set forth under Paragraph 9.5.1, may independently in its sole discretion decline to approve an Application for Payment, or withhold a Certificate for Payment in whole or in part, to the extent deemed reasonably necessary by the City to protect its interest. If the City withholds payment, then it shall notify Construction Manager and the Architect.

## **9.6 PROGRESS PAYMENTS.**

9.6.1 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- a. Indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment;

b. Take that portion of the Guaranteed Maximum Price properly allocable to completed work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values, less retainage of five (5 %) percent. Notwithstanding the foregoing, with regard to Progress Payments for Pre-Construction and Additional Pre-Construction Services subject to this provision, the portion properly allocable will be determined in accordance with the specific approvals and authorizations generated in connection therewith, less retainage of five (5%);

c. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, less retainage of five (5%) percent. Notwithstanding the foregoing, with regard to Progress Payments for Pre-Construction and Additional Pre-Construction Services subject to this provision, the portion properly allocable will be determined in accordance with the specific approvals and authorizations generated in connection therewith, less retainage of five (5%);;

d. Subtract the aggregate of previous payments made by the City; and

e. Subtract amounts, if any, for which the City has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5

9.6.2 The City will make progress payments to Construction Manager within thirty (30) business days of receipt of a proper Application for Payment as certified by the Architect.

9.6.3 Construction Manager shall promptly pay each Subcontractor within thirty (30) business days of receipt of payment from the City, out of the amount paid to Construction Manager on account of such Subcontractor's portion of the Work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to Construction Manager on account of such subcontractor's portion of the Work. Construction Manager shall, by appropriate agreement with each subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.4 The Architect will, on request, furnish to a subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Construction Manager and action taken thereon by the Architect and City on account of portions of the Work done by such Subcontractor.

9.6.5 Neither the City nor Architect shall have an obligation to pay nor to see to the payment of money to a Subcontractor except as may otherwise be required by law.

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

9.6.7 The City shall have the right to offset any monies due and owing by Construction Manager to the City under this Agreement, against any other sums of monies that may be due and owing by the City to Construction Manager under any other contract.



## **9.7 SUBSTANTIAL COMPLETION.**

9.7.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the City can occupy the Work for its intended use with all required systems fully operational and as evidenced by a final or a temporary Certificate of Occupancy consistent with the Contract Documents and acceptable to the State Department of Administrative Services for occupancy by students and staff. Percentage of Work completed, in dollar amount or time expended, will not be considered in determining the date or dates of Substantial Completion.

9.7.2 When Construction Manager considers that the Work, or a portion hereof which the City agrees to accept separately, is substantially complete, Construction Manager shall prepare and submit to the City a comprehensive list of items to be completed or corrected prior to final payment. Upon receipt of Construction Manager's list of items to be corrected, the City will conduct an inspection to review Construction Manager's list. On the basis of such inspection, the City may reasonably add to or modify items contained on the list prepared by Construction Manager's list of items to be completed or corrected, when reviewed and modified by the Architect, shall be considered the "Punch List", and shall be consistent with the requirements of the Contract Documents. Upon receipt of the reviewed Punch List from the Architect, Construction Manager shall promptly make all corrections and completions required thereby. Construction Manager shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Construction Manager to complete all Work in accordance with the Contract Documents. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall recommend responsibilities of Construction Manager for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Construction Manager shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted by the Architect for the City's review and approval prior to submission to Construction Manager.

9.7.3 Upon Substantial Completion of the Work or designated portion thereof, the City may reduce retainage to two-and-one-half percent (2.5%) of the Contract Sum. Upon application by Construction Manager and certification by the Architect, the City will make payment, reflecting adjustment in the retainage, if any, for such Work or portion thereof, and amounts determined by the City to be sufficient to secure the City's interests and induce resolution of incomplete Work or outstanding submittals, but not greater than twice the cost of the incomplete items. The City will pay to Construction Manager the amount retained upon satisfactory completion of all listed items. Partial payments may be made if agreed to by the City and Construction Manager.

9.7.4 Construction Manager shall not be held responsible for failure to obtain a temporary certificate of occupancy as set forth in paragraph 9.47.1 b, above, if said delay is due to the acts of the City or the Architect.

## **9.8 PARTIAL OCCUPANCY OR USE.**

9.8.1 The City may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by the Contract Documents, provided such occupancy or use is authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the City and CMAR have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Construction Manager considers a portion substantially complete, Construction Manager shall prepare and submit a list to the City as provided under Subparagraph 9.7.2. The stage of the progress of the Work shall be determined by written agreement between the City and Construction Manager or, if no agreement is reached, by decision of the Architect.

9.8.2 Immediately prior to such partial occupancy or use, the Architect, City, and CMAR shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

## **9.9 FINAL COMPLETION AND FINAL PAYMENT.**

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and when the Architect finds the Work acceptable under the Contract Documents and the Agreement fully performed, the Architect will promptly issue a final Certificate For Payment stating that, on the basis of the Architect's 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 Construction Manager and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9.3 as precedent to Construction Manager's being entitled to final payment have been fulfilled.

9.9.2 If the Architect's on-site visit and inspection upon receipt of Construction Manager's written notice, as provided in Subparagraph 9.9.1, indicates that the entire Work is not complete, correct, and performed in accordance with the Contract Documents to the best of the Architect's information, knowledge and belief, the Architect will withhold acceptance of the Work and decline to issue a final Certificate for Payment until all known deficiencies have been corrected. The Architect shall make re-inspections upon Construction Manager's written notice that all noted deficiencies have been corrected.

9.9.3 Neither final payment nor any remaining retained percentage shall become due until Construction Manager submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or

the City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the City, (3) a written statement that Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) the following documentation as required by the City:

a. All Operating Manuals, Maintenance Manuals, and related charts or diagrams for the use of the City's operations and maintenance personnel.

b. Adequate proof of completion of operations training, or similar special maintenance instruction that may be stipulated by warranties surviving the one year project guarantee, or as required in the Contract Documents.

c. All interim and final permits, approvals, licenses and other documents from any governmental authority having jurisdiction, including but not limited to, all necessary and customary close out documentation having been provided to the City as required by the State of Connecticut Department of Administrative Services and all final approvals and other documentation as may be required from the State of Connecticut Department of Administrative Services.

d. Full and final releases and waivers of all bond claim rights arising out of the Work in the form of the final release and waiver of bond claim rights as contained in the Contract Document, and executed by Construction Manager, all subcontractors, all sub-subcontractors, equipment suppliers and material suppliers for the Work performed on and the equipment and materials supplied to the Project; and

e. Complete set of all "as-built" drawings as required by the Contract Documents; and

f. All warranties and guarantees required under or pursuant to the Contract Documents; and

g. Such other documentation establishing payment or satisfaction of all obligations such as receipts, releases, and waivers of all bond claim rights arising out of the Agreement in such forms as may be designated by the City.

9.9.4 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of Construction Manager or by issuance of Change Orders affecting Final Completion, and the Architect so confirms, the City shall, upon application by Construction Manager and certification by the Architect, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Construction Manager to the Architect prior to certification of such payment. Such

payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.5 Waiver of Claims: Final Payment. The making of final payment shall constitute a waiver of Claims by the City except those arising from:

- a. Bond claim rights, liens, Claims, security interests or encumbrances arising out of the Agreement and unsettled; or
- b. Failure of the Work to comply with the requirements of the Contract Documents; or
- c. Terms of special warranties required by the Contract Documents: or
- d. Any audit rights that City may be entitled to by the Agreement.

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

9.9.7 Final payment, constituting, the entire unpaid balance of the Guaranteed Maximum Price, will be made by the City to Construction Manager when:

- a. The Agreement has been fully performed by Construction Manager except for Construction Manager's responsibility to correct nonconforming Work as provided in the General Conditions and to satisfy other requirements, which necessarily survive final payment;
- b. A final Certificate for Payment has been issued; and
- c. Final releases and waivers of bond claims or lien rights in forms acceptable to the City have been furnished.

## **ARTICLE 10 HAZARDOUS MATERIALS**

### **10.1 DEFINITION.**

Hazardous Materials shall have the meaning provided in the Agreement, including but not limited to, any pollutant, hazardous or toxic substance, waste or material, including oil products, asbestos, asbestos containing materials, lead, lead containing materials, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing polychlorinated biphenyls, flammable explosives, radioactive materials or any other material or substance designated or regulated as hazardous or as a toxic substance or waste, pollutant, or contaminant under any applicable federal, state or local statute, law or regulation.

## **10.2 USE OF HAZARDOUS MATERIALS REQUIRED FOR THE WORK.**

10.2.1 When the use, management, handling or storage of hazardous materials are required for the Work, Construction Manager shall provide Material Safety Data Sheets (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 31 3A, for all hazardous material whether or not listed in Appendix A of the Standard. This requirement applies to all materials delivered under this Agreement which will involve exposure to hazardous materials or items containing these materials. Construction Manager shall use best efforts to ensure hazardous materials are not used, managed, handled or stored on site and non-hazardous materials are utilized instead.

10.2.2 The City's rights to data furnished under this article are to use, duplicate, and disclose any data to (1) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; and (2) obtain medical treatment for those affected by the material. The City shall not be precluded from using similar or identical data acquired from other sources.

10.2.3 The data shall not be duplicated, disclosed, or released, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this clause applies:

"This is furnished under Project No. and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of \_\_\_\_\_. This legend shall be marked on any reproduction of this data."

10.2.4 Construction Manager shall not place the legend or any other restrictive legend on any data which Construction Manager or any subcontractor previously delivered to the Project without limitations.

10.2.5 Neither the requirements of this article, nor any act or failure to act by the City, will relieve Construction Manager of any responsibility or liability for the safety of the City's population, or Construction Manager's and Subcontractor's personnel or property.

10.2.6 Construction Manager shall comply with all Applicable Laws (including the obtaining of licenses and permits) in connection with the use, management, handling or storage of hazardous material.

10.2.7 Construction Manager shall include the provisions of this Article 10 in subcontracts at any tier.

## **10.3 HAZARDOUS MATERIAL REMEDIATION.**

10.3.1 In the event the CMAR encounters on the site material reasonably believed to be hazardous, which has not been rendered harmless or which will be disturbed during the Work by the CMAR, the CMAR shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to the City and the Architect as soon as possible and shall follow up in writing.

## **ARTICLE 11 INSURANCE AND BONDS**

### **11.1 GENERAL INSURANCE PROVISIONS.**

During the term of this Agreement and for such additional time as may be required herein, Construction Manager shall provide, pay for, and maintain in full force and effect, the insurance, as set forth in Article 13 of the Agreement, for coverages at not less than the prescribed minimum limits of liability, covering Construction Manager's activities, those of any and all subcontractors, and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

### **11.2 PERFORMANCE BOND AND PAYMENT BOND.**

Performance and Payment Bond requirements are governed by Paragraph 3.7.6 of the Agreement.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING THE WORK.**

12.1.1 If a portion of the Work is covered contrary to the City or the Architect's request or contrary to requirements specifically expressed in the Contract Documents, it must, if required in writing by the City, or Governmental Authority, be uncovered for their observation and be replaced at Construction Manager's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the City has not specifically required to observe prior to it's being covered, the Architect may request to see such Work and it shall be uncovered by Construction Manager if authorized in writing by City. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the City's expense. If such Work is not in accordance with the Contract Documents, correction shall be at Construction Manager's expense.

### **12.2 CORRECTION OF WORK.**

12.2.1 **Before or After Substantial Completion.** Construction Manager shall promptly correct Work rejected by the City, or Governmental Authority or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the professional services and expenses of an Architect made necessary thereby, shall be at Construction Manager's expense.

12.2.2 **After Substantial Completion.** Construction Manager, upon the request of the City, shall make inspection up to twelve (12) months after completion to ensure correction of defective Work or equipment operation. If, within one year after the date of Substantial Completion of the Work or designated portion thereof; or after the date for commencement of

warranties established under Subparagraph 9.9., or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Construction Manager shall correct it promptly after receipt of written notice from the City to do so unless the City has previously given Construction Manager a written acceptance of such condition. Upon completion of any Work pursuant to this subparagraph, the one (1) year warranty in connection with the Work requiring correction shall be renewed and recommenced. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Agreement and termination of the Agreement

12.2.3 Construction Manager shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Construction Manager nor accepted by the City.

12.2.4 If Construction Manager fails to correct nonconforming Work within a reasonable time, the City may correct it in accordance with Paragraph 2.4. If Construction Manager does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect, the City may remove it and store the salvable materials or equipment at Construction Manager's expense. If Construction Manager does not pay costs of such removal and storage within ten days after written notice, the City may, upon ten additional days' written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by Construction Manager, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which Construction Manager should have borne, the Guaranteed Maximum Price shall be reduced by the deficiency. If payments then or thereafter due Construction Manager are not sufficient to cover such amount, Construction Manager shall pay the difference to the City.

12.2.5 Construction Manager shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the City or separate contractors caused by Construction Manager's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

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

### **12.3 ACCEPTANCE OF NONCONFORMING WORK.**

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

**ARTICLE 13**  
**EQUAL OPPORTUNITY AND LABOR RELATIONS**

**13.1 EQUAL OPPORTUNITY.**

13.1.1 The City has implemented affirmative action programs to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, in accordance with 41-CFR-60-741.1 et. seq., and to ensure that applicants for jobs are employed and employees are treated during their employment without regard to their race, color, religion, sex or national origin in Accordance with 41-CFR-60-1.1 et. seq. These programs and the applicable federal regulations are incorporated by reference herein and are binding on Construction Manager.

13.1.2 Contractors in all tiers, and suppliers, shall have in effect a current policy dealing with Equal Employment Opportunity and Affirmative Action in their own work place. Contractors and suppliers shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. Construction Manager or supplier shall take affirmative action to insure that applicants are given unbiased consideration, employed, and advanced without regard to religion, color, sex, national origin or age. Such action shall include, but not be limited to, the following: employment, upgrading, training, including apprenticeship. Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

13.1.3 Contractors in all tiers shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

13.1.4 Contractors in all tiers shall submit a written summary of actual work-force utilization and business participation ratios, as a condition of Final Payment.

**13.2 LABOR RELATIONS.**

13.2.1 Contracts will be awarded and labor shall be employed on the Project by Construction Manager without discrimination as to whether employees, agents, suppliers or subcontractors of the contractor or any subcontractor are members or non-members of any labor or collective bargaining organization.

13.2.2 There shall be no manifestations on the Project of any dispute between any labor organization and Construction Manager, and Construction Manager agrees to employ agents, suppliers and subcontractors who perform the Work under this Agreement whether or not other employees or mechanics on the Project are members or non-members of any labor or collective bargaining organization.

13.2.3 Should any workers performing any Work under this Agreement engage in a strike or other Work stoppage or cease to Work due to picketing or a labor dispute of any kind, the City may, after twenty-four (24) hours written notice to CMAR, without prejudice to any other remedies it may have, provide any substitute labor as may be required and deduct the cost thereof from any monies then due or thereafter to become due CMAR; and further, the City



may, without prejudice to any other remedies it may have, terminate the employment of CMAR for the work under this Agreement, and shall have the right to enter upon the premises and take possession for the purpose of completing the Work hereunder, all Construction Manager's materials, tools and equipment thereon and to finish the Work with its own employees or other contractors.

### **13.3 LABOR REQUIREMENTS.**

CMAR acknowledges the provisions contained in the Agreement requiring compliance with Applicable Laws including those contained in Article 14 and the attachments thereto.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE AGREEMENT**

See, Article 10 of the Agreement.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

### **15.1 GOVERNING LAW.**

See, paragraph 14.13 of the Agreement

### **15.2 SUCCESSORS AND ASSIGNS.**

See, paragraph 14.10 of the Agreement.

### **15.3 WRITTEN NOTICE.**

See, paragraph 14.6 of the Agreement

### **15.4 RIGHTS AND REMEDIES.**

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

15.4.2 No action or failure to act by the City, Architect or CMAR shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

15.4.3 No consent or waiver, whether express or implied, by the City or the Architect to any breach of any covenant, condition or duty by Construction Manager shall be construed as or give rise to a consent to or waiver of any other breach of the same or other covenant, condition or duty by Construction Manager.

## **15.5 TESTS AND INSPECTIONS.**

15.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Construction Manager shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Construction Manager shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The City shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

15.5.2 If the Architect, City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 15.5.1, the Architect will, upon written authorization from the City, instruct Construction Manager to make arrangements for additional testing, inspection or approval by an entity acceptable to the City, and Construction Manager shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The City shall bear the costs except as provided in Subparagraph 15.5.3.

15.5.3 If such procedures for testing, inspection or approval under Subparagraphs 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, Construction Manager shall bear all costs made necessary by such failure, including those of repairs, repeated procedures, and compensation for the Architect's services and expenses, including the cost of retesting to demonstrate compliance with the Contract Documents.

15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Construction Manager and promptly delivered to the Architect.

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

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

## **15.6 INTEREST.**

In no event shall any interest be due and payable on account of late or overdue payments, retainage, or withholding of amounts in dispute by the City.

## **END OF GENERAL CONDITIONS**

**ATTACHMENT 3  
PROPOSED GMP EXHIBITS AND  
FORM OF GMP AMENDMENT**

**(To be Provided Prior to Execution of this Agreement)**

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN  
CITY AND CONSTRUCTION MANAGER**

Pursuant to Section 4.2.4 of the Agreement, dated \_\_\_\_\_, 20\_\_\_\_ between The City of Waterbury, Connecticut (*City*) and **XXX** (*Construction Manager*), for the Wendell L. Cross Elementary School Construction Project, located in Waterbury, Connecticut (*the Project*), the City and Construction Manager establish a Guaranteed Maximum Price (GMP) and Contract Time for the Work as set forth below.

**CITY**

**CONSTRUCTION MANAGER**

City of Waterbury\_\_\_\_\_

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

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

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Printed Name and Title)

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

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

**ATTACHMENT 4  
WAIVER FORMS**

**((To be provided prior to execution of this Agreement))**

**ATTACHMENT 5**  
**CONSTRUCTION MANAGER'S PRE-CONSTRUCTION STAFFING MATRIX,**  
**CONSTRUCTION PHASE STAFFING MATRIX, AND SCHEDULE OF**  
**REIMBURSABLES**

# Addendum No. 2 - Revised May 2, 2019

Newfield Construction Group, LLC  
225 Newfield Ave.  
Hartford, CT 06106

## EXHIBIT E – STAFFING MATRIX

Wendell Cross Pre K-8 School

Pre-Construction Staffing Matrix

Position	Name	Number of Hours	Hourly Rate	Total Price*	Comments
Projective Executive					
Project Manager	Thomas DiMauro	365	135.00	49,275.00	
BIM Coordinator	Kevin Nelson	80	110.00	8,800.00	
MEP Coordinator					
Project Scheduler					
Quality Controls					
Administrative Support					
Other (please list):					
Superintendent/Demo Phase	Yegor Muraskvy	700	105.00	65,125.00*	Demolition Phase Supervision
Estimator	Joanne Cotoia	480	110.00	52,800.00	
Total Price for Pre-Construction Staff				\$ 176,000.00*	

\* All staff listed in this matrix are included in the Pre-Construction Fee.

\* Represents a savings calculation to our original FEE proposal as show on the Bid Form

**Addendum No. 2 - Revised May 2, 2019**  
**Construction Phase Staffing Matrix**

**All proposals must meet the minimum staffing requirements for the duration of construction.**

\*Only price those items which are included in the General Conditions. This total Price should be included in the fee breakout in Exhibit E.



**Wendell Cross School Waterbury CT**  
**(Schedule Phase 1 5mo Phase 2 15mo)**

**Reimbursables**

Office Trailer	15	mo	\$ 1,500	\$ 22,500
Trailer Install Remove	1	ea	\$ 10,000	\$ 10,000
Office Furniture	1	ea	\$ 5,000	\$ 5,000
Office Equipment	1	ea	\$ 5,000	\$ 5,000
Office Supplies	15	mo	\$ 200	\$ 3,000
Postage / FedEx	15	mo	\$ 500	\$ 7,500
Copier	15	mo	\$ 500	\$ 7,500
Computers	3	ea	\$ 2,500	\$ 7,500
IT Support	15	mo	\$ 350	\$ 5,250
Internet	15	mo	\$ 150	\$ 2,250
Payroll	15	mo	\$ 800	\$ 12,000
Procure	\$ 40,272,000	\$	0.10%	\$ 40,272
Telephones Equip. Installed	1	ea	\$ 1,500	\$ 1,500
Telephones Monthly	15	mo	\$ 400	\$ 6,000
Cell Phones	15	mo	\$ 750	\$ 11,250
Office Utilities	15	mo	\$ 500	\$ 7,500
Water/Coffee	15	mo	\$ 125	\$ 1,875
First Aid	1	ea	\$ 2,500	\$ 2,500
Signage	1	ea	\$ 3,000	\$ 3,000
Reproduction	1	ea	\$ 7,500	\$ 7,500
Photos	15	mo	\$ 400	\$ 6,000
Electric Consumption	1	allow	\$150,000	\$150,000
Temp Heat Fuel	1	allow	\$250,000	\$250,000
Security	1	allow	\$100,000	\$100,000
GL insurance	\$ 40,272,000	\$	0.45%	\$181,224
Advertising	1	allow	\$ 10,000	\$ 10,000
Perf. & Payment Bonds	\$ 40,272,000	\$	\$ 0.0068	\$273,850
<b>Total</b>				<b>\$ 1,139,971</b>



**ATTACHMENT 6**  
**PRELIMINARY SCHEDULE**

[illegible]

**ATTACHMENT 7  
HISTORIC DOCUMENTS**

**(To be Provided Prior to Execution of this Agreement)**

**ATTACHMENT 8**  
**CONSTRUCTION MANAGER'S INSURANCE**

**(To be Provided Prior to Execution of this Agreement)**

**ATTACHMENT 9**  
**STATE OF CONNECTICUT DEPARTMENT OF ADMINISTRATIVE SERVICE**  
**CHANGE ORDER REQUIREMENTS**

**(To Be Provided Prior To Execution Of This Agreement)**

**ATTACHMENT 10**  
**CT DEPARTMENT OF LABOR WAGE AND WORKPLACE STANDARDS**  
**(To Be Provided Prior To Execution Of This Agreement)**

# BOARD OF EDUCATION

*Waterbury, Connecticut*

## COMMITTEE ON FINANCE

Item #2.1

May 30, 2019

To the Board of Education  
Waterbury, CT

Ladies and Gentlemen:

The Committee on Finance recommends the Waterbury Board of Education approve the following transfers in the fiscal year 2018/2019 budget:

DESCRIPTION	Acct Unit	Account	TO	FROM
Special Education – Teachers	88510001	511102		(\$201,000)
Special Education – School Psychologists	88510002	511108		(\$250,000)
Special Education – Social Workers	88510002	511109		(\$150,000)
Special Education – Speech Pathologists	88510002	511110		(\$175,000)
Special Education – Out of District Tuition	88510001	556055	\$610,000	
Special Education – Purchased Service	88510001	556056	\$166,000	
Transfer needed to cover Special Ed out of district tuition and services for students.				
Special Education – Paraprofessional	88510001	511228		(\$750,000)
Student Transportation – Pupil Transportation	89510007	551000	\$700,000	
Administration – Consulting	89010004	533020	\$ 50,000	
Transfer is needed for Special Education & Pre-K transportation and Special Ed audit.				
Operation & Maintenance - Custodians	88031006	511226		(\$400,000)
Operation & Maintenance - School Maintenance	88031006	511225		(\$250,000)
Special Education – ABA Therapists	88510001	511233		(\$200,000)
Administration – Non Certified	89010004	511201		(\$ 75,000)
Fiscal Administration – Fiscal Non Cert	89010508	511220		(\$ 45,000)
Enlightenment – Teachers	83210001	511102		(\$ 27,500)
WAMS – Teachers	83410001	511102		(\$ 27,500)
Wilby – Teachers	86310001	511102		(\$ 27,500)
WCA – Teachers	86510001	511102		(\$ 27,500)
Operation & Maintenance – Building Improvements	88031006	575501	\$1,080,000	
Transfer is needed for special capital improvement & revenue fund.				
District Wide – Teachers	87510001	511102		(\$125,000)
DW Reading – Teachers	87512501	511102		(\$150,000)
Life Management – Teachers	87516001	511102		(\$ 75,000)
Wilby - Teachers	86310001	511102		(\$ 80,000)
District Wide – Instructional Supplies	87510001	561100	\$ 430,000	
Transfer is needed for curriculum & computer technology.				
TOTALS			\$3,036,000	(\$3,036,000)

Approved:

---

Catherine N. Awwad