

# Attachment B-1.1 – Draft Form of Contract (A133-2009)

AGREEMENT made as of the « » day of « » in the year «2020»  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status and address)

«Capital Region Development Authority (“CRDA”)  
«100 Columbus Boulevard, Suite 500»  
«Hartford, CT 06103-2819»

and the Construction Manager:  
(Name, legal status and address)

« »  
« »  
« »

for the following Project:  
(Name and address or location)

XL Center Chiller Plant Relocation  
One Civic Center Plaza  
Hartford, CT 06103

CRDA Project # 20-004

The Architect:  
(Name, legal status and address)

BBB/SCI Architects  
469 Seventh Avenue, Suite 900  
New York, NY 10018

The Owner’s Designated Representative:  
(Name, address and other information)

« »  
« »  
« »

The Construction Manager’s Designated Representative:  
(Name, address and other information)

« »  
« »  
« »

The Architect’s Designated Representative:  
(Name, address and other information)

« »  
« »  
« »

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

### 1. ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by the Owner ("General Conditions"), Supplementary and other Conditions of the Contract identified in this Agreement (if any), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Task Authorization ("TA") Guaranteed Maximum Price proposals and the execution of the TA Guaranteed Maximum Price Amendments by the Owner and the Construction Manager, the Contract Documents will also include the TA Guaranteed Maximum Price Amendments, the documents described in Section 2.2.3 and identified in the TA Guaranteed Maximum Price Amendments, and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager ("CM") accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and the Owner and exercise the Construction Manager's professional skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests, all of which shall be consistent with the Contractor's Standard of Care (as defined in Section 3.1.2.3 of the General Conditions). The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 1.2.1 Owner** - The Capital Region Development Authority ("CRDA") with offices located at 100 Columbus Boulevard, 5th floor, Suite 500, Hartford, CT 06103, is a quasi-public agency of the State of Connecticut working to encourage the redevelopment and economic expansion of the Connecticut Capital Region. CRDA entered into a Lease Agreement with the City of Hartford, A second Amended and Restated Lease Agreement dated as of April 26, 2013. CRDA, as the tenant, holds a leasehold interest in the land on which the XL Center ("XLC"), also known as the Hartford Civic Center is located and is the owner of the XLC. Where "Owner" appears in the RFP and Contract Documents, it shall refer to CRDA.

CRDA has a Facilities Management Agreement with Spectra Venue Management ("Spectra") to operate and maintain the facilities at the XLC.

### **§ 1.3 General Conditions**

For the Preconstruction Phase, the General Conditions shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be the General Conditions, which document is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager. Where reference is made in this Agreement to a provision of the General Conditions or any other AIA document or provision, the reference refers to that document or provision as modified by the Owner and, if required, any other party to such document, and as amended and supplemented by other provisions of the Contract Documents

### **§ 1.4 Applicable Law**

The term "Applicable Law" as used herein shall mean and include all applicable local, state and federal laws, statutes, ordinances, codes, building codes, rules, regulations, permits, and orders enacted, promulgated, issued or ordered by any governmental body or public or quasi-public authority having jurisdiction over the Work, the Construction Manager or the site of the Project. The Construction Manager shall be responsible for the performance of the Work in compliance with all Applicable Law.

**§ 1.5** The Construction Manager shall secure the building permit as well as for such other permits, fees, licenses, certifications and inspections that are required under Applicable Law as of the date hereof and are customarily secured after execution of the Contract. The cost of the building permit will be a reimbursable expense. The Construction Manager shall provide the Owner and Architect with reproductions of all permits, licenses, permissions, certifications and receipts for payments and, upon final completion, shall deliver all originals of such documents to the Owner with copies to the Architect.

CRDA shall assist the Construction Manager with the Building Permit Application to the Office of State Building Inspections ("OSBI") and Office of State Fire Marshal ("OSFM"). The Construction Manager shall be solely responsible for obtaining sidewalk and street closure permits from the City of Hartford. An Allowance will be included in Task Authorization # 02 for permit costs.

### **§ 1.6 Expedited Project**

**§ 1.6 .1** The Project may be composed of the following Tasks (which may be combined into fewer tasks or be increased to include additional scope tasks) as follows:

#### **§ 1.6.1.1 Tasks:**

- Task 1: Phase 1, Preconstruction Services as set forth in Section 2.1 of the Request for Proposal (CM): Instruction to Candidates (RFP) Exhibit A attached hereto.
- Task 2: Construction Contingency, General Conditions and General Requirements required for Phase 2, Early Release Bid Package, Phase 3, Construction and Phase 5 Post Construction.
- Task 3: Phase 2, Early Release Bid Package
- Task 4: Phase 3, Construction
- Task 5: Other Tasks may be added as required

**§ 1.6.1.2** Owner reserves the right to add or delete from the proposed Tasks. The CM may combine proposed Tasks or revise the task priority based on the current approved schedule with the Owner's prior Approval.

§ 1.6.2 The Owner intends to designate and release to the CM specific Tasks, and the services of the Work required to accomplish such tasks as described in an individual "Task Authorization Amendment" (or "TA"). The form of a TA is attached hereto as Schedule C. The form will be revised as needed to reflect the terms of each TA (with or without a GMP). The terms and conditions of this Agreement shall be considered a part of any and all Owner issued TA's and incorporated therein , as if more fully set forth in each TA.

§ 1.6.3 Upon the Owner's issuance of a TA to the CM the CM shall promptly commence construction of each TA as soon as possible and in compliance with the Contract Documents.

§ 1.6.4 The Contract Time for each Task shall be measured from the date of execution of a TA and shall be established in each TA subject to adjustments of the TA Contract Time as provided in the Contract Documents.

§ 1.6.5 Unless instructed by the Owner in writing, including, as applicable, "early release packages", CM shall not knowingly commence the Work before the Owner's issuance of a TA and the effective date of insurance to be provided by the CM as required by the Contract Documents.

§ 1.6.6 The CM shall achieve Substantial Completion of the Work of each TA not later than the Substantial Completion Date set forth in each TA. The Date of Substantial Completion and Final Completion for the Project as a whole shall be subject to the Substantial Completion Date of each TA and adjustment as provided for in the Contract Documents.

## **2. ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project which designation shall be subject to the Owner's approval and which designation shall not be changed without the Owner's prior written approval.

### **§ 2.1 Preconstruction Phase**

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Scope of Work for the Preconstruction Phase is more fully described in Attachment 1, Section 2.1.

### **§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Critical Path Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the TA Recommendation to Award proposals; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to procurement and phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues. The Project Phasing Plan shall maintain construction work efficiency and minimize disruption to on-going operations within the building. The Project Phasing Plan must include temporary construction required for on-going use of the building.

The CM will identify Bid Packages in accordance with the Construction Phasing Plan. Identify obstacles to adhering to project schedule and recommend strategies for the Design team in preparing expedited construction bid documents.

#### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the current design and other design criteria prepared by the Architect, the Construction Manager shall prepare a detailed estimate by trade or scope package, which will be broken down by phase of construction, with supporting data for review by the Architect and approval by the Owner. This estimate shall include a comparison to the Construction Manager's historical cost data for similar size and project type. The Construction Manager shall assist the Owner in revising the Owner's Budget based on this estimate.

§ 2.1.5.2 Intentionally deleted.

§ 2.1.5.3 Intentionally deleted.

§ 2.1.5.4 If bids received or other projected cost for any Task exceed the Owner's Budget as revised pursuant to Section 2.1.5.1, the Construction Manager shall make appropriate recommendations to the Owner and Architect. The Construction Manager agrees to work proactively with the Owner and the Architect to provide and evaluate options, based on the Construction Manager's experience and industry knowledge, for the Owner's review and acceptance. These options shall include system, scope, products, and constructability recommendations. The Construction Manager will be responsible for maintaining a complete log of all value engineering and product proposals.

#### § 2.1.6 Subcontractors and Suppliers

§ 2.1.6.1 Neither the Construction Manager, nor any subsidiary, parent, company, or other related party (as defined in Section 6.10.1 of this Agreement) of the Construction Manager may perform any part of the Work with its own forces. The Owner may waive this restriction, in writing, at its sole and absolute discretion. Owner acknowledges that Construction Manager may self-perform labor required to perform Preconstruction Services, General Conditions and General Requirements Work and that Construction Manager may propose to self-perform other areas of the Work when it believes it is in the Owner's economic interest for Construction Manager to self-perform.

§ 2.1.6.2 The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall, with the assistance of the Architect, develop Task Bid Packages for the Work included in each Task and prepare a list of qualified bidders for each Task Bid Package. The Construction Manager shall develop, for the review and approval by the Owner, the criteria which the Construction Manager will use to determine whether a bidder is responsible and qualified. The Construction Manager shall include all such criteria as approved by the Owner in the bid packages. Each bid by a Subcontractor for a component of the Work where the estimated cost of labor and materials is **Fifty Thousand Dollars (\$50,000.00) or more**, shall be accompanied by a bid bond or certified check in an amount which shall be **Ten Percent (10%)** of the bid submitted. If the bidder is a small contractor or minority business enterprise as defined in Connecticut General Statutes Section 4a-60g, such bidder may provide, in lieu of a bid bond, a letter of credit in an amount equal to **Ten Percent (10%)** of the bid amount, if the estimated cost of labor and materials is less than One Hundred Thousand Dollars (\$100,000.00) and in an amount equal to **Twenty-Five Percent (25%) of the bid amount**, if the estimated cost of labor and materials is One Hundred Thousand Dollars (\$100,000.00) or greater.

For Subcontracts that are estimated to equal or exceed \$500,000, the CM will conduct bidding subject to CGS 4b-91(a). . These requirements include, without limitation, that the Construction Manager publish the invitation to bid on the State of Connecticut Contracting Portal and that bidders be required to be appropriately prequalified for the Work by the Department of Administrative Services (DAS) pursuant to CGS §4a-100.

For Subcontracts estimated to be less than \$500,000, the CM will use its best efforts with the CRDA's prior written approval to solicit three or more competitive bids from qualified responsible Subcontractors

All Subcontract awards are conditioned upon and subject to Owner review and approval.

§ 2.1.6.3 The Construction Manager shall provide a Task Bid Package Recommendation to Award (or "RTA") for each Task. The RTA shall summarize the bids received for each component of the Work in a spreadsheet format, including all analysis and adjustments necessary to permit a meaningful comparison among bidders. The Construction Manager shall also provide in the RTA, as appropriate, comments concerning the subcontractors and suppliers under consideration, including financial strength, past performance, and current workload, and a recommendation as to subcontractor and supplier selection.

§ 2.1.6.4 after the Owner's approval of an RTA and subsequent execution of a TA The Construction Manager shall award the Subcontract(s) to the lowest responsible and qualified bidder(s) who are prequalified pursuant to CGS §4a-100. To the extent permitted by Applicable Law, the Construction Manager shall not be obligated hereunder to contract with an individual or entity with which the Construction Manager has a reasonable objection.

§ 2.1.6.5 The Construction Manager shall be solely responsible to assure that the bidding process is conducted in accordance with Applicable Law.

§ 2.1.6.6 The Construction Manager shall assist CRDA in preparing Owner procurement bid packages which may include FF&E.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the related TA Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the related TA Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter assume all responsibility for them.

#### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise the Contractor's Standard of Care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of a TA Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with Applicable Law, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with Applicable Law applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.1.10 Without limitation of the generality of the foregoing provisions of Section 2.1, the Construction Manager's responsibilities during the Preconstruction Phase shall also include the following:

- .1 Estimating: Verify the validity of budget assumptions. Provide full detailed estimates based on the existing drawings and specifications that have been issued for bid.
- .2 Scheduling: Develop a detailed critical path master schedule that is tracked through the pre-construction phase to capture all of the anticipate Work activities. Continue to use the schedule through the construction phase to ensure on-schedule completion. Update the project master schedule as required, but not less than monthly and submit for CRDA approval. Advise CRDA weekly as to compliance to the overall project schedule. CM shall offer recommended course of action whenever requirements of schedule or contract are not being met.
- .3 Value Engineering: Working with the Owner's design professionals, develop value engineering at the appropriate milestones of design. Manage the Value engineering log as appropriate.
- .4 Cost Trending: track the budget as design changes are proposed and sketches are produced for review and approval. Maintain a cost trending log to document the significant scope changes.
- .6 Work with the design team on identifying required building and system testing and pre-bid investigations including an environmental survey of areas where demolition and construction is required. Administer and contract the required testing and pre-bid investigations with in-house staff, sub-contractors and sub-consultants as required.
- .7 Constructability Review: Review the construction documents and advise on issues of constructability both from an initial installation and a long-term servicing perspective.
- .8 Site Logistics Plan: Develop a graphic site sequencing and logistics plan showing construction staging areas for all contractors including vehicle parking and/or shuttle requirements, construction traffic routes, access in and out of the building and required work restrictions during events.
- .9 Implement project management reporting systems and record progress of the project by submitting written monthly cost, schedule, quality and progress reports including information on services, as well as work, completion, changes, etc.
- .10 Conduct and document regularly scheduled project meetings at the construction site.
- .11 Prepare bid packages and manage the bidding process.
- .12 Provide a field office at the project site.
- .13 Coordinate with the building's security department to develop controls for security and contractor access at the site.
- .14 Quality Plan: Develop a plan to describe how quality will be ensured in the execution of the design and communicated to the Subcontractors.
- .15 Safety Plan: Develop a project specific safety plan.

## § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 For each Task Bid Package, the CM shall submit an RTA that shall include a GMP Proposal for the Work of that Task in a format acceptable to the Owner. Unless the Parties mutually agree otherwise, the GMP for each Task shall be the sum of the CM's estimated Cost of the Work as defined in Section 6.1.1 and the Construction Manager's as defined in Section 5.1.1. The GMP for each Task shall be subject to modification as provided in the Agreement. The CM does not guarantee any specific line item provided as part of the GMP but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

### § 2.2.1.1 Construction Contingency

- .1 The "Construction Contingency" as set forth in the individual Task # 02 TA and which may be amended with each additional TA, is the amount specified as the construction contingency in the Guaranteed Maximum Price which amount is available to reimburse the Construction Manager for unanticipated costs provided such costs are of the type included in the definition of, and are properly reimbursable as, the Cost of the Work under Sections 6.1 through and including 6.7 hereafter but not the proper basis for a Change Order. Construction Manager shall submit a written request to the Owner for Owner's consent to the reimbursement of such cost together with an explanation of the reason such cost is to be incurred. The Construction Manager shall not be entitled to reimbursement of any such cost unless, prior to incurring such cost, the Owner provided such consent.
- .2 At final completion of the Work, One Hundred percent (100 %) of any unspent Construction Contingency shall inure to the benefit of the Owner on a per Task basis.

#### § 2.2.1.2 General Conditions Costs

A fixed lump sum amount based on Exhibit F.1 included in the Construction Manager's Bid submission for "General Conditions and General Requirements Costs" shall be separately identified and itemized as separate line items on a schedule to be included in TA's # 01 and 02. The term "General Conditions Costs" shall mean and include the Construction Manager's indirect costs incurred in the performance of the Work which indirect costs are included as reimbursable under Sections 6.1 through and including 6.7 and are not excluded from reimbursement pursuant to Section 6.8.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect for a Task, the Construction Manager shall provide in the TA Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, may only be incorporated by Change Order or Construction Change Directive.

§ 2.2.3 The Construction Manager shall include with each TA Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the TA Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed TA Guaranteed Maximum Price, including a statement of the estimated Cost of the Work (organized by trade categories or systems), allowances, insurance and bond costs, Construction Contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed TA Guaranteed Maximum Price is based and a schedule for completion of the Work pursuant to Section 2.2.13 below;
- .5 A period of time (of not less than forty-five (45) days after Construction Manager's submission of a TA Guaranteed Maximum Price proposal in accordance with the terms and conditions of this Agreement) during which such proposal may not be unilaterally modified or withdrawn by the Construction Manager (the "Proposal Period"); and
- .6 A statement sworn by the Construction Manager listing the names and addresses of each subcontractor, supplier and consultant to perform any part of the Work on behalf of the Construction Manager along with a description of that portion of the Work to be performed/provided by, and the compensation to be paid to, such subcontractor, supplier or consultant, as applicable.



§ 2.2.4 REVIEW AND ADJUSTMENT TO GMP PROPOSAL – The CM shall meet with the Owner to review each Task GMP Proposal. If the Owner has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give written notice of such comments or findings to the CM, who shall make appropriate adjustments to the GMP, its basis or both.

§ 2.2.4.1 ACCEPTANCE OF GMP PROPOSAL – Upon written acceptance by the Owner of each Task GMP Proposal, the GMP and its basis shall be set forth in a TA.

§ 2.2.4.2 FAILURE TO ACCEPT THE GMP PROPOSAL – Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the CM, the GMP Proposal shall not be effective. If the Owner fails to accept the Task GMP Proposal, or rejects the Task GMP Proposal, the Owner shall have the right to:

§ 2.2.4.3 Suggest modifications to the GMP Proposal – If such modifications are accepted in writing by CM, the GMP Proposal shall be deemed accepted in accordance with the terms and conditions of subsection 4.4.3.5; or

§ 2.2.4.4 Direct, by signed TA, the CM to proceed on the basis of reimbursement (Cost of the Work plus a fee) as provided in Article 6 without a GMP, in which case all references in this Agreement shall not be applicable.

§ 2.2.4.5 PRE-TA WORK Except as provided in Section 2.2.7, prior to the Owner's acceptance of each TA, the CM will not incur costs to be reimbursed as part of the Cost of the Work.

§ 2.2.4.6 GENERAL CONDITIONS ("GC") AND GENERAL REQUIREMENTS ("GR") – The lump sum amount for the GC costs and GR costs portion of the Cost of the Work ("the General Conditions Lump Sum Amount"), shall be separately identified and itemized as separate line items on a schedule to be included in TA's # 01 and 02. The Construction Manager shall be entitled to an increase in the General Conditions Lump Sum Amount only as follows: (i) in the case of excusable delay as defined in Section 8.3 of the A201 General Conditions and, subject to Owner's reasonable approval, Construction Manager shall be allowed reimbursement to the extent available from the Contingency or buyout savings for provable direct costs of acceleration or delay; (ii) in the case of compensable delay occurrences as allowed by Section 8.3 of the A201 General Conditions, the Construction Manager shall be allowed an increase in both the General Conditions Lump Sum Amount and the Guaranteed Maximum Price for the provable direct costs of acceleration or delay, subject to the limitations set forth in Section 8.3 of the General Conditions; or (iii) in the case of Change Orders or other project conditions caused by Owner or Architect that materially increase Construction Manager's staffing required to execute the Work.

§ 2.2.5 Intentionally Omitted.

§ 2.2.6 The Construction Manager shall meet with the Owner and Architect to review the TA Guaranteed Maximum Price proposal incorporated in the RTA, and the Project Schedule (as defined in Section 2.2.12 of this Agreement) proposal for each Task. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the TA Guaranteed Maximum Price proposal incorporated into the RTA, its basis, or both or to the Project Schedule. The risk of loss due to inconsistencies or inaccuracies in the Guaranteed Maximum Price and the Project Schedule and/or in the TA Guaranteed Maximum Price executed pursuant to Section 2.2.6, shall be the Construction Manager's, except to the extent due to the fault of the Owner or the Architect.

§ 2.2.6.1 If the Owner notifies the Construction Manager that the Owner has accepted a TA in writing before the date specified in the TA, the TA shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a TA, the Owner and Construction Manager shall execute the TA, a copy of which the Owner shall provide to the Architect. The TA shall set forth the agreed upon Guaranteed Maximum Price for the Task with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to execution of a TA unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in a TA . The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the TA and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in a TA Guaranteed Maximum Price, but only to the extent applicable, all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the TA Guaranteed Maximum Price Amendment is executed. The Owner is a tax-exempt entity. The TA Guaranteed Maximum Price does not include any state sales and use tax on materials and services incorporated into the Project.

§ 2.2.10 Intentionally Omitted.

§ 2.2.11 Intentionally Omitted.

§ 2.2.12 By executing a TA that includes a Guaranteed Maximum Price pursuant to Section 2.2.6 of this Agreement, the Construction Manager represents and warrants, which representation and warranty is hereby incorporated into the such TA, that the Drawings and Specifications and other materials and information listed in the TA describe the scope, construction requirements and design intent of the Work in detail sufficient to enable the Construction Manager to establish firmly the Guaranteed Maximum Price included in the TA, subject to the agreed upon assumptions and clarifications included in the TA . So long as the further drawings, clarifications, supplemental information, and other materials are consistent with the Contract Documents, the Construction Manager shall not be permitted to claim any adjustment in the Guaranteed Maximum Price included in the TA or the Construction Schedule in connection with the completion of drawings, clarifications, supplemental information and other materials issued by the Architect or the Owner (collectively, "Supplemental Materials") after the date the TA is executed in regard to items of Work that are reasonably inferable from, and not excluded by, the Contract Documents except as otherwise provided in the Contract Documents.

#### §2.2.13 Contract Time

§ 2.2.13.1 As part of a TA Guaranteed Maximum Price proposal, the Construction Manager shall prepare and submit for the approval of the Owner, a schedule for completion of the Work of that Task, the Task Project Schedule, in accordance with the requirements of Section 3.10 of A201-2017. The Task Project Schedule shall: (1) provide a graphic representation of material activities and events that will occur during performance of the Work; (2) identify each phase of construction separately; (3) identify the dates applicable certifications, permits and approvals will be sought and the expected date of receipt of such certifications, permits and approvals; (4) indicate a proposed cash flow schedule for the Task; (5) identify key dates for Owner-provided information and materials; (6) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents; (7) fully coordinate with the work of other Tasks; and (8) specify the Substantial Completion Date for the purposes of this Section 2.2.13.

§ 2.2.13.2 TIME IS OF THE ESSENCE in the completion of the Work.

§ 2.2.13.3 The Project shall be deemed to have achieved Substantial Completion when all of the following have occurred:

- .1 The Architect has issued a Certificate of Substantial Completion; and
- .2 Code Authorities with jurisdiction have approved the Work.
- .3 The CM shall provide the Owner with a completed and executed AIA Document G704-2000 for each TA and for the Project.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase of the Work. The Construction Phase of the Work shall commence upon the Owner's acceptance of the first proposed TA or the issuance by the Owner to the Construction Manager of a Notice to Proceed with the Construction Phase, whichever occurs earlier.

### § 2.3.2 Administration

§ 2.3.2.1 See Section 2.1.6 of this Agreement for the Construction Manager's obligations regarding selecting, and contracting with subcontractors and/or suppliers for all elements of the Work. All such subcontracts or agreements shall be between the performing party and the Construction Manager in the Construction Manager's own name and not as an agent of the Owner. However, each subcontract, vendor contract, purchase order, letter of intent or any similar agreement entered into by the Construction Manager in connection with the Work shall be assignable to the Owner upon demand by the Owner, subject to the provisions of Section 5.4 of the General Conditions of the Contract. Each such agreement shall include language indicating that the Owner may, at the Owner's option, take assignment of the Construction Manager's rights under such agreement, subject to Section 5.4 of the General Conditions of the Contract.

§ 2.3.2.2 If the TA has been established before the selection of Subcontractors and Suppliers pursuant to Section 2.1.6, and when, in such event, a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents and the bid packet approved by the Owner pursuant to Section 2.1.6 without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the TA Contract Time and the TA Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall be awarded on a lump basis and conform to the applicable payment provisions of this Agreement and the General Conditions and shall be awarded on a lump sum basis and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, in accordance with Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect. The Construction Manager shall schedule and conduct progress meetings at the site on a weekly basis or other interval appropriate for the level of job site activity and in accordance with the Construction Manager's operations. Owner and Architect shall be notified of meeting dates and times and will be required to attend bi-weekly meetings at the Construction Manager's request.

§ 2.3.2.6 Upon the execution of a TA, the Construction Manager shall prepare and submit to the Owner and Architect, in addition to the Project Schedule, a submittal schedule in accordance with Section 3.10.2 of the General Conditions.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. Such reports shall also compare actual progress with the progress required under the Construction Schedule and shall

describe any material adjustments to the schedule or the progress forecast and the causes therefore and, where applicable, note corrective measures. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.3 Without limitation of the generality of the foregoing provisions of Section 2.3, the Construction Manager's responsibilities during the Construction Phase shall also include the following:

- .1 Prepare & administer agreements with contractors (successful bidders). Implement an effective plan for coordination of all field activities. Monitor and coordinate the day-to-day activities of the contractors. Maintain daily logs of contractor activities.
- .2 CM shall provide on-site supervision to ensure that quality, schedule and cost elements are adequately managed to the full satisfaction of the CRDA.
- .3 CM shall continue to monitor and update the project master schedule as required in accordance with Section 2.1.10.3.
- .4 Develop and implement a system for review, tracking and processing of change requests and change orders with all contractors, subcontractors and vendor purchase orders.
- .5 Verify accuracy of costs and conformance to the contract documents by all contractors and subcontractors. Recommend acceptance or rejection to the CRDA.
- .6 Develop and implement a procedure for review and processing of contractors' and subcontractors' applications for payment; progress payments and final payment including release of liens, waivers, change orders, etc.
- .7 Ensure all contractors of record on the site are meeting prevailing wage and state labor requirements including certified payroll documentation.
- .8 Cooperate with the CRDA and contractors in ensuring that construction permit applications have been made, and that permits, and other approvals are received in a timely fashion. Ensure that permit reporting and record-keeping requirements are met.
- .9 Ensure that all inspections and special inspections required by the State Building and Life Safety Codes are scheduled and performed as required.
- .10 Establish and implement procedure for expediting, processing and securing approval of all shop drawings, mock-ups and samples. Develop and maintain a submittal and mock-up schedule coordinated and in conformance with the Project Schedule.
- .11 Maintain on site for the CRDA one record copy of the drawings, specifications, addenda, change orders and other modifications, marked currently to record field changes and selections made during construction and one record copy of approved shop drawings, product data, samples and similar required submittals. Ensure all contractors provide accurate as-built drawings in CAD format of all major disciplines. The design team will provide base CAD drawings for preparation of submittals and as-built drawings.
- .12 Monitor delivery and, if necessary, arrange for inventorying, storage, protection, and security of owner purchased materials, systems and equipment.
- .13 CM acknowledges that the XL Center is an operating venue. The CM is responsible to ensure that the MEP infrastructure including fire alarm, fire sprinkler system, smoke evacuation system and emergency power are fully operational during all times the public

- has access to the building for events including show set-up and take-down. At all other times, if interruptions to the system's power, fire alarm, fire sprinkler system, smoke evacuation system and emergency power are required, the CM shall coordinate with CRDA, Spectra and the City of Hartford Fire Department; and obtain the approval of the Authorities having Jurisdiction.
- .14 CM is responsible for sequencing of the Work to maximize efficiency, minimize conflict between trades and avoid conflict with the building's ongoing operational requirements as noted in Section 2.2.3.13.
  - .15 CM is responsible to provide all coordination required to prevent conflicts between installed architectural, structural and mechanical systems.
  - .16 Record project progress with Daily Reports and digital photographs. Dailey Reports shall record trade personnel and equipment on site and work performed. The digital photographs are to be transmitted electronically to the CRDA in a monthly report.
  - .17 Implement a tracking and monitoring system that will provide for timely flow and execution of all documents. Implement a tracking and control program for handling contractor "Requests for Information".
  - .18 Maintain an effective program of document control. CM is responsible for maintaining records of design changes, contracts, contract drawings, shop drawings, progress photos, samples, purchases, materials, technical standards and specifications, daily reports, testing, inspection reports, as built drawings, operating manuals and instructions, etc.
  - .19 Ensure that the construction site is maintained in a safe manner and the premises and surrounding areas are free from accumulated waste or rubbish. Perform Safety Audits, job hazard analysis, review accidents for root causes and implement corrective action plans.
  - .20 Implementation and understanding of all environmental procedures, including ensuring that the work of the CM and all subcontractors complies with all applicable laws and regulations, including environmental, health, and safety requirements. This condition shall include planned work as well as changed work and work due to changed conditions, if necessary.
  - .21 Ensure that insurance programs and bonding documents are on file and in conformance with contract documents. Maintain a complete and up-to-date file of insurance certificates for all on-site contractors and provide copies to CRDA.
  - .22 As applicable, ensure that Affirmative Action requirements and reporting are met. Ensure that specified requirements, including all reporting, for the State of Connecticut's small business set-aside program as outlined in Connecticut General Statutes Section 4a-60g and SBE/MBE, and construction workforce goals are met.
  - .23 Maintain operational status of fire safety systems throughout construction. Provide temporary protection, lighting and other facilities necessary to allow on-going operational use of the building during construction.
  - .24 Assist in the on-site coordination of Owner's separate contract work.
  - .25 Protect existing facilities and all recently renovated areas.
  - .26 Contract with an experienced Commissioning Agent to perform building equipment and systems' commissioning services and coordinate activities during the construction phase. Monitor and assist in the start-up, testing and commissioning of utilities, operational systems and equipment.
  - .27 Require trade contractors to assist in training Owner's maintenance personnel to operate equipment and deliver written operating and maintenance Instructions.
  - .28 Administer testing requirements of buildings, systems and equipment. Cooperate with Building Health and other Inspections, acceptances or turnover procedures, which may be

- required. Provide construction-related information that the owner may require to obtain necessary operating permits.
- .29 Upon approximate substantial completion of the work, prepare punch list of incomplete and unsatisfactory items in conjunction with the CRDA. Coordinate issuance of letters of substantial completion from each contractor.
  - .30 Schedule completion of punch list work and advise CRDA of completion of the work.
  - .31 Compile all completion documents for transmittal to CRDA including guarantees, warranties, affidavits, waivers, release of liens, bonds, as-built documents, keys, manuals, record drawings, etc. in a timely manner.
  - .32 Deliver to CRDA an itemized, reconciled final statement of project costs, closing out all contracts, purchase orders, change orders and waiver of liens.
  - .33 Arrange for production of "As-Built" documentation as follows: 3 complete sets of O&M Manuals (paper in binders and PDF files), as-built drawings (paper, PDF and CAD), final approved submittals and inventory of attic stock.

#### § 2.4 Professional Services

Section 3.12.10 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

### 3. ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of a TA, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the TA Contract Sums, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to an appropriate corresponding change in the Project's scope as desired by the Owner and/or necessary to compensate for such changes in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control to the extent relevant to, and necessary for, the

Construction Manager's performance of the Work, with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall, except to the extent otherwise informed by the Owner in writing at the time of the furnishing of the information and services, be entitled to rely on the accuracy of such information and services furnished by the Owner but, in all events, the Construction Manager shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The CM shall work with the design professionals on identifying required building and system testing and pre-bid investigations including an environmental survey of work areas to identify required hazardous material abatement; administer and contract the required testing and pre-bid investigations with in-house staff, Sub-contractors and sub-consultants as required. The cost of required surveys and testing shall be added to TA #1.

§ 3.1.4.2 Unless otherwise provided in the Contract Documents, the Owner shall furnish, if available, surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 3.1.4.3 Intentionally omitted.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's responsibilities under the Contract Documents with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that the Owner reasonably deems necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the Owner's agreement with the Architect.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

«The compensation to be paid to the Construction Manager for Preconstruction Phase Services shall be the fixed lump sum amount of [REDACTED] Dollars (\$ [REDACTED]).

§ 4.1.3 Intentionally Omitted.

§ 4.1.4 If compensation is based on Direct Personnel Expense, "Direct Personnel Expense" shall mean and includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**§ 4.2 Payments**

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

§ 4.2.2 Payments for Preconstruction Phase Services are due and payable no later than thirty (30) days after the Owner's approval of the Construction Manager's properly submitted invoice along with all documentation reasonably requested by the Owner to substantiate the Construction Manager's entitlement to payment of the invoice amount. Payments due and payable and remaining unpaid shall bear interest only to the extent required by Connecticut law and, if so required, at the minimum required rate.

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

§ 5.1 For the Construction Manager's performance of the Work in accordance with the Contract Documents as described in Section 2.3, the Owner shall subject to the provisions of Section 11.7 of this Agreement, pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

«The Construction Manager's Fee shall be an amount equal to [redacted] (%) of the Direct Costs included in the approved TAs. "Direct Costs" shall mean and include amounts payable by the Construction Manager under Subcontracts for labor and materials to be incorporated into the Work.

The Cost of Bonds shall not exceed [redacted] % of GMP Value

The Cost the CM's Insurance shall not exceed [redacted] % of Trade Cost

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

«Provided changes in the Work were made at the request or with the prior consent of the Owner, and not necessitated by the fault of the Construction Manager, its Subcontractors, material suppliers or any other entity or person for which any of them is responsible, Construction Manager shall be entitled:

§5.1.2.1 For such changes in the Work that result in a net increase in the Direct Costs, the Construction Manager shall be entitled to a fee equal to [redacted] % of such net increase.

The CM's Fee and mark-ups for Bond and Insurance on Change Order work shall be as indicated in Section 5.1.1

§5.1.2.2 For such changes in the Work that result in a net decrease in the Direct Costs, the Contract Sum shall be reduced appropriately for such reduction in Direct Costs and Construction Manager's Fee calculated thereon.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«Subcontractor's markup on change order work shall not exceed that permitted under Section 7.3.3.5 of the General Conditions.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall be consistent with Section 6.5.2 of this Agreement.

§ 5.1.5 Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*



As indicated in the CM's Labor Rates attached hereto as Exhibit D and Exhibit F.1 from the CM's Bid Submission attached hereto as Exhibit D.1

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

**§ 5.2 Guaranteed Maximum Price**

§ 5.2.1 The Construction Manager guarantees that the Contract Sum for each TA shall not exceed the TA Guaranteed Maximum Price set forth in the TA Guaranteed Maximum Price Amendment, as it may be amended from time to time. To the extent the Cost of the Work exceeds a TA Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the TA Guaranteed Maximum Price without reimbursement or any additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

The Construction Manager shall be responsible for all costs and expenses to the extent that the Contract Sum exceeds the sum of all TA Guaranteed Maximum Prices and shall not be entitled to share in any savings should the final Contract Sum be less than the Guaranteed Maximum Price.»

§ 5.2.2 The Guaranteed Maximum Price of each TA is subject to additions and deductions by Change Order as provided in the Contract Documents and the Substantial Completion Date shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of the General Conditions. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to a TA Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the TA Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of the General Conditions.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of the General Conditions and the term "costs" as used in Section 7.3.4 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to a Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price of the related TA shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

See Replacement for Sections §6.1, §6.1.1 and §6.1.2 on the following page.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior  
*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, but only with the Owner’s prior approval.

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction are to be included in Subcontract Costs described in Section 6.3.

## **§ 6.1 Costs to Be Reimbursed**

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. Items included in the General Conditions Preconstruction Services Lump Sum Amount established as part of TA 1 pursuant to Exhibit F.1, shall be paid as part of the Cost of the Work in accordance with Article 7.

Items included in the General Conditions Lump Sum Amount established as part of TA 2 for General Conditions and General Requirements pursuant to Exhibit F.1, shall be paid in equal monthly payments, as set forth in Section 1.6.1.1 for Task 1 and Task 2, as part of the Cost of the Work pursuant to Article 7 and not billed separately under this Section. To the extent relevant for extra work or change orders, attached as Schedule D The number of monthly payments for General Conditions and General Requirements shall be based on the Schedule pursuant to Sections 2.1.10.2 and 2.2.13 subject to adjustment if the Project falls behind schedule. The Construction Contingency will be allocated to approved Change Orders which will become part of the Cost of Work pursuant to Article 7 and not billed separately under this Section. To the extent relevant for extra work or change orders, attached as Attachment 4 is a listing of the Construction Manager's fully burdened rates for trade labor and supervisory, administrative, and professional staff.

**§ 6.1.2** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the related TA Guaranteed Maximum Price Amendment.

## **§ 6.2 Labor Costs**

**§ 6.2.1** Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. To the extent that such workers are not included in the Lump Sum General Conditions and General Requirements, such workers will be charged as a Cost of the Work per the stipulated fully burdened labor billing rates set forth in Attachment 4.

This project is subject to the prevailing wage requirements of Connecticut General Statutes Section 31-53. Conformance to the prevailing wage rates is required. The Construction Manager is required to submit wage rate certifications with all applications for progress payment. No payment will be made unless the wage rate certifications have been properly completed. Submission of certified payrolls is required.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.1.1 The Construction Manager shall maintain an inventory of the items described in this Section 6.5.1 that are purchased in connection with the Work and charged as Costs of the Work. Following final completion of the Work and as a condition precedent to the final payment, the Construction Manager shall submit to the Owner a final accounting in which (i) all such items are listed; (ii) for each item, the amount charged as a Cost of the Work is indicated; and (iii) the final disposition for each such item is indicated.

§ 6.5.2 Fair market rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. All such items that have residual value at project completion shall be conveyed to the Owner.

§ 6.5.2.1 If the cumulative total of rental charges in connection with any single piece of machinery or equipment equals or exceeds one hundred percent (100%) of its fair market value as of the date such machinery and equipment was first put into service, the Owner shall be deemed to have purchased such machinery or equipment and, upon final completion of the Work, the Construction Manager shall deliver such machinery or equipment to the Owner together with appropriate documentation conveying free and clear title to the Owner.

§ 6.5.2.2 If the Construction Manager purchases equipment under a lease/purchase arrangement whereby rental payments were charged to the Owner as reimbursable costs, an appropriate credit will be given to the Owner for the fair market value of the equipment at the time it was last used on the Project.

§ 6.5.2.3 For equipment owned by the Construction Manager or a related party (as defined in Section 6.10.1 of this Agreement) of the Construction Manager, the Construction Manager shall, upon the Owner's request, maintain daily equipment usage time reports noting the hours and activity for which the equipment was used, standby time, idle time, etc. Such equipment usage reports will be used by the Construction Manager to determine whether hourly, daily, weekly or monthly rates shall apply; and the rates used for billing purposes will be those most economical to the Owner based on the circumstances of actual usage.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 The expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work are included in the Construction Manager's Fee and shall not otherwise be reimbursable.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.5.7 Except in case of an emergency, the Construction Manager shall notify the Owner thirty (30) days prior to providing, with its own forces or property or the forces or property of a related party (as defined in Section 6.10.1 of this Agreement) of the Construction Manager, any of the items or services, as the case may be, described in Section 6.5.1, 6.5.2 and/or 6.5.3, and the Construction Manager shall not so provide the same without the prior written approval of the Owner. At the request of the Owner, the provision of such items shall be bid in a manner consistent with Section 2.1.6 of this Agreement.

#### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents is subject to the Owner's prior approval. The cost of Construction Manager's liability insurances shall be charged as a Cost of the Work at the stipulated amount of not to exceed ### percent (###%) of the estimated Cost of the Work.

§ 6.6.2 Intentionally Deleted.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work are not included as a Cost of the Work and shall not be reimbursable.

§ 6.6.7 Deposits lost for causes unrelated to the Construction Manager's negligence or failure to fulfill a responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

#### § 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of the General Conditions.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, suppliers or anyone else for whose work the Construction Manager is responsible under the Contract, provided that such damage was not caused by (i) the negligent act or omission of any such party or entity or (ii) the Construction Manager's failure to otherwise comply with the terms of the Contract Documents, or to fulfill a specific responsibility of the Construction Manager and in any event, only

to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not to Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Notwithstanding anything to the contrary provided in Section 6.7.3, costs due to the negligent act or omission of the Construction Manager, its Subcontractor or Supplier, or anyone else conducting the Work, or due to the failure of the Construction Manager to comply with the terms of the Contract Documents, and all costs arising from any Work which the Construction Manager was aware did not comply with the Contract Documents or Applicable Law;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7 as included in the Cost of the Work;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause a TA Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Amounts required to be paid by the Construction Manager for federal, state, or local income or franchise taxes;
- .10 Labor, material, and equipment costs or any other costs incurred which are recoverable from Subcontractors or Suppliers or which is included in a contract with a Subcontractor or Supplier;
- .11 Losses resulting from lost, damaged or stolen tools and equipment (other than equipment to be incorporated into the Work to the extent covered by the Owner's property insurance);

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall promptly notify the Owner of potential cash discounts of which the Construction Manager is aware to enable Owner to take advantage of same. The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate or refund.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of this Agreement, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of this Agreement. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of this Agreement.

### **§ 6.11 Accounting Records**

**§ 6.11.1** The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six years after final payment, or for such longer period as may be required by law.

**§ 6.11.2** Records to be available for audit shall include but not be limited to accounting records, written policies and procedures; contact and subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence invoices; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; electronic or computer data and any other supporting evidence deemed necessary to substantiate charges. These records shall be open to inspection and subject to an audit and/or reproduction to the extent necessary to adequately permit evaluation and verification of the Cost of the Work, and any invoices, change orders, payments or claims submitted by the contractor or vendor to any of his payees pursuant to the execution of this Agreement

**§ 6.11.3** The audits described in this Section 6.11 may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent's reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that have any bearing on or pertain to any records subject to audit. This material shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations). Access shall be afforded to all of the Construction Manager's records, and the auditor shall be allowed to interview any of the Construction Manager's employees. The Construction Manager shall provide access to the Construction Manager's facilities and provide all necessary records for the purpose of an audit and shall provide adequate workspace to conduct audits in compliance with this article.

**§ 6.11.4** If any audit reveals an overcharge, the Construction Manager shall pay the Owner upon demand an amount equal to such overcharge as reimbursement for said overcharge. Nothing in this Section 6.11 shall limit the remedies of the Owner by law or in equity.

§ 6.11.5 The Construction Manager shall deliver to the Owner such items as are requested by the Owner to support costs billed to the Project and shall provide any further assistance requested by the Owner during an audit of the Project.

§ 6.11.6 The Construction Manager shall comply and shall cause subcontractors and suppliers of every tier to comply, with all accounting procedures and record retention policies reasonably requested by the Owner.

## **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 7.1 Progress Payments**

§ 7.1.1 Based upon Applications for Payment submitted to the Architect and the Owner by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager subject to and as provided below and elsewhere in the Contract Documents.

§ 7.1.2 Applications for Payment shall be submitted on a monthly basis and the period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 Provided that a "pencil" Application for Payment is received by the 25th day of a month and a final Application for Payment is received by the Architect not later than the « first » day of a month, The Owner shall make payment of the amount certified by the Architect to be due and payable to the Construction Manager under each Application for Payment submitted in accordance with Section 9.3 of the General Conditions within thirty (30) days after receipt of the final approved version of such Application for Payment. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than « thirty (» ( « 30 » ) days after the Architect receives and approves the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, lien waivers, and subcontractor's applications for payment and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.4.1 Each Application for Payment shall also include a statement showing the status of all pending change orders, other pending change directives and approved changes to the Contract. Such statement shall identify the pending change orders and other pending change directives and shall include the date such change orders and directives were initiated, the costs associated with their performance and a description of any work completed.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the 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 the unspent balance of the Construction Contingency 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 and/or Owner may require. This schedule, unless objected to by the Architect and/or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of each TA Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.



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

- .1 Take that portion of each TA Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the TA Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values (not including General Conditions and Construction Manager's Fee) less retainage of five (5%) percent). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add that portion of each TA Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing less retainage of five (5%) percent;
- .3 Add the Construction Manager's Fee less retainage of « five » percent ( « 5 » % of the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of percent five percent (5 %) from that portion of the Work that the Construction Manager self-performs ;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the 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 Section 7.1.4 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 Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 **Notwithstanding anything to the contrary contained in the Contract Documents**, issuance of a Certificate for Payment by the Architect is a recommendation only; payment to the Construction Manager of amounts certified in a Certificate for Payment is subject to the Owner's approval.

§ 7.1.12 With the exception of the Construction Manager's Fee, the Construction Manager shall use payments made under this Agreement solely for the purpose of performance of the Work pursuant to the Contract Documents. Construction Manager shall pay for all labor performed and materials supplied by others in connection with the performance of the Work in accordance with the Contract Documents and as required by Applicable Law.

**§7.1.13** Upon Substantial Completion, an amount equal to 200% of the cost reasonably estimated by the Architect to be necessary to complete "punch list" items and achieve Final Completion of the Work, shall be subtracted from the payment made pursuant to Section 9.8.5 of the General Conditions. If the Construction Manager fails to complete the items on the "punch list," the Owner may use such retainage to complete such items, and the Construction Manager shall forfeit all rights to such retainage amounts as the Owner so uses.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the TA Contract Sums, shall be made by the Owner to the Construction Manager no later than sixty (60) days after:

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows: In the discretion of the Owner, the Owner may make final payment to the Construction Manager by joint checks made payable in each case to the Construction Manager and the appropriate subcontractor or supplier. The Construction Manager acknowledges and agrees that such payment by joint check shall constitute payment by Owner to the Construction Manager.

Notwithstanding anything to the contrary set forth herein or in any other Contract Documents, unless otherwise required by Applicable Law, the Owner shall not be required to make final payment until the Construction Manager has submitted all documentation required by the Contract Documents to the Owner and the Owner has accepted the same (which acceptance shall not be unreasonably withheld), including without limitation, all warranties and guarantees associated with the Work and a "as built" surveys in form acceptable to the Owner.

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of the General Conditions. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment to the extent not subject to dispute by the Owner.

**§ 7.2.4** Intentionally Omitted.

**ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth below and in Article 11 of the General Conditions.

**§ 8.1 Insurance**

§ 8.1.1 The insurance required of the Construction Manager under Section 11.1.1 of AIA Document A201-2007 shall be written for not less than the amounts in this Section 8.1, or greater if required by law. The insurance required under this Section 8.1 shall comply in all ways with the requirements of insurance required pursuant to Section 11.1 of AIA Document A201-2007.

- .1 Workers' Compensation (waiver of subrogation required):
  - a. State
  - b. Voluntary Compensation (by any exempt entities): Same as State Workers' Compensation
  - C. Employers Liability:
    - \$ 500,000.00 Each Accident
    - \$ 500,000.00 Disease, Policy Limit
    - \$ 500,000.00 Disease, Each Employee
  
- .2 Commercial General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage):
  - a. Bodily Injury: \$ 1,000,000.00 Each Occurrence
  - b. Property Damage:
    - Included Each Occurrence
    - Included Aggregate
  - c. Products and Completed Operations shall be maintained for five (5) years after final payment
  - d. Property Damage Liability Insurance shall provide explosion, collapse and underground coverage as applicable
  - e. Contractual Liability (Hold Harmless Coverage):
    - Bodily Injury: \$ 1,000,000.00 Each Occurrence
    - Property Damage:
      - Included Each Occurrence
      - Included Aggregate
  - f. Personal Injury with Employment Exclusion deleted: \$ 1,000,000.00 Aggregate
  - g. If the General Liability policy includes a General Aggregate, such Aggregate shall not be less than \$ 2,000,000.00. Policy shall be endorsed to have General aggregate apply to this Project only.
  
- .3 Umbrella Excess Liability
  - \$ 10,000,000.00 Over primary insurance
  - \$ 10,000.00 maximum Retention or deductible
  
- .4 Pollution Liability:
  - \$3,000,000 Each Occurrence
  - Included Each Occurrence
  - Included Aggregate
  
- .5 Comprehensive Automobile Liability (owned, non - owned, hired):
  - a. Bodily Injury: \$ 1,000,000.00 Per Accident
  - b. Property Damage: Included Each Occurrence
  - c. Including Endorsement MCS-90 and Pollution Liability (CA9948)
  
- .6 Professional Liability
  - a. Minimum coverage for each claim \$3,000,000
  - b. Minimum annual coverage \$3,000,000
  - c. Maximum deductible or self-insured retention \$100,000

d. Extended reporting period for six (6) years following the termination of this Agreement

§ 8.1.3 The Construction Manager shall cause each and every Subcontractor, at its expense, to obtain and maintain throughout the performance of the Work, insurance in such form and amounts set forth in Paragraph 8.1, unless a different form or a lesser amount is agreed to by the Owner and the Construction Manager on a case-by-case basis. Notwithstanding the foregoing, subcontractors not performing engineering or other design services shall not be obligated to carry the Professional Liability coverage required of the Construction Manager.

§ 8.1.4 See Section 11.1 of the General Conditions for information about those to be included as Additional Insureds and the required inclusions in certificates of insurance.

**§ 8.1.5 Builder's Risk and Off-Site Insurance** – Beginning on or before \_\_\_\_\_ and continuing throughout the period of any construction until the date of substantial completion and receipt of the final certificate of Occupancy, Contractor shall maintain or cause to be maintained a completed value "all risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form in an amount not less than 100% of the replacement cost of any such construction. Contractor shall insure or cause to be insured all materials for the Construction Activities that are stored off the Stadium Site, including transit (to the extent not otherwise insured by vendor or shipper), for their full insurable value.

§ 8.2 Bonds

§ 8.2.1 At the written request of the Owner upon completion of the Preliminary Estimate pursuant to Section 2.1.5 of this Agreement, the Construction Manager shall furnish, with sureties satisfactory to the Owner:

.1 a bond covering the Construction Manager's faithful performance of the Work, which bond shall be equal to one hundred percent (100%) of the Total of the Preliminary Estimate and on which the Owner shall be shown as the obligee; and

.2 a Payment Bond equal to one hundred percent (100%) of the total of the Preliminary Estimate.

.3 The value of the Performance Bond and Payment Bond shall be adjusted if the aggregate total GMP of all TAs exceeds the value of the Preliminary Estimate.

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)

**ARTICLE 9 DISPUTE RESOLUTION**

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of the General Conditions. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of the General Conditions, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

Arbitration pursuant to Section 15.4 of the General Conditions  
Arbitration shall take place in Hartford, Connecticut.

Litigation in a court of competent jurisdiction

Other: *(Specify)*

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of the General Conditions for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### § 10.1 Termination Prior to Establishment of a Task Authorization Amendment

§ 10.1.1 Prior to the execution of a TA, the Owner may, without prejudice and without waiving any other right or remedy the Owner may have, terminate this Agreement upon not less than seven days' written notice to the Construction Manager **for the Owner's convenience and without cause**, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of the General Conditions.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated pursuant to this Agreement for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of a TA, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements, as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the such subcontracts, purchase orders or rental agreements, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontracts, purchase orders or rental agreements that would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager will terminate the subcontracts, purchase orders or rental agreements and the Owner will pay the Construction Manager the satisfactorily evidenced and documented costs necessarily incurred by the Construction Manager because of such termination.

§10.1.4 Upon payment by the Owner of the amounts required under this Section 10.1, the Owner's obligations to the Construction Manager shall be fully satisfied, and the Construction Manager shall be deemed to have fully released the Owner from any obligations, claims and liabilities.

#### § 10.2 Termination Subsequent to Establishing a Task Authorization

Following execution of a TA and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of the General Conditions.

§ 10.2.1 If the Owner terminates the Contract after execution of a TA, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of a TA, the amount payable to the Construction Manager under Section 14.1.3 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, each TA Guaranteed Maximum Price and TA Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Section 5.1 and, if applicable, 5.3.5 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

§ 11.1 Terms in this Agreement shall have the same meaning as those in the General Conditions.

#### § 11.2 Ownership and Use of Documents

Section 1.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

#### § 11.3 Governing Law

Section 13.1 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

#### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

#### § 11.5 Other provisions:

§ 11.5.1 The Construction Manager's representative is designated on the first page of this Agreement and shall have express authority to bind the Construction Manager with respect to all matters under the Contract Documents. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative. Such representative may only be changed with the consent of the Owner, which consent the Owner shall not unreasonably withhold.

§ 11.5.2 Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Construction Manager hereunder if any one or more of the following conditions exist:

- .1 The Construction Manager is in default of any of its obligations hereunder or otherwise is in default under any of the Contract Documents;
  - .2 Any part of such payment is attributable to Work which, because of the fault or neglect of the Construction Manager, is defective or not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Contract Documents and is not defective;
- or

- .3 The Construction Manager has failed to make payments properly to the Subcontractors or suppliers or for material or labor otherwise used in the Work for which the Owner has made payment to the Construction Manager.

§ 11.5.3 No partial payment made hereunder shall be or be construed to be final acceptance or approval of that part of the Work to which such partial payment relates or relieve the Construction Manager of any of its obligations hereunder with respect thereto.

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

§ 11.5.5 Except for the Construction Manager's Fee, the Construction Manager shall use the sums advanced to it solely for the purpose of performance of the Work and the construction, furnishing, and equipping of the improvements in accordance with the Contract Documents. If so, requested by the Owner, the Construction Manager shall furnish to the Owner a statement accounting for the disbursement of funds received from the Owner. Such statement shall itemize all disbursements to Subcontractors and Suppliers and shall be accompanied by copies of subcontract payment vouchers, vendor's invoices, payrolls and other data substantiating actual expenditures and any other information requested by the Owner. However, no provision hereof shall be construed to require the Owner to ensure the proper disposition or application of the monies so advanced to the Construction Manager.

§ 11.5.6 The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- .1 the Construction Manager is financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the work and perform all obligations hereunder;
- .2 the Construction Manager is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to so;
- .3 the Construction Manager is authorized to do business in the State of Connecticut and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager's duly authorized powers;
- .4 the Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly authorized powers;
- .5 the Construction Manager's duly authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed including the location, condition, accessibility, layout and nature of the Project site; the generally prevailing climactic conditions; the anticipated labor supply and costs; and the availability and costs of materials, tools and equipment, and has correlated observations with the requirements of the Contract Documents; and
- .6 the Construction Manager possess a high level of experience and expertise in the business administration, construction, construction management and superintendence of school construction projects in the State of Connecticut of the size, complexity and nature of this particular Project and will perform the Work in a manner consistent with the Construction Manager's Standard of Care.

#### § 11.6

The Construction Manager shall pay all bills for labor and material performed and furnished by others in connection with the construction, furnishing, and equipping of all improvements and the performance of Work within thirty (30) days after the date the Construction Manager receives payment from the Owner. The Construction Manager shall include in each of its subcontracts a provision requiring each Subcontractor and Supplier to pay any amounts due any of its subcontractors or suppliers, whether for labor performed or materials furnished, not later than thirty (30) days after the date such Subcontractor or Supplier receives a

payment from the Construction Manager which encompasses labor performed or materials furnished by such subcontractor or supplier..

§ 11.7 Exhibit B entitled Administrative and Statutory Requirements is attached hereto and made a part hereof. The Construction Manager hereby acknowledges receipt of a copy of and agrees to comply with the provisions of Exhibit A.:

## **ARTICLE 12 SCOPE OF THE AGREEMENT**

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price as amended.  
General Conditions of the Contract for Construction as amended:

« »

- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*  
Schedule A List of Plans and Specifications

Schedule B Administrative and Statutory Requirements  
Schedule C Form of Task Authorization  
Exhibit F.1 General Conditions Matrix (from Bid as amended)  
Attachment 1 Instructions to Bidders  
Attachment 2 Contractor's Bid Form Submission  
Attachment 3 Required State Forms  
Attachment 4 CM Labor Rates (for change order work)  
Attachment 5 RFP Addenda



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

OWNER (*Signature*)  
CAPITAL REGION DEVELOPMENT AUTHORITY

CONSTRUCTION MANAGER (*Signature*)

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name and Title

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

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

