

State Of Connecticut Department Of Public Works
Standard Form of Agreement Between Owner and Construction Manager-At-Risk (CMR)
For Guaranteed Maximum Price (GMP)

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Modification date: October 14, 2009

AGREEMENT made as of the 27th day of October in the year of 2009

BETWEEN:

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

Acting herein by its Commissioner of the Department of Public Works, hereinafter referred to as the Owner (Owner), under the provisions of Sections 4-8, 4b-1 and 4b-103 of the Connecticut General Statutes, as revised;

and

The Whiting-Turner Contracting Company
195 Church Street, 16th Floor
New Haven, CT 06510

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

The Project is:

Department of Public Health
State Laboratory Building
Rocky Hill, CT 06067

and is hereinafter referred to as the Project

The Project number is: BI-2B-179 CMR

The Architect is:

Flad Architects
One Atlantic Street, Suite 304
Stamford, CT 06901

And is hereinafter referred to as the Architect

The Owner and CMR agree as set forth below:

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ARTICLE 1 GENERAL PROVISIONS

1.1 RELATIONSHIP OF PARTIES

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

1.2 GENERAL CONDITIONS

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

If a conflict exists between this Agreement and the General Conditions, the terms and conditions of this Agreement shall govern. This Agreement contemplates the creation of a Guaranteed Maximum Price Amendment (the "GMP Amendment"), the form of which is attached hereto as Exhibit A. If a conflict exists between the GMP Amendment and this Agreement, the terms and conditions of the GMP Amendment shall govern, with the Assumptions and Clarifications (Exhibit C to the GMP Amendment) having the highest level of priority of all the Contract Documents. Thereafter, the order of precedence of Contract Documents shall be in accordance with Article 3 of the General Conditions. The term "Contract Documents" as used in this Agreement and as further defined in Article 1.24 of the General Conditions shall include this Agreement, the General Conditions, the Department of Public Works Division 1 General Requirements (the "General Requirements"), Drawings, Specifications, and addenda, as required. The Contract Documents are incorporated herein and made a part of this Agreement. The term "Contract Sum" as used in this Agreement and the General Conditions shall mean the Guaranteed Maximum Price ("GMP") when it is established in accordance with this Agreement. The term "Work" as used in this Agreement and shall mean the construction and services required by the Contract Documents, including all labor, materials, equipment and services provided or to be provided by the CMR to fulfill the CMR's obligations. The Work may constitute the whole or a part of the Project, whether on or off the site of the Project, and including all labor, materials, equipment and services provided or to be provided by Subcontractors, Secondary Subcontractors, material suppliers or any other entity for whom the CMR is responsible under or pursuant to the Contract Documents.

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

ARTICLE 2 CONSTRUCTION MANAGER AT RISK RESPONSIBILITIES

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

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

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

2.1.2 CONSULTATION

The CMR with the Architect shall jointly schedule and attend regular meetings with the Owner. The CMR shall consult with the Owner and Architect regarding site use and improvements and the selection of materials,

building systems and equipment. The CMR shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible savings

2.1.3 PRELIMINARY PROJECT SCHEDULE

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~~When Project requirements described in Section 3.1.1 have been sufficiently identified, the CMR shall prepare, and periodically update, a Preliminary Project Schedule, as further described in Section 01 32.16.13 of the General Requirements, for the Architect's review and the Owner's approval. The CMR shall obtain the Architect's approval of the portion of the Preliminary Project Schedule relating to the performance of the Architect's services. The CMR shall coordinate and integrate the Preliminary Project Schedule with the services and activities of the Owner, Architect and CMR. As design proceeds, the Preliminary Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and Acceptance as those terms are defined and described in the General Conditions and Section 7.2 of this Agreement. If Preliminary Project Schedule updates indicate that previously approved schedules may not be met, the CMR shall make appropriate recommendations to the Owner and Architect and take all steps necessary to ensure completion of the aspects of Work as that term is described herein within its control within the time period required by the Contract Documents. All Preliminary Project Schedules shall contain the items and be in the format as directed by the Owner.~~

2.1.3.1 The CMR shall prepare a project Construction Schedule as defined and described in Article 1.56 of the General Conditions, concurrent with the initiation of the trades bidding process more fully described in Section 2.1.6 herein. This Construction Schedule will be reviewed with the Owner and the Architect to identify the anticipated dates for key milestones related to required permits, approvals and funding. All Construction Schedules shall contain the items and be in the format as directed by the Owner.

2.1.4 PHASED CONSTRUCTION

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

2.1.5 PRELIMINARY COST ESTIMATES

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

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

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

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

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The CMR shall conduct a detailed audit of the latest cost estimate provided by Owner with recommendations, as appropriate, for corrective or preventative action to avoid cost overruns. CMR shall prepare sufficiently detailed bid scopes. In developing and preparing the bids for trade packages, the CMR shall consider constructability, construction cost, sequence of construction, construction duration and means and methods of construction. Any and all costs incurred by the CMR as a part of such process, including the engagement of structural, engineering or other consultants, shall be included in the CMR's Preconstruction Lump Sum amount for "Bid and GMP Preparation" as set forth in Exhibit B.. In the event the bids for trade packages, as further described in Section 2.1.6 herein, exceed Owner's budget, CMR shall value engineer and/or provide a relevant scope reduction matrix, along with estimates for selected substantial scope items, as needed.

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

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

2.1.6 SUBCONTRACTORS AND SUPPLIERS

2.1.6.1 Bidding and Award of Subcontracts. The CMR shall review with the Owner the CMR's bidding procedures and bidder criteria and shall establish a schedule for the competitive bidding and awarding of Subcontracts, to be conducted separately for each of the Project Elements, in accordance with all applicable federal and state requirements. The term Project Elements as used herein shall refer to the permanent structures, site improvements and other permanent developments at the site specifically defined and specified in the Contract Documents. The Project Elements may constitute the whole or part of the Work. The CMR shall use all reasonable means and efforts to develop the interest of qualified Subcontractors in the Project.

.1 The CMR shall include in its subcontractor bid documents the following requirements: (i) For work to be performed with an estimated value in excess of five hundred thousand dollars (\$500,000.00), the subcontractor shall be prequalified in the State of Connecticut Department of Administrative Services classification noted on the pertinent Invitation to Bid; (ii) the bid shall be accompanied by a bid bond or certified check in an amount which shall be ten percent (10%) of any bid for work with an estimated value of at least fifty thousand dollars (\$50,000.00). If the bidder is a small contractor or minority business enterprise pursuant to Connecticut General Statutes Section 4a-60g and further described in Appendix I to this Agreement, it may provide in lieu of a bid bond a letter of credit in an amount equal to ten percent (10%) of the bid amount if the estimated value is less than one hundred thousand dollars and in an amount equal to twenty-five percent (25%) if the estimated value is one hundred thousand dollars or greater; and (iii) the bidder shall possess experience with projects of a similar nature and scope.

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

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

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

.1 Each bid shall be kept sealed until opened publicly on the date and at the time set forth in the notice soliciting such bid. Such opening shall take place at a location to be selected by the CMR and approved by the Owner. The CMR will analyze all bids and proposals to verify that the proposals are complete, that no unacceptable qualifications are made, that the bidders meet all CMR's criteria to the extent that it is in the best interest of the Project, and that the bidders have included the essential and qualitative information specified by the CMR in its bid documents. The CMR may waive minor irregularities in the bid documents.

Notwithstanding the foregoing, and as set forth in all pertinent bid advertisements and notices, the following conditions shall render a bid invalid and rejected by the CMR: (i) the subcontractor, if submitting a bid for work to be performed with an estimated value in excess of five hundred thousand dollars (\$500,000.00) is not prequalified in the State of Connecticut Department of Administrative Services requisite classification noted on the pertinent Invitation to Bid; (ii) the bid is not accompanied by a bid bond or certified check in an amount which shall be ten percent (10%) of any bid for work with an estimated value of at least fifty thousand dollars (\$50,000.00), or if the bidder is a small contractor or minority business enterprise pursuant to Connecticut General Statutes Section 41-60g, it has not provided in lieu of a bid bond a letter of credit in an amount equal to ten percent (10%) of the bid amount if the estimated value is less than one hundred thousand dollars and in an amount equal to twenty-five percent (25%), if the estimated value is one hundred thousand dollars or greater; (iii) the bidder appears on the State of Connecticut Department of Labor Debarment List.; and/or (iv) the bidder does not provide a requirement or qualification, the omission of which the CMR clearly stated in all bid solicitation communications would be grounds for bid rejection without allowance for waiver.

.2 Within seven (7) days of any bid opening, the CMR shall make available for review by bidders all bid packages at a location within the State of Connecticut to be designated by the CMR. A notice in prominent typeface describing such location shall be displayed in a visible place at the bid opening.

.3 The CMR is responsible for ensuring an adequate number of bids received for each advertised bid package through careful scope preparation and combination and/or separation of work, as required. In the event the CMR wants to recommend award of a package that received fewer than three (3) bids, CMR must describe in writing the following: (i) detailed explanation of efforts made by the CMR; (ii) the number of contractors provided with the bid information; (iii) any information the CMR may have acquired as to reasons for the low number of bids received; and (iii) that the pricing received from the contractor to be recommended is competitive and reasonable according to industry standards and the Project estimate..

.4 Prior to CMR's recommendation to Owner for approval of a contract, the CMR shall review any of Owner's performance-related files or evaluations pertinent to the recommended award. The CMR shall, after consultation with and approval by the Owner, award any contracts for Project Elements to the responsible, qualified, and approved subcontractor submitting the lowest bid in compliance with CMR's bid requirements and procedures. The CMR shall not be eligible to submit a bid for any such contract.

.5 The CMR shall resolve any issues that may arise relevant to the bidding process.

2.1.6.4 Aspects of the Work which are not Project Elements, not included in the general conditions costs described in Section 5.1.1 herein, and not otherwise included as an allowance under this Agreement, shall be awarded through a competitive process by which the CMR shall obtain quotes from no fewer than three (3) firms. In the event the CMR obtains fewer than three (3) quotes, the CMR must explain in writing the reasons therefor. If the CMR does not select the lowest price, the CMR must justify in writing its basis for its selection. All selections are subject to consultation with, and approval by, the Owner.

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

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

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

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

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

.2 A WAO shall not constitute: (i) a Notice to Proceed or the start of the Construction Phase as described in Section 2.3.1.1 of this Agreement; (ii) the start of days to Substantial Completion or increase in general conditions costs as described in Sections 2.2.4.7 and 5.1.1 of this Agreement; (iii) evidence of any approval or funding of the GMP.

2.1.7 LONG-LEAD-TIME ITEMS

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

2.1.8 EXTENT OF RESPONSIBILITY

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

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

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

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

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

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

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

2.2.3 The estimated Cost of the Work shall include the CMR's Contingency, which shall be a sum equal to two and one half percent (2.5%) of the estimated Cost of the Work established by the CMR and approved by the Owner for the CMR's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as a Cost of the Work but not the basis for a Change Order.

Use of the CMR's Contingency shall be to cover costs described in this Section. Use of CMR's Contingency to cover costs described in this Section shall include but not be limited to, costs associated with matters related to: (1) estimating errors; (2) trade buy-out differentials; (3) unanticipated market conditions, including price escalation after the GMP is accepted through a the GMP Amendment to this Agreement; (4) labor and material market conditions; (5) interface and coordinating omissions between various Subcontractor packages; (6) overtime and/or premium time; (7) acceleration and/or expediting; (8) correcting defective, damaged, and/or nonconforming work, provided CMR makes an effort to first recover such costs from the responsible Subcontractor, Subcontractor's surety, and/or vendor; (9) design errors or omissions that are the responsibility of the CMR; (10) bidder, Subcontractor, and vendor defaults; (11) legal expenses; and (12) losses not covered by insurance, including insurance deductibles not resulting from the neglect or negligence of the CMR or its Subcontractors..

The CMR's Contingency shall not, however, be used to fund changes in the Work as described in Article 13 of the General Conditions, including any adjustments to any of the allowances included in the GMP, nor shall it be

used to fund costs that result from the gross negligence or willful misconduct of CMR. CMR shall furnish documentation evidencing expenditures charged to the contingency and the reasons therefor. The CMR shall keep full and detailed records regarding costs used from the CMR's Contingency and the accounting and control systems for such costs shall be in accordance with generally accepted accounting principles acceptable to the Owner, and Owner shall be provided access to such records upon prior notice and as further provided under Article 25.6 of the General Conditions. Any savings to a Project Element bid subsequent to its inclusion as part of the determination of CMR's GMP proposal, as approved by the Owner, shall be added to, and become a part of, the CMR's Contingency. Any unused CMR's Contingency as of the date that Final Payment is determined, shall revert to the Owner.

No expenditures from the CMR's Contingency shall be paid without prior notice to the Owner and written approval of the Owner, whose approval will not be unreasonably withheld, for any expenditure charged to the CMR's contingency in excess of Twenty Thousand Dollars (\$20,000.00). For any expenditure charged to the CMR's contingency equal to or less than Twenty Thousand Dollars (\$20,000.00), the Owner's approval is not required. The CMR shall account to the Owner for the allocation of the CMR's Contingency on a monthly basis in a manner acceptable to the Owner.

- .1 The CMR's Contingency is not available and shall not be used for any of the following:
 - .1 Payment of liquidated damages, reimbursement of additional consultant services due to deficient or delayed work, or similar back charges or damages from the Owner caused by the CMR.
 - .2 Any costs identified in this Section that are recovered by the CMR from insurance, Subcontractors or suppliers, or other sources.
 - .3 To supplement the CMR's own office or field staff, beyond the levels or commitment originally agreed to, without the prior written consent of the Owner.
 - .4 Notwithstanding compliance with Paragraph 2.2.3 above, any use that is for the sole use, benefit or convenience of the CMR, and that would not create any additional benefit or difference to the final Work beyond that which the original Construction Documents would have provided.
- .2 When all of the funds in the CMR's Contingency are expended or in the event that the Cost of the Work exceeds the GMP and any adjustments as may be due under the terms of this Agreement; the CMR shall continue to perform at no additional cost to the Owner until the Work is complete. The CMR shall be responsible for paying all costs, in accordance with the terms of this Agreement that may be necessary to complete the Work, even if such amounts are in aggregate in excess of the GMP.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

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

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the GMP proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A detailed list of the clarifications and assumptions made by the CMR in the preparation of the GMP proposal to supplement the information contained in the Drawings and Specifications. See GMP Amendment, Exhibit C.
- .4 The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, other verified costs and the CMR Fee, as defined in Section 5.1.1 herein.
- .5 All costs incurred for work performed for site preparation and/or demolition and/or long lead items purchased pursuant to Section 2.1.7 of this Agreement prior to acceptance of the GMP and any estimated costs for any items for which Subcontractor bids have not been received by the CMR and which have not been approved by the Owner and documentation of the basis for same.

- .6 A list of all Project Elements for which bids have been received by the CMR and which have been approved by the Owner, which bids must represent at least ninety percent (90%) of the Subcontractor bids for the Project.
- .7 The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based and a confirmation of the Liquidated Damages assessment in the amount of Five Thousand Six Hundred Seventy-Six Dollars (\$5,676.00) per day for each calendar day beyond the established Substantial Completion Date that the CMR fails to achieve Substantial Completion.
- .8 The Date of Acceptance upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Acceptance is based and a confirmation of the Liquidated Damages assessment in the amount of Four Thousand Three Hundred Fifty-Six Dollars (\$4,356.00) per day for each calendar day beyond the ninety (90) calendar days of the established Substantial Completion Date that the CMR fails to achieve Acceptance.
- 2.2.5 The CMR shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. Said meeting shall occur within fourteen (14) days of Owner's receipt of the GMP Proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMR, who shall make appropriate adjustments to the GMP proposal, its basis, or both.
- 2.2.6 Owner shall have the right to accept or reject the GMP in its sole discretion. Unless the Owner accepts the GMP proposal in writing within sixty (60) days of the meeting described in Section 2.2.5, above, and so notifies the CMR, the GMP proposal shall not be effective without written acceptance by the CMR.
- 2.2.7 Prior to the Owner's acceptance of the CMR's GMP proposal and issuance of a Notice to Proceed, the CMR shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing with the exception of those items provided for under Sections 2.1.6.7 and 2.1.7 of this Agreement.
- 2.2.8 Upon acceptance by the Owner of the GMP proposal, the GMP, the GMP basis, and the dates of Substantial Completion and Acceptance shall be set forth in the GMP Amendment. The GMP shall be subject to additions and deductions by a Change in the Work as provided in the Contract Documents, and the Dates of Substantial Completion and Acceptance shall be subject to adjustment as provided in the Contract Documents.
- 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon Assumptions and Clarifications contained in the GMP Amendment. Such revised Drawings and Specifications shall be furnished to the CMR in accordance with schedules agreed to by the Owner, Architect and CMR. The CMR shall notify the Architect and Owner within fourteen (14) days of being furnished with such revised Drawings and Specifications if such revised Drawings and Specifications are inconsistent with the agreed-upon Assumptions and Clarifications. Failure to notify the Architect and Owner within the aforementioned time frame shall result in a waiver of any claim for increase in Cost of the Work.
- 2.2.10 The State of Connecticut is tax exempt pursuant to Connecticut General Statutes Section 12-242. The CMR shall be responsible for reviewing the current regulations of the Department of Revenue Services. The tax on materials or supplies exempted by such regulation shall not be included as part of the GMP. A sales tax certificate will be provided by the Owner upon execution of the Contract.
- 2.2.11 By proposing the GMP, the CMR warrants that it has the capability, in all respects, and the moral and business integrity, reliability, technical ability, financial resources, management, superintendence, equipment and materials which will assure effective and efficient good faith performance in full compliance with the Contract Documents and with any and all schedules and milestone and completion dates, that it has made allowances for normal inclement weather indigenous to the Project Site, in its estimating, planning and scheduling of the Work. The CMR further acknowledges that the Contract Documents, if not complete, will be upon completion, appropriate and adequate to complete this project and for the construction of sound and suitable work, and that the GMP submitted is complete and covers all of the Work shown or reasonably inferred, and as specified or

shown, in the Contract Documents. The CMR hereby certifies that the Work shall be completed, in place and in full accordance with the Contract Documents, within the time limits specified.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence upon the Owner's acceptance of the CMR's GMP proposal and issuance of a Notice to Proceed.

2.3.1.2 The CMR shall ensure that all construction activities are performed efficiently and with the requisite expertise, skill, quality and competence to satisfy the requirements of the Contract Documents. The CMR shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.3.1.3 The CMR shall establish and implement a program to monitor the quality of construction to guard the Owner against defects and deficiencies in the Work. The CMR shall reject the Work and transmit to the Subcontractor or supplier a notice of non-conforming work with a copy of such notice provided to Owner, when it is the opinion of the CMR that the Work does not conform to the requirements of the Contract Documents. The CMR is not authorized as part of this requirement to change, enlarge, relax, alter or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. In the event a dispute arises regarding CMR's rejection of Work; or in the event the Owner prefers to accept such Work, the provisions of General Conditions Articles 21, 25 and 26 shall apply.

2.3.1.4 The CMR shall, if requested by the Owner, coordinate and oversee the work of third-party contractors retained directly by the Owner.

2.3.2 ADMINISTRATION

2.3.2.1 The Work shall be performed under subcontracts or by other appropriate agreements with the CMR. The CMR shall obtain competitive public bids in accordance with the provisions of Sections 2.1.6.1 through 2.1.6.3 of this Agreement. Subcontracts shall be in a form acceptable to the Owner.

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

2.3.2.2 A Payment Bond shall not be required to be furnished in relation to any general bid in which the total estimated cost of labor and materials under the Subcontract with respect to which the bid is submitted is less than one hundred thousand dollars (\$100,000.00) or in relation to any sub-bid in which the total estimated cost of labor and materials under the Secondary Subcontract with respect to which the sub-bid is submitted is less than one hundred thousand dollars (\$100,000.00).

A Performance Bond shall not be required to be furnished in relation to any general bid in which the total estimated cost of labor and materials under the Subcontract with respect to which the bid is submitted is less than twenty-five thousand dollars (\$25,000.00) or in relation to any sub-bid in which the total estimated cost of labor and materials under the Secondary Subcontract with respect to which the sub-bid is submitted is less than fifty thousand dollars (\$50,000.00).

If the bidder is a small contractor or minority business enterprise pursuant to Connecticut General Statutes Section 4a-60g, it may provide in lieu of a Payment or Performance bond, a letter of credit in an amount equal to ten percent (10%) of the bid amount if the estimated value of the contract for which the bid is submitted is less than one hundred thousand dollars and in an amount equal to twenty-five percent (25%) if the estimated value of such contract is one hundred thousand dollars or greater.

- 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.
- 2.3.2.4 The CMR shall schedule and conduct meetings at which the Owner, Owner's Representative (as described in Section 3.2 herein), DPW Project Manager, Architect, CMR and appropriate Subcontractors can discuss matters including but not limited to: procedures, quality control, safety, scheduling, changes in the Work and the status of the Work. The CMR shall prepare and promptly distribute meeting minutes, including formal weekly project meetings. Owner may also schedule meetings at such times as it deems necessary.
- 2.3.2.5 Promptly after the Owner's acceptance of the GMP proposal, the CMR shall update and incorporate the planned Project Construction Schedule described in Section 2.1.3.1 into the schedules described in Article 11 of the General Conditions, including the Owner's occupancy requirements.
- 2.3.2.6 The CMR shall provide monthly written reports to the Owner and Architect on the progress of the Work. Such reports shall contain such information as may be required by the Owner in its sole discretion and be in a form and format acceptable to the Owner. The CMR shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, heavy equipment on the site and utilization of such equipment, Work accomplished, observations of any differing conditions encountered, problems encountered and other similar relevant data as the Owner may reasonably require. Heavy equipment as referred to in this Section shall mean machinery that may be used for construction, including but not limited to, bulldozers, earthmoving equipment, well-drilling machinery and cranes. The log shall be available to the Owner and Architect but shall not relieve the CMR of its notice and reporting obligations to Owner hereunder.
- 2.3.2.7 The CMR shall develop a system of cost control for the Work to be provided to Owner in monthly reports, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CMR shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.
- 2.3.2.8 The CMR will provide administrative, management and related services as required to coordinate work of the Subcontractors with each other and with the activities and responsibilities of the CMR, the Owner, and the Architect to complete the Project in accordance with Owner's objectives for cost, time and quality and provide sufficient organization, personnel and management to carry out the requirements of this Agreement.
- 2.3.2.9 The CMR will at all times monitor and update the Project Construction Schedules, consistent with Article 11 of the General Conditions.
- 2.2.2.10 The CMR will provide regular monitoring of the approved GMP showing actual costs for activities in progress and estimates for uncompleted tasks.
- 2.3.2.11 The CMR will, consistent with the requirements of the project schedule and budget, endeavor to prevent and eliminate the necessity or requirement for any Changes to the Work and to the extent such changes are nevertheless determined to be necessary or desired by the Owner, make recommendations to the Architect and the Owner, prepare proposed changes orders, review requests for changes, negotiate Subcontractor's change proposals; and if change orders are acceptable, sign change orders prepared by the Architect and Owner.

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide available information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. Such program shall be in the form of a written statement including all of the aforementioned information, which statement has been prepared by the Architect or other consultant for the Owner and which statement is on file with the Owner.

3.1.2 The Owner shall establish and update an overall budget for the Project, based on consultation with the CMR and Architect.

3.1.3 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the CMR knows of any inaccuracy, the CMR shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.3.1 through 3.1.3.6 but shall exercise customary precautions relating to the performance of the Work.

3.1.3.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

3.1.3.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

3.1.3.3 The services of a geotechnical engineer. Such services shall include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.3.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

3.1.3.5 The services of such other consultants which may be required by the scope of the Work and are requested by the CMR and approved by the Owner.

3.1.3.6 Testing and inspection services.

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

3.2 OWNER'S DESIGNATED REPRESENTATIVE

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

3.3 ARCHITECT

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

3.4 LEGAL REQUIREMENTS

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

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

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

4.1 COMPENSATION

- 4.1.1 For the services described in Sections 2.1 and 2.2, the CMR's compensation shall be calculated as follows: CMR shall be compensated for Preconstruction Services in the total amount of Seventy Thousand Eight Hundred Sixty Dollars (\$70,860.00) for all preconstruction services up to and through the date occurring one hundred eighty (180) days after the date this Agreement is fully executed and approved, which date shall be confirmed at the time of final approval of this Agreement (the "Preconstruction Services End Date"). If Preconstruction Services extend beyond the Preconstruction Services End date, further services shall be considered additional services and billed at hourly rates in accordance with the following rate schedule:

Preconstruction Rate Schedule:

<u>Personnel</u>	<u>Rate (\$/hour)</u>
VP/Project Executive	\$ 151.00 /hr.
Senior Project Manager	\$ 106.92 /hr.
Project Manager	\$ 82.38 /hr.
Assistant Project Manager	\$ 61.92 /hr.
Project Engineer	\$ 55.35 /hr.
Field Engineer	\$ 55.35 /hr.
Senior Superintendent	\$ 114.23 /hr.
Superintendent	\$ 78.42 /hr.
Accountant/Administrative Personnel	\$ 37.08 /hr.
Scheduling Coordinator	\$ 96.69 /hr.
MEP Coordinator	\$ 168.60 /hr.

All rates include cost plus burden.

Reimbursable expenses, as determined in accordance with Exhibit B, are included in the above lump sum amount except for: (i) CMR's Preconstruction Phase Allowance for Reimbursable Expenses, which shall be a not to exceed amount of One Hundred Thousand Dollars (\$100,000.00); and (ii) preapproved travel outside of Connecticut for the purpose of investigating and/or verifying materials or services relevant to ensuring the quality of the Work. No expenditures shall be made for such reimbursable expenses without prior notice to the Owner and written approval of the Owner. CMR shall furnish any and all documentation required by Owner to substantiate such expenditures. Reimbursable expenses not attributable to expenditures under the aforementioned items (i) and (ii) that are incurred after the Preconstruction Services End Date for Preconstruction Services, shall be billed at cost plus an administrative mark up of five percent (5%).

Preconstruction Services shall be billed monthly, pro-rated over the preconstruction period. Otherwise, billings will be based on costs incurred. Payments shall be due within thirty (30) days after invoicing. No Retainage, as that term is defined in General Conditions Article 1.55, shall be withheld on Preconstruction Services.

- 4.1.2 The hourly rates above shall be equitably adjusted by three percent (3%) annually after the Preconstruction Services End Date plus one (1) year. CMR's compensation for Preconstruction Services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.
- 4.2 PAYMENTS
- 4.2.1 Payments shall be made monthly following presentation of the CMR's invoice and, where applicable, shall be in proportion to services performed.
- 4.2.2 Payments are due and payable thirty (30) days from the date the CMR's invoice is received and approved by the Owner in accordance with Articles 27 and 28 of the General Conditions.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

5.1 COMPENSATION

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

The CMR Fee shall be One and 25/100 percent (1.25%) of the Cost of the Work, excluding General Conditions Costs. The CMR shall be reimbursed for general conditions costs as defined in Exhibit B ~~in the lump sum amount of Two Million Three Hundred Twenty Eight Thousand Five Hundred Sixty Two Dollars (\$2,328,562.00)~~, conditioned upon an anticipated schedule not to exceed Six Hundred Forty-Eight (648) calendar days (Five Hundred Fifty-Eight (558) days to Substantial Completion and Ninety (90) days to Acceptance). Each scheduled payment shall be subject to the prior approval of the Owner.

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

5.2 GUARANTEED MAXIMUM PRICE

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

5.3 CHANGES IN THE WORK

- 5.3.1 Adjustments to the GMP on account of Changes in the Work subsequent to the execution of The GMP Amendment may be determined by any of the methods listed in Article 13 of the General Conditions.
- 5.3.2 The amount of each Change in the Work shall be determined in accordance with Article 13 of the General Conditions.
- 5.3.3 Adjustments to subcontracts shall be determined as provided in Article 13 of the General Conditions.
- 5.3.4 Notwithstanding any provision of the General Conditions to the contrary, the CMR's compensation for any Changes in the Work is limited to the applicable CMR Fee set forth in Section 5.1.1, above. The CMR shall not be entitled to any overhead and profit percentages or any additional general conditions costs except that if a Change in the Work results in an increase in the overall calendar days provided in Section 5.1.1 above, or if a Change in the Work requires additional resources from the CMR, the CMR may receive, upon prior review and approval by the Owner, additional general conditions costs based upon the construction rate schedule set forth below and necessary, reasonable and verified costs.

Construction Rate Schedule:



Personnel	Rate (\$/hour)
VP/Project Executive	\$ 161.00 /hr.
Senior Project Manager	\$ 108.92 /hr.
Project Manager	\$ 82.38 /hr.
Assistant Project Manager	\$ 61.92 /hr.
Project Engineer	\$ 55.35 /hr.
Field Engineer	\$ 55.35 /hr.
Senior Superintendent	\$ 114.23 /hr.
Superintendent	\$ 78.42 /hr.
Accountant/Administrative Personnel	\$ 37.08 /hr.
Scheduling Coordinator	\$ 96.69 /hr.
MEP Coordinator	\$ 168.00 /hr.

All rates include cost plus burden.

The hourly rates above shall be equitably adjusted by three percent (3%) annually after the date described in Section 4.1.2, above.

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

6.1 COSTS TO BE REIMBURSED

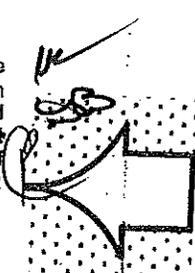
6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the CMR in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The parties agree that the general conditions expense items are hereby fixed (subject to adjustment in accordance with the terms of the Contract Documents) ~~at the lump sum amount set forth in Section 6.1.1, above.~~ If a conflict exists between this Article 6 and Exhibit B, the terms and conditions of Exhibit B shall take precedence. The lump sum general conditions expense items shall be paid to the CMR monthly on an agreed upon payment schedule.

6.1.2 LABOR COSTS

- .1 Wages or salaries of the CMR's supervisory and administrative personnel when stationed at the site with the Owner's agreement including but not limited to those categories set forth on Exhibit B attached hereto. Said costs are included in the lump sum general conditions costs under this Agreement.
- .2 Wages and salaries of the CMR's supervisory or administrative personnel engaged, at factories, workshops or off site, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .3 Costs paid or incurred by the CMR for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, the CMR's standard fringe benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are not already included in the rates set forth in Section 4.1 and provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3. Said costs are included in the lump sum general conditions costs under this Agreement.

6.1.3 SUBCONTRACT COSTS

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



Payment and/or performance bonds may be required and the costs of same shall, as appropriate, be included as a Cost of the Work. Notwithstanding the foregoing, at the sole discretion and with the prior approval of the Owner, the CMR may waive the requirement of a Subcontractor bond.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the CMR; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CMR at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the CMR. Cost for items previously provided by the CMR shall mean fair market value.
- .2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CMR at the site, whether rented from the CMR or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. Rental charges for all tools and equipment shall be consistent with published rates for similar equipment in the location of the Project. In no case shall the aggregate total rental cost for any tool or piece of equipment exceed the purchase price of a functionally comparable item. In no event will the CMR be entitled to the cost of rentals from any affiliated entity or from itself or from its Subcontractors.
- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office with prior approval of the Owner.
- .5 That portion of the reasonable pre-approved, out-of-state travel and subsistence expenses of the CMR's personnel incurred while traveling in discharge of duties connected with the Work.

6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds, subject to the provisions of Article 35 of the General Conditions.
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the CMR is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the CMR is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work, in accordance with General Conditions Article 16.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents and the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents.

- .6 Data processing and computer costs related to project support for the Work, including but not limited to project scheduling and tracking programs, shall be included in the lump sum general conditions costs.
- .7 Data processing and computer costs related to business or corporate overhead shall be reimbursable under Cost of the Work.
- .8 Deposits lost for causes other than the CMR's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .9 Expenses incurred in accordance with CMR's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations with the prior written approval of the Owner.

6.1.7 OTHER COSTS

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

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

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

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

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

Unless otherwise provided, when such reimbursable costs are properly included in the Cost of the Work, the CMR shall only be entitled to reimbursement of its direct, out-of-pocket costs without allowance for any surcharge, overhead, or profit, except as provided in Section 5.1.1. Except where agreed rates are applicable, the CMR, when entitled to reimbursable costs under this Agreement, shall promptly furnish in a form satisfactory to the Owner, itemized statements of the costs incurred, including, but not limited to, certified payrolls and copies of documents, bills and vouchers.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the CMR's personnel stationed at the CMR's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the CMR's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- .4 The CMR's capital expenses, including interest on the CMR's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.

- .6 Except as provided with respect to the use of the CMR's contingency as set forth in Section 2.2.3, costs due to the negligence of the CMR or to the failure of the CMR to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services since they are to be paid for separately pursuant to Article 4.
- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.
- .9 Costs which would cause the GMP to be exceeded.
10. Losses not covered by insurance, including deductibles.

6.3 DISCOUNTS, REBATES AND REFUNDS

- 6.3.1 Cash discounts obtained on payments made by the CMR shall accrue to the Owner if (1) before making the payment, the CMR included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the CMR with which to make payments; otherwise, cash discounts shall accrue to the CMR. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CMR shall make provisions so that they can be secured.
- 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work and shall be credited on the next monthly construction pay requisition after receipt.

6.4 ACCOUNTING RECORDS

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

ARTICLE 7 CONSTRUCTION PHASE PAYMENTS

7.1 PROGRESS PAYMENTS

- 7.1.1 Based upon Applications for Payment submitted to the Architect and DPW Project Manager by the CMR and Applications for Payment recommended by the Architect, all in accordance with the provisions of Articles 27 through 29 of the General Conditions, the Owner shall make progress payments to the CMR as provided below and elsewhere in the Contract Documents.
- 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- 7.1.3 Provided an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment to the CMR not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment. The CMR shall submit an Application for Payment for General Conditions on a monthly basis separate from subcontract work, with the lump sum general conditions costs set forth in Section 5.4.4 herein, pro rated for the duration of the Contract Time. The CMR shall submit an Application for Payment for subcontract work on a monthly basis.



- 7.1.4 With each Application for Payment, the CMR shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence which may be required by the Owner or Architect pursuant to Articles 27 through 29 of the General Conditions to determine in the opinion of the Owner the amounts that properly represent the value of the Work completed and for the materials suitably stored on the site, as applicable.
- 7.1.5 Each Application for Payment shall be based upon an approved schedule of values submitted by the CMR in accordance with the Contract Documents and more fully discussed and described in Section 7.1.4, above and Articles 27 through 29 of the General Conditions. The schedule of values shall allocate the entire GMP among the various portions of the Work, except that the CMR Fee and CMR Contingency shall be shown as a single separate item, and the lump sum general conditions cost shall also be shown as a separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule shall be used as a basis for reviewing the CMR's Applications for Payment.
- 7.1.6 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the percentage of that portion of the Work which has actually been completed.
- 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as set forth herein and in Articles 27 through 29 of the General Conditions:
- .1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the schedule of values.
 - .2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
 - .3 Add the CMR Fee, less Retainage of seven and 50/100 percent (7.5%). The CMR Fee shall be computed upon the Cost of the Work described in Sections 5 and 6 of this Agreement at the rate stated in Section 5.1.1.
 - .4 If applicable, subtract an additional two percent (2%) of the total contract price per month pending the State Commission on Human Rights and Opportunities' ("CHRO") approval of the CMR's Affirmative Action Plan,
 - .5 Subtract the aggregate of previous payments made by the Owner.
 - .6 Subtract the shortfall, if any, indicated by the CMR in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
 - .7 Subtract amounts, if any, for which the Owner has withheld a proportion of any payment due the CMR pursuant to Article 32 of the General Conditions.
 - .8 There shall be no Retainage held on CMR's general conditions costs.
- 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than seven and 50/100 percent (7.5%). The Owner and the CMR shall agree upon a mutually acceptable procedure for review and approval of payments and Retainage for subcontracts. Retainage on any particular Subcontractor may be reduced or eliminated upon mutual agreement of the Owner and the CMR. Notwithstanding the provisions of Article 28 of the General Conditions, the determination in the reduction of Retainage as described in General Conditions Article 28.2 shall be made on a per trade subcontractor package basis.
- .1 The CMR within thirty (30) days after payment to the CMR by the Owner, shall be required to pay any amounts due any Subcontractor, whether for labor performed or materials furnished, when the labor or materials have been included in a requisition submitted by the CMR and paid by the Owner.

- .2 The CMR shall include in each of its subcontracts a provision requiring each Subcontractor to pay any amounts due any of its Subcontractors, whether for labor performed or materials furnished, within thirty (30) days after each Subcontractor receives a payment from the CMR which encompasses labor or materials furnished by such Subcontractor.
- 7.1.9 Except with the Owner's prior approval, the CMR shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- 7.2 SUBSTANTIAL COMPLETION AND ACCEPTANCE**
- 7.2.1 Substantial Completion:**
Substantial Completion, shall be achieved on or before the date set forth on Exhibit A (The GMP Amendment) to this Agreement and in accordance with Article 30.1.1 through 30.1.4 of the General Conditions. Substantial Completion shall be determined by the date of execution of the Certificate of Substantial Completion by the Owner, pursuant to Article 30 of the General Conditions.
- 7.2.2 Acceptance:**
Acceptance shall be achieved within the time frame set forth in Exhibit A (The GMP Amendment) to this Agreement and in accordance with Article 30.2.1 through 30.2.2 of the General Conditions. Acceptance shall be determined by the date of execution of the Certificate of Acceptance by the Owner pursuant to Article 30 of the General Conditions.
- 7.3 FINAL PAYMENT**
- 7.3.1** Final payment shall be made by the Owner to the CMR when: (1) the Contract has been fully performed by the CMR and accepted by the Owner in accordance with Section 7.2, above, and Article 30 of the General Conditions, except for the CMR's responsibility to correct nonconforming Work as provided in Article 21 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment, including an executed final release for payment of materials and services rendered, if in an acceptable form, and a final accounting for the Cost of the Work have been submitted by the CMR and reviewed and approved by the Owner and Architect; (3) a Certificate of Compliance, as defined in General Conditions, Article 1.16, has been issued along with the Certificate of Acceptance, as defined in General Conditions, Article 1.15 and described in General Conditions, Articles 30.2.1 through 30.2.2; (4) any other documentation required pursuant to Article 31 of the General Conditions has been submitted by the CMR to the Owner through the DPW Project Manager and subsequently reviewed and approved by both the DPW Project Manager and the Architect; and (5) any and all other requirements set forth in Article 31 of the General Conditions have been fully satisfied.
- 7.3.2** The amount of the final payment shall be calculated as follows:
- .1 Take the sum of the Cost of the Work substantiated by the CMR's final accounting and the CMR Fee, but not more than the GMP, as adjusted by authorized Changes in the Work.
 - .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Article 32 of the General Conditions or other provisions of the Contract Documents.
 - .3 Subtract the aggregate of previous payments made by the Owner.
 - .4 Subtract the amount of any unused contingency and allowance(s).
- If the aggregate of previous payments made by the Owner exceeds the amount due the CMR, the CMR shall reimburse the difference to the Owner.
- 7.3.3** If the Owner determines the Cost of the Work as substantiated by the CMR's final accounting to be less than claimed by the CMR, the CMR shall be entitled to proceed in accordance with Article 9 herein.

- 7.3.4 If, subsequent to final payment and at the Owner's request, the CMR incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the CMR such costs and the CMR Fee if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP.

ARTICLE 8 INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CMR

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

- 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

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

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

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

- .1 Owner shall be listed as an additional insured.
- .2 Products and Completed Operations insurance shall be maintained for the duration of the Project and shall be maintained for a minimum of three (3) years after certification by the Owner that all work has been completed and accepted by the Owner in accordance with the Contract Documents.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Article 35.6 of the General Conditions.

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

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

- 8.1.4 Other coverage:

- .1 Umbrella Excess Liability. The CMR shall maintain coverage in the amount of \$25,000,000. The CMR may satisfy the minimum limits required under this Article for Commercial General Liability, Automobile Liability and Employer's Liability coverage under an Umbrella Excess Liability policy described in Section 8.1.4.1, above. The underlying limits may be set at the minimum amounts required by the Umbrella Excess Liability policy provided the combined limits meet at least the minimum limit for each required policy. The Umbrella Excess Liability policy shall have an Annual Aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required for any of the required coverages described in this Article. The Owner shall be specifically endorsed as an Additional Insured

on the Umbrella Excess Liability policy, and the Umbrella Excess Liability policy shall provide continuous coverage to the underlying policies on a complete "Follow-Form" basis.

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

BUILDERS RISK POLICY DESCRIPTION	COVERAGE LIMITS
Policy Limit	Value of Project
Limits for Windstorm, Rain, Fire, Lightning, Hail, Arson, and Acts of Sabotage.	Value of Project
Limits for Soft Costs	\$ 5 Million
Limits for Flood	\$ 10 Million
Limits of Earthquake	\$ 10 Million
Toppling of Crane	\$ 1 Million
Theft or Destruction of Materials at Job Site	\$ 500 Thousand
Mold, Mildew, Fungus, Dry Rot, Wet Rot	\$ 500 Thousand
Loss of Use	\$ 5 Million
Landscaping	\$ 100 Thousand
Storage	\$ 500 Thousand
Business Interruption	\$ 5 Million
Inland Marine/Transit	\$ 500 Thousand
Terrorism	Value of Project
Deductibles	\$ 25,000
"Significant" Loss (equal to greater than \$2.0 million)	
"Minor Loss" (less than \$2.0 million).	
Period	558 days plus period of time required for Close Out and Acceptance

8.1.5 CMR must obtain the permission of the Owner to adjust any of the above requirements. The CMR shall provide Owner with certificates of insurance which show that CMR is so insured, and Owner shall keep them on file. The

Insured's certificates of insurance shall include a statement as to the indemnification of Owner by CMR and the insurer of CMR. Such certificates shall be updated and provided to Owner on an annual basis.

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

Coverage	Amount
a) Commercial General Liability including Bodily Injury and Property Damage . Policy must include: Explosion, Collapse and Underground Hazards; Completed Operations Coverage; Contractual Liability. Policy must be on the Insurance Services Office (ISO) 2001 form or equivalent. It is the responsibility of the Subcontractor to maintain general liability coverage on an occurrence form including completed operations for a period of 5 years beyond final payment.	\$1,000,000. Combined Single Limit Each Occurrence \$2,000,000. General Aggregate/On a per Project Basis
b) Commercial Automobile Liability including Bodily Injury and Property Damage (Owned, Hired and Non-Owned)	\$1,000,000. Combined Single Limit Each Occurrence No Aggregate
c) Professional Liability	
d) Workers Compensation. Coverage applies in the state work is performed.	Not Required \$1,000,000 Minimum Employers Liability. W/C Statutory Limits Required.
e) Umbrella Liability	Contract amounts of \$1 to \$2,000,000 \$3,000,000 Each Occurrence \$3,000,000 General Aggregate Contract amounts of \$1 to \$2,000,000 \$3,000,000 Each Occurrence \$3,000,000 General Aggregate Contract amounts of \$2,000,000 to \$10,000,000 \$5,000,000 Each Occurrence \$5,000,000 General Aggregate Contract amounts of \$10,000,000 to \$30,000,000 \$10,000,000 Each Occurrence \$10,000,000 General Aggregate

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

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

The commercial general liability policy and the worker's compensation policies must include an endorsement that waives the insurance company's right of subrogation against the CMR and the Owner.

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

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

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

1. A statement that the policies evidenced meet all the insurance requirements provided under the subcontract agreement between CMR and the named insured Subcontractor.
2. A list of all additional insureds required by the Contract Documents.
3. A statement that the worker's compensation policy provides coverage in the State of Connecticut.
4. The workers compensation and general liability policies include a waiver of subrogation.

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

8.2 PERFORMANCE BOND AND PAYMENT BOND

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

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

The CMR shall comply and ensure that its subcontractors comply, with any and all posting and reporting requirements related to minimum wage rates and adjustments, as set forth above and in Article 9 and 10 of the General Conditions. The CMR shall familiarize itself with and, as required, comply with, and ensure that its Subcontractors comply with, Connecticut Department of Revenue Services guarantee bond requirements and regulations pertinent to nonresident contractors. The guarantee bond form and guidelines are located at the Department of Revenue Services website: www.ct.gov/drs, Forms>Bond Forms

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 DISPUTE RESOLUTION

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

9.2 OTHER PROVISIONS

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

9.2.2 EXTENT OF CONTRACT

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

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

9.2.3 OWNERSHIP AND USE OF DOCUMENTS

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

.1 The Drawings, Specifications and other documents prepared by the Architect, and copies (electronic and otherwise) thereof furnished to the CMR, are for use solely with respect to this Project. They are not to be used by the CMR, Subcontractors, sub-Subcontractors or suppliers on other projects, or for additions to this project outside the scope of the Work, without the specific written consent of the Owner and the Architect. The CMR, Subcontractors, Sub-subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents.

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

9.2.4 GOVERNING LAW

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

9.2.5 ASSIGNMENT

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

9.2.6 CANCELLATION DUE TO FAILURE TO FUND

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

9.2.7 INDEMNIFICATION

To the fullest extent permitted by law the CMR shall defend, indemnify and hold harmless the Owner, Architect, Architect's Consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, court costs and the cost of appellate proceedings, arising out of the negligent acts or omissions of the CMR, its Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to any party or person described in Article 35.6 of the General Conditions.

9.2.8 SOVEREIGN IMMUNITY

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

ARTICLE 10 TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

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

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

10.1.2 If the Owner terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the CMR shall be compensated for Preconstruction Phase Services actually performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1 and shall not include any anticipated overhead or profit on any work that was not executed.

- .1 All work and materials obtained by the Contractor for the Work, that have been incorporated into the Work, inspected, tested as required, accepted by the Commissioner, and paid for by the State, shall become the property of the State.
- .2 Materials obtained by the Contractor for the Work that have been inspected, tested as required, and accepted by the Commissioner, and that are not incorporated into the Work, may, at the option of the Commissioner, be purchased from the Contractor at actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the Commissioner, as shown by actual cost records.
- .3 Termination of the Contract shall not relieve the Contractor or its Surety of their responsibilities for the completed Work, nor shall it relieve the Contractor's Surety of its obligations to ensure completion of the Work and to pay legitimate claims arising out of Work.

10.1.3 If the Owner or CMR terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the rights and obligations of the parties shall be governed by Article 33 of the General Conditions. In no event shall the CMR be entitled to payment of any anticipated overhead or profit for any Work that was not executed.

10.2 **TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE**
Subsequent to execution by both parties of The GMP Amendment, the Contract may be terminated as provided in Article 33.2 of the General Conditions.

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

ARTICLE 11 OTHER CONDITIONS AND SERVICES

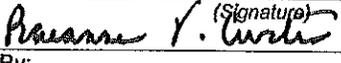
11.1 **LIQUIDATED DAMAGES**
The Owner and CMR agree that liquidated damages may be assessed at two distinct times: Substantial Completion and Acceptance as those dates are set forth in the GMP Amendment to this Agreement and in the dollar amounts set forth in Section 2.2.4 of this Agreement and in accordance with Article 8 of the General Conditions. Notwithstanding the foregoing, it is understood that the tasks necessary to complete certain commissioning and related systems verifications and/or adjustments under the required seasonal testing conditions, may occur after the date of Acceptance. These activities will not be subject to the liquidated damages requirements provided under this Agreement

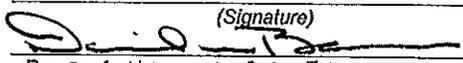
11.2 **PROVISIONS REQUIRED BY LAW DEEMED INSERTED**
Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any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

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

STATE OF CONNECTICUT

CONSTRUCTION MANAGER


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


By: DANIEL M. BAUER, SENIOR VICE PRESIDENT
(Printed name and title)

Date 10-27-09

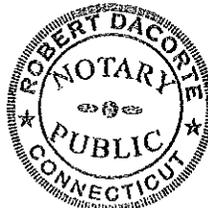
Date 10/21/09

STATE OF Conn.)
COUNTY OF New Haven) ss.:

On this the 21st day of Oct, 2009, before me, personally appeared Daniel M. Bauer who, acknowledged that he/she is the Senior Vice President of The Whiting-Turner Contracting Co. a Corporation, and that he/she as such Senior vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as Senior vice President.

Robert Dacorte

Notary Public
My Commission Expires:
Commissioner of the Superior Court



ROBERT DACORTE
NOTARY PUBLIC
MY COMMISSION EXPIRES FEB 28 2013

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

On this the 27th day of Oct, 2009 before me, personally appeared Raeanne V. Curtis, acknowledged that he/she is the Commissioner of Public Works, a Commissioner of the State of Connecticut Department of Public Works, known to me to be the person described in the foregoing instrument, and acknowledged that she executed the same in the capacity therein stated and for the purposes therein contained.

Diane M. Chase Date 10/27/09
Notary

My Commission Expires:

Approved as to form
ATTORNEY GENERAL

By: [Signature]
Associate Attorney General

Date: 11/13/09

DIANE M. CHASE
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2014