



AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made effective as of the 10th day of January in the year Two Thousand and Thirteen

BETWEEN the Owner:

The Town of East Hampton through The East Hampton High School Building Committee
20 East High St.
East Hampton, CT 06424

and the Construction Manager:

Downes Construction Company, LLC
P.O. Box 727
200 Stanley Street
New Britain, CT 06050

for the following Project:

East Hampton High School Renovation/Construction Project
15 North Maple Street
East Hampton, CT 06424

The Architect:

The S/L/A/M Collaborative, Inc.
80 Glastonbury Boulevard
Glastonbury, CT 06033

The Owner's Representative:

John A. Mena, Director of School Construction
Capitol Region Education Council (CREC)
School Construction Division
111 Charter Oak Avenue
Hartford, CT 06106
Telephone: (860) 509-3614

The Construction Manager's Designated Representative shall have authority to accept instructions, make decisions, attend all required meetings, act for and bind the Construction Manager at all times and shall not be changed without the Owner's prior consent. The Construction Manager's Designated Representative is:

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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**DOWNES CONSTRUCTION
COMPANY, LLC**

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User Notes:

(1496601922)

Joseph N. Desautel, Jr.
Downes Construction Company, LLC
P.O. Box 727
200 Stanley Street
New Britain, CT 06050

The Architect's Designated Representative:

Glenn R. Gollenberg
The S/L/A/M Collaborative, Inc.
80 Glastonbury Boulevard
Glastonbury, CT 06033

The Owner and Construction Manager agree as follows.

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TABLE OF ARTICLES

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

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, the General Conditions, as amended, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions, if any, prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. The most stringent requirement shall control in the event of conflict between the Drawings and Specifications.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement and covenants with the Owner to cooperate with the Architect and Owner and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to use the Construction Manager's best efforts to perform the Work in an expeditious and economical manner consistent with the Owner's interests and without compromising quality. The Owner shall endeavor to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. It is understood that the Owner will engage the services of an Owner's Representative, Capitol Region Education Council (the "Owner's Representative"), to perform and provide project management and project oversight services for the Owner in connection with the Project. Further, it is understood that the Construction Manager will work with and assist the Owner's Representative.

The Construction Manager shall perform the services consistent with the professional skill and care ordinarily provided by nationally recognized Construction Managers having experience with successful projects of comparable size, complexity and in the same locality and under the same circumstances.

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§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, as amended, a copy of which is attached hereto as **Exhibit A** and made a part hereof (the "General Conditions") shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be the General Conditions. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

Construction Manager's (i) Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. and (ii) Construction Phase responsibilities are set forth in Section 2.3. Notwithstanding the foregoing, the Construction Manager shall perform the scope of services described in that certain document issued by the Owner entitled Scope of Services for Construction Management at Risk Services for the East Hampton High School Renovation/Construction Project, a copy of which document is attached hereto as **Exhibit B** and made a part hereof ("Scope of Services"). In the event of a conflict between the Scope of Services and this Agreement regarding the scope of services, to be performed by the Construction Manager, the Scope of Services shall govern. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager's representative authorized to act on behalf of the Construction Manager with respect to the Project is identified in the introduction of this Agreement.

After receiving written authorization by the Owner to proceed with the Preconstruction Phase services and the Construction Phase services as set forth in Sections 2.1, 2.2 and 2.3, the Construction Manager shall proceed with the scope of services in an expeditious and efficient manner. The Construction shall not proceed beyond the Preconstruction Phase services without a written notice to proceed from the Owner. Within the Preconstruction Phase services, the Construction Manager shall not proceed beyond the Pre-Referendum Services without a written notice to proceed from the Owner. Should the Construction Manager do so, it will not be entitled to any compensation for such services and proceeds at its own risk.

§ 2.1 Preconstruction Phase

§ 2.1.1 The date of commencement of the Construction Manager's Preconstruction Phase services is established pursuant to the limited notice to proceed issued by Owner in that certain CREC Memorandum, a copy of which is attached hereto as **Exhibit C** and made a part hereof (the, "CREC Memorandum"). The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. As part of Construction Manager's Preconstruction Phase services, the Construction Manager shall perform value management and/or engineering services as warranted by the Project or as requested by Owner. Such value management and/or engineering services shall be considered a part of Preconstruction Phase services whether performed before or after commencement of the Construction Phase. To the extent that the Construction Manager performs value management and/or engineering services, the Owner acknowledges that such services are in the capacity of a Construction Manager, and not professional design services. The Owner will refer questions, matters, and inquiries regarding such services to its design professionals.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner as directed by the Owner, to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise and provide recommendations to the Owner and the Architect on design and construction details and methodologies that affect proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on construction feasibility; availability of materials and labor; time requirements for procurement, actions designed to minimize adverse effects of labor or material shortages, installation and construction; possible means and methods of attaining efficiencies; and factors related to reducing construction cost including, but not limited to, costs of alternative designs or materials, budgets, life-cycle data, and possible economies.

At the direction of the Owner, the Construction Manager shall prepare a logistics plan for the use of the site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, which shall include phasing and be coordinated with the needs of the Owner and approved by governmental authorities.

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§ 2.1.3 Schedules

A detailed, preliminary milestone Project schedule is attached hereto as **Exhibit _D** (the "Preliminary Project Schedule") The Construction Manager shall prepare and periodically update a Project schedule for the Architect's and Owner's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's opinion and the Owner's acceptance for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction and critical milestones; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction, as required. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's and Owner's review and Owner's approval. If the Architect, Owner or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, pursuant to the RFQ/P, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Notwithstanding the foregoing, such detailed estimates shall be revised by the Construction Manager not less than monthly. Such estimates shall be provided for the Architect's and Owner's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make specific recommendations for corrective actionable items and alternatives. If such services arise from the Construction Manager's failure to perform the Preconstruction Services pursuant to the standard of care set forth herein, then the Construction Manager shall provide its recommendations at no additional cost to the Owner, and the Construction Manager shall be responsible for any additional costs incurred by the Owner to bring the Project within budget. The Construction Manager shall, as part of its estimates of the Cost of the Work, prepare a verified written estimate of the Construction Documents for submission to the State of Connecticut Department of Construction Services ("DCS") for DCS review and approval.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project; verify that the requirements and assignment of responsibilities for safety precautions and programs, temporary project facilities, and equipment, materials and services for common use of subcontractors, are included in the proposed subcontracts; review the Drawings and specifications to ascertain areas of overlapping Work and verify that all Work has been included.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction such that the Project schedule will not be exceeded. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms consistent with the requirements of the Contract Documents. Upon the establishment of the Guaranteed Maximum Price, which shall include the cost of such items, the Owner may assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise professional care pursuant to § 1.2 in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates except as may be included as part of the Guaranteed Maximum Price, or as set forth in § 2.1.5.2. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager. The Construction Manager shall review the Drawings and Specifications in order to be well informed as to the intent and scope of the Contract Documents and shall promptly report to the Architect and Owner any work that is not included in the Drawings and Specifications as it relates to the limits and responsibilities of the Construction Manager under the Agreement. While the Architect is responsible for including all required items or components in the Drawings and Specifications and design, errors or omissions in the Drawing and Specifications are the responsibility of the Architect, the Construction Manager shall be responsible for the cost of work not included in the Drawings and Specifications if during such review of the Drawings and Specifications the Construction Manager discovered or through the exercise of reasonable diligence should have discovered the Drawings and Specifications did not include certain work and did not promptly report it to the Architect and Owner.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents including, without limitation, all programs and requirements set forth in the RFQ/P, this Agreement, and the General Conditions.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 When the Drawings and Specifications are sufficiently complete for certain initial Work identified by the Owner (the "Initial Work") and the Subcontractors for the Initial Work have been bid and are ready to be awarded or have been awarded for such Initial Work, the Construction Manager shall, upon the Owner's request, prepare an initial Guaranteed Maximum Price proposal for the Owner's review and approval. The initial Guaranteed Maximum Price proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work as to the Initial Work, including the Construction Contingency (hereinafter defined in Section 2.2.5) and the Construction Manager's Fee. When the Drawings and Specifications are in the Owner's opinion sufficiently complete and all Project trades have been bid and are ready to be awarded or have been awarded, the Construction Manager shall, upon the request of the Owner, prepare a Final Guaranteed Maximum Price proposal for the Owner's review and approval. The Final Guaranteed Maximum Price proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including the Construction Contingency and the Construction Manager's Fee.

§ 2.2.2 The Guaranteed Maximum Price in the proposal(s) shall be the sum, as applicable, of the Construction Manager's estimate of the Cost of the Work, including the Construction Contingency and the Construction Manager's Fee. As part of and included in the Cost of the Work, the Guaranteed Maximum Price proposal(s) shall, as applicable, set forth a not to exceed stipulated lump sum amount (the "Lump Sum General Conditions Amount"), which Lump Sum General Conditions Amount is established pursuant to the Construction Manager's Bid Form Fee And Compensation Structure Project Cost Calculation submitted to the Owner in response to the RFQ/P, a copy of which submitted Bid Form Fee And Compensation Structure Project Cost Calculation is attached hereto as **Exhibit E** and made a part hereof (the "Fee and Compensation Structure Bid") and is compensation to the Construction Manager for the costs and expenses incurred by the Construction Manager in performance of the Work for the items set forth in the Construction Manager Task Matrix, a copy of which Task Matrix is attached hereto as **Exhibit F** (the "Task Matrix"), for the periods from (i) as to the initial Guaranteed Maximum Price proposal, the Date of Commencement of the Initial Work until the date of Substantial Completion of the Initial Work; and (ii) as to the Final Guaranteed Maximum Price proposal, the Date of Commencement until the date of Substantial Completion. The items set forth in the Task Matrix are collectively referred to as the "Lump Sum General Conditions Items". Subject to Subsection 5.1.1 (1), in no event shall the Lump Sum General Conditions Items component of the Cost of the Work exceed the General Conditions Lump Sum Amount.

§ 2.2.3 The Construction Manager shall
(Paragraphs deleted)

provide allowances in the Final Guaranteed Maximum Price proposal, for acceptance by the Owner, designated to cover specific portions of the Work reasonably inferable from the Contract Documents, but whose quality, quantity or configuration is subject to modifying circumstances. Unless otherwise approved by the Owner, an allowance includes the Subcontractor's cost of labor, materials and equipment, less applicable trade discounts, plus costs for unloading and handling, installation costs, overhead, profit and all other amounts contemplated for the portion of the Work covered by the allowance. Such further development does not include such items as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.4 The Construction Manager shall include with the Guaranteed Maximum Price proposal(s) a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal(s), including assumptions under Section 2.2.2 to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, with separate line items for allowances, contingencies, and the Construction Manager's Fee;
- .4 A Project construction schedule setting forth the anticipated date of Substantial Completion upon which the Guaranteed Maximum Price proposal(s) is based, and the Owner's key milestones; and
- .5 A date, being a date not less than ninety (90) days after the date the Guaranteed Maximum Price proposal(s) has been delivered to Owner, by which the Owner must either approve and accept the initial and final Guaranteed Maximum Price or reject the initial or final Guaranteed Maximum Price.

§ 2.2.5 In preparing the Construction Manager's Guaranteed Maximum Price proposal(s), the Construction Manager shall include a construction contingency in an amount equal to three percent (3.0%) of the Cost of the Work determined at the time the Guaranteed Maximum Price is established for use for the Project, subject to Owner's prior written approval, to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order or not the basis for a Change Order (the "Construction Contingency"). The Construction Contingency shall not be used for costs covered by a Change Order, excluded under this Agreement, or caused by the breach of contract, negligence, or intentional act or omission of the Construction Manager or those for whom it is responsible. All unused Construction Contingency funds shall be the property of the Owner.

§ 2.2.6 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal(s). In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal(s), its basis, or both.

§ 2.2.7 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price Initial Proposal in writing before the date specified in the Guaranteed Maximum Price Initial Proposal, the Guaranteed Maximum Price Initial Proposal shall be deemed effective, but subject to the execution of a Guaranteed Maximum Price Amendment on terms and conditions acceptable to Owner, without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price for the Initial Work, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price for the Initial Work with the information and assumptions upon which it is based.

§ 2.2.8 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price Final Proposal in writing before the date specified in the Guaranteed Maximum Price Final Proposal, the Guaranteed Maximum Price Final Proposal shall be deemed effective, but subject to the execution of an Amended and Restated Guaranteed Maximum Price Amendment on terms and conditions acceptable to Owner, without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Final Proposal, the Owner and Construction Manager shall execute the Amended and Restated Guaranteed Maximum Price Amendment amending and restating the Guaranteed Price Amendment and amending this Agreement, a copy of which the Owner shall provide to the Architect. The Amended and Restated Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.9 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.10 The Owner may authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or the Amended and Restated Guaranteed Maximum Price Amendment, as applicable. The Owner shall cause the Architect to furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment or the Amended and Restated Guaranteed Maximum Price Amendment, as applicable, and the revised Drawings and Specifications.

§ 2.2.11 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment or the Amended and Restated Guaranteed Maximum Price Amendment, as applicable, is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase as such date is established pursuant to the written notice to proceed issued by Owner (the "Date of Commencement"). The Owner may issue a limited written notice to proceed for the Initial Work and thereafter a written notice to proceed for the Work (collectively, the "Notice to Proceed"). The Construction Manager shall not proceed with any Work absent a written notice to proceed from the Owner.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed directing the Construction Manager to commence the Work for the Construction Phase.

§ 2.3.1.3 The Owner and Construction Manager hereby acknowledge and agree that time is of the essence with respect to Construction Manager's performance of the Work hereunder. On the Date of Commencement Contractor shall immediately commence performance of the Work and continue to perform the same during the term of this Agreement in accordance with the Project Schedule established by the Guaranteed Maximum Price Amendment, as such Project Schedule may be amended in accordance with the Contract Documents.

§ 2.3.2 Administration

§ 2.3.2.1 All portions of the Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall not perform any portions of the Work with its own personnel except as may be approved by Owner and in accordance with the guidelines as set forth by the DCS. The Owner may designate, specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner, along with a breakdown of anticipated subcontracts by trade and anticipated commencement and completion dates. The Construction Manager shall receive and open all bids, prequalify and evaluate all bidders, prepare a bid analysis and make recommendations to the Owner for the award of subcontracts or rejection of bids, and if the Construction Manager is bidding to self-perform any portion of the Work, it shall keep all Subcontractor's bids sealed until it has submitted its bid to Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall conduct pre-award conferences with successful bidders, contract with all Subcontractors who are approved by Owner and whose bid or negotiated price has been accepted, and advise Owner on the acceptability of Subcontractors and material suppliers proposed by Subcontractors. The Owner may reject any and all bids in Owner's sole discretion. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager shall provide the Owner with a list of names and addresses of all Subcontractors and material suppliers working on the Project at the time the Agreement is executed and at the time subsequent subcontracts are signed.

§ 2.3.2.2 If the Guaranteed Maximum Price Amendment has been signed by the Owner and Construction Manager and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without

reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

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

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a submittal schedule in accordance with Section 3.10 of the General Conditions.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a not less than monthly basis, or otherwise directed by the Owner, the Construction Manager shall submit periodic written progress reports to the Owner and Architect, showing percentages of completion, the numbers and amounts of Change Orders, and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, Subcontractors working on site, number of workers on site from each Subcontractor, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and provide monthly monitoring reports of the budgeted Cost of the Work, showing actual costs for activities in process, estimates for uncompleted tasks, and variances between actual and budgeted or estimated costs. The Construction Manager shall account to the Owner for the allocation of contingency in a Contingency Log as part of each monthly report. The Construction Manager shall advise the Owner and Architect whenever projected costs exceed budgets or estimates. The Construction Manager shall recommend necessary or desirable changes in the Work to the Owner and the Architect, review requests for changes, submit recommendations to the Owner and the Architect, and negotiate all Change Orders with Subcontractors. In no event shall such report constitute an adjustment of Contract Sum or Contract Time.

§ 2.3.2.9 The Construction Manager shall, as cost being reimbursed as a Cost of the Work within the Guaranteed Maximum Price, (i) cooperate and assist the commissioning agent hired by the Owner to commission the Work in accordance with the Project specifications, which cooperation and assistance shall be deemed to include, without limitation, that the Construction Manager shall provide on-site staff to address commissioning related issues during the period following Substantial Completion of the Work and commencing seven (7) days prior to the start of school and ending thirty (30) days after such start; and (ii) warranty claims for 12 months following Substantial Completion of the Work or a portion thereof.

§ 2.3.2.10 The Construction Manager shall comply with the Project work rules reasonably established by the Owner.

§ 2.3.2.11 The Construction Manager acknowledges that the Project is a municipal school construction project receiving funding from the DCS pursuant to a school construction grant under Chapter 173 of the Connecticut General Statutes. The Construction Manager shall cooperate, as part of its accounting services provided hereunder being

reimbursed as a Cost of the Work within the Guaranteed Maximum Price, with DCS audits of the Project, which cooperation shall include, without limitation, preparation of and production of documentation. Notwithstanding anything to the contrary in the Contract Documents, the Construction Manager shall comply with DCS requirements regarding Change Orders.

§ 2.3.2.12 The Construction Manager shall ensure that any Subcontractor providing defective or non-conforming Work correct the Work in accordance with the Contract Documents at such Subcontractor's expense. The Owner shall not be responsible for costs that could have been avoided by reasonable means, including backcharging responsible parties, prudent scheduling of the Work, supplementation of labor or equipment, judicious use of overtime or proper administration of Subcontractors.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project.

§ 3.1.2 NOT USED.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall, at the request of Construction Manager and provided such information or services are reasonably required for the scope of the Project, furnish the following information or services with reasonable promptness.. Subject to Section 2.2 of the General Conditions and except to the extent that the Construction Manager knows, or through the exercise of due diligence reasonably should know of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of any such information and services furnished by the Owner and described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 Tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 3.1.4.3 Services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Representative

The Owner's Representative is authorized to act on behalf of the Owner with respect to the Project. The Owner's Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of the

General Conditions, the Architect does not have such authority. A new representative may be subsequently designated by the Owner upon notice to the Construction Manager.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Construction Manager is not responsible for identifying such services, but will assist Owner in implementing such services where appropriate. All costs to implement such services shall be borne by the Owner. Notwithstanding the foregoing, the Construction Manager acknowledges that (i) it is familiar with DCS requirements, including, without limitation, DCS audit requirements; and (ii) the requirements set forth in this Agreement, including, without limitation equal opportunity employment requirements, and Construction Manager shall comply with and assist in complying with such requirements as a cost being reimbursed as a Cost of the Work within the Guaranteed Maximum Price.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101 - 2007, Standard Form of Agreement Between Owner and Architect.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2 and performed in accordance with that certain preconstruction staffing matrix submitted by the Construction Manager to the Owner in response to the RFQ/P, a copy of which is attached hereto as **Exhibit G** and made a part hereof (the "Preconstruction Staffing Matrix"), the Owner shall compensate the Construction Manager in a stipulated lump sum amount of Sixteen Thousand, Two Hundred and 00/100 Dollars (\$16,200.00) for Pre-Referendum Preconstruction Phase Services, and Fifty-Eight Thousand, Five Hundred Twenty and 00/100 Dollars (\$58,520.00) for all other Pre-Construction Phase Services as set forth on the Bid Form Fee and Compensation Structure (the "Pre-Referendum Construction Services Fee and the Pre-Construction Fee") attached hereto as **Exhibit E**, payable in monthly installments during the Preconstruction Phase (the "Preconstruction Phase Period"), which Preconstruction Phase Period shall commence pursuant to a written notice to proceed issued by the Owner. The Preconstruction Fee includes all of the Construction Manager's costs and expenses incurred in the performance of the Preconstruction Phase services, including, without limitation, staffing costs and/or reimbursable costs and expenses.

§ 4.1.2 In no event shall the Construction Manager be compensated for Construction Manager's Preconstruction Phase services described in Sections 2.1 and
(Paragraphs deleted)
2.2 in an amount in excess of the Preconstruction Fee, which Preconstruction Fee shall include, without limitation, all of the Construction Manager's staffing costs and reimbursable costs and expenses, including, but not limited to, long-distance telephone charges, travel and mileage, printing and other out-of-pocket expenses.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed during the Preconstruction Phase Period, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted, but only to the extent that the Construction Manager is required to perform additional Preconstruction Phase services and to incur additional costs beyond those contemplated in the Preconstruction Fee. Such adjustment shall be proportionate to the scope of additional services provided beyond the services contemplated by the Preconstruction Fee, and shall be calculated based upon the actual staff costs and hourly rates set forth in the Preconstruction Staffing Matrix.

§ 4.1.4 The Preconstruction Staffing Matrix includes all the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable

(Paragraphs deleted)

thirty (30) days after presentation of the Construction Manager's invoice to Owner.

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's (Paragraphs deleted)

Fee shall be a fixed fee equal to 1.25% of the Cost of Work established at the time the Guaranteed Maximum Price is determined and the Guaranteed Maximum Price Amendment is executed. Prior to the establishment of the Guaranteed Maximum Price, the Fee shall be 1.25% of the Cost of the Work. In the event the Guaranteed Maximum Price is increased pursuant to Owner approved Change Orders, the Construction Manager may seek an increase in the Lump Sum General Conditions Amount (as defined in § 6.1.1) as part of a Change Order, if the Construction Manager demonstrates an increase in its general conditions costs as a result of any such change. Construction Manager's Fee, if based on a percentage of the Cost of the Work, shall not be increased under any circumstances due to changes in the Work.

§ 5.1.2 Subcontractors shall receive no greater than 10% to cover overhead and 5% to cover profit for changes in the Work pursuant to Owner approved Change Orders. All sub-subcontractors working under the first tier Subcontractors shall receive no greater than 5% to cover overhead and profit for changes in the Work pursuant to Owner approved Change Orders.

§ 5.1.3 Rental rates and quantities for Construction Manager owned equipment shall be subject to Owner's prior approval, but in any case shall not exceed the standard rate paid at the place of the Project.

§ 5.1.4 Unit prices, if any, shall be set forth in the Guaranteed Maximum Price Amendment (the "Unit Prices").

(Table deleted)

(Paragraphs deleted)

§ 5.2 Guaranteed Maximum Price

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

§ 5.2.1.1 Promptly after the quantities of unit price items and the actual costs of allowances become fixed, the Construction Manager shall submit to the Owner a proposed Change Order modifying the Guaranteed Maximum Price to reflect the difference between actual quantities or costs and the amount of the estimate or allowance. All savings realized in buying out the Work and allowances, and in completing unit price items, shall be solely the property of the Owner.

§ 5.2.1.2 Upon Substantial Completion, the Owner may require that 75% of the remaining contingency be returned by Change Order to the Owner. All remaining contingency shall be returned by Change Order to the Owner at Final Completion.

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

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect, upon authorization from the Owner, may make minor changes in the Work as provided in Section 7.4 of the General Conditions, but shall not have authority to direct or authorize any changes that result in a change in the Contract Sum of the Contract Time. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of material changes that impact the critical path of the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined in accordance with Section 5.1.1 and Section 5.1.2 of this Agreement and Section 7.3.3 of the General Conditions.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the term "costs" as used in Section 7.3.7 of the General Conditions shall have the meaning assigned to it in the General Conditions as modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

(Paragraph deleted)

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 Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. The Construction Manager's general conditions, which include those Costs of the Work not broken out separately in the Task Matrix attached hereto as Exhibit F, are included in the General Conditions Lump Sum Amount of \$1,834,495 (One-Thousand Eight Hundred Thirty Four Thousand, Four Hundred Ninety Five and No/100) set forth in Exhibit E. Subject to Subsection 5.1.1, in no event shall the Construction Manager's Lump Sum General Conditions Items component of the Cost of the Work exceed the General Conditions Lump Sum Amount.

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

§ 6.2 Labor Costs

§ 6.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel performing Work, which labor costs are included in the General Conditions Lump Sum Amount.

§ 6.2.2 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and in accordance with the staffing matrix submitted by the Construction Manager to the Owner in response to the RFQ/P, a copy of which is attached hereto as **Exhibit H** and made a part hereof (the "Construction Staffing Matrix"), which labor costs are included in the General Conditions Lump Sum Amount.

§ 6.2.3 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on and not already part of the wages and salaries included in the Cost of the Work under Sections 6.2.1 and 6.2.2.

(Paragraphs deleted)

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts approved by Owner, which approval shall not be unreasonably withheld, delayed or conditioned.

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

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

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§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, the Construction Manager shall compensate the Owner based on the fair market value of the materials, which shall be credited as a deduction from the Cost of the Work.

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

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

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

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

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

§ 6.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval and the commercially reasonable requirements established by the Owner regarding, without limitation, retainage and bonding of the storage facility.

(Paragraph deleted)

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Commercial General Liability Insurance ("CGL") and Professional Liability insurance shall be reimbursed at the rate of \$6.00 per Thousand of the Cost of the Work. Automobile and worker's compensation insurance costs are included in such reimbursement for CGL. Payment and performance bond premiums shall be billed at the amount set forth in the Construction Manager's Proposed General Conditions Analysis as **Exhibit E**. These costs are included in the General Conditions Lump Sum Amount and are provided here as information for billing purposes. The Construction Manager shall provide support for payment and performance bond premiums with its applications for payment.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

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

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

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

Section 3.17 the General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Such costs shall include disputes with subcontractors, suppliers, and third parties, provided such disputes are not caused by Construction Manager's negligence, intentional misconduct or other failure to fulfill its obligations as set forth in this Agreement or any such responsibility to a third party.

(Paragraph deleted)

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work and required by Construction Manager to meet its obligations under this Agreement if, and to the extent, approved in advance in writing by the Owner.

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

§ 6.7.3 Costs of repairing damaged Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the willful misconduct, negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to comply with the Contract Documents;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase; and
- .9 Any Work which does not comply with the Contract Documents unless and not until such Work is rendered in compliance with the Contract Documents or costs to repair or correct Work that is defective or non-conforming with the Contract Documents except as provided in Subparagraph 6.7.3.
- .10 Any fines, penalties or costs imposed on the Construction Manager or a Subcontractor of any tier by any local, state or federal authority (including OSHA);
- .11 Overtime wages and allowances of Construction Manager's employees unless approved in advance, in writing, by the Owner;

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- .12 Costs of promotional materials;
- .13 Costs of employee benefits, except as expressly included in this Agreement; and
- .14 Legal, mediation and arbitration costs, including attorneys' fees incurred by the Construction Manager arising from the negligence or intentional misconduct of Construction Manager, or material breach of this Agreement by Construction Manager or arising from any dispute between the Owner and the Construction Manager

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.1.1 Any tools, supplies or equipment left at the Project at the completion of the Work shall be transferred to the Owner in good condition, subject to ordinary wear and tear. The Construction Manager shall provide a list of all such equipment to the Owner.

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

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes in writing the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Construction Manager and Certificates for Payment issued by the Architect and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager 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 that a pencil copy of an Application for Payment is received by the Owner and Architect no later than the 20th day of a month, and a complete, proper and correct certified Application for Payment is received by the Owner and Architect not later than the first day of the following month, the Owner shall make payment to the Construction Manager not later than the thirtieth day of the same month. If a complete, proper and correct certified Application for Payment is received by the Owner and Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner and Architect receive the certified Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall, if applicable, submit receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate the cash disbursements already made by the Construction Manager on account of the Construction Manager's general conditions items to the extent such items are not Lump Sum General Conditions Items. With each Application for Payment submitted in connection with an Owner approved Change Order that increases the Contract Time and extends the date of Substantial Completion, the Construction Manager shall, submit receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate the cash disbursements already made by the Construction Manager on account of the Construction Manager's Lump Sum General Conditions Items for the period of Contract Time for which the date of Substantial Completion was extended.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee and the Lump Sum General Conditions Amount, which Lump Sum General Conditions Amount shall be payable in equal monthly installments during the Construction Phase, shall each be shown as a single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Owner shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be 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 follows:

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

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, but in no event less

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than five percent (5%) and the Construction Manager shall execute subcontracts in accordance with those agreements. The Construction Manager shall invoice for its fee on a percent complete basis; provided, however, that five percent (5%) of the Construction Manager's total fee shall be held as retainage by the Owner until the Project is financially closed out.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner or Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Owner or Architect have made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 Notwithstanding anything to the contrary herein, the Owner shall be entitled to withhold 200% of the estimated cost of the completion of punch list items as retainage. Said retainage shall be paid within thirty (30) days of completion of the punchlist items in a good and workmanlike manner. Additionally, the Owner shall have the right but not the obligation to complete the punchlist items in the event the Construction Manager has failed to complete same within sixty (60) days after receiving seven (7) days' advanced written notice from the Owner of such punchlist items. In the event the Owner completes the punchlist items, the Owner shall have the right to apply the reasonable cost of such completion against the Guaranteed Maximum Price.

§ 7.1.12 In the event the Construction Manager fails to pay Subcontractor or suppliers when due and payable, the Owner shall have the right, but not the obligation, to pay any such Subcontractor directly and subtract such amount paid, plus a percentage equal to the Construction Manager's Fee for such work, from the Guaranteed Maximum Price. Notwithstanding any other provisions to the contrary the Owner shall always be entitled to withhold from payment to the Construction Manager such additional amounts as may be reasonably necessary to protect the Owner from the insolvency of the Construction Manager.

§ 7.1.13 In the event of a monetary dispute between or among the Construction Manager and any Subcontractor or supplier, the Construction Manager shall immediately notify the Owner in writing and furnish such information and substantiation as the Owner may require with respect to the nature and extent of such dispute or claim.

§ 7.2 Final Payment

§ 7.2.1 Final payment (the "Final Payment"), constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

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

The Owner's Final Payment to the Construction Manager shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment. At the time of Final Payment, in addition to the lien waivers and other material to be submitted to the Owner or the Architect as a condition to receiving Final Payment, the Construction Manager, if requested by the Owner, shall deliver a final Sworn Construction Statement in a form approved by the Owner and duly executed and acknowledged, showing payment to have been made to all contributors to the Work.

§ 7.2.2 Provided the Construction Manager has fully performed all its obligations under the Contract Documents, the Owner and/or its accountants shall review the Construction Manager's final cost accounting and provide Construction Manager with a final written report setting forth any disputed costs within sixty (60) days after Owner's receipt of the accounting. Notwithstanding any dispute over all or a portion of the Final Payment requested by Construction

Manager, Owner shall pay Construction Manager all undisputed amounts within the time set forth in Section 7.2.1. Any disputed amounts shall be identified in writing by Owner to Construction Manager.

§ 7.2.3 If the Owner and/or its accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner and/or its accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to Final Payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to Final Payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

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

Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate bodily injury/property damage \$1,000,000 Personal and Advertising Injury \$2,000,000 Products-Completed operations aggregate The CGL policy must include coverage for: <input type="checkbox"/> liability from premises and operations. <input type="checkbox"/> liability from products or completed operations <input type="checkbox"/> liability from actions of independent contractors. <input type="checkbox"/> liability assumed by contract.
Conditions	Town must be named as "additional insured": on contractor's CGL policy with form CG 20 10 or CG 20 33, and CG 20 37. The Aggregate limit must apply per job. Products/completed operations must be carried for 2 years after completion of job/acceptance by owner.
Automobile Liability	\$1,000,000 each accident \$2,000,000 aggregate for bodily injury/property damage, including hired owner non-owned vehicles.
Workers' Compensation	Liability meeting statutory limits mandated by the state. Federal laws with minimum limits of" \$1,000,000 each accident for bodily injury by accident \$1,000,000 each employee for bodily injury by disease \$1,000,000 policy limit for bodily injury by disease
Employers Liability	\$1,000,000 each accident

Professional Liability	\$1,000,000
<i>(Row deleted)</i>	
Umbrella Liability	\$15,000,000

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of the General Conditions.

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

(Paragraphs deleted)

be, at the Owner's sole option, Arbitration pursuant to Section 15.4 of the General Conditions, or, if the Owner elects not to arbitrate, litigation in a court of competent jurisdiction

(Paragraphs deleted)

in the state courts where the Project is located.

(Paragraphs deleted)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of the General Conditions.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section (i) exceed the compensation set forth in Section 4.1; or (ii) include payment for Work not executed and any cost or damages incurred by reason of such termination.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the

(Paragraphs deleted)

Construction Manager shall be entitled to receive payment pursuant to Section 14.4.3 of the General Conditions.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

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

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to the extent required by DCS or to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 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.

§ 11.5 Other Provisions:

§ 11.5.1 Subject to Section 10.3 of the General Conditions, Construction Manager shall, as part of the Work, be responsible for the removal, handling, and disposal of polluted, contaminated, or hazardous materials, including, but not limited to, the abatement and disposal of material containing lead or asbestos.

§ 11.5.2 NOT USED.

§ 11.5.3 While Construction Manager assumes no responsibility for insuring that the Contract Documents specify work, materials, or equipment are in compliance with local building codes, ordinances, or other requirements, the Construction Manager shall be obligated to inform Owner of any noncompliance that they know of or, through the exercise of due diligence reasonably should know of.

§ 11.5.4 To the extent they are required, lien waivers and releases shall be furnished to cover payments received by Construction Manager and its subcontractors.

§ 11.5.5 Where work is designated "by others" or "by Owner" or is otherwise not the responsibility of Construction Manager, Construction Manager shall provide management support to Owner in order to assist the Owner in managing and coordinating such work.

§ 11.5.6 The relationship of Construction Manager to Owner shall be that of an independent contractor.

§ 11.5.7 Owner shall be responsible for the payment of all permanent utility company charges and connection costs. All permanent utilities shall be established and maintained in the name of the Owner. Notwithstanding the foregoing, the Construction Manager shall be responsible for temporary heat, power, and light hookup and utility charges for its own temporary gas and telephone and all associated utilities charges.

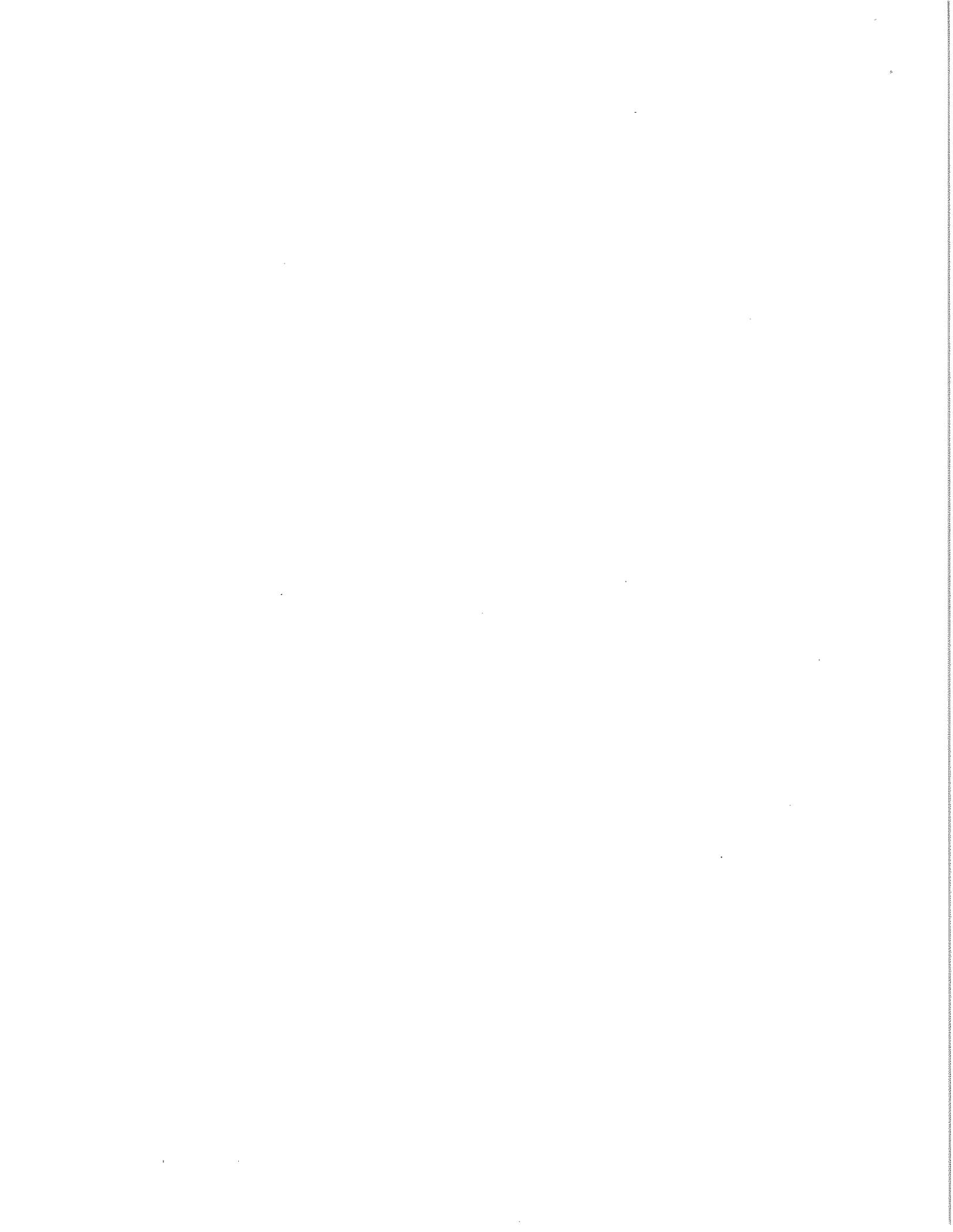
§ 11.5.8 The parties have had full opportunity to review, consult counsel and participate in the negotiation and preparation of this Agreement and, accordingly, the Contract Documents shall not be more strictly construed against any one of the parties hereto.

§ 11.5.9 In the event any term or provision of the Agreement is finally determined to be illegal, void or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of the Agreement shall be construed to be in full force and effect.

§ 11.5.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

§ 11.5.11 OWNER AND CONTRACTOR HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND

Init.



INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

§ 11.6 Equal Opportunity

Contractor shall comply with all applicable equal opportunity requirements, including but not limited to those set forth in Article 17 of the General Conditions.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

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

§ 12.3 The following exhibits attached to this are part of the Agreement and also comprise the Agreement:

- Exhibit A – The General Conditions, AIA Document A201-2007, as amended;
- Exhibit B – Scope of Services;
- Exhibit C – CREC Memorandum;
- Exhibit D – Preliminary Project Schedule
- Exhibit E – Bid Form Fee and Compensation Structure Project Cost Calculation;
- Exhibit F – Task Matrix
- Exhibit G – Preconstruction Staffing Matrix; and
- Exhibit H – Construction Staffing Matrix.

(Paragraph deleted)

To the extent of conflicts between this Agreement and the CREC Memorandum, the terms and conditions of this Agreement control and prevail. To the extent of conflicts between this Agreement and Exhibit I of the RFQ/P, the terms and conditions of this Agreement control and prevail.

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

TOWN OF EAST HAMPTON

DOWNES CONSTRUCTION COMPANY, LLC


OWNER (Signature)


CONSTRUCTION MANAGER (Signature)

Michael Maniscalco Town Manager
(Printed name and title)

JOSEPH N. DESAUTEL JR C.E.O.
(Printed name and title)

