

Project Minutes

Project: Stoneham High School Feasibility Study

Prepared by: Joel Seeley

Re: CM Prequalification and Selection Committee Meeting

Location: Remote Participation

Distribution: Attendees (MF)

Project No.: 20033

Meeting Date: 12/7/2020

Time: 5:00pm

Meeting No: 2

Attendees:

PRESENT	NAME	AFFILIATION
✓	Douglas Gove	Co-Chair, CM Prequalification and Selection Committee, Community Member with Engineering Experience
✓	Stephen O'Neill	Co-Chair, CM Prequalification and Selection Committee, Community Member with Engineering Experience
✓	Marie Christie	Co-Chair, School Building Committee
✓	David Bois	Co-Chair, School Building Committee; Community Member with Architecture Experience
✓	Jeanne Craigie	Town Moderator
✓	Paul Ryder	Community Member with Construction Experience
✓	Kevin Yianacopolus	Local Official responsible for Building Maintenance
✓	Dennis Sheehan	Town Administrator / MCPPO Certified
✓	Brian McNeil	Facilities Director
✓	April Lanni	Town Procurement Officer
✓	Brooke Trivas	Perkins and Will
✓	Joel Seeley	SMMA

Item #	Action	Discussion
2.1	Record	Call to Order, 5:00 PM, meeting opened by roll call.
2.2	Record	A motion was made by J. Craigie and seconded by M. Christie to approve the 11/2/20 CM Prequalification and Selection Committee meeting minutes. No discussion, motion passed unanimous by roll call vote.
2.3	J. Seeley	J. Seeley distributed and reviewed the updated CM Selection Timeline, attached. Committee Discussion: Keep the 1/18/21 Optional Site Visit date. Add a note in the RFP to indicate the school grounds only will be available to visit on 1/18/21, unescorted, however the Town reserves the right to cancel pending the status of the pandemic.

Item #	Action	Discussion
2.4	J. Seeley Committee	J. Seeley paged thru one of the CM at Risk Qualification Submissions and described the type of information provided in each section. J. Seeley paged thru the Evaluation Form, attached. Committee Discussion: 1. J. Seeley to send the Evaluation Form in Excel to the Committee. 2. The Committee to send their completed evaluation forms to J. Seeley by 12:00 noon on 1/4/21 for compilation. 3. J. Seeley to send the CM Reference checks to the Committee prior to 1/4/21.
2.5	Committee	J. Seeley reviewed the Draft Request for Proposal for CM at Risk Services (RFP), Packages 1, 2 and 3, attached. Committee to review and have comments for the 1/4/21 meeting.
2.6	Record	J. Seeley reviewed the Notice to Proceed with the CM at Risk Delivery Method from the Office of the Inspector General, attached.
2.7	Record	Next Meeting: January 4, 2021 at 6:00 pm.
2.8	Record	A Motion was made by J. Craigie and seconded by M. Christie to adjourn the meeting. No discussion, motion passed unanimous by roll call vote.

Attachments: Agenda, CM Selection Timeline, Evaluation Form, Draft Request for Proposal for CM at Risk Services, Packages 1, 2 and 3, Notice to Proceed with the CM at Risk Delivery Method from the Office of the Inspector General

The information herein reflects the understanding reached. Please contact the author if you have any questions or are not in agreement with these Project Minutes

Agenda

Project:	Stoneham High School Feasibility Study	Project No.:	20033
Re:	CM at Risk Prequalification Committee Meeting	Meeting Date:	12/7/2020
Prepared by:	Joel Seeley	Meeting Time:	6:00 PM
Location:	Remote Participation		
Distribution:	Attendees (MF)		

1. Call to Order
2. Approval of Minutes
3. Review CM Selection Timeline
4. Progress Review of Submitted Qualification Packages
5. Review Evaluation Form
6. Review Draft Request for Proposal (RFP)
7. Next Meeting: January 4, 2021
8. Adjourn

Join GoToMeeting:

<https://global.gotomeeting.com/join/517001509>

Dial-In: [+1 \(224\) 501-3412](tel:+12245013412)

Access Code: [517-001-509](https://global.gotomeeting.com/join/517001509)

Stoneham High School Feasibility Study October 19, 2020 - *Updated November 24, 2020*

Construction Manager Selection Timeline

October 13, 2020	SBC Decide CM at Risk Approach, Appoint CM Prequalification and Selection Subcommittee
October 13 – October 19, 2020	Develop Application to Inspector General
October 19, 2020	Submit Application to Inspector General
October 14 – November 2, 2020	Develop Request for Qualifications (RFQ)
November 2, 2020 @ 7:00 PM	CM Prequalification Subcommittee Meeting: Review Draft RFQ and Schedule
November 5, 2020	Submit RFQ Advertisement to: 1. Central Register and Local Newspaper
November 11, 2020	RFQ Advertisement Noticed in: 1. Central Register and Local Newspaper
November 9 – December 7, 2020	Develop Request for Proposal (RFP)
November 18, 2020 @ 3:30 PM	Informational Meeting at Stoneham High School and Tour
December 7, 2020	Notice to Proceed with CM at Risk from Inspector General
November 19, 2020 @ 2:00 PM	Deadline for Submission of CM Questions
December 2, 2020	CM Qualification Packages Due
December 2, 2020 – January 4, 2021	Review CM Qualification Packages
December 7, 2020 @ 6:00 PM (prior to SBC Meeting)	CM Prequalification Subcommittee Meeting: Review Draft RFP, Progress Review of Qualifications
January 4, 2020 @ 6:00 PM	CM Prequalification Subcommittee Meeting: Prequalify CM Firms to Receive RFP
January 11, 2021	Distribute RFP to Prequalified CM Firms
January 18, 2021	Optional Site Visit
January 19, 2021 @ 2:00 PM	Deadline for Submission of CM Questions on RFP
January 25, 2021	CM Proposal Packages Due
January 25 – February 9, 2021	Review CM Proposal Packages
February 1, 2021 @ 6:00 PM	CM Selection Subcommittee Meeting: Review CM Proposals, Finalize Questions for Interviews
February 10, 2021 (Wednesday) @ 4:00 PM	CM Interviews, Rank CM Firms
February 22, 2021	SBC Meeting: CM Selection Subcommittee to Recommend CM Firm, Introduce CM
February 22 - 26, 2021	Finalize Agreement with Selected CM Firm

Date: _____

EVALUATION INSTRUCTIONS**Construction Manager Prequalification Committee Members****STONEHAM HIGH SCHOOL**

Douglas Gove, Co-Chair	Jeanne Craigie	Brian McNeil
Stephen O'Neill, Co-Chair	Paul Ryder	Brooke Trivas
Marie Christie	Dennis Sheehan	Joel Seeley
David Bois	Kevin Yianacopolus	

Evaluation Instructions

Attached are the Construction Managers who have submitted a complete Statement of Qualifications (SOQ) for the project.

- STEP 1** Confirm all requirements are included in each SOQ submittal. *(SMMA will do this step.)*
- STEP 2** Complete Numerical Comparative Evaluation. Each Section lists the Schedule to be referenced and should be scored as noted beside each criteria item. Use the Points Guideline Form to assist in determining allocated points.
- STEP 3** SMMA will perform, record and distribute the reference checks prior to the January 4, 2021 CM Prequalification Committee Meeting.
- STEP 4** Bring completed evaluation sheet for compiling and review at the January 4, 2021 CM Prequalification Committee Meeting.

Date: _____

REGISTER OF RESPONDERS

STONEHAM HIGH SCHOOL

Submittal of RFQ	FIRM NAME	FIRM NAME	FIRM NAME
Date of Receipt			
Time of Receipt			
Received by:			

Submittal of RFQ	FIRM NAME	FIRM NAME	FIRM NAME
Date of Receipt			
Time of Receipt			
Received by:			

Submittal of RFQ	FIRM NAME	FIRM NAME	FIRM NAME
Date of Receipt			
Time of Receipt			
Received by:			

Submittal of RFQ	FIRM NAME	FIRM NAME	FIRM NAME
Date of Receipt			
Time of Receipt			
Received by:			

CM AT RISK STATEMENT OF QUALIFICATION EVALUATION

STONEHAM HIGH SCHOOL

PROJECT MANAGEMENT

SMMA

Date: _____

Company Name _____

Reviewed by _____ Signature _____

Required Documents to be included in the Statement of Qualifications

		Included / Not Included*
CM at Risk Statement of Qualifications Form (SOQ)		
Schedule A	CM at Risk Qualifications Application	
Schedule B	Executive Summary	
Schedule C	Management Personnel and Organization Chart	
Schedule D	Similar Project Experience (last 5 years)	
Schedule E	Terminations and Legal Proceedings	
Schedule F	Safety Record	
Schedule G	MBE/WBE and Workforce Compliance Record	
Schedule H	Audited Financial Statement	
Schedule I	Letter from Surety Company Evidencing Bonding	
Schedule J	Certificate of Eligibility (issued by DCAMM) and a complete Update Statement	
Schedule K	Examples of Project Management Reports and Operating Philosophy	
Schedule L	Examples of Prior Experience on Sustainable Construction, ZNE and LEED - Certified	
Schedule M	Examples, if any, of Building Information Modeling (BIM) documents	
Schedule N	List of Projects in Progress, Completed Projects and Certification Page from Recent DCAMM Application for Certification	

CM AT RISK STATEMENT OF QUALIFICATION EVALUATION

PROJECT MANAGEMENT



NUMERICAL COMPARATIVE EVALUATION STONEHAM HIGH SCHOOL

Date: _____

Company Name _____

Reviewed by _____

Signature _____

	SCHEDULES	CRITERIA	AVAILABLE POINTS	CM FIRM Name	CM FIRM Name	CM FIRM Name	CM FIRM Name	CM FIRM Name	CM FIRM Name	CM FIRM Name	CM FIRM Name	CM FIRM Name	CM FIRM Name
				POINTS	POINTS	POINTS	POINTS	POINTS	POINTS	POINTS	POINTS	POINTS	POINTS
1	Schedule B	Respondents ability to understand project goals, dates, phasing, etc. <i>1 = (Least Favorable) to 10 = (Most Favorable)</i>	0-10										
2	Schedule C	Management Team and Organization for the Project <i>1 = (Least Favorable) to 15 = (Most Favorable)</i>	0-15										
3	Schedule D	Prior Similar Project Experience: <i>1 = (Least Favorable) to 15 = (Most Favorable)</i>	0-15										
4	See References	Respondent's References	0-5										
5	See References	Respondents record of harmonious, non adversarial, honest relationship with Owner, Architect and OPM	0-5										
6	Schedule E Part C, Section 1	Litigation and Performance/Termination/Mediation etc. History (0 Litigation) = 5 Points; (1-4 Litigation) = 3 Points; (5-9 Litigation) = 2 Points; (10+ Litigation) = 0 Points	0-5										
7	Schedule F	Safety Record: (Less than 0.50) = 5 Points; (0.51-0.70) = 3 Points; (0.71-0.89) = 2 Points; (Over 0.90) = 1 Point	0-5										
8	Schedule G	History of Compliance with MBE/WBE participation and workforce percentages: <i>1 (Least Favorable) - 10 (Most Favorable)</i>	0-5										
9	Schedule H	Financial Status - See Financial Statement: <i>1 (Least Favorable) - 5 (Most Favorable)</i>	0-5										
10	Schedule J	Volume of Current Work - See DCAMM Certificate and Update Statement: <i>1 (Least Favorable) - 5 (Most Favorable)</i>	0-5										
11	Schedule K	Project Management Reports and Operating Philosophy: <i>1 (Least Favorable) - 5 (Most Favorable)</i>	0-5										
12	Schedule L	Sustainable construction ZNE Buildings, MA-CHPS and LEED-certified buildings: <i>1 (Least Favorable) - 5 (Most Favorable)</i>	0-5										
13	Schedule M	Building Information Modeling (BIM) Documents: <i>1 (Least Favorable) - 5 (Most Favorable)</i>	0-5										
14		General Evaluation	0-10										
Total Lines 1-14				0	0	0	0	0	0	0	0	0	0
TOTAL COMPARATIVE POINTS				100	100	100	100	100	100	100	100	100	100
Total Available Points													

Date: _____

POINTS GUIDELINES FORM
STONEHAM HIGH SCHOOL

	POINTS	Most Favorable			Least Favorable
1 Respondents ability to understand project goals, dates, phasing, etc. (SCHEDULE B)	0-10	Provided strong evidence of exceeding project goals	Provided evidence of having exceeded project goals	Provided little evidence of meeting project goals	Did not provide information requested or did not meet project goals
2 Management Team and Organization for the Project (SCHEDULE C)	0-15	Highly qualified staff; project leadership team with significant and specifically relevant experience	Highly qualified staff; project leadership team with relevant experience	Qualified staff; good project leader, similar experience	Inadequate information regarding proposed team members and/or qualification background experience
3 Prior Similar Project Experience (SCHEDULE D)	0-15	Five or more similar projects	Three or more similar projects	One or more similar projects	No similar project experience
4 Respondent's References (See References)	0-5	Outstanding references on performance and proposed personnel	Strong references on performance and proposed personnel	Average references on performance and proposed personnel	Below average references on performance and proposed personnel
5 Respondents record of harmonious, non adversarial, honest relationship with Owner, Architect and OPM (See References)	0-5	Outstanding record of harmonious, non adversarial, honest relationship with Owner, Architect and OPM	Strong record of harmonious, non adversarial, honest relationship with Owner, Architect and OPM	Average record of harmonious, non adversarial, honest relationship with Owner, Architect and OPM	Below average record of harmonious, non adversarial, honest relationship with Owner, Architect and OPM
6 Litigation and Performance/Termination/ Mediation/ etc. History (SCHEDULE E Part C, Section 1) (0 Litigation) = 5 Points; (1-4 Litigation) = 3 Points; (5-9 Litigation) = 2 Points; (10+ Litigation) = 0 Points	0-5	Demonstrated no history of contract performance problems	Demonstrated some contract performance problem	Demonstrated continued history of contract performance problems	Demonstrated significant continued history of contract performance problems
7 Safety Record (SCHEDULE F) (Less than 0.50) = 5 Points; (0.51-0.70) = 3 Points; (0.71-0.89) = 2 Points; (Over 0.90) = 1 Point	0-5	Demonstrated strong performance rating	Demonstrated better than average performance rating	Demonstrated average performance ratings	Demonstrated continued history of performance problems

Date: _____

POINTS GUIDELINES FORM
STONEHAM HIGH SCHOOL

	POINTS	Most Favorable			Least Favorable
8 History of Compliance with MBE/WBE participation and workforce percentages (SCHEDULE G)	0-5	Provided strong evidence of exceeding workforce-MBE/WBE goals	Provided evidence of having exceeded workforce-MBE/WBE goals	Provided all information required, met project goals	Did not provide information requested or did not meet project goals
9 Financial Status - See Financial Statement (SCHEDULE H)	0-5	Exhibited strong financial position	Exhibited stable financial position	Provided information requested	Firm did not provide requested information
10 Volume of Current Work - See DCAMM Certificate and Update Statement (SCHEDULE J)	0-5	Current work volume with-in DCAMM limits not overburdened	Current work volume with-in DCAMM limits with ability to perform	Current work with-in DCAMM limits	Current work not with-in DCAMM limits
11 Project Management Reports and Operating Philosophy (SCHEDULE K)	0-5	Provided an excellent response addressing all tasks, deliverables and approach to project	Provided an excellent response addressing most tasks, deliverables and approach to project	Provided an adequate response	Response was not adequate
12 Sustainable construction ZNE Buildings, MA-CHPS and LEED-certified buildings (SCHEDULE L)	0-5	Five or more projects using Sustainable Construction methods, LEED, MA-CHPS, etc. Three or more ZNE building projects.	Three or more projects using Sustainable Construction methods, LEED, MA-CHPS, etc. Two or more ZNE building projects.	One or more projects using Sustainable Construction methods, LEED, MA-CHPS, etc. One or more ZNE building projects.	No similar project experience
13 Experience with BIM (SCHEDULE M)	0-5	Outstanding experience with BIM on previous projects	Strong experience with BIM on previous projects	Average experience with BIM on previous projects	No experience with BIM on previous projects
14 General Evaluation	0-10	Exceeded all RFQ requirements, including format, understanding of project, completeness of proposal	Met all RFQ requirements, including format, understanding of project, completeness of proposal	Met all basic proposal requirements, but some clarification and amplification of proposal elements is needed	Did not meet one or more of response requirements



**Town of Stoneham
Stoneham High School**

**Request For Proposal
For Construction Management At Risk Services**

Date: January 11, 2021

Owner:

Town of Stoneham
35 Central Street
Stoneham, Massachusetts 02180

Architect:

Perkins & Will Architects (P&W)
225 Franklin Street, Suite 1100
Boston, Massachusetts 02110
Principal: Brooke Trivas, AIA

Owners Project Manager:

Symmes Maini & McKee Associates (SMMA)
1000 Massachusetts Avenue
Cambridge, Massachusetts 02138
Principal: Joel Seeley

Proposal Deadline: 2:00 PM EST on January 25, 2021

Submit Proposals to:

Town of Stoneham
Town Administrator's Office
Attn: April Lanni, Procurement Officer
35 Central Street
Stoneham, Massachusetts 02180

PACKAGE 1 OF 3 - RFP

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REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES

STONEHAM HIGH SCHOOL PROJECT, STONEHAM, MASSACHUSETTS

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- Form D – Certificate of Tax Compliance
- Form E – Affidavit of Prevailing Wage Compliance
- Form F – Certification of Labor / OSHA Compliance
- Form H – Certificate of Corporate Responder
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- DCAM’s Update Statement (DCAM Form CQ 3)

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	Form GC – Price Proposal
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PACKAGE 2 of 3 – PREFERRED SCHEMATIC REPORT (PSR) DESIGN DOCUMENTS

The following documents will be made available to the Offerors as part of this RFP:

- Preferred Schematic Report (PSR) Submission, dated December 23, 2020
- Preferred Schematic Report (PSR) Construction Cost Estimate, dated December 23, 2020
- Project Schedule, dated December 23, 2020

PACKAGE 3 of 3 – CM AGREEMENT AND GENERAL CONDITIONS

Owner – Construction Manager Agreement

Exhibit 1 – CM Contract Amount Breakdown [to be inserted at a later date]

Exhibit 2 – Insurance Certificates and Bonds [to be inserted at a later date]

Exhibit 3 – Prevailing Wage Rates [these rates shall be provided prior to the issuance of each bid package.]

Exhibit 4 – Certificate of Vote

General Conditions of the Contract

Appendix A – Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program

Appendix B – Procedure For Pre-Bid Reduction/Waiver of MBE/WBE Participation Goals

Appendix C – Bidding Instructions - Goals for Participation by Minority Business Enterprises and Women Business Enterprises (Executive Order 390, M.G.L. C. 7, S. 40n)

Appendix D – General Conditions - Goals for Participation by Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) (Executive Order 390, M.G.L. C. 7, S. 4)

Exhibit A: Schedule for Participation by Minority/Women Business Enterprises

Exhibit B: Letter Of Intent Minority/Women Business Enterprises Participation

Exhibit C: Contractor Progress Payment Form Minority/Women Business Enterprises Participation

Appendix E – Contractor's Certification

Appendix F – Subcontractor's Certification

Appendix G – Procedures for Award of Subcontracts

Appendix H – Form Of Trade Contract

Appendix I – Performance Bond

Appendix J – Certificate as To Corporate Principal (Performance Bond)

Appendix K – Labor and Material Payment Bond

Appendix L – Certificate as To Corporate Principal (Labor and Material Bond)

The CM Contract that will be executed with the successful Offeror shall be in substantial compliance with these documents.

Any qualifications and exceptions to the terms and forms of the Owner-Construction Manager Agreement or the Owner-Construction Manager General Conditions of the Contract must be noted in writing at the time of submission of the RFP.

SECTION ONE

NOTICE TO CONSTRUCTION MANAGERS

1.1 GENERAL

The following project is the subject of this Request for Proposal ("RFP"):

Stoneham High School, Stoneham, Massachusetts

The project consists of the construction of a new three-story Stoneham High School on the site of the existing Stoneham High School. The new school will contain 208,113 square feet.

The Stoneham School Building Committee has elected to commence the CM at Risk procurement process **in advance** of the Special Town Meeting and Debt Exclusion Ballot Vote scheduled to take place in the fall of 2021. The CM selection process is commencing prior to the funding approval so the initial CM project activities can be executed during the Schematic Design Phase. During the Schematic Design Phase and as part of the Initial Preconstruction Services, the selected CM firm will generate the Schematic Design (SD) Estimate, reconcile the SD estimate with the Designers independent SD estimate, manage the Value Engineering process, and provide a realistic building schedule and logistics plan. This work product will be part of the Schematic Design Submission that is due to the MSBA on July 7, 2021. It is anticipated the award for Schematic Design Phase CM Services will occur at the February 22, 2021 SSBC meeting and that the CM will be working closely with the Design team generating a draft estimate for a reconciliation meeting that will occur on or before May 17, 2021. The final estimate is to be presented to the Stoneham School Building Committee on June 14, 2021 for approval to submit to the MSBA. The selected CM firm will need to attend local committee meetings (March to November 2021) and attend community outreach activities to inform the community about the project prior to the votes.

The CM will receive a lump sum fee of \$25,000.00 for the Initial Preconstruction Services during the Schematic Design Phase. The remaining Preconstruction and Construction Services would commence upon local voter approval of the project in the fall of 2021 and the issuance of a Notice to Proceed by the Stoneham School Building Committee. The CM agrees that the Town of Stoneham will have no obligation for the remaining preconstruction and construction services until such time as the Notice to Proceed is issued.

If the above noted fee or schedule does not work with your current staff and estimating workload, please notify the OPM that your firm cannot provide these services and withdraw from the selection process.

Pursuant to Chapter 149A of the General Laws, the Town of Stoneham requests proposals for Construction Management at Risk Services for the Stoneham High School Project, Stoneham, MA. Firms, which have already been pre-qualified, may submit proposals to perform the Construction Management at Risk Services required by this Proposal and the attached documents. The Town of Stoneham intends to award a Construction Manager at Risk Contract that substantially conforms to the Construction Management Contract, and the General Conditions of the Contract attached to this RFP, and the requirements of this Request for Proposal. The CM Contract will initially cover the Initial Preconstruction Phase Services and upon successful vote

and issuance of a Notice to Proceed, the remainder of the Preconstruction Phase Services. Early construction phase work, also referred to as “Early Site Preparation, Early Foundation and Early Steel Package Work”, will be incorporated into the CM Contract through an amendment prior to the execution of a Guaranteed Maximum Price (“GMP”). The contract amendment establishing the GMP for the CM contract will be negotiated at a later date.

The project is partially funded by the Massachusetts School Building Authority (MSBA) and as such, requires the CM be in compliance with MSBA Funding and Reimbursement Requirements and Regulations throughout the entire project duration, which concludes when the MSBA Board of Directors acknowledges the project as being complete.

Qualified firms are hereby requested to prepare a Proposal consisting of two parts:

1. Non-Price Proposal Submission, and
2. Price Proposal Submission.

The terms "Offeror" or "Proposer" are defined to mean a qualified entity submitting a Proposal for the work of this Contract, and is synonymous with the term "Contractor" and "Construction Manager" ("CM") as used in the Technical Specifications. For this RFP, the following firms, in alphabetical order, have been prequalified and are able to participate in this phase two of the CM at Risk selection process:

1. TBD
2. TBD
3. TBD

This RFP contains all of the information and requirements for the Project needed by prospective Offerors for the submission of their complete Proposals and the evaluation thereof. Utilizing the format prescribed, Offerors are to provide the requested information and demonstrate their specific qualifications. Proposals shall be as complete and accurate as possible and present data relative to the specific project under consideration. Offerors shall make every effort to present information clearly and concisely in accordance with the formats described herein.

1.2 REQUEST FOR PROPOSAL DOCUMENTS

The Request for Proposal Document packages will be available at Symmes Maini & McKee Associates, Inc. (SMMA), Attn: Joel Seeley, 1000 Massachusetts Avenue, Cambridge, Massachusetts 02138 by electronic download from <http://procurementdocuments.smma.com> at **2:00 PM EST on January 11, 2021.**

The cost of obtaining these documents shall be borne by the Offeror / CM firm. Messenger and other types of pick-up and delivery services are the agents of the Offeror. The Town of Stoneham shall not be responsible under any circumstances for any costs incurred by any respondents to this RFP.

1.3 CONTRACTUAL STATUS OF RFP AND PROPOSALS

The Town of Stoneham assumes no responsibility for costs incurred in the preparation of a

Proposal or related activities of any Offeror. The Town of Stoneham reserves the right to amend or withdraw the RFP at any time in its sole discretion before the execution of the contract. In such event, the Town of Stoneham shall not be liable to any Offeror for the costs incurred by it as a result of the withdrawal of the RFP. The RFP, including the documents incorporated in the RFP, have been prepared to solicit Proposals and are not contract offers. The only document that will be binding on the Town of Stoneham is the contract duly executed by the Town of Stoneham and the Construction Management Firm selected pursuant to the selection process.

1.4 COMMUNICATIONS

- A. All correspondence and documents should reference the Project Name as follows.

Construction Management at Risk Services for the Stoneham High School Project.

- B. Construction Manager Contact Person

The Town of Stoneham will address all communications relating to the RFP and selection process to the contact person provided by the Construction Manager. Offerors must provide the Town of Stoneham with the following information:

Name
Company
Address
Phone Number
Cell Number
Email Address

- C. The Town of Stoneham Contact

Town of Stoneham
c/o Symmes Maini & McKee Associates, Inc. (SMMA)
Attn: Joel Seeley, Owner's Project Manager
1000 Massachusetts Avenue
Cambridge, Massachusetts 02138
Tel: (617) 547-5400 Email address: opm@smma.com

1.5 COMPLIANCE WITH RFP

Offerors must fully comply with the Proposal requirements described below in order for the Town of Stoneham to properly evaluate each Proposal. The Town of Stoneham reserves the right to reject any Proposal not in compliance with the RFP.

1.6 EXAMINATION OF DOCUMENTS

Before submitting a Proposal, each Offeror must thoroughly examine the RFP, including the form of contract and all other attachments, and familiarize itself with the site and with local conditions and with federal, state, and local laws, ordinances, rules and regulations and any other

circumstances or conditions that may in any manner affect cost or performance of the contract. Failure of an Offeror to acquaint itself with the RFP, or to review the documents contained in or referred to in the RFP, shall in no way relieve Offeror from any obligation with respect to its Proposal. Each Offeror shall promptly notify the Town of Stoneham of any ambiguity, inconsistency, or error it may discover upon examination of the RFP or any Project information. The submission of a Proposal shall constitute a representation by the Offeror that, a) the RFP is sufficient in scope and detail to describe the services to be provided and the terms and conditions of their provision, and b) that the Offeror understands and has complied with every requirement of the RFP.

1.7 PRE-PROPOSAL SITE VISIT

A remote information meeting and virtual building tour was held in the RFQ phase. An optional site visit for CMs may be scheduled for **Monday, January 18, 2021** depending upon the status of the pandemic. If the optional site visit is to take place, all CM staff visiting the site are to sign-in with the Principal's office and wear identifiable clothing and Personal Protective Equipment (PPE.) No other site visits are allowed.

1.8 ADDENDUM PROCEDURES

The Town of Stoneham reserves the right to amend the RFP at any time. Any amendments to the RFP shall be issued through written addenda.

The Town of Stoneham will provide copies of each addendum to all Offerors who received the RFP. Each addendum will be made available at <http://procurementdocuments.smma.com>. All offerors who received the RFP will be notified when each addendum is issued. All addenda so issued shall become part of the RFP.

Each Offeror shall be responsible for determining that it has received all addenda issued, and failure of any Offeror to receive any addendum shall not relieve such Offeror from any obligation imposed by such addendum.

1.9 PROHIBITION ON UNAUTHORIZED COMMUNICATIONS AND REQUESTS FOR INTERPRETATION OF DOCUMENTS

Unauthorized communications or contact between CM firms, their employees, agents or other related entities interested in submitting Proposals and the Town of Stoneham, the Project Designer or Owner Project Manager, or any other person or entity participating on the Selection Committee with regard to this project are strictly prohibited. The only authorized communication shall be: 1) inquiries to the Owner's Project Manager for general information about obtaining the RFP, RFP submission deadlines, and the existence of any relevant addenda to the RFP; and 2) written submission of questions submitted by the date set for such inquiries.

All questions must be submitted in writing to the Town of Stoneham, by mail or email addressed to:

***Town of Stoneham
c/o Symmes Maini & McKee Associates (SMMA)***

*Attn: Joel Seeley
1000 Massachusetts Avenue
Cambridge, Massachusetts 02138
Email: opm@smma.com*

The deadline for receipt of written questions is 2:00 PM EST on January 19, 2021.

To be given consideration, such questions, requests, or correspondence shall be received by the Owner's Project Manager by the deadline for receiving questions stated above. Clarifications or interpretations and any supplemental instructions or forms, if issued, shall be issued as written addenda prior to the date for opening of Proposals. Oral clarifications, interpretations, instructions, or other communications, including but not limited to statements made at the pre-proposal site tour, will not be binding on the Town of Stoneham in any way. The Town of Stoneham will not be responsible for, and an Offeror may not rely upon or use as the basis of a claim against the Town of Stoneham or a consultant of the Town of Stoneham, any information, explanation or interpretation of the RFP rendered in any manner other than as provided in this Paragraph 1.9.

1.10 CONSULTANTS WITH PRIOR SERVICE ON THIS PROJECT ARE PRECLUDED FROM SERVICE TO CM TEAMS

Architectural, engineering, cost estimating, testing or any other consultants or sub-contracting firms that participated in any way, as a direct consultant to the Town of Stoneham or provided any services as a subconsultant to the Town of Stoneham's consultants, during the development of this RFP or provided any prior study, planning, environmental or other services with respect to this project are excluded from providing any services to firms submitting offers or to the successful Offeror on this project.

Firms that have had prior involvement with the RFP's development or study, planning, environmental or other services with respect to this project include but are not limited to:

Perkins & Will Architects and its consultants
Symmes Maini & McKee Associates, Inc. and its consultants

1.11 PROPOSAL SUBMISSION

- A. Proposals must be submitted in form and substance as required by the RFP no later than the date and time shown on the title page of the RFP or a later date and time established by addendum duly issued by the Town of Stoneham (in either case, the "Proposal Deadline").
- B. It is the Offeror's responsibility to obtain a time stamp, indicating the Owner's receipt of its Proposal by the stipulated deadline. Proposals submitted after the Proposal deadline shall not be accepted for consideration. The clock in the office to which proposals are to be submitted shall be considered the official time.
- C. An authorized person must sign the (Non-Price) Request for Proposal Response Form and the Price Proposal in ink to bind the Offeror.

- A. Any and all addenda must be acknowledged on the Request for Proposal Response Form.
- B. If the office to which proposals are to be submitted is closed due to weather or emergency, the deadline for receipt of proposals shall be extended until the exact same time (2:00 PM EST) on the next business day upon which such offices are open.

1.12 PROPOSAL FORMAT

Offerors are referred to the sections regarding Evaluation Criteria for specific guidelines for the preparation and submission of their proposal. If the Offeror has any exceptions to the terms of the proposed contract documents or the conditions required by the RFP, it must list those exceptions in its Proposal. Offerors are not expected to present extensive lists of exceptions. The Owner reserves the right to determine that a Proposal is nonresponsive if the exceptions would have a substantial impact on the Owner's ability to fairly evaluate the Proposals.

1.13 COMMITMENT LETTER FROM SURETY

Each proposal shall be accompanied by a commitment letter from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the Proposer if the Proposer is selected by the Town of Stoneham for the award of the CM at Risk Construction Contract. The final penal sum of those bonds will be in the full amount of the CM at Risk contract. For purposes of the Commitment Letter, the surety shall confirm that it is willing to bond the Proposer in an amount equal to 110% of the current estimated construction cost of \$140,000,000.

1.14 MODIFICATION OR WITHDRAWAL OF PROPOSALS

- A. If an Offeror has submitted its Proposal prior to the Proposal Deadline, it may, until the Proposal Deadline, submit an amendment to its Proposal. The amendment must be in writing and submitted in the same manner as the Proposal.
- B. An Offeror may withdraw its Proposal by submitting written notice to the Owner's Project Manager at any time prior to the Proposal Deadline.
- C. After the Proposal Deadline an Offeror may not change the price or any provisions of the Proposal in a manner prejudicial to the interest of the Town of Stoneham or fair competition.
- D. The Town of Stoneham may waive minor informalities or allow an Offeror to correct them. If a mistake in the intended offer is clearly evident on the face of the proposal, the Town of Stoneham shall correct the mistake to reflect the intended correct offer and shall so notify the Offeror in writing. The Town of Stoneham may permit an Offeror to withdraw an offer if a mistake is clearly evident on the face of the proposal and the intended correct offer is not similarly evident.
- C. A Proposal shall remain valid for a period of one hundred and twenty (120) calendar days following the Proposal Deadline.

1.15 REJECTION OF PROPOSALS

The Town of Stoneham reserves the right to reject any or all Proposals if it determines that such action is in the best interest of the Town of Stoneham. Any Proposal which is incomplete, conditional, or difficult to understand may be considered invalid, and the Town of Stoneham may reject such Proposal. In addition, the Town of Stoneham may consider any Proposal which is not prepared and submitted in accordance with all requirements of the RFP, or which contains alterations, contingencies or additions not called for, or errors or irregularities of any kind as informal and may reject such Proposal; provided, however, that the Town of Stoneham reserves the right to waive any and all informalities or minor irregularities. If the RFP or any applicable law requires submission of certain information or additional documentation, and any Offeror neglects to furnish such information or documentation with its Proposal, the Town of Stoneham may reject the Proposal of such Offeror as incomplete; provided, however, the Town of Stoneham reserves the right to deem any such omission as an informality for which such Proposal will not be rejected, and to subsequently receive such information or documentation to clarify the omission or informality prior to award of the contract.

1.16 OPENING OF PROPOSALS

The Town of Stoneham will open the Proposals on or after the Proposal Deadline, but will not read them publicly. A register of those firms submitting timely Proposals will be maintained and will be open to public inspection.

1.17 AUTHORITY OF THE SELECTION COMMITTEE

The Town of Stoneham School Building Committee has appointed a Selection Committee (the "Selection Committee"), to review proposals pursuant to M.G.L. c. 149A Section 6. The Selection Committee shall review and evaluate responses to the RFP in accordance with the Evaluation Criteria listed in Section Six for the purposes of ranking the proposals. The Selection Committee may also be involved in negotiations with the highest-ranked CM prior to the award of the CM Contract.

1.18 EVALUATION PROCESS

The Selection Committee will evaluate all proposals submitted in accordance with provisions of the RFP based on the criteria described in Section 6 of the RFP. The Selection Committee will first review and evaluate the Technical [Non-Price] component of the Proposal Form. In its review, the Selection Committee may consider, in addition to the Proposal, any other information obtained by the Selection Committee. The Price component of the Proposal Form will be opened subsequently and separately from the Technical [Non-Price] component of the Proposal. The Selection Committee will complete its evaluations of the Proposals based on the evaluation criteria set forth in Section 6. The Selection Committee may reject a Proposal that fails to meet the minimum requirements or is otherwise non-responsive at any time after the Proposal is submitted. The Selection Committee shall perform a combined evaluation of the Non-Price and Price Proposals and will determine which Proposal is in the best interest of the Town of Stoneham to accept. In addition to the Proposal evaluation, the Selection Committee may conduct interviews. The interview process is described in section 1.19.

1.19 INTERVIEW PROCESS

The Selection Committee may elect to conduct interviews. If interviews are conducted all offerors will be notified of the time, date and location. The interviews, if conducted will occur on the afternoon/evening of **February 10, 2021**. Pursuant to M.G.L. c. 149A, if interviews are conducted, the Selection Committee will interview all Offerors that have submitted a timely Proposal. At the conclusion of the interview phase, the Selection Committee will convene and select the CM Firm it considers having submitted the most advantageous Proposal to the Town. The Selection Committee will then recommend the selected CM Firm to the Town of Stoneham's School Building Committee (the "SSBC"). The SSBC will decide whether to award the contract to the selected CM Firm.

1.20 MODIFICATION OF SCOPE OF WORK BY THE TOWN OF STONEHAM

The Town of Stoneham may, subsequent to the receipt of Proposals, modify the scope of work of the Project. Any modifications to the scope of work by the Town will be issued to all of the Offerors selected for interviews. The Town of Stoneham may permit the Offerors selected for interviews to submit a revised Proposal. Following the submission of revised Proposals, if any, the Town of Stoneham shall complete the evaluation process using the criteria set forth in Section 6 of the RFP. The Town of Stoneham may at any time reject the Proposal of any Offeror, and that Proposal shall no longer be considered by the Town of Stoneham.

1.21 NEGOTIATING AND AWARD

- A. **Award of Contract.** Based upon its evaluation as provided above, the Town of Stoneham shall select the Offeror whose Proposal is determined by the Town of Stoneham to be most advantageous. The contract shall be awarded to such Offeror, subject to successful negotiation of satisfactory contract provisions. The Town of Stoneham reserves the right to incorporate into the contract any portion of the selected Offeror's Proposal, with such modifications as are approved by the Town of Stoneham.
- B. **Time for Finalizing Contract.** The selected Offeror will be notified in writing. The notice may specify a time, by which such Offeror must execute the Contract in substantial accordance with the Contract Documents and the forms included in the RFP, modified by the provisions of any applicable addenda, and other provision the Town and the Offeror agree to. The selected Offeror will be required to furnish the certificates of insurance and any other documents required in connection with execution of the Contract. If the selected Offeror fails or refuses to execute the Contract within the time designated by the Town, the Town may award the Contract to the next highest ranked Offeror, subject to negotiation of a satisfactory CM Contract with such Offeror.

1.22 EQUAL EMPLOYMENT OPPORTUNITY, NONDISCRIMINATION AND AFFIRMATIVE ACTION REQUIREMENTS AND MINORITY AND WOMEN BUSINESS ENTERPRISE GOALS

Due to the nature of a Construction Manager at Risk Project, the Construction Manager will not

solicit subcontractors until the Project is ready to proceed into construction. At that time, the Construction Manager shall make good faith efforts to comply with the following requirements:

The combined Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) participation goal for this Contract is 10.4% of the Guaranteed Maximum Price (GMP).

Article XIII and Appendix B of the General Conditions contains detailed information about MBE and WBE participation requirements, waivers, enforcement, and other important information.

MBEs and WBEs must be certified by the Supplier Diversity Office (SDO). All Offerors are advised that by submitting a proposal they certify that they intend to fully comply with all requirements of the RFP, including the MBE/WBE requirements.

The Construction Manager shall maintain on this project the percentages for minority and women employed on the Project in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers. Operating engineers, and those classes of work enumerated in Section 44F of Chapter 149 of the Massachusetts General Laws. Article XII and Appendix A of the General Conditions contains detailed information about Equal Employment Opportunity, Nondiscrimination and Affirmative Action requirements and other important information.

1.23 ROLES AND RESPONSIBILITIES OF AWARDING AUTHORITY

The Town of Stoneham is responsible for the administration and management of the contracts for the design and construction of the facility. Its responsibilities include the management of the RFP process and the monitoring and administration of the design and construction after the Offeror has been selected.

1.24 ROLES AND RESPONSIBILITIES OF THE CONSTRUCTION MANAGER (SCOPE)

1.24.1 PRECONSTRUCTION PHASE

The Initial Preconstruction Phase shall be for the Schematic Design Phase through the successful passage of Town appropriation and debt exclusion voting. The CM will perform cost estimating, phasing and logistics analysis and project support through attendance at Stoneham School Building Committee Meetings, Public Presentations and Forums. After successful town voting, the remaining Preconstruction phase is expected to last twelve (12) months. Please note that Preconstruction will overlap with the performance of early bid packages of construction work as shown on the attached schedule. The CM shall be responsible for providing adequate personnel for all necessary construction management, supervisory and clerical staff for the proper management of the construction of the project. The CM shall be responsible for cost estimating, scheduling, value engineering, constructability reviews, subcontractor bidding and management of early bid packages. The CM shall carefully review the construction documents for constructability and completeness to mitigate potential claims that may arise from ambiguities, conflicts, overlaps or omissions in the construction documents. While it is understood that the CM is not responsible for the completeness of the construction documents, the CM is expected to identify ambiguities, conflicts, errors and omissions in the documents and coordinate and assign applicable scope relating to these ambiguities, conflicts, errors and omissions in the documents. During the

preconstruction phase of the project, the CM shall work closely with the Town of Stoneham, the Owner's Project Manager (OPM) and the Architect/Engineers on the specific tasks listed below and shall provide all other services required for projects of the type and scope of this Project and customarily provided by a construction manager at risk during the pre-construction phase of the project.

- a. **Design Review:** The CM shall work with the Architect by reviewing the design development and construction documents. Due to the schedule, the CM's review shall be timely. The CM's reviews shall take into account quality of materials, systems and equipment to ensure that the construction documents will result in an efficient design and minimum lifecycle costs. The CM's reviews will also seek to eliminate areas of conflict and overlap of work to be performed by subcontractors and to ensure that there are no gaps in the design. The CM shall participate in design decisions by providing information, estimates, options and recommendations regarding construction materials, methods, systems, phasing and costs that shall provide the highest quality building within the project budget and schedule. The CM's reviews shall be provided in writing with detailed notations on the drawings and specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution.
- b. **Project Meetings:** The CM shall participate in project meetings during the design phase as needed with the Stoneham School Building Committee, the OPM and Designer and attend presentations and project review meetings with local boards, permitting authorities and community forums as requested by the Stoneham School Building Committee.
- c. **Assignment of Scope and Scope Bid Clarifications:** The CM is expected to review the design drawings and provide comment regarding assignment of scope to various trades. Based on the CM's comments, the Designer will assign the scope on the drawings. The CM shall provide Scope Bid Clarifications as required. The intent of this task is to assign scope to trades that would benefit the project in sequence of work and to provide an overall scheduling benefit. The CM is expected to develop a thorough Scope Bid Clarification list for each filed sub trade and subcontractor package of work.
- d. **Master Schedule:** As part of the Initial Preconstruction Services Phase, CM shall provide a Master Project Schedule which shall organize and identify all significant project activities, phases and sequences, with input from the Stoneham School Building Committee, the OPM and the Architect. Upon commencement of the remainder of Preconstruction Services after the successful Town vote, the CM shall update the project schedule at least monthly or as required to reflect the most recent project developments. The Master Project Schedule shall be a Critical Path Method (CPM) Schedule, that identifies all design activities, permits, and all other activities required to be completed before construction activities can begin. The CM shall monitor and track in the Master Project Schedule all design phase activities related to obtaining all regulatory approvals.
- e. **Phasing Plan:** The CM shall work with the Stoneham School Building Committee, the OPM and Design Team in the development of a project specific construction logistics and phasing plan. The plan shall include the study of existing conditions, including the existing building, utilities and services for the development of a project logistics and phasing plan which includes work from the early site enabling packages and provides the least impact to maintaining the

existing Stoneham High School during construction and minimizing the impact of the traffic along Franklin Street during the construction. The CM shall work with the Design Team in identifying all necessary temporary construction measures as a result of the phasing for incorporation into the construction documents. The CM shall provide a detailed site logistics plan which addresses, but is not limited to, mitigation measures for the following issues: continuous parent, student, teacher and public access to the existing school complex, existing site utilities to the existing school, construction access to the site, trade parking, construction deliveries and lay-over locations, construction trailers and laydown areas, off-site dust control, construction noise mitigation, construction fencing locations, signage, lighting and safety measures with the full understanding that the CM will be performing construction work adjacent to an occupied school.

f. **Project Cash Flow Chart:** Within thirty (30) days of the commencement of the remainder of Preconstruction Phase Services, the CM shall submit a projected project cash flow chart with anticipated costs to be spent on a month to month basis throughout the anticipated project. Thereafter, the CM shall provide updated cash flow projections on a monthly basis.

g. **Value Engineering:** The CM shall provide a written analysis of all value engineering opportunities for building materials, systems and equipment (with cost and schedule support) and shall perform life cycle cost analyses for major building elements. The value engineering analysis should be done to find ways to reduce cost without compromising quality. The CM shall make such recommendations and value engineering options while cognizant of the ZNE and LEED goals for the project and at no time jeopardize those goals.

h. **Constructability Review:** The CM shall check the Design Development, 60% Construction Documents, and 90% Construction Documents for completeness and coordination of work among the trades, shall make recommendations to the Stoneham School Building Committee, the OPM and the Architect regarding necessary modifications.

i. **Cost Control Management:** CM will submit detailed cost estimates at the completion of Schematic Design Documents, Design Development Documents, 60% Construction Documents and 90% Construction Documents. All estimates shall be provided in a format acceptable to the Town of Stoneham and MSBA. The CM shall evaluate each of these estimates against the Town's construction budget and where necessary, shall recommend appropriate value engineering items for consideration by the Town in order to correct and/or avoid potential cost overruns. The CM shall prepare new estimates based on approved value engineering items to ensure that the construction budget is met. Authorization to proceed shall be contingent upon the acceptance of the CM's cost estimate as compared to the Project's construction budget. In addition, the Owner may obtain independent cost estimates. The CM shall compare such estimate with its own current estimate to identify significant cost differences and shall work with the Town, the OPM and the Architect to reconcile those differences.

j. **Approvals:** The CM shall monitor and track in the Master Project Schedule design phase activities related to obtaining all required regulatory approvals. The CM shall attend regulatory approval meetings as required.

k. **BIM:** Participate in the development of a Building Information Modeling (BIM) Work Plan for implementation during the Preconstruction Phase. CM shall develop and maintain the BIM model through construction and shall perform clash detection with the Designer at Design

Development, 60% and 90% Construction Documents.

l. **Sub-Filed Trade Bid Contractors / Packages:** In accordance with Appendix C of the General Conditions, the CM will participate directly in the management, solicitation, prequalification and bidding of work to be performed by Sub-filed Trade Contractors.

The Town shall procure Sub-Bids in the Trade Contractor categories listed on Appendix C.

The CM shall procure bids for all other subcontracts, as provided in Appendix C. The CM shall develop the most logical, competitive, seamless and distinct subcontractor bid packages with all scopes of work included in the packages and shall include bid alternates in each subcontractor bid package where appropriate. (See item c. "Assignment of Scope and Scope Bid Clarifications". The CM shall include the Owner-CM Agreement and General Conditions of the Contract in all subcontractor packages. The CM is responsible for assuring that each of the subcontractors understands the project schedule and the relationship between the CM and the Town of Stoneham.

m. **Bid Phase Services:** The CM shall work with the Town, the OPM and the Architect to determine the number and make-up of the subcontractor bid packages. The CM shall stimulate subcontractor interest in the project in order to solicit bids for each trade from at least three (3) qualified subcontractors. The CM shall review bids from prospective subcontractors and shall evaluate the bids along with the Town, the OPM and the Architect in order to determine the most responsive bidder for each trade. All bids from subcontractors and quotes for any other direct construction cost item, including materials, shall be provided to the Town in an "open book" process at all times during all phases of the project.

The CM shall evaluate each of these subcontractors' bids against the Town's construction budget and where necessary, shall recommend appropriate value engineering items for consideration by the Town in order to correct and/or avoid potential cost overruns. The CM shall re-bid subcontract packages where necessary, based on approved Town value engineering items to ensure that the Town's construction budget is met.

n. **Development of a Guaranteed Maximum Price:** It is the Town's intent that the CM and the Owner shall negotiate a Guaranteed Maximum Price (GMP) for performing the Construction Phase services after the trade contracts have been bid. The GMP provisions are described in Section 6.5 of the Agreement for Construction.

GMP = Pre-Construction Fee + Cost of General Conditions + General Requirements + Cost of Work + CM Fee + CM Construction Contingency

The CM's proposed GMP shall include a Construction Contingency as described in Section 7.2 of the Owner – Construction Manager Agreement.

The Town may ask the CM to proceed with certain early construction phase services for the Project at an agreed upon price prior to the time that the CM's preconstruction services are complete and prior to the negotiation of the GMP.

1.24.2 CONSTRUCTION PHASE

The CM shall furnish construction administration and management services to construct the project in an expeditious and economical manner consistent with the interests of the Town. The CM shall work closely with the Town, the OPM and the Architect on specific tasks listed below and all other work that is ordinarily performed by a Construction Manager during the Construction phase of a project:

- a. **Execute Sub-Contracts:** The CM shall enter into subcontracts with the successful bidder approved by the Town in each trade and the Owner-Construction Manager Agreement, the General Conditions and Supplementary General Conditions shall be incorporated into each subcontract.
- b. **Permits:** The CM shall obtain and pay for all required construction related permits.
- c. **Bonds and Insurance:** The CM shall furnish all bonds and insurance certificates required by the contract documents.
- d. **On-Site Management:** The CM shall provide and maintain a construction site office and provide all site management and administration necessary to meet the contract requirements and to complete the project.

The CM shall provide and maintain a separate construction site office for the OPM and Architect, as required by the General Conditions.

- e. **Trade Contractors and Subcontractors:** The CM shall manage and coordinate the work of all trade contractors and subcontractors and others engaged in the construction of the project. The CM shall obtain from trade contractors and subcontractors all shop drawings, samples, product literature as required by the Construction Documents. The CM shall review materials for accuracy, completeness, appropriateness and coordination purposes both before forwarding them to the Architect for review and after the Architect returns the reviewed submittal. All critical path submittals from the trade contractors and subcontractors shall be evaluated by the CM and incorporated into the CM's overall critical path schedule for the construction.
- f. **Administrative Procedures:** With input from the Town, the OPM and the Architect, the CM shall implement procedures for reviewing and processing requests for information or clarifications and interpretations of the Contract Documents; shop drawings, samples, and all other submittals, contract schedule adjustments, change order proposals, proposals for substitutions, payment applications, as-built drawings and maintenance logs.
- g. **Supervision:** The CM shall continuously supervise and observe all construction work in progress to ensure that the work is proceeding in accordance with the construction contract documents. Record all work in progress in a daily report which will contain at a minimum the number of employees present on site with their names and employer, the areas of work being performed that day, any materials received, any heavy equipment and trucking and the quantities of trucks and what was being hauled to where, any injuries, weather statistics, and any other eventful or uneventful actions taken each day by each trade. Track all long lead items to ensure arrival on time for incorporation into the Work as scheduled. Bring to the attention of the Owner any issues with regard to materials delays, and any opportunities with regard to material

procurement that could save the project cost and/or time.

h. **Meetings:** The CM shall hold, run, organize, lead and document weekly project meetings and other construction progress meetings with the Town's representatives, the OPM and the Architect as required. The CM shall also conduct regular meetings at the site with the subcontractors. In addition and as requested, the CM shall meet to report on construction progress to the Town and the OPM at regular intervals throughout the project. The CM shall meet with school staff as required to update and inform them of safety procedures, and project milestones.

i. **Quality Control Program:** The CM shall develop and implement a Quality Control Program, which shall include review, approval, monitoring and enforcement of the quality control program of all subcontractors. The CM shall coordinate the installation of Mock-up areas as indicated on the documents.

j. **Safety Program:** The CM shall develop and implement a project wide safety program, which shall include review, approval, monitoring and enforcement of the program for subcontractors.

k. **MBE/WBE Goals:** Manage and meet the Minority Business Enterprise and Women Business Enterprise participation goals for the project, including providing monthly status updates.

l. **Reports:** The CM shall furnish to the Town's projects representative monthly reports concerning the progress of the work which addresses: (a) compliance with the construction schedule, and weekly reports for (b) progress made by each subcontractor, (c) status of shop drawings and submittals, (d) status of change orders, (e) status of WBE/MBE requirements, (f) wage compliance and weekly payroll reports, and (g) other matters relating to the progress of work as directed by the Town. In addition, and as requested, the CM shall meet to report on construction progress to the Town at regular intervals throughout the project.

m. **CORI:** The CM shall be responsible for enforcement and monitoring the on-site CORI program requirements with regard to the CM's personnel and all trade and subcontractor personnel. A detailed written plan to enforce CORI requirements must be approved by the SSBC and the OPM prior to performing any work, survey, and/or study of any kind on the school grounds by any employee of the CM, its consultants, or subcontractors. This plan would be submitted during the preconstruction phase to the OPM. CM shall provide and manage a photo ID system and must ensure that CORI checks are done prior to all personnel entering the school grounds and construction site.

n. **Substantial Completion:** The CM shall advise the Architect and OPM when it considers each phase of the work to be substantially complete and shall prepare a list of incomplete work and work which does not conform to the requirements of the construction documents.

o. **Record Keeping:** The CM shall maintain complete and accurate records, including (a) correspondence, (b) meeting notes and minutes, (c) shop drawings and submittals, (d) construction documents including change orders, (e) clarifications and interpretations of the construction documents issued by the Architect, (f) progress reports including observations of testing performed, (g) as-built drawings (h) accounting records, (i) prevailing wage certificates and (j) all other project related documents.

- p. **Construction Kickoff Meeting:** The CM shall conduct a construction kickoff meeting at each of the major phases with appropriate representatives from the CM's team, Town, OPM, the design team and the school staff. The CM shall prepare for the meeting documents that establish job procedures (e.g. for managing project communications, for ensuring job-site safety, for scheduling meetings and field testing/inspections and for processing clarifications, change orders, shop drawings, progress payments).
- q. **Update the Master Project Schedule:** The CM shall update the Master Project Schedule each month. The CM shall review and approve the subcontractors' schedules for compliance with the individual requirements of each trade subcontract and the overall Master Project Schedule. The CM shall review and approve subcontractors' proposed construction schedule for logic, reasonableness and conformance to the requirements of the Contract Documents. The CM shall conduct a daily review of the subcontractors' progress and conformance with monthly updated construction schedules.
- r. **Review Monthly Progress Payment Requests:** The CM shall review and approve subcontractors' monthly progress payment requests and shall compare the requested payments to actual work complete in accordance with the pre-approved Schedule of Values presented by the subcontractor and approved by the Designer at the beginning of construction. The CM shall combine invoices and prepare an Application and Certification for Payment (AIA Form G702) which shall include a current overall Schedule of Values which shall include any requested application of the Construction Contingency. The CM shall submit these in quadruplicate to the Architect for approval and recommendation of payment by the Town. The schedule of values will be structured as to track costs that are reimbursable by the Massachusetts State Building Authority separate from non-reimbursable costs. The CM must develop and utilize a schedule of values for its pay requisitions that conforms with the requirements of the MSBA ProPay System.
- s. **Project Cash Flow:** The CM shall submit a project cash flow projection each month showing how the GMP is anticipated to be spent on a month to month basis throughout the anticipated construction period.
- t. **Act as Liaison:** The CM shall work with the Town in order to minimize any construction-related disruption of school operations and impacts to adjoining roadways and neighborhoods. The CM shall coordinate with the school, the scheduling of any work that may have an impact on the school operations. The CM shall communicate with school parents and staff as required to update and inform them of the procedures in place to safeguard the children.
- u. **Clarify Design:** The CM shall coordinate and address subcontractors' Requests for Information (RFI's) with the Architect. RFI's shall be tracked through the field office by the CM. The Architect shall be responsible to provide interpretations and clarifications of the Contract Documents. The Architect shall prepare sketches to clarify Contract Documents where necessary. The CM shall be responsible for managing the clarifications and interpretation process.
- v. **Coordinate and Supervise Trade Contractors and Subcontractors Work:** Throughout construction, the CM shall provide direct supervision, scheduling and problem resolution for trade contractors and subcontractors.

w. **Provide Necessary Personnel:** The CM shall provide all necessary construction management, supervisory and clerical staff for the proper management of the construction of the project.

x. **As-Built Drawings:** Throughout the construction phase of the project, the CM shall develop and maintain detailed as-built drawings and shall monitor the subcontractors to ensure that other such drawings are prepared thoroughly and in a timely manner. At the completion of the project and prior to submission of its final application for payment, the CM shall submit to the Architect for review and approval all of the as-built drawings. Progress submissions will be required at the completion of each phase of the work.

y. **Project Closeout Procedures:** The CM shall develop and implement procedures for the orderly completion of punch list items and for the final inspection, testing, programming and initial operation of all equipment and systems. The CM and the subcontractors shall participate, as required by the Commissioning Agent, in startup, testing and adjusting of the projects mechanical electrical and plumbing systems in order to satisfy the testing program developed by the Commissioning Agent. The CM shall prepare a recommendation for the final acceptance of the project after the subcontractors have corrected deficient work and satisfied all contract conditions. The CM shall prepare a final payment request and final report. The CM shall coordinate all training for the school on the use of the new building systems.

z. **Project Closeout Documents:** The CM shall provide a complete set of hard copy and electronic copy of all documents to the Town's representative. These documents shall include, but not be limited to, as-built drawings, operation and maintenance manuals, additional materials and warranties.

aa. **Post Construction Responsibilities:** The CM shall ensure performance of all warranty obligations, resolution of all claims and other post construction requirements. The CM shall participate with the project team and commissioning agent 10 months after substantial completion to aid in the review of the site and building's systems to ensure that all systems are functioning properly.

bb. **Commissioning Agent:** CM shall cooperate and ensure all Trade and Subcontractor cooperation and labor is provided to support the Commissioning Agent assigned by the MSBA for the building commissioning outlined in the construction documents.

cc. **BIM:** The CM shall utilize the application of BIM during the construction phase at a level agreed to by all parties and developed within the Work Plan during Preconstruction Phase as a means of improving the coordination, logistic, planning and quality of the overall project.

dd. **Quality:** CM shall construct a facility of high quality, durability, operability and maintainability. The quality of construction as to construction type mechanical systems, electrical systems, plumbing systems, telephone systems, computer network, audio-visual systems hardware, fixtures, equipment, building appurtenances and all other aspects of the project shall be consistent with the level of design intent and overall quality developed during the pre-construction phase of the project. The quality of construction shall be consistent with state, local and federal laws and regulations.

ee. **ZNE, LEED, Green Building Standards:** The Town of Stoneham has elected to pursue a Zero Net Energy building and LEED for Schools V4 Certification through the United States Green Building Council (USGBC). The project will strive to meet “certified” rating as established under the LEED rating system and maximize the Energy Efficiency incentive points allowed by the MSBA. The CM Team will also be responsible for achieving these goals including assisting with the documentation for the USGBC.

ff. **Liquidated and Actual Damages for Delays:** Time is of the essence and the CM will be responsible for the payment of liquidated damages for each calendar day that the substantial completion is delayed in accordance with the General Conditions and Contract Documents.

1.25 LIST OF ANTICIPATED TRADE CONTRACTORS:

The following is a preliminary listing of the anticipated Trade Contractors required to be part of the Trade Contractors Prequalification Plan.

- | | |
|--|-----------------------|
| 1. Masonry | 9. Resilient Flooring |
| 2. Metal Fabrications | 10. Painting |
| 3. Dampproofing, Sealants and Caulking | 11. Elevators |
| 4. Roofing | 12. Fire Protection |
| 5. Aluminum Windows | 13. Plumbing |
| 6. Glazing | 14. HVAC |
| 7. Tile | 15. Electrical |
| 8. Acoustical Ceilings | |

SECTION TWO

PROJECT INFORMATION

2.1 PRELIMINARY PROJECT SCHEDULE:

The preliminary project schedule is presented solely in a narrative format to provide information to Offerors and is not and shall not become an official or contractual project schedule. The Construction Manager shall not use this schedule information as the basis for a change order.

February 26, 2021	Notice to Proceed
May 17, 2021	Present Schematic Design Cost Estimate to the Stoneham School Building Committee
June 23, 2021	Submit the Total Project Cost to MSBA
July 7, 2021	Submit Schematic Design Documents to MSBA
August 25, 2021	MSBA Approval of Schematic Design Document
October 2021	Town of Stoneham Special Town Meeting
November 2021	Town of Stoneham Ballot Question
June 13, 2021	Notice to Proceed with Early Construction Package Work
November 2021 - April 2022	Design Development Phase
April - November 2022	Construction Documents Phase
May 2022	Complete Early Site Enabling Package
June 2022	Bid and Award Early Site Preparation Package
June 2022	Complete 60% Contract Documents
June 2022	Complete Early Foundation / Steel Package
July 2022	Bid and Award Foundation /Steel Package
September 2022	Complete 90% Contract Documents
November 2022	Complete 100% Contract Documents
November - December 2022	Bid Filed Trade Contractors and Subcontractors
January 2023	Execute GMP
June 2022 – June 2024	Construct Building
June 2024	Substantial Completion of Building
June – August 2024	Commissioning/FF&E/Move-In/ School Opens
June 2024 – December 2024	Demolish Existing School Building/Finish Site/Plantings/
Spring 2025	Final Completion of Project

See also Project Schedule dated December 3, 2020 (Package 2 of 3)

2.2 PRELIMINARY BUDGET ESTIMATE

The current estimated construction cost for the Project is presented solely to provide information to Offerors.

Division	Estimated Value of Work	
Foundations	\$	0
Structure	\$	0
Exterior Closure	\$	0
Roofing	\$	0
Interior Construction	\$	0
Staircases	\$	0
Interior Finishes	\$	0
Vertical Movement	\$	0
Fire Protection	\$	0
Plumbing	\$	0
HVAC	\$	0
Electrical	\$	0
Equipment	\$	0
Materials Abatement	\$	0
Building Demolition	\$	0
Furnishings	\$	0
Special Construction	\$	0
Site Development & Infrastructure	\$	0
General Conditions, Fee, Permits, CM Contingency, General Requirements, Insurances, Bonds, Escalation, etc.	\$	0
Estimated Construction Total	\$	0

See also Preferred Schematic Report (PSR) Design Construction Cost Estimate, dated December 23, 2020 (Package 2 of 3)

SECTION THREE
SUBMISSION REQUIREMENTS: NON-PRICE PROPOSAL

3.1 NON-PRICE PROPOSAL SUBMISSION INSTRUCTIONS

- A. The following are the Non-Price Proposal submission requirements for the Stoneham High School Project. This section identifies the Town of Stoneham's requirements for proposal documents. The non-price proposal submission will be evaluated independently of the price proposal.

To facilitate evaluation and complete consideration for each evaluation criterion, the Proposers are instructed to present their non price proposals in the same structure and format presented below in the section titled Non-Price Submission Requirements. For each item in the proposal include the number identical to the numbers used in this section. This will allow the evaluators to determine the extent to which the information meets the respective evaluation criterion.

- B. The following information shall appear on each binder for the Non - Price Proposal and the sealed envelope containing the copies of the Price Proposal.

Offeror's Name: _____

Person responsible for Proposal: _____

Person's telephone number: _____

Person's cell number: _____

Person's email address: _____

**Title all envelopes: Proposal for Construction Management at Risk Services
Stoneham High School Project, Stoneham, Massachusetts**

If the Offeror is a joint venture, each participant of the joint venture must provide this information on each binder for the Non - Price Proposal and the sealed envelope containing the copies of the Price Proposal.

- C. The Offeror shall submit **ONE signed original and FIVE copies** of the Non- Price Proposal in separate three ring "D" binders as well as **ONE complete copy on a USB storage device** containing the Non-Price Proposal.

For the Price Proposal submit **ONE signed original and FIVE copies** of the forms collated and stapled in a separate sealed envelope, as well as **ONE complete copy on a USB storage device** containing the Price Proposal.

The Non-Price binders and the sealed Price proposal envelope must be packed in a box addressed and delivered to:

**Town of Stoneham
Town Administrator's Office
Attn: April Lanni, Procurement Officer
35 Central Street
Stoneham, Massachusetts 02180**

3.2 **NON PRICE PROPOSAL SUBMISSION REQUIREMENTS**

The following are the Non-Price Proposal submission requirements for the Stoneham High School Project. The Non-Price Proposal will be evaluated independently of the Price Proposal.

To facilitate evaluation and complete consideration for each evaluation criterion, the Offerors are instructed to present their Non-Price Proposals in the same structure and format presented below. For each item in the proposal, include the number identical to the numbers used in this section.

1. **The Request for Proposal Response Form** (FORM A) is located at the end of this section. It must be signed and submitted with the proposal.
2. **Informational Sheet** (FORM B)
3. **Affidavit of Compliance** (FORM C)
4. **Certificate of Tax Compliance** (FORM D)
5. **Affidavit of Prevailing Wage Compliance** (FORM E)
6. **Certificate of Eligibility** (DCAM Form CQ 7).
7. **DCAM's Update Statement** (DCAM Form CQ3).
8. **Bond Commitment Letter** Provide a commitment letter from a surety company licensed to do business in the commonwealth and whose name appears on the United States Treasury Department Circular 570 stating the surety's willingness to provide a Performance Bond and Payment Bond for the project, each in an amount equal to 110% of the estimated total Construction Cost of **\$140,000,000**.
9. **Project Experience on Comparable Projects** The Offeror shall identify three of its completed projects, which the Offeror believes are most comparable to the Project with respect to the size, duration, and project complexity. Comparable projects would include successfully completed building projects entailing similar phasing and adjacency to an occupied school, the project was a ZNE Building and MA-CHPS or LEED or equivalent, and the project completed using the Construction Management at Risk M.G.L. Chapter 149A delivery method. The Offeror should provide references from the Owners, Architects and OPMs for each project identified in this paragraph, including name, title, and current telephone number.

For each of the three projects identified above, the Offeror shall provide a narrative describing in detail the scope, duration and complexity of the project and the role of the Offeror in its implementation. The description should indicate the roles and length of project involvement of Managerial and Technical Personnel identified in the project descriptions that will be utilized in the Offeror's Staffing Plan.
10. **Management Plan**: The Offeror shall include a thoughtful, coherent proposed Management Plan for the project, which describes in detail the firm's proposed approach to meeting the

project goals, including schedule management, budget management, quality management; and maintaining safety of faculty and students. Quality, costs and claims tracking and schedule control procedures for the duration of the preconstruction and construction phases must be described. The plan must also include a description of the firm's approach to minimizing traffic along Franklin Street as well as maintaining parent, student and staff access to the existing Stoneham High School. The plan must also include subcontractor outreach and bidding management, and a description of the methods the firm proposes to use in order to optimize communications between and coordination among project participants. The CM shall review the attached proposed schedule to affirm that the proposed project schedule is attainable.

11. **Preconstruction Services Plan:** The Offeror shall submit its plan for performing the preconstruction services. The plan shall illustrate the Offeror's understanding of the activities required during preconstruction and demonstrate its ability to coordinate and perform those activities as listed below. This plan shall represent the 2 phases of preconstruction, the Initial Preconstruction Services (February 22, 2021 to November 2021) and then the remainder of Preconstruction Services from a successful funding vote in November 2021 to the start of construction. It shall also explain how the Offeror intends to work efficiently and effectively with the Stoneham School Building Committee, the Owner's Project Manager ("OPM"), the Commissioning Agent and the Designer. The plan should include a detailed description of how the Offeror shall comply with each of the preconstruction services required herein and by the Contract.
12. **Staffing Plan:** The Offeror shall also provide a Staffing Plan, which shall include an organizational chart to describe in detail the staff and consultants, if any, it will assign to the project during each phase of the project, including each of the following project phases: Initial Preconstruction Services, Preconstruction Services, Estimating, Design Reviews, Community Presentations, Preparation of Subcontractor Bids, Solicitation of Subcontractor Bids, Construction, Commissioning and Project Close Out. The chart should clearly indicate the anticipated duration (in months) of each phase and the number of man hours per month budgeted for each staff level for each phase.
 - a. Provide current work load of each staff member listed, their level of involvement with current projects, and ability to devote the required time to this assignment.
 - b. Commuting Logistics: Address employee travel/commute to the site on a daily basis relative to start and end times.

The staffing plan shall show reporting relationships and lines of authority; an explanation of the responsibilities of the Managerial and Technical positions (i.e., project executive(s), project manager(s), superintendent(s), project engineer(s), cost estimator, and contract administrator(s)); and the name of the person proposed for each position. The Offeror should identify by staff level position each proposed individual's experience in the delivery of construction projects utilizing the CM at Risk, M.G.L.c. 149A procurement method.

The Offeror shall list the sub consultants it proposes to utilize as part of the Construction Management team. For each such proposed sub consultant, the Offeror shall list the

responsibilities that the sub consultant shall carry out on the Project, the Managerial and Technical Personnel to be supplied by the sub consultant, if any; and the relevant experience of the subconsultant.

13. **Resumes:** The resumes of all proposed personnel (pre-construction and construction phases) for the Staffing Plan shall be provided and each resume must contain at least three references from Owners, OPMs and Designers including name, title, and current telephone number.
14. **Job Skill Narrative:** The Offeror shall provide a narrative outlining the performance skills for the position of Lead Project Manager, MEP Project Manager, Asst. Project Manager, General Superintendent, Asst. Superintendent, and Project Engineer. Describe in detail how the individual selected for each position above has utilized these specific skills on a recent construction project (one-page each person).
15. **Self Performing Work:** List any scope(s) of work that your Firm may be interested in self performing. Provide examples of sub-trade categories of work that your company customarily self performs and may perform on this Project. In the event the Owner agrees to allow the selected CM at Risk Contractor to self perform certain trade and non-trade work, the Owner shall require that the CM play no role during the prequalification, review and selection of subcontractor proposals for those categories of trade and non-trade work that the CM intends to self perform.
16. **Legal Proceedings:** List any legal proceeding, administrative proceeding, arbitrations and any matters being investigated by the Massachusetts Inspector General, whether currently pending or concluded within the past five (5) years that involved a construction project and or a construction contract in which your firm was named a party. Include a narrative statement that summarizes the basis of the disputes presented in the legal proceedings.

3.3 **FORMS:** All forms to be included in the Non-Price Submissions are listed below. They shall be submitted in the Non-Price Proposal Binder.

Attached as part of this RFP packet:

- Form A – Request for Proposal Response
- Form B – Informational Sheet
- Form C – Affidavit of Compliance
- Form D – Certificate of Tax Compliance
- Form E – Affidavit of Prevailing Wage Compliance
- Form F – Compliance of Labor / OSHA Compliance
- Form G – Certificate of Non-Collusion
- Form H – Certificate of Interest Certification
- Form I – Certificate of Compliance with M.G.L. C. 151B
- Form J – Certificate of Non-Debarment
- Form K – Certificate of Corporate Responder

Not attached as part of this RFP packet:

- Certificate of Eligibility (DCAM Form CQ 7)
- DCAM's Update Statement (DCAM Form CQ3)

SECTION FOUR

SUBMISSION REQUIREMENTS: PRICE SUBMISSION

4.1 PRICE PROPOSAL SUBMISSION INSTRUCTIONS

The lowest price proposal shall not necessarily be awarded the contract.

The Offeror shall submit **ONE signed original and FIVE** collated and stapled copies of the Fee Proposal Summary Form (Form B) in a large sealed envelope as well as **ONE Electronic Copy on a USB Storage Device** containing all documents of the Price Proposal. Review submission requirements in Section 3.1 for packaging of the entire proposal.

4.2 PRICE PROPOSAL FORMS

All forms for the Price Proposal Submission are included in the following pages and listed below. They must be submitted in the Price Proposal Envelope. Fill out all sections completely including quantities, unit costs, lump sum costs, percentages and other information requested

Attached as part of this RFP Packet:

1. Form GC – Price Proposal
2. Form GC – Section B – Schedule of CM Costs – Preconstruction Phase
3. Form GC – Section C – Schedule of CM Costs – Construction Phase

4.3 INSTRUCTIONS FOR COMPLETING THE PRICE PROPOSAL FORMS

A. Form GC Instructions

This form summarizes all CM Services based on Forms GC, Section B and Section C, to provide a Total Cost of Construction Management. Fee / Profit is to include CM's profit and overhead, expressed as a fixed fee – LUMP SUM. This fixed fee and subsequent progress payments of the fixed fee is NOT to be construed as a percentage of the construction cost of the work. If the construction cost exceeds the listed value in section 2.2, the CM fee will remain fixed. The CM Fee can only be adjusted via an approved Change Order to the Contract.

B. Form GC – Section B Instructions

The Initial Preconstruction Services fee shall be a lump sum of \$25,000.00 and include the cost of all labor and expenses. List the remainder Preconstruction Phase management costs as a schedule of values. CM is to list all applicable Staff Members, Consultants (if applicable), Pre-Construction General Conditions and any "other" costs that may be applicable.

Personnel costs are to include all mark-ups for wages, insurance, taxes, and benefits for the proposed personnel identified as performing preconstruction services. In addition, the CM is to also include any component of a CM FEE within the rates. Note – the CM shall not be entitled to any portion of the CM FEE for performing preconstruction phase services.

Preconstruction General Conditions Expenses should be a lump sum amount and shall include

all expenses related to preconstruction services not identified as part of the personnel costs. The remainder of Preconstruction Services Lump sum is to be a “monthly” amount. The CM shall pay for all expenses relating to the Prequalification of Trade Contractors and Prequalification and Procurement of all other Subcontracts as part of the Preconstruction General Conditions cost. The Preconstruction General Conditions cost shall not include the reproduction cost of the plans and specifications for the Request for Bids for Filed Sub-Bid Trade Contractors. The Preconstruction General Conditions should include the reproduction cost of plans and specifications for all other subcontractors. The Town of Stoneham will provide copies of the plans and specifications to the CM for Filed Sub-Bid Trade Contractor bidding.

The Pre-Construction services period and the Pre-Construction Services Costs on Form GC – Section B, are based on 12 months of Pre-Construction Services. In the event conditions arise that cause the Pre-Construction period to be longer than estimated, the Town reserves the right to negotiate a revision to the monthly amount for providing pre-construction phase services, to reflect any changes in the CM’s work load during the extended Pre-Construction Phase period, including an appropriate reduction in the value of the CM’s monthly Pre-Construction Services amount.

The prices contained in the submitted price proposal shall remain valid until the successful Town Meeting appropriation vote for the project.

C. Form GC – Section C Instructions

Lists all Construction Management and General Conditions costs during the Construction Phase. General Conditions are to be scheduled and values attached as indicated. Cost of Work items will be formulated during the Pre-Construction phase and values assigned. This fixed cost and subsequent progress payments is NOT to be construed as a percentage of the construction cost of the work. If the construction cost exceeds the listed value in section 2.2, the General Conditions Cost will remain fixed. The General Conditions can only be adjusted via an approved Change Order to the Contract. All home office expenses, salaries, subcontractor solicitations and negotiations, and computer IT time/software are to be included in the CM fee.

SECTION FIVE

OPENING OF PROPOSALS AND EVALUATION PROCESS

5.1 OPENING OF PROPOSALS

The Town of Stoneham will not open Proposals publicly, but shall open them in the presence of one or more witnesses. Until completion of the selection process, the contents of the Proposals shall remain confidential and shall not be disclosed to competing Offerors and will not be made available to the public. At the opening of Proposals, the Town of Stoneham shall prepare a register of Proposals. The register of Proposals shall be open for public inspection.

5.2 EVALUATION PROCESS

- A. The Selection Committee shall prepare their evaluations based on the criteria set forth in Section Six of the Request for Proposals.
- B. For each Proposal the Selection Committee shall specify in writing on each evaluation criterion a rating of highly advantageous, advantageous, not advantageous, or such additional rating as the Committee finds reasonable, and shall specify in writing a composite rating for each Proposal and the reasons for such composite rating. The Selection Committee will then consider the Price Proposals. The differences between Proposal ratings on the non-price Proposals will be weighed against differences in the price Proposals in determining the most advantageous Proposal. After considering the Price and Non-Price portions of the Proposals, the Committee will rank the Proposals based on the highest combined ranking of the Price and Non-Price Proposals.
- C. Proposals will be evaluated by the Selection Committee based on the criteria described in Section Six. Price will not be the single determining factor in the evaluation and selection of Proposals. The evaluation criteria and the method of evaluation are designed to ensure competition among the Offerors.
- D. The Selection Committee may request that a Proposer clarify a portion of its Proposal.
- E. The Selection Committee may elect to conduct interviews as described in section 1.19 of this RFP. The Selection Committee may request specific individuals to attend the interview. No statements made or actions taken by any representative of the Selection Committee during these interviews shall be binding in any way on the Town of Stoneham.
- F. The Selection Committee may, but shall not be required to, consider modifications to the Contract, or any other aspect of the Project. Any modification determined by the Town of Stoneham to potentially impact fairness of the selection process, will be issued to all of the Offerors by addendum. The Town of Stoneham, in response to such addendum or otherwise, may, but shall not be required to, permit the Offerors to submit a revised Proposal. Following the submission of revised Proposals, if any, the Selection Committee shall complete the evaluation process.
- G. The Selection Committee may rely upon information previously submitted by the Offeror in response to the Request for Qualifications.

- H. The Town of Stoneham's Selection Committee shall determine the most advantageous Proposal based upon the ratings given to the Proposals. The Town of Stoneham shall engage in negotiations as outlined in Section Seven. If, after negotiating with the selected Offeror, the Town of Stoneham is unable to finalize a contract for Construction Management Services that is in the Town's best interests, the Town of Stoneham may negotiate with the offer of the next most advantageous Proposal based upon the rankings made by the Selection Committee.

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SECTION SIX

EVALUATION CRITERIA

6.1 EVALUATION CRITERIA

Proposals will be evaluated based on the Non - Price and Price Components.

1. NON-PRICE PROPOSAL

Evaluations based upon:

All items listed within Section 3, 3.2 SUBMISSION REQUIREMENTS with emphasis placed on the following:

- a. **Management Team:** Identification of the project team members with specific information on key project personnel strengths. Project organization chart showing communication amongst team members, the Designer, the OPM and the Town of Stoneham.
- b. **Project Plan:** Detailed descriptions of the project approach from pre-construction through close-out. Identifying challenges and proposed solutions. Regarding Project Schedule and Phasing, the Offeror can submit an alternate Schedule and Phasing Diagram for consideration by the Town of Stoneham. The CM's alternate schedule and logic must be explained clearly. In addition, briefly describe your Firm's document and cost control tracking systems and any web based collaboration abilities.
- c. **Prior Project Performance / Reference Data:** Provide a minimum of three references for the proposed Project Executive, Project Manager and Superintendent from Owners, OPMs and Designers. All personnel and their listed project references, should reflect as close as possible, the challenges that this project encompasses. The Selection Committee's intent is to obtain references on the Project Manager and Superintendent that will be ON-SITE and managing the day to day operations of the project.
- d. **Comparable Public Work Experience:** Provide similar public project experience within the last five years. Indicate location of the project, construction value, completion date, services completed via "General Contractor" or "Construction Manager", list Designer and Awarding Authority. Similar forms can be utilized from the SOQ's.

The Selection Committee will rate highly Offerors, which have demonstrated in their descriptive narrative and project references the Offeror's experience and successful building construction projects of similar size, scope, duration, and project complexity to the Stoneham High School Project. Comparable projects would include successfully completed building projects entailing phasing and adjacency to an occupied school, projects that are ZNE and using the U.S. Green Building Council's LEED for Schools or the Massachusetts Collaborative for High Performance Schools (MA-CHPS) criteria, projects of the approximate size as or larger than, this project and projects completed using the CM at risk delivery method required by M.G.L. Chapter 149A.

- e. **Litigation/Termination History:** Resubmit litigation/termination history as submitted (schedule E) in your SOQ, updated if applicable.
- f. **Financial Capacity:** Resubmit your DCAM Certificate of Eligibility and Update Statement as submitted in your SOQ, updated if applicable.
- g. **Safety History:** Resubmit your workers compensation experience modifiers rating (EMR) for the past three years via documentation from your insurance carrier.

The Town of Stoneham will rate Proposals by Offerors as highly advantageous if they demonstrate to the satisfaction of the Town that they have: provided effective value engineering and quality control programs, maintained construction progress schedules, controlled and reduced change order costs, provided effective project safety programs, provided excellent coordination and management of subcontractors, provided exceptional cooperation and coordination with the Owner, and effectively minimized of claims and disputes. Lower rankings will be applied where Offerors do not demonstrate this level of excellence.

2. PRICE PROPOSAL

Evaluations based upon:

- a. Initial Preconstruction Services Lump Sum Fee
- b. Remainder Preconstruction Services based on the applicable rates per the listed staff members.
- c. FEE for the CM services.
- d. The estimated cost proposed by the CM for the specified General Conditions.

3. COMBINED RANKING OF PROPOSALS

The Selection Committee shall perform a Ranking of the Non-Price Proposal and the Price Proposal in determining which Proposal is most advantageous to the Town of Stoneham.

SECTION SEVEN
NEGOTIATION AND AWARD OF CONTRACT

7.1 AWARD OF CONTRACT

- A. Taking into consideration price and the evaluation criteria set forth in the request for proposals, the Town of Stoneham shall determine the most advantageous proposal from a responsible, responsive, and eligible offeror. The Town of Stoneham may condition an award on the successful negotiations of any revisions to the proposal, recommended in the evaluation. The Town of Stoneham will endeavor to award the selection of a CM Firm by written notice within the time specified in the attached project schedule. The parties may extend the time for contract negotiation and award by mutual agreement.
- B. Once the Town of Stoneham has announced the award to a Construction Manager, the Town of Stoneham will issue a letter of intent to enter into a contract. The Town of Stoneham will not execute a contract until negotiations with the CM are complete. The contract shall be awarded to such Offeror, subject to negotiation of satisfactory provisions concerning compensation to the selected Offeror and any other matters determined appropriate by the Town of Stoneham. The Town of Stoneham reserves the right to incorporate into the contract all or portions of the selected Offeror's Proposal, with such modifications as are required by the Town of Stoneham.
- C. The Town of Stoneham may award the contract to the next highest ranked CM team, if the Town of Stoneham and the selected offeror fail to execute a contract or the selected offeror cannot perform under the contract.
- D. The Town of Stoneham reserves the right to reject any and all proposals when deemed in the best interests of the Town.
- E. The selected offeror shall furnish to the Town of Stoneham payment and performance bonds of a surety company qualified to issue bonds in the Commonwealth and satisfactory to the Town of Stoneham, prior to commencement of construction services. Each bond shall be for 110% of the sum of the estimated contract price. Such bonds shall be in form and content satisfactory to the Town of Stoneham.

7.2 TIME FOR FINALIZING CONTRACT

The selected Offeror will be notified in writing of the Town's timetable for finalizing and executing the CM Contract. The notice may specify a time, which shall not be less than fifteen (15) business days from the date of the notice, by which such Offeror must execute the Contract in the form included in the RFP, modified by the provisions of any applicable addenda, and furnish the certificates of insurance and any other documents required in connection with execution of the Contract. If the selected Offeror fails or refuses to execute the Contract within such time, then, unless the Town of Stoneham in its sole discretion elects to extend the time or cancel this procurement, the Town of Stoneham may select another Offeror from among the Offerors invited to an interview (and not subsequently rejected), and may award the Contract to such other Offeror, subject to negotiation of a satisfactory contract with such Offeror.

7.3 AWARD WITHOUT NEGOTIATIONS

The Town of Stoneham reserves the right to accept the selected Offeror's Proposal as submitted without further negotiation. In such case the notice described in Paragraph 7.2 above shall inform the selected Offeror that there shall be no negotiations, and that the Offeror must execute the Contract and meet the other obligations set forth in Paragraph 7.2 within the time stated in the notice.

7.4 SUSPENDED OR DEBARRED PROPOSERS

No person or firm disqualified by the Federal Government or under Massachusetts General Laws Chapter 7, Section 38E (e), nor any person or firm suspended or debarred pursuant to Massachusetts General Laws Chapter 29, Section 29F, or any other applicable debarment or disqualification provisions of any other provision of the Massachusetts General Laws or any rule or regulation promulgated thereunder, shall be eligible for award of this contract.

- End of RFP -

FORM A

REQUEST FOR PROPOSAL RESPONSE FORM

To The Town of Stoneham

The undersigned proposes to furnish all Construction Management Services required by the Town of Stoneham for the Stoneham High School Project, Stoneham, MA. In accordance with the Request for Proposal, all documents contained in the Request for Proposal or referred to therein, addenda or clarifications issued in regard to that RFP, namely addenda numbered _____ for the price stated in a separate form, submitted in a separate envelope.

The undersigned declares that it has carefully examined all the documents noted above and also the site where the proposed work is to be performed. The undersigned certifies that this offer fully complies with all of the requirements of the Request for Proposal. The undersigned hereby acknowledges that if selected it will be obligated to meet the MBE and WBE goals for the project and certifies that it will meet or exceed these goals.

The undersigned further certifies that if selected, it will execute a contract in accordance with the terms stated in the RFP, addenda thereto, documents referred to therein, and prior to the commencement of construction the undersigned will furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Town of Stoneham, each in the sum of the estimated value of the construction project, the premiums of which are to be paid by the undersigned and are included in the proposal price. The undersigned hereby certifies that it is able to furnish for any work at the site of installation labor that can work in harmony with all other elements of labor employed or to be employed on the work at the site of installation, and that it will comply fully with all laws and regulations applicable to the award of the contract for this work.

The undersigned also hereby certifies that it is the only person interested in this proposal; that it is made without any connection with any other person making any proposal for the same work; that the undersigned company has not influenced or attempted to influence any other person or corporation to file a proposal or to refrain from doing so or to influence the terms of the proposal of any other person or corporation; and that this proposal is made in good faith without collusion or connection with any other person bidding for the same work.

I certify, under the pains and penalties of perjury, that all of the above statements are true.

Firm Name: _____

By: _____
(Signature of Authorized Representative)

Title: _____

Date: _____

FORM B

INFORMATIONAL SHEET

If a Corporation:

Incorporated in what State: _____

President: _____

Treasurer: _____

Secretary: _____

If a foreign corporation, are you registered to do business in Massachusetts?

Yes _____

No _____

To be considered for Selection for this work, you are required under Massachusetts General Laws Ch. 30, Sec. 39L to obtain from the Secretary of State, Foreign Corporations Section, a certificate stating that your corporation is registered, and to furnish such certificate to DCAMM prior to award of the contract.

If a partnership, name all partners on attached sheet.

If an individual:

Name: _____

Residence: _____

If an individual doing business under a firm name:

Name of Firm: _____

Business Address: _____

Name of Individual: _____

FORM C

AFFIDAVIT OF COMPLIANCE

_____Massachusetts Business Corp. _____Foreign Corp. _____Non-Profit Corp.

I, _____, President _____ Clerk _____ of

_____, principal office is located at _____

I do hereby certify that the above named corporation has filed with the State Secretary all certificates and annual reports required by Chapter 156B Sec. 109 (business corporation), by Chapter 181, Sec. 4 (foreign corporation) or by Chapter 180, Sec. 26A (non-profit corporation) of the Massachusetts General Laws.

SIGNED UNDER THE PENALTIES OF PERJURY this _____ day of _____, 20__.

Signature of Duly Authorized Corporate Officer

FORM D

CERTIFICATION OF TAX COMPLIANCE

Pursuant to Massachusetts General Laws (M.G.L.) c.62C, section 49A, I certify under the penalties of perjury that the Proposer named below has complied with all laws of the Commonwealth of Massachusetts pertaining to the payment of taxes, to the reporting of employees and contractors, and to the withholding and remitting of child support.

Name of Proposer

Address of Proposer

Telephone Number: _____

By: _____
(Signature)

Printed Name

Printed Title

Date

FORM E

AFFIDAVIT OF PREVAILING WAGE COMPLIANCE (C. 149, S. 26 AND 27)

I, _____, _____, of the
Name Title

_____, with a principal office is located at _____
Offeror's Company Name

do hereby certify that the above named corporation will comply with the prevailing wage laws as set forth in Sections 26 and 27 of the Massachusetts General Laws.

SIGNED UNDER THE PENALTIES OF PERJURY this _____ day of _____, 20____.

Signature of Duly Authorized Corporate Officer

FORM F

CERTIFICATE OF LABOR / OSHA COMPLIANCE

Responder certifies that he/she/it is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work.

Responder certifies that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (10) hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee.

Name of Responder

Address of Responder

Telephone Number

By: _____
(Signature)

Printed Name

Printed Title

Date

FORM G

CERTIFICATE OF NON-COLLUSION

The undersigned certifies, under penalties of perjury, that this Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

Name of Proposer

Address of Proposer

Telephone Number

By: _____
(Signature)

Printed Name

Printed Title

Date

FORM H

CERTIFICATE OF INTEREST CERTIFICATION

The Proposer hereby certifies that:

1. The Proposer has not given, offered, or agreed to give any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of a Contract pursuant to this RFP.
2. No consultant to, or subcontractor for, the Proposer has given, offered, or agreed to give any gift, contribution, or offer of employment to the Proposer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a Contract by the Proposer.
3. No person, corporation, or other entity, other than a bona fide full time employee of the Proposer has been retained or hired to solicit for or in any way assist the Proposer in obtaining a Contract pursuant to this RFP upon an agreement or understanding that such person, corporation or entity be paid a fee or other compensation contingent upon the award of a Contract to the Proposer.
4. The Proposer understands that the Massachusetts Conflict of Interest Law, Chapter 268A of the Massachusetts General Laws (M.G.L.), applies to the Proposer and its officers, employees, agents, subcontractors, and affiliated entities with respect to the transaction outlined in the Request for Proposals.
5. The Proposer understands that the Proposer and its officers, employees, agents, subcontractors, and affiliated entities, shall not participate in any activity which constitutes a violation of the Massachusetts Conflict of Interest Law or which creates an appearance of a violation of the Massachusetts Conflict of Interest Law.

Name of Proposer

Address of Proposer

Telephone Number _____

By: _____
(Signature)

Printed Name

Printed Title

Date

FORM I

CERTIFICATE OF COMPLIANCE WITH M.G.L. C.151B

The Proposer hereby certifies that it is in compliance with and shall remain in compliance with Massachusetts General Laws (M.G.L.) Chapter 151B and shall not discriminate on any prohibited basis outlined therein. The Proposer also hereby certifies that it shall comply with any and all applicable Supplier Diversity Office (SDO) thresholds that have been established in conjunction with this Request for Proposals.

Name of Proposer

Address of Proposer

Telephone Number

By: _____
(Signature)

Printed Name

Printed Title

Date

FORM J

CERTIFICATE OF NON-DEBARMENT

The Proposer hereby certifies that it is presently not debarred, suspended, or otherwise prohibited from practice by any federal, state, or local agency, and that, should any proceeding arise in which it is debarred, suspended, or otherwise prohibited from practice by any federal, state, or local agency, the Proposer shall inform the Town within one (1) business day of such debarment, suspension, or prohibition from practice.

Name of Proposer

Address of Proposer

Telephone Number

By: _____
(Signature)

Printed Name

Printed Title

Date

FORM K

CERTIFICATE OF CORPORATE RESPONDER

I, _____, certify that I am the _____ of the Corporation named as Responder in the attached Response Form; that _____, who signed said Response Form on behalf of the Responder was then _____ of said Corporation; that I know his/her signature hereto is genuine and that said Response Form was duly signed, sealed and executed for and on behalf of this governing body.

Corporate Seal

Name of Responder

Address of Responder

Telephone Number

By: _____
(Signature)

Printed Name

Printed Title

Date

This Certificate shall be completed where Responder is a Corporation and shall be so completed by its Clerk. In the event that the Clerk is the person signing the Response on behalf of the Corporation, this Certificate shall be completed by another officer of the Corporation.

PRICE PROPOSAL
FORM GC: PAYMENT FOR CONSTRUCTION MANAGEMENT SERVICES

SECTION A: SUMMARY

Company Name: _____
By: _____
(Signature of Authorized Representative)
Title: _____

Section A. PAYMENT SUMMARY FOR CM PRECONSTRUCTION SERVICES

A.0 Total Payment for Initial CM Preconstruction Services \$ 25,000.00
A.1 Total Payment for CM Preconstruction General Conditions Costs \$ _____
A.2 Total Payment for CM Preconstruction Fee \$ NA
A.3 Total Payment for CM Preconstruction Services
Add A.0, A.1 and A.2 \$ _____
Confirm Total Payment for CM Preconstruction Services in words below, from line A.3
_____ Dollars

Section A. PAYMENT SUMMARY FOR CM CONSTRUCTION SERVICES

A.4 Total Payment for CM Construction General Conditions Costs \$ _____
A.5 Total Payment for CM Construction Fee \$ _____
A.6 Total Payment for CM Construction Services
Add A.4 and A.5 \$ _____
Confirm Total Payment for CM Construction Services in words below, from line A.6
_____ Dollars

Section A. PAYMENT SUMMARY FOR PRECONSTRUCTION and CM CONSTRUCTION SERVICES COMBINED

A.7 Total Payment for CM Preconstruction and CM Construction Services
Add line A.3 and A.6 \$ _____
Confirm Total Payment for CM Preconstruction and Construction Services combined in words below, from line A.8
_____ Dollars

FORM GC: PAYMENT FOR CONSTRUCTION MANAGEMENT SERVICES**Section B: DETAIL OF CM PRECONSTRUCTION GENERAL CONDITIONS COSTS**

Note: Titles in the boxes below are listed for convenience only. Please add more titles if needed and insert zeros on the lines you do not plan to use.

B.1. Preconstruction Title List company name for subcontractors to CM	Personnel Name	(A) Duration in Months	(B) Hourly Rate	(C) Monthly Rate	(A+C=D) Total Cost
Principal in Charge			\$	\$	\$
Project Executive			\$	\$	\$
Senior Project Manager			\$	\$	\$
Project Manager			\$	\$	\$
Assistant Project Manager			\$	\$	\$
Superintendent			\$	\$	\$
Chief Estimator			\$	\$	\$
Lead Estimator			\$	\$	\$
HVAC Estimator			\$	\$	\$
Electrical Estimator			\$	\$	\$
Plumbing / FP Estimator			\$	\$	\$
Purchasing Agent			\$	\$	\$
Pre-Construction Coordinator			\$	\$	\$
			\$	\$	\$
List Consultant Costs			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
Key Personnel					Total B.1
					\$

B.2 Lump Sum for Additional Categories of CM Preconstruction General Conditions Costs (Expenses, Insurance and miscellaneous staff and subcontractors not listed above).	\$
---	----

B.3 Total Payment for CM Preconstruction General Conditions Costs Add lines B.1 and B.2 Transfer total to Payment Summary, Section A line A.1	\$
--	----

FORM GC: PAYMENT FOR CONSTRUCTION MANAGEMENT SERVICES**Section C: DETAIL OF CM CONSTRUCTION GENERAL CONDITIONS COSTS**

Note: Titles in the boxes below are listed for convenience only. Please add more titles if needed and insert zeros on the lines you do not plan to use.

C.1. Project Management Titles	Personnel Name	(A) Duration in Months	(B) Hourly Rate	(C) Monthly Rate	(A+C=D) Total Cost
List company name for subcontractors to CM					
Principal in Charge			\$	\$	\$
Project Executive			\$	\$	\$
Senior Project Manager			\$	\$	\$
Project Manager			\$	\$	\$
Asst. Project Manager			\$	\$	\$
Project Engineer			\$	\$	\$
Asst. Project Engineer			\$	\$	\$
LEED Coordinator			\$	\$	\$
Project Accountant			\$	\$	\$
Administrative Assistant			\$	\$	\$
Cost Control Engineer			\$	\$	\$
CORI Management/Badge Coordinator			\$	\$	\$
Scheduler			\$	\$	\$
BIM			\$	\$	\$
Information Technology			\$	\$	\$
Purchasing Agent			\$	\$	\$
			\$	\$	\$
List Consultant Costs			\$	\$	\$
			\$	\$	\$
Key Personnel				Total C.1	\$

C.2 Field Supervisory List company name for subcontractors to CM	Personnel Name	(A) Duration in Months	(B) Hourly Rate	(C) Monthly Rate	(A+C=D) Total Cost
General Superintendent			\$	\$	\$
Superintendent			\$	\$	\$
Asst. Superintendent			\$	\$	\$
MEP Coordinator / Commissioning Assistant			\$	\$	\$
Field Engineer			\$	\$	\$
Asst. Field Engineer			\$	\$	\$
Safety Engineer			\$	\$	\$
CORI Implementation			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
Total C.2					\$

C.3 Additional Positions List company name for Consultants to CM	Personnel Name	(A) Duration in Months	(B) Hourly Rate	(C) Monthly Rate	(A+C=D) Total Cost
QA/QC – Consultant/ Testing				\$	\$
Haz-Mat Supervision / Testing				\$	\$
				\$	\$
				\$	\$
				\$	\$
Total C.3					\$

C.4 Insurance and Bond Costs Identify other Insurance and Bond Costs in blank spaces below	Rate Per Thousand Dollars	ECC cost to be used for Pricing, bond costs will be adjusted to reflect Offeror's GMP	Total Cost
Performance Bond (Construction)		\$140,000,000	\$
Payment (Labor & Material) Bond (Construction)		\$140,000,000	\$
Builders' Risk		\$140,000,000	
General Liability			\$
Vehicle Liability	--		\$
Pollution Liability	--		\$
Workers Compensation	--		\$

C.4 Insurance and Bond Costs Identify other Insurance and Bond Costs in blank spaces below	Rate Per Thousand Dollars	ECC cost to be used for Pricing, bond costs will be adjusted to reflect Offeror's GMP	Total Cost
Umbrella Coverage	- -		\$
			\$
Subcontractor Bonds		Assign to Subcontractor	Cost of Work
Total C.4			\$

C.5 General Conditions Additional Categories	Cost
Project Phasing	Included in C.1
Supervision of the Work	Included in C.2
Use of Premises	Included in C.2
Coordination	Included in C.1
BIM	Included in C.1
Accounting	Included in C.1
Cost Control	Included in C.1
Safety and First Aid Manager	Included in C.1
Debris Removal Management	Included in C.2
Field Measurements	Included in C.2
Critical Path method Construction Schedules Two Week Look-Ahead and Monthly Updates	Included in C.1
Shop Drawing Log	Included in C.1
Long Lead Item Log	Included in C.1
Pre-Purchase Log	Included in C.1
Shop Drawings, Products Data and Samples	Included in C.1
Quality Control	Included in C.1
Testing Agency Service	Included in C.3
Neighborhood Management Plan	Included in C.1
Neighborhood Plan Implementation	Included in C.2
Demolition Waste Management Plan	Included in C.1
Demolition Waste Plan Implementation	Included in C.2
Construction Waste Management Plan	Included in C.1
Construction Waste Plan Implementation	Included in C.2
Hazardous Waste Management Plan	Included in C.1
Hazardous Waste Plan Implementation	Included in C.2
Project Closeout	Included in C.1
LEED Sustainable Design Management	Included in C.1
CORI Implementation	Included in C.2
Project Management and Coordination	Included in C.1
Management of Job Progress Meetings	Included in C.1
Attendance at School Related Meetings	Included in C.1

	(A) Duration in Months	(B) Hourly Rate	(C) Monthly Rate	(A+C=D) Total Cost
Town of Stoneham, OPM and Architect Temporary Office Trailers (minimum 12x60 with working toilet)				\$
Town of Stoneham, OPM and Architect Telephone, high speed internet line and wireless internet connection and Usage Charges (including long distance)				\$
Town of Stoneham, OPM and Architect Office Furniture				\$
Cleaning of Town of Stoneham and Architect Trailers				\$
CM Temporary Office Trailers				\$
CM Telephone and Internet Service, Equipment and Usage Charges (including long distance)				\$
CM Office Furniture				\$
Cleaning of CM Trailers				\$
Travel, Meals, etc...				\$
LEEDS Supervision and Assistance Implementation (Field)				\$
Information Technology (I.T.) Time (Field Office)				\$
Computers & Software				\$
Field Office Supplies				\$
Site Security Services				\$
On-Site Storage Containers				\$
Small Tools				\$
Safety Materials (Safety Kit)				\$
Photos				\$
Reprographics				\$
Postage, Shipping, Courier Services, etc...				\$
Management of Plans, Specifications, etc...				\$
Record Drawings				\$
Punch List				\$
Photo ID Badge Machine				\$
Other				\$
			Total C.5	\$

Site Enclosure Fences and Gates	cost of work
Temporary Walkways	cost of work
Temporary Paving	cost of work
Security Enclosures	cost of work
Temporary Enclosures	cost of work
Police Details	cost of work
Fire Watch Details	cost of work
Temporary Lighting	cost of work
Temporary Fire Protection	cost of work
Staging and Hoisting	cost of work
Shoring	cost of work
Temporary Stairs	cost of work
Dust Control	cost of work
Noise Control	cost of work
Winter Conditions	cost of work
Weather Protection	cost of work
Permanent Utility Costs (before the building is occupied)	cost of work
Subcontractor Insurance and Bonds	cost of work
Dewatering Including Contamination Treatment	cost of work
Subcontractors (Material, Equipment and Labor)	cost of work
Project Vehicles/Maintenance/Protection	cost of work
Rental Costs of Machinery and Equipment	cost of work
Storage Trailers and Containers	cost of work
Safety Labor and Protection	cost of work
Safety Materials (guardrails, railing, etc...)	cost of work
Project and Site Traffic Signage – (temporary)	cost of work
Debris Control, Removal and Dumpsters	cost of work
Demolition Waste Removal	cost of work
Hazardous Waste Removal	cost of work
Rodent and Pest Control	cost of work
Interim and Final Cleaning for Site and Building	cost of work
Contaminated Soil Removal	cost of work
Cutting, Coring and Patching	cost of work
Tree and Shrub Protection	cost of work
Wetland and Environmental Protection	cost of work

C.8 Total of all Details of CM Construction General Conditions Costs <i>Add lines C.1, C.2, C.3, C.4, C.5 and C.6.</i> <i>Transfer total to Payment Summary, Section A line A.4</i>	\$
--	----



Town of Stoneham
Stoneham High School

**Request For Proposal
For Construction Management At Risk Services**

Date: January 11, 2021

Owner:

Town of Stoneham
35 Central Street
Stoneham, Massachusetts 02180

Architect:

Perkins & Will Architects (P&W)
225 Franklin Street, Suite 1100
Boston, Massachusetts 02110
Principal: Brooke Trivas, AIA

Owners Project Manager:

Symmes Maini & McKee Associates (SMMA)
1000 Massachusetts Avenue
Cambridge, Massachusetts 02138
Principal: Joel G. Seeley

Proposal Deadline: 2:00 PM EST on January 25, 2021

Submit Proposals to:

Town of Stoneham
Town Administrator's Office
Attn: April Lanni, Procurement Officer
35 Central Street
Stoneham, Massachusetts 02180

PACKAGE 2 OF 3 – PREFERRED SCHEMATIC DESIGN DOCUMENTS

TABLE OF CONTENTS**REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGEMENT AT RISK SERVICES****STONEHAM HIGH SCHOOL PROJECT, STONEHAM, MASSACHUSETTS*****PACKAGE 1 of 3 – REQUEST FOR PROPOSAL***

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	1.2 Request for Proposal Documents
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	1.7 Pre-proposal Site Visit
	1.8 Addendum Procedures
	1.9 Prohibition on Unauthorized Communications and Requests for Interpretations of Documents
	1.10 Consultants with Prior Service on This Project are Precluded From Service to CM Teams
	1.11 Proposal Submission
	1.12 Proposal Format
	1.13 Commitment Letter from Surety
	1.14 Modification or Withdrawal of Proposals
	1.15 Rejection of Proposals
	1.16 Opening of Proposals
	1.17 Authority of the Selection Committee
	1.18 Evaluation Process
	1.19 Interview Process
	1.20 Modification of Scope of Work by Town of Stoneham
	1.21 Negotiating and Award
	1.22 Equal Employment Opportunity, Nondiscrimination and Affirmative Action Requirements and Minority and Women Business Enterprise Goals
	1.23 Roles and Responsibilities of Awarding Authority
	1.24 Roles and Responsibilities of the Construction Manager (scope of services)
	1.25 List of Anticipated Trade Contractors
Section Two	Project Information
	2.1 Preliminary Project Schedule
	2.2 Preliminary Project Budget Estimate
Section Three	Submission Requirements: Non-Price Proposal
	3.1 Non-Price Proposal Submission Instructions
	3.2 Non-Price Proposal Submission Requirements
	3.3 Forms

- Form A - Request for Proposal Response
- Form B – Informational Sheet
- Form C – Affidavit of Compliance
- Form D – Certificate of Tax Compliance
- Form E – Affidavit of Prevailing Wage Compliance
- Form F – Certification of Labor / OSHA Compliance
- Form H – Certificate of Corporate Responder
- Certificate of Eligibility (DCAM Form CQ 7)
- DCAM’s Update Statement (DCAM Form CQ 3)

Section Four	Submission Requirements: Price Submission
	4.1 Price Proposal Submission Instructions
	4.2 Price Proposal Forms
	○ Form GC – Price Proposal ○ Form GC – Section B – Schedule of CM Costs – Preconstruction Phase ○ Form GC – Section C – Schedule of CM Costs – Construction Phase
	4.3 Instructions for Completing the Price Proposal Forms
Section Five	Opening of Proposals and Evaluation Process
	5.1 Opening of Proposals
	5.2 Evaluation Process
Section Six	Evaluation Criteria
	6.1 Evaluation Criteria
	1. Non-Price Proposal 2. Price Proposal
Section Seven	Negotiation and Award of Contract
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PACKAGE 2 of 3 – PREFERRED SCHEMATIC REPORT (PSR) DESIGN DOCUMENTS

The following documents will be made available to the Offerors as part of this RFP:

- Preferred Schematic Report (PSR) Submission, dated December 23, 2020
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PACKAGE 3 of 3 – CM AGREEMENT AND GENERAL CONDITIONS

Owner – Construction Manager Agreement

Exhibit 1 – CM Contract Amount Breakdown [to be inserted at a later date]

Exhibit 2 – Insurance Certificates and Bonds [to be inserted at a later date]

Exhibit 3 – Prevailing Wage Rates [these rates shall be provided prior to the issuance of each bid package.]

Exhibit 4 – Certificate of Vote

General Conditions of the Contract

Appendix A – Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program

Appendix B – Procedure For Pre-Bid Reduction/Waiver of MBE/WBE Participation Goals

Appendix C – Bidding Instructions - Goals for Participation by Minority Business Enterprises and Women Business Enterprises (Executive Order 390, M.G.L. C. 7, S. 40n)

Appendix D – General Conditions - Goals for Participation by Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) (Executive Order 390, M.G.L. C. 7, S. 4)

Exhibit A: Schedule for Participation by Minority/Women Business Enterprises

Exhibit B: Letter Of Intent Minority/Women Business Enterprises Participation

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Appendix E – Contractor's Certification

Appendix F – Subcontractor's Certification

Appendix G – Procedures for Award of Subcontracts

Appendix H – Form Of Trade Contract

Appendix I – Performance Bond

Appendix J – Certificate as To Corporate Principal (Performance Bond)

Appendix K – Labor and Material Payment Bond

Appendix L – Certificate as To Corporate Principal (Labor and Material Bond)

The CM Contract that will be executed with the successful Offeror shall be in substantial compliance with these documents.

Any qualifications and exceptions to the terms and forms of the Owner-Construction Manager Agreement or the Owner-Construction Manager General Conditions of the Contract must be noted in writing at the time of submission of the RFP.



**Town of Stoneham
Stoneham High School**

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PACKAGE 3 OF 3 – CM AGREEMENT AND GENERAL CONDITIONS

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TOWN OF STONEHAM

**AGREEMENT FOR CONSTRUCTION
MANAGER AT RISK SERVICES**

OWNER - CONSTRUCTION MANAGER AGREEMENT

STONEHAM HIGH SCHOOL

JANUARY 11, 2021

AWARDING AUTHORITY: TOWN OF STONEHAM

This Agreement ("Contract") is made as of the _____ day of _____ in the year two thousand and twenty-one by and between the Town of Stoneham (the "Owner"), acting by and through the Stoneham School Building Committee, with a principal place of business at Stoneham Town Hall, 35 Central Street, Stoneham, Massachusetts 02180 and _____ hereinafter called the "Construction Manager" or CM", with a principal place of business at _____.

The terms used in this Owner - Construction Manager Agreement, are defined in the General Conditions of the Contract and in this Owner – Construction Manager Agreement.

The scope of the work is generally described as follows:

The performance of initial pre-construction services, remainder pre-construction services and construction services, as described in the Contract Documents, during the design and construction of the Stoneham High School Project (the "Project"). **The project consists of (Add description of Preferred Alternative).**

PRELIMINARY STATEMENT

A. Pursuant to M.G.L. c. 149A the Town of Stoneham ("Owner") is undertaking the construction of the Stoneham High School Project (the "Project").

B. The Construction Manager ("CM") shall perform the obligations, responsibilities and liabilities of the Construction Manager under this Agreement.

C. OWNER has engaged Symmes Maini & McKee Associates, Inc. (the "Project Manager"), under a separate agreement, to assist OWNER in connection with the Project, as provided in M.G.L. c. 149A, section 2. The Project Manager will assist the Owner in the administration and management of the Project during design and construction. The CM shall fully cooperate with the Project Manager including, but not limited to, complying with any instructions that the Project Manager may issue on OWNER's behalf.

D. OWNER has engaged the architectural firm of Perkins & Will Architects (the "Designer"), under a separate agreement, to provide design services for the Project. The CM shall fully cooperate

with the Designer including, but not limited to, complying with any instructions that the Designer may issue on the Project.

E. Until further written notice from the OWNER to the CM, the CM shall not perform, or permit the performance of, any Construction Phase services, and execution of this Agreement by the OWNER shall constitute authority for the CM to perform, or arrange for performance of, Initial Preconstruction Phase Services only.

NOW, THEREFORE, in consideration of the mutual agreements and obligations of the parties set forth below, OWNER and the Construction Manager do hereby agree as follows:

Article 1. The Work.

1.1 The Construction Manager's Responsibilities. The CM shall perform the Work as required by the Contract Documents to construct the Project.

1.2 Site. The Site is shown in the Site Plans that accompanied the Request for Proposals for Construction Management Services issued by the Owner.

1.2.1 Site Inspection. By executing this Agreement, the CM acknowledges that it has visited the Site and has learned as much about the Site as may reasonably be learned from such an inspection. No information which would reasonably have been obtained by such a site inspection may serve as the basis for any change order proposal or claim for additional costs and/or additional time by the CM.

1.2.2 Site Conditions. Information about soil and other subsurface conditions at the Site is provided in the Specifications and the Request for Proposals. Neither the Owner, the OPM nor the Designer represents that such information is a fully complete or accurate indication of subsurface conditions. No change order proposal or claim for additional costs and/or additional time resulting from the CM's reliance on such information shall be allowed except as expressly provided in the Contract Documents.

Article 2. The Contract Documents.

2.1 Contract Documents. The following documents form the Contract, are incorporated by reference herein, and are referred to as the "Contract Documents".

- The Request for Qualifications (RFQ) for Construction Management Services for the Project, including amendments thereto.
- The CM's Response to the Request for Qualifications, as accepted by the Owner.
- The Request for Proposals (RFP) for Construction Management Services for the Project, including exhibits and amendments thereto.
- The Construction Manager's Proposal, as accepted by the Owner.
- The Owner-Construction Manager Agreement, including amendments thereto.
- The General Conditions of the Contract.
- The Plans and Specifications prepared by the Designer, including Addenda.

- All Approved Change Orders/Contract Modifications issued after execution of this Owner Construction Manager Agreement.

Article 3. Relationship of the Parties.

3.1 CM's Obligation. The CM accepts the relationship of trust and confidence between OWNER and the CM established by this Agreement and covenants with OWNER to cooperate at all times with OWNER, the Project Manager, the Designer and any other consultants or project representatives engaged or employed by OWNER, and to utilize the CM's best skill, efforts and judgment in furthering the interests of the OWNER; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and, consistent with the requirements of the Contract Documents, to perform the Work in the best way and most expeditious and economical manner consistent with the interests of OWNER and to make every reasonable effort to achieve time savings and construction efficiencies with respect to the Work. The CM, in performing its services under this Agreement, is an independent contractor and is not an agent or employee of, or a joint venturer with, OWNER. The CM shall work in harmony and cooperation with the OWNER, the Project Manager, the Designer, and separate contractors and other persons or entities engaged by OWNER or otherwise employed in connection with the Project, as well as other public agencies having jurisdiction with respect to the Project.

3.2 Standard of Performance. The CM represents that it is experienced and skilled in construction of projects of the type, magnitude and complexity described in the Contract Documents, that it is familiar with the special problems and requirements of construction of the type required for the Project and in the location of the Site, and that it will furnish a complete and fully operable Project as indicated by and reasonably inferable from the Contract Documents.

Article 4. Contract Time.

4.1 Commencement Date. The CM shall begin preconstruction and construction phase services pursuant to the terms and conditions included in written Notices to Proceed ("NTP") that are issued by the OWNER.

4.1.1 Preconstruction Services. The NTP for initial preconstruction services shall be issued within a reasonable time following execution of the Contract. It may, in OWNER's discretion, instruct the CM to begin only certain portions of the preconstruction services. The NTP for the remainder of Preconstruction Services will be issued upon successful Town Meeting Appropriation Vote and Ballot Vote for the Project.

4.1.2 Construction Services. The NTP for construction services shall be issued within a reasonable time following the execution of the Guaranteed Maximum Price ("GMP") Amendment as defined in Subsection 6.5.2, provided that, the OWNER intends to issue several NTPs that will authorize the CM to perform the construction of enabling and early packages of work prior to the execution of the GMP Amendment, as described in the Request for Proposals. When an NTP is issued prior to the execution of the GMP Amendment, OWNER may, in its discretion, limit the scope of the NTP in whatever manner it deems appropriate.

4.2 Substantial and Final Completion. The CM shall achieve Substantial Completion of the designated phases of the work and the entire Work, in accordance with Subsection 4.4.1, subject to any adjustments in the Contract Time approved by OWNER in accordance with the Contract Documents (the "Substantial Completion Date"). The CM shall achieve Final Completion for each Phase of the Work, no

later than 45 days after substantial completion of the phase of the work. The Substantial and Final Completion Dates for the phases of work shall be subject to extensions of Time that may be approved by OWNER in accordance with the Contract Documents.

4.3 Time is of the Essence. The CM acknowledges that the times of Substantial Completion of the Work, Final Completion of the Work, any other milestones for completion of portions of construction, times for submitting proposals for contract modifications, and other times set forth in the Contract Documents are essential conditions of this Agreement.

4.4 Owner's Damages for Delay

4.4.1 Liquidated Damages. If the CM shall neglect, fail or refuse to achieve Substantial Completion of a Phase of the construction within the Contract Time, as such time may be adjusted in accordance with the provisions of the Contract Documents, the CM shall pay OWNER the amounts set forth in this Subsection 4.4.1 below, not as a penalty, but as liquidated damages to cover certain losses, expenses and damages of OWNER for such failure to substantially complete the applicable phase of the contract in a timely manner in breach of this Agreement. The CM acknowledges that delay in Substantial Completion of the Project will cause Owner to incur administrative, professional, rental, storage, moving, transportation and other costs in the event of such delay. Delay in Substantial Completion will also require OWNER to incur additional costs for compensation to the Designer, the Project Manager and other consultants or contractors for extended or additional work on the Project. In light of the difficulty of determining all the costs the Owner will incur, in the event of a delay to the Substantial Completion Date of a phase of the work, the parties have agreed upon the liquidated damages stated below, and said amounts may be retained by THE TOWN on or after the scheduled date of Substantial Completion from current progress payments or any other amounts owing to the CM. The liquidated damages amounts that the Owner may assess for not achieving Substantial Completion for a phase of the Work are as follows:

Phase One "Enabling Work" – If the CM fails to achieve Substantial Completion of the Enabling Work by the scheduled date of Substantial Completion, the Owner may assess liquidated damages in the amount of \$2,000.00 for each calendar day that the actual Substantial Completion date for this Phase exceeds the contract date for Substantial Completion, as such completion date may be extended by an approved extension of time granted pursuant to Article VI of the General Conditions.

Phase Two "Building Completion" – If the CM fails to achieve Substantial Completion of the Work by the scheduled date for Substantial Completion, the Owner may assess liquidated damages in the amount of \$3,000.00 for each calendar day that the actual Substantial Completion date for this Phase exceeds the contract date for Substantial Completion, as such completion date may be extended by an approved extension of time granted pursuant to Article VI of the General Conditions.

Phase Three "Demolition and Site Work Completion" – If the CM fails to achieve Substantial Completion of the Work by the scheduled date for Substantial Completion, the Owner may assess liquidated damages in the amount of \$1,500.00 for each calendar day that the actual Substantial Completion Date for this Phase exceeds the contract date for Substantial Completion, as such completion date may be extended by an approved extension of time granted pursuant to Article VI of the General Conditions.

The date of determining when Substantial Completion has occurred for purposes of the assessment of liquidated damages shall be the date of Substantial Completion as stated in the Designer's Certificate of Substantial Completion applicable to each Phase of the Work.

4.4.3 Except as otherwise expressly provided, none of the following shall constitute a waiver of the CM's or its surety's obligations to pay liquidated damages or actual damages, as provided in Subsection 4.4.1 or **4.4.2**:

- (a) Acceptance of any portion of the Work or payment to the CM or its surety therefor;
- (b) Completion of a portion of the Work or the use or occupancy of a portion of the Work by OWNER or others;
- (c) OWNER's requiring or allowing the CM or its surety to complete the Work after the Substantial Completion Date has passed.

4.5 Phasing of the Work.

A summary of the anticipated construction phases for the Project is as follows:

Phase 1 – “Enabling Work”

Phase 2 – “Building Completion”

Phase 3 – “Demolition and Site Work Completion”

4.5.1 The work will be performed on a phased schedule. Each phase of construction shall have a substantial completion date. On or before the substantial completion date for each phase, the CM shall turn over the completed work for use and occupancy by the Owner for its intended purpose. The CM and the Owner shall agree to a phased completion schedule that shall be incorporated into the Contract. That phased completion schedule shall be in accordance with the Project Schedule included in the Request for Proposals for Construction Management Services.

4.5.2 The phased completion dates, as agreed to, shall be subject to extensions of time as may be approved by the Owner, in the same manner as the Substantial Completion Date of the Entire Work may be subject to extensions of time.

4.5.3 In the event the CM fails to meet the Substantial Completion Date for a particular Phase of the Work, other than the date for the Substantial Completion of the Entire Work, and the Owner does not approve an extension to the phased Substantial Completion Date, the Owner shall be entitled to assess damages in accordance with Subsection 4.4, as applicable.

Article 5. Construction Manager's Services.

5.1 Preconstruction Services. Commencing upon a NTP issued by OWNER, the CM shall perform preconstruction services as provided in this Article and elsewhere in the Contract Documents. The CM's scope of services during the Preconstruction Phase is described in the Request for Proposals, a copy of which is incorporated by reference into this Agreement. Preconstruction services shall be considered complete when all Preconstruction Services as described in the RFP have been achieved including all sub-trade and subcontractor bidding services and the completion and execution of a GMP.

5.1.1 Construction Planning. The CM shall attend regular Project meetings with OWNER, the Project Manager and the Designer. If requested by OWNER, the CM shall schedule and lead such meetings and keep (take) minutes of such meetings. The CM shall consult with OWNER, the Project Manager and the Designer concerning planning for construction of the Project. The CM shall make recommendations as to the purchase, and assist in expediting the procurement of, long lead items, which are required for the Project to ensure their delivery by the required dates. The CM shall review and, if appropriate, make recommendations with respect to the phasing of the Work, in conjunction with the needs of the Owner. The CM shall advise the Designer with respect to the division of the Work into subtrade categories to facilitate the development of bid and proposal packages, bidding, and awarding of subcontracts, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

5.1.2 Construction Services. The CM's scope of services during the Construction Phase is described in the Request for Proposals, a copy of which is incorporated by reference into this Agreement.

5.2 Preconstruction and Construction Services The CM shall perform its preconstruction and construction services, responsibilities and obligations concurrently as necessary during the term of this Agreement. The CM shall provide the initial phase of preconstruction services upon issuance of a NTP from the Owner. The initial phase of preconstruction services shall be comprised of Schematic Design Cost Estimate, Construction Scheduling, and Logistics Analysis and Support through attendance at Stoneham School Building Committee meetings and public presentations leading up to and prior to the Town Meeting appropriation vote.

5.2.1 Design Review. The CM shall review, on a continuous basis, the development of the Drawings, Specifications and other design documents produced by the Designer. Review of the documents is to discover inconsistencies, errors and omissions between and within design disciplines. The CM shall consult with OWNER, Project Manager and the Designer regarding the selection of materials, building systems and equipment, and shall recommend alternative solutions whenever design details impact construction feasibility, schedules, cost or quality (without, however, assuming the Designer's responsibility for design) and shall provide value engineering services to OWNER. Without limitation, the CM shall review the design documents for clarity, consistency, constructability, maintainability/operability and coordination among the trades, coordination between the specifications and drawings, and sequence of construction, including recommendations designed to minimize adverse affects of labor or material shortages. The CM reviews shall be performed by those project team members approved by the Owner, and shall be provided in writing with detailed notations on the drawings and specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution. The CM shall attend meetings as necessary with the Designer, OWNER and the Project Manager in order to discuss and resolve all issues.

5.2.2 Master Development Schedule. The CM shall develop detailed project schedules for the Work that allow the Owner to take use and occupancy of designated areas of the Work on a Phased basis, and in accordance with the milestone bid packages stated in Section 4.5 of this Agreement. The CM will cooperate with the Project Manager during the development and analysis of these documents. The CM shall coordinate and integrate its Project schedules with scheduling information developed by the Project Manager and other parties. The requirements provided herein are in addition to and not in limitation of the CM's obligation to prepare and maintain the Baseline Critical Path Method (CPM) Schedule and other schedules as provided in the Contract Documents.

5.2.3 Cost Estimates. The CM shall provide four detailed cost estimates to the Owner during the Contract period, as follows:

- (a) (1) Based on the Schematic Design Documents; (2) after CM has received the Design Development Documents; (3) after CM has received 60% Complete Construction Documents; and (4) after CM has received 90% Complete Construction Documents. The CM shall prepare, for the review by the Designer and the Project Manager, and approval of OWNER, detailed estimates of the Construction Cost (hereafter defined) with supporting data including but not limited to unit costs of materials, equipment and labor hours required to complete all sections of the work. Estimates are to be prepared in Uniformat II, level 3 and CSI MasterFormat 6-digit format to level 3. As used herein, "Construction Cost" shall mean the total cost or, to the extent the Project is not completed, the total estimated cost of constructing the Project, including the Cost of the Work, the General Conditions Payment, Permit Fees, CM Contingency, and the CM Fee. The Construction Cost does not include costs of land acquisition, financing costs, Owner purchased furnishings and equipment, project manager fees or design fees. The CM shall provide value engineering analysis and recommendations during design and construction in order to maintain the limits of the project budget during design, and the Guaranteed Maximum Price (GMP), thereafter, and as requested by Owner.
- (b) The CM shall update and refine its estimate of Construction Cost at appropriate intervals agreed to by OWNER, the Designer and the CM.
- (c) Owner may, but shall not be required to, arrange for the preparation of its own periodic estimates of Construction Cost, to be performed by the Designer and/or the Project Manager. The CM shall work in good faith and in cooperation and coordination with the Project Manager and the Designer, and any other consultants involved in preparing estimates of Construction Cost, in order to reconcile any differences between cost estimates prepared by the CM and the cost estimates prepared by such other parties, to clarify assumptions upon which cost estimates are based, and otherwise to address any concerns or questions with respect to such cost estimates raised by the Designer, the Project Manager, OWNER or such other consultants. If the agreed-upon, reconciled estimate of Construction Cost exceeds the initial Construction Budget established by OWNER, the CM shall advise and cooperate with OWNER, the Project Manager and the Designer in identifying, specifying and recommending changes in, or additional specification of materials, equipment, component systems and types of construction, or other adjustments in the scope or quality of the Project (collectively, "Cost Reduction Alternatives"), including contingencies or alternative bid items, so as to facilitate revision of the design of the Project to reduce the Construction Cost so as to comply with the Owner's fixed limit of construction cost. Implementation of any Cost Reduction Alternative shall be subject to the approval of OWNER, and OWNER shall have the right, in its sole discretion, to choose which of the Cost Reduction Alternatives shall be implemented.
- (d) The process and responsibilities of the CM described in this Section 5.2 shall also apply to any separate cost limits within the Construction Budget that have been established by OWNER for certain phases, components or elements of the Work.
- (e) In addition to the detailed estimates of Construction Cost required under subparagraph (a), the CM shall, upon request by the Owner, provide additional cost estimating services

related to value engineering and for estimating costs related to Proposed Change Orders, at no additional cost to the Owner.

5.2.4 Permits and Approvals. Consistent with the General Conditions, the CM shall assist OWNER and the Designer in identifying all governmental permits, user fees, approvals and licenses of any kind which must be obtained and be met in connection with the construction and use and occupancy of the Project. The CM shall comply with all conditions and mitigation requirements in the permits and approvals that have been issued for the Project. The CM shall be responsible for obtaining all permits, user fees and approvals, including the costs thereof. The CM shall obtain and pay for all permits, inspections and certificates of occupancy for the Project. All applications, requests, appeals, filings and other documents, materials and information prepared by the CM to be submitted to governmental authorities in connection with the Permits and Approvals shall be subject to the prior approval of the Owner, and shall be delivered to the Owner sufficiently in advance of the time of their proposed filing or submission so as to permit a reasonable period for the review and comment of the Owner and its consultants. If requested by the Owner at any time, any such documents or materials to be used in connection with the permits and approvals may be prepared by the Owner or other persons designated by the Owner, and the Owner or other persons designated by the Owner may appear on behalf of the Owner at any hearing, presentation or conference. In addition, the CM shall promptly complete and provide such other documentation as may be required by the Owner, any of its agencies, or such other parties as the Owner may indicate.

5.2.5 Progress Reports. The CM shall furnish to the Owner's Project Manager monthly reports, on the 5th day of the month, concerning the progress of the work which address: (a) compliance with the construction schedule, (b) status of major scopes of work being performed by the CM and subcontractors, (c) status of shop drawings, submittals, RFI's and material procurement, (d) manpower status, (e) safety/occurrences, (f) status of change orders, (g) 30 day look ahead schedule, (h) MBE/WBE status updates, and (i) other matters relating to the progress of work as directed by the Owner's Project Manager or the Massachusetts School Building Authority (MSBA).

5.2.6 Subcontracts. Unless the Owner authorizes the CM to self-perform any of the Work during construction, all Work shall be performed by the CM pursuant to Subcontracts awarded by the CM in accordance with the General Conditions of the Contract, particularly Appendix C: Procedures for Award of Subcontracts. The CM shall perform the overall management of the effort required to solicit and prequalify, receive subbids and proposals and award subcontracts to the subcontractors who perform services hereunder, in accordance with the procedures specified in Appendix C, provided, however, that the Owner shall procure bids from Trade Contractors, as provided in Appendix C.

- (a) The CM shall consult with OWNER with respect to the procurement of bids for all subcontracts. The CM understands and agrees that OWNER or the Project Manager may, to the extent described in the General Conditions of the Contract, Appendix C - Procedures for Award of Subcontractors, participate in negotiations with Subcontractors and that OWNER and its representatives shall have access to any documents submitted by all Trade Contractors and Other Subcontractors to the CM, for review as to compliance with bidding and proposal procedures and other requirements of the Contract Documents. No Subcontract or other agreement between the CM and any third party for the furnishing or supply of any labor, materials or equipment in the performance of the Work shall be entered into without OWNER's prior written approval. Such written approval by Owner may take the form of an approval of a list of subcontractors and the dollar value of the subcontracts that CM intends

to execute on this Project. Standard forms of subcontract agreement for all Trade Contractors are attached to the General Conditions of the Contract. No material revisions shall be made to any such Subcontract or other agreement approved by the Owner without the prior approval of the Owner. Copies of all executed Subcontracts shall be provided to the Owner promptly. The CM shall include all costs, with respect to the procurement of bids for all subcontracts, however the Owner shall pay for reproduction costs associated with the procurement of bids for Trade Contractors.

- (b) CM shall develop and assemble the front end documents, the Scope of Work, and Supplementary General Conditions and any other documents for use with the Trade Contractors.
- (c) In the case of procuring non-trade subcontracts, the CM shall oversee and manage the complete bidding process, including distribution of Bid Documents, management and tracking of plan holders and deposits, receipt of bidder questions, and issuance of Addenda in consultation with Owner, Project Manager and Designer.

5.3 Construction Services. In accordance with the Notice to Proceed with Construction, the CM shall perform Construction Services as provided in these paragraphs and elsewhere in the Contract Documents.

5.3.1 Construction Cost Monitoring. The CM shall provide a system of Project cost monitoring and reporting, and shall develop cash flow reports and forecasts in the format approved by OWNER upon the advice of Project Manager. The CM shall identify variances between actual costs and its estimated costs and shall immediately advise OWNER whenever projected costs exceed previous estimates. Such reports and other information shall be included in the Monthly Progress Reports to be submitted to the Owner.

5.3.2 Costs of Construction shall, in no event, exceed the Guaranteed Maximum Price that will be negotiated between CM and Owner.

5.3.3 Quality Assurance/Quality Control. In addition to the Owner's independent testing and inspection services, the CM shall be responsible for insuring that adequate quality assurance and quality control programs are developed, implemented and enforced by the CM's staff and all Subcontractors. The CM shall designate an experienced quality manager, employed by the CM, whose responsibility shall be quality assurance and quality control and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work. The CM shall report to the Owner, Project Manager and Designer any deficiencies, and a recommended plan for corrective action.

5.3.4 Prevailing Wage. Work under this project is subject to the prevailing wage laws M.G.L. c. 149, ss.26-27 H. The schedule for prevailing wages will be provided as applicable and prior to the negotiation of the GMP. The CM and its subcontractors shall be responsible for anticipating the costs of future changes to the prevailing wage rates in their bid prices, provided that for change order work, the CM and the subcontractor will be entitled to apply the wage rates in effect at the time the extra work is performed.

5.3.5 CM Responsibility for Managing Construction The CM shall be responsible for managing, coordinating, scheduling, and supervising all aspects of the construction of the Work, as described in this Agreement, the General Conditions, and all other Contract Documents.

5.4 General Requirements for Preconstruction and Construction Services

5.4.1 Design Related. CM shall provide Owner with recommendations and advice concerning design of the Project and modifications or alternatives. If the CM recognizes or discovers that any portion of the Drawings and Specifications are in error, unclear, ambiguous, or at variance with applicable laws, the CM shall promptly notify the Designer, the Project Manager and OWNER in writing. By providing such notice, it is understood that the CM does not assume any obligations or responsibilities for the design of the Project, which obligations shall remain with the Architect. If, however, the CM proceeds with work based on Drawings and Specifications that CM knows are in error, unclear, ambiguous, or at variance with applicable laws, without providing such notice to the Designer and the Project Manager, the CM shall bear all costs related to the correction of such work.

5.4.2 CM's Organization and Staff. The CM shall establish a table of organization and lines of communication required to carry out the requirements of this Agreement in order to organize and direct the efficient construction of the Project. A listing of the CM's key staff who will perform services directly on this Project, has been provided in CM's Proposal in Form D and Form E and is incorporated herein. All key staff shall be available for and actively participate in the performance of the services provided under the Contract Documents. No substitution of any assigned and approved key staff shall be made by the CM without the prior written consent of OWNER in its reasonable discretion. Before any such substitution is made, the CM shall submit to OWNER the qualifications of any proposed replacement. The removal or replacement, without OWNER's consent, of any of the key staff listed in CM's Proposal, other than as a result of retirement, disability, death or bona fide termination of employment, shall constitute a material breach of this Agreement and the Owner reserves the right to terminate the Agreement and assess damages. Within ten (10) days after execution of this Agreement, the CM shall furnish to OWNER a detailed organizational chart (the "Organizational Chart") for approval by OWNER. Such chart shall reflect the same persons as set forth in the Proposal unless otherwise approved by OWNER, and shall identify each staff position, the anticipated start date and end date for each identified staff person and the estimated personnel cost on account of each such staff person. All modifications to the Organizational Chart after initial approval by the Owner must be approved by the Owner, such approval not to be unreasonably withheld. The Owner may require replacement of any member of the CM's staff with or without cause, and may require increased levels of staffing by the CM, at no increase in the Contract Price, if necessary to achieve proper production, management, administration or superintendence, or if otherwise necessary to maintain progress in accordance with the Project Schedule. By executing this Agreement, the CM certifies that the CM and each member of its key staff comply with all licensing, registration and other requirements applicable to the CM and the performance of its services hereunder pursuant to Applicable Laws. Furthermore, the Owner shall have the right to require the CM and any Subcontractor to replace any on-site personnel who it reasonably finds objectionable, with other personnel approved by the Owner.

Article 6. Contract Price

6.1 Contract Price.

6.1.1 OWNER shall pay to the CM the Contract Price for the CM's proper performance of the Contract and completion of the Work. The "Contract Price" consists of the Pre-Construction Services Fee described in Section 6.2.1, the General Conditions Amount, described in Section 6.2.2, the Cost of the Work, as defined in Article 7, and the CM Fee as defined in Section 6.3. The total payments to the CM (the Contract Price) shall not exceed the Guaranteed Maximum Price ("GMP")

to be agreed to by the Parties in a Contract Amendment that will be negotiated after Contract execution.

6.1.2 For Change Orders or Contract Modifications authorized by the Owner pursuant to the Contract Documents, the Contract Price shall be adjusted as provided in Section 6.2.4 below and Article VII of the General Conditions and not otherwise. After the GMP has been agreed to by OWNER and the CM, any increase or decrease in the Contract Price authorized by OWNER by execution of a Change Order, shall increase or decrease the GMP, accordingly.

6.1.3 The CM's Fee Proposal, submitted on Forms F, G, and H, designates the contract amounts for the Pre-Construction Services Fee, the Construction Manager's Fee, and the General Conditions. Forms F, G and H are made part of this contract at Exhibit 1.

6.2 Contract Price Breakdown

6.2.1 Preconstruction Services Fee. The initial Pre-Construction Services Fee is in the lump sum amount of \$25,000.00. The remainder of the Pre-Construction Services fee is in the amount of \$_____. The Owner will have no obligation for the remainder of Pre-Construction Services fee until the successful Town Meeting Appropriation Vote and Ballot Vote and a Notice to Proceed has been issued by the Owner. From the commencement of the remainder of Preconstruction Services provided through the end of the Preconstruction Period, monthly payments for the Pre-Construction Services shall be in accordance with the Pre-Construction Services Fee specified on Exhibit 1, subject to a cap of \$_____. The initial Pre-construction Services fee payment shall be a single lump sum payment at the completion of the Schematic Design phase.

6.2.1.1 The Owner may, after execution of the Contract, authorize the CM to spend additional amounts for testing and exploratory work, during the Pre-Construction Phase.

6.2.1.2 In the event that conditions arise that cause the Pre-Construction Services to be extended, the Owner reserves the right to negotiate a revision to the monthly amount of the Pre-Construction Services Fee, to reflect any changes in the CM's workload during the extended Pre-Construction Phase period. Those revisions may include a reduction in the value of the monthly Pre-Construction Services Fee, reflecting workload decreases or reductions in the number of the CM's personnel assigned to the Project.

6.2.2 General Conditions Amount. In consideration of the performance by the CM of the items of work described in the Contract Documents as General Conditions, OWNER shall pay to the CM, as full and complete compensation for all General Conditions costs incurred in the performance of such work, the lump sum amount specified on Exhibit 1, Form H, for General Conditions. The Amount of General Conditions is a lump amount of \$ TBD at the time of issuance of Notice To Proceed for remainder of Preconstruction Services. The total dollar value for General Conditions Costs set forth in Exhibit 1 represents the maximum amount to be paid to the CM for all General Conditions Costs during the Construction Phase, unless Owner agrees to a Change Order that revises the cost items covered by General Conditions. Those revisions may include a reduction in the value of the monthly General Conditions Costs, reflecting decreases of the monthly General Conditions required on the Project.

6.2.3 Construction. During the Construction Period, monthly payments shall be made to the CM on

account of General Conditions Costs. Prior to the commencement of construction services, the Owner and CM shall agree to a Schedule of Values for the payment of General Conditions during the Construction period. For each month or partial month during the period from the commencement of the Construction Period through Final Completion, the CM shall submit a monthly invoice to the Owner requesting payment of the Construction Period General Conditions Costs.

6.2.4 General Conditions Mark-Up on Change Orders. If the Construction Manager performs additional work under a Change Order approved by OWNER, compensation, if any, due to the Construction Manager for General Conditions related to the Change Order work shall be computed as a percent markup on the direct costs of the Change Order, as described in Article VII of the General Conditions of the Contract.

6.2.5 General Conditions Breakdown. The CM shall provide a detailed breakdown of its General Conditions costs that complies with the General Conditions cost breakdown required by the Massachusetts School Building Authority. Payments for the CM's invoices for General Conditions costs shall not be processed until the CM has provided a breakdown of the General Conditions in a format that is acceptable to the Owner and the MSBA.

6.3 Construction Manager's Fee.

6.3.1. Construction Manager's Fee for Construction Services. In further consideration of the performance of the Construction Services by the CM, OWNER shall pay to the CM a fee associated with performing the construction services in the amount identified on Exhibit 1 as Fee/Profit. The Construction Manager's Fee is in the lump sum amount of \$ TBD at time of issuance of Notice To Proceed for remainder of Preconstruction Services. Payment of the Construction Manager's Fee shall be made on a monthly basis. The amount of the monthly payments shall be determined by applying the percentage of the Cost of the Work approved for payment by OWNER, to the total amount of the Construction Manager's Fee set forth in Exhibit 1 and deducting from such value any amounts previously paid to the CM on account of the Construction Manager's Fee. Owner and CM may alternatively agree to pay the Construction Manager's Fee based upon a fixed monthly amount, provided the cumulative amount of such monthly payments shall not exceed the Construction Manager's Fee.

6.4 No Retainage on Pre-Construction Services; Retainage on Payments during Construction The Owner shall not assess retainage against the payments for the Pre-Construction Services Fee. Payment to the CM for the Cost of Work and the Construction Manager's Fee shall be subject to the procedures contained in Article VIII of the General Conditions, including a five percent retainage on monthly payments.

6.5 Guaranteed Maximum Price.

6.5.1 Upon the request of the Owner, the CM shall submit to OWNER a proposed GMP, which shall be the sum of the estimated Cost of the Work, the Construction Contingency (hereafter defined), the General Conditions Amount, the CM Fee for Pre-Construction Services, and the Construction Manager's Fee. The CM shall include with the GMP proposal a written statement explaining the basis of the GMP, in form and substance satisfactory to OWNER, which shall include at least:

- (a) a list of the Project design documents upon which the GMP proposal is based;
- (b) a list of allowances and a statement of their basis;

- (c) a list of any assumptions, qualifications and clarifications made by the CM and mutually agreed upon with the Owner, the OPM and the Designer in the preparation of the GMP proposal to supplement the information contained in the Project design documents;
- (d) a statement that the proposed GMP is based on the Baseline CPM Schedule and the Substantial Completion Dates for each phase of the work specified in this Agreement;
- (e) the proposed GMP, including a detailed statement of the actual and estimated
Cost of the Work organized in accordance with the categories of work used in the CSI (Construction Specification Institute) format with quantities, units, and unit rates, Preconstruction and Construction General Conditions Costs, allowances, Construction Contingency, Preconstruction Services Fee and Construction Manager's Fee and other items that comprise the GMP;
- (f) a schedule of applicable alternate prices;
- (g) a schedule of applicable unit prices; and
- (h) the time limit for acceptance of the GMP proposal (which shall not be less than 90 days).

6.5.2 The CM shall meet with OWNER, the Project Manager and the Designer, as necessary, to review the GMP proposal and the written statement of its basis. In the event that OWNER, Project Manager or the Designer discover any inconsistencies or inaccuracies in the GMP proposal and accompanying information, they shall promptly notify the CM, which shall make appropriate revisions thereto. OWNER may elect, in its sole discretion, to accept or not to accept the CM's GMP proposal, as such proposal may be revised by agreement with the CM and Owner. Prior to OWNER's acceptance of the CM's GMP proposal, the CM shall not incur any cost to be reimbursed by OWNER, except as provided in this Contract or as OWNER may specifically authorize in writing. If OWNER accepts the CM's GMP proposal, OWNER and CM shall execute and deliver within fifteen (15) days after such acceptance, an amendment to this Agreement, in form acceptable to OWNER and the CM incorporating the GMP amount into the Contract (the "GMP Amendment"). The CM shall execute and deliver together with the GMP Amendment, performance and payment (labor and materials) bonds in the form provided by the Owner, executed by a surety licensed by the Massachusetts Division of Insurance and acceptable to the Owner. Each such bond shall be in the full amount of the GMP. These bonds shall be substituted for the bonds obtained from the CM at the time of signing the contract, which said bonds shall be returned to the CM by the Owner.

6.5.3 If OWNER does not accept the CM's GMP proposal, OWNER may elect to solicit bids or proposals for the construction of the Project from other contractors, using any solicitation method or methods chosen by OWNER, consistent with applicable laws and procedures, or, if OWNER determines that it is in its best interest to do so, OWNER may enter into negotiations for a contract with one or more of the offerors that submitted proposals in response to the Request for Proposals for this Contract. If OWNER does not accept the CM's GMP proposal within the time limit for acceptance specified in the GMP proposal, as it may be extended by agreement of the parties, then this Contract shall terminate upon the completion of the CM's performance of the Work then in progress or upon notice from OWNER as provided in the General Conditions.

6.5.4 In the event the Contract is terminated for failure to agree to a GMP, Owner's obligations to CM shall be limited to those provided in Article XVII, para. 2 of the General Conditions, for a Termination for Convenience.

Article 7. Cost of the Work.

7.1 Cost of the Work. The "Cost of the Work" shall mean those costs listed in this Section.

Cost of the Work shall not include any item included in the General Conditions Costs or the CM's Fee for Pre-Construction Services or the CM's Fee for Construction Services. Costs of the work include:

7.1.1 Subcontract Costs. Payments made by the Construction Manager to any Subcontractor in accordance with the requirements of an approved Subcontract.

7.1.2 Costs of Materials and Equipment Incorporated in the Completed Construction

- (a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction, less all discounts and rebates.
- (b) Costs of materials described herein which are in excess of those actually installed, but which are required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be delivered to OWNER at the completion of the Work or, at OWNER's option, shall be sold by the Construction Manager. Amounts realized, if any, from such sales shall be credited to OWNER as a deduction from the Cost of the Work.

7.1.3 Costs of Work CM Self Performs. The CM's direct costs for construction work it self-performs, provided that in no event shall such work include cost items included in the General Conditions Costs, the CM's Fee for Pre-Construction Services or the CM's Fee for Construction Services.

7.1.4 Emergencies and Repairs to Damaged or Nonconforming Work.

The following costs incurred by the Construction Manager shall become a part of the Cost of the Work:

- (a) 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 the General Conditions.
- (b) in repairing damaged Work, provided that such damage did not result from the fault or negligence of the Construction Manager or the Construction Manager's personnel or any Subcontractor, and only to the extent that the cost of such repairs is not recoverable by the Construction Manager from others or the Construction Manager is not compensated therefor by insurance or otherwise.
- (c) in correcting defective or nonconforming Work, provided that such defective or nonconforming Work did not result from the fault or negligence of the Construction Manager or the Construction Manager's personnel or any Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the Construction Manager from third parties or the Construction Manager is not compensated by insurance or otherwise.

Any costs incurred by the CM which would otherwise be within the scope of this Subsection, but are excluded because such costs result from the fault or negligence of the CM, the CM's personnel, any Subcontractor or any other party for whom the CM is responsible, may only be charged against the Construction Contingency to the extent permitted by Paragraph 7.2.1 (e), and any such costs incurred after the Construction Contingency has been exhausted shall not be reimbursable as a Cost of the Work.

7.1.5 Miscellaneous Costs of the Work

The following costs shall be included in the Cost of the Work:

- (a) Subcontractor Bond premiums.
- (b) Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents in accordance with the General Conditions.
- (c) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by OWNER as Costs of the Work.

7.2 Construction Contingency.

7.2.1 The term "Construction Contingency" shall mean the line item included by the CM in the GMP and the Schedule of Values that is available to cover the net amount of any additional costs resulting from unforeseen conditions and events not reasonably anticipated at the time that the CM awards a Subcontract or the parties execute the GMP Amendment, as applicable, to the extent that such conditions or events do not result in or constitute a change in the Work. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- (a) minor concealed or unknown conditions encountered in the performance of the Work which are determined not to be materially different from those indicated in the Contract Documents;
- (b) unanticipated cost overruns during the CM's procurement of Subcontracts or other purchases of materials or labor costs, provided that the same are not caused by the fault, negligence, or breach of contract of the CM or any Subcontractor;
- (c) expediting or acceleration costs required to meet the Baseline CPM Schedule, as long as the same are not made necessary by the oversight, omission, fault, negligence, or breach of contract of the CM or any Subcontractor; and
- (d) such other unforeseen events and conditions as may be specified in the Contract Documents as chargeable to the Construction Contingency.

After execution of the GMP Amendment, if the contract price of any recommended subcontract award or of any recommended line item "hold" amount is less than the amount carried for such subcontract in the GMP breakdown, the Construction Contingency may be increased at the discretion of the Owner, by the amount of such savings. If the amount of subcontract award or any line item "hold" amount is greater than the amount carried for such subcontract in the GMP breakdown, the CM shall be able to charge the Construction Contingency for the increased costs.

7.2.2 The CM shall maintain and update monthly a report describing each item that has been funded from the Construction Contingency and each item for which the CM has requested funding from the Construction Contingency that is pending with the Owner.

7.2.3 Costs authorized to be reimbursed from the Construction Contingency by Paragraph 7.2.1 shall be paid to the CM as Cost of the Work only if and to the extent approved by OWNER. The Construction Contingency shall be reduced by the additions to the Cost of the Work resulting from the use of the Construction Contingency as authorized by Paragraph 7.2.1. In the event the CM demonstrates that it has incurred or is about to incur additional costs for unforeseen conditions or events that fall within the parameters of subparagraphs (a) through (e) of Paragraph 7.2.1, the CM shall be entitled to be paid for such costs from the Construction Contingency, with the prior approval from OWNER at its discretion.

7.2.4 Contingency Interim Return/Balance. Prior to the execution of the GMP, the CM and the OWNER shall mutually agree to a milestone schedule to target contingency balances that shall be returned to the OWNER pending the financial status of the project and assessment of risk for both the CM and the Owner. The method of contingency reductions (percentage of total contingency or specified values) shall be defined prior to the execution of the GMP. At the completion of each milestone, the CM shall credit uncommitted contingency and buyout balances to the extent they are in excess of the milestone targets established prior to the GMP. If, at the time the OWNER issues the final payment to the CM pursuant to Article VIII of the General Conditions of the Contract, there is a balance in the Construction Contingency, such balance shall be the sole property of the Owner.

7.3 Non-Compensable Costs. Neither the Cost of the Work nor the General Conditions Costs shall include compensation for any of the items set forth below:

- (a) Salaries, bonuses and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal offices, or other offices, other than the site office for the Project, unless those personnel are specifically listed on Form H, or unless there is a mutual agreement between Owner and CM to include those personnel costs in either General Conditions costs or the Cost of Work.
- (b) Expenses of the Construction Manager's principal offices, site office or other offices, except the site office for this Project (including, without limitation, in-house computer costs, and other costs of doing business, services, and related expenses to maintain such offices).
- (c) Overhead and general expenses of any kind, including but not limited to office or fabrication shop overhead and drafting, other than the items covered by the General Conditions Amount.
- (d) The CM's capital expenses, including interest on the CM's capital employed for the Work.
- (e) Costs of machinery and equipment owned or rented by the CM, except as specifically provided in the Contract and approved by the Owner.
- (f) Costs incurred due to the fault, negligence or breach of contract of the CM, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, death or injury to person or damage to property, the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, unanticipated cost overruns incurred by the CM in the procurement of Subcontracts, materials or labor, and making good damage to property not

forming part of the Work, except: (i) to the extent reimbursement is received through the recovery of insurance proceeds, or (ii) to the extent such items may be charged to the Construction Contingency with the prior approval of the Owner pursuant to Paragraph 7.2.1(e).

- (g) Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated into the Work, except as specifically provided in the Contract and approved by the Owner.
- (h) Penalties, fines or costs imposed by governmental authorities in connection with, or resulting from any violation of, or noncompliance with Applicable Laws, by the Construction Manager or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- (i) Any legal fees incurred by the Construction Manager, unless the same are incurred at the written direction, or with the prior written approval, of OWNER.
- (j) Travel or meal expenses and personnel relocation expenses except as approved by the Owner for personnel who have been assigned to the Project.
- (k) General Conditions Costs in excess of the total of compensation to be paid to CM for all General Conditions as set forth in Exhibit 1.
- (l) Any cost incurred by the CM as a result of a knowing violation of or failure to comply with this Agreement or the other Contract Documents by the CM.
- (m) Costs that would cause the GMP to be exceeded.
- (n) Costs incurred by the CM after final payment; provided, however, that to the extent there is a balance in the Construction Contingency remaining at final payment, such Contingency shall be available to pay costs incurred during the one year period after substantial completion, but only if such Contingency would have been available, subject to reasonable approval by the OWNER, to pay such costs had such costs been incurred prior to final payment and only if CM has satisfied Owner that it has made commercially reasonable efforts to have subcontractors and suppliers pay for costs relating to defective or incomplete work items or warranty items.

7.4 Discounts, Rebates, Refunds and Expenses. Cash discounts obtained on payments made by the CM shall accrue to OWNER if (a) before making the payments the CM included them in an Application for Payment and received payment therefor from OWNER, or (b) OWNER has deposited funds with the CM with which to make payments; otherwise, cash discounts shall accrue to the CM. The CM shall notify OWNER of the availability of any cash discounts so that OWNER may elect to pay or deposit such funds with the CM in order to obtain such cash discount. Such cash discounts and any other trade discounts, rebates, refunds and other amounts received from sales of surplus materials and equipment shall be credited to the Cost of the Work, and the CM shall make provisions so that they can be secured and credited accordingly. Any utility or government rebates associated with the Work are the property of the Owner.

7.5 Accounting Records

7.5.1 The Construction Manager shall check all materials, equipment and labor used on the Work, and shall keep full and detailed accounts and exercise controls as may be necessary for proper accounting and financial management under this Agreement. All books and records shall

be maintained in accordance with generally accepted accounting principles, consistently applied. Without limitation, the CM shall comply with the requirements set forth in Article XI of the General Conditions. OWNER and its authorized representatives shall, upon request by OWNER, be afforded copies of, and at all times shall be afforded access to, all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, invoices, vouchers, memoranda, estimates, budgets, breakdowns, accounting data, bid proposals, cost control information and any other documents and data relating to this Agreement, including data in electronic media or any other media (collectively, "records") and the Construction Manager shall preserve all such records for a period of six years, or for such longer period as may be required by law, after Final Payment. With respect to work performed by the CM's own forces on a lump sum basis, the CM shall only be required to maintain certified payrolls, documentation required by the Supplementary Conditions for Equal Employment Opportunity, Non-Discrimination and Affirmative Action, and such other records as are required by Applicable Laws or the terms of the Contract Documents.

7.5.2 Without limitation of the foregoing, OWNER shall have the right, at any time and from time to time, upon notice to the Construction Manager, to audit the Construction Manager's records in connection with the Work at the Construction Manager's offices. The Construction Manager shall facilitate any such audit by making necessary facilities available to OWNER and its accountants or other representatives for up to two years after substantial completion of the project.

7.5.3 Subcontractors shall have the same obligations to maintain books and records and to permit audits by the Construction Manager or OWNER as are applicable to the Construction Manager under the Contract Documents.

7.5.4 If any inspection of the Construction Manager's or any Subcontractor's books, records or other documents reveals an overcharge, the Construction Manager shall pay OWNER or, at OWNER's election, OWNER may reimburse itself by taking as a credit against future payments due the Construction Manager, an amount equal to the overcharge. Nothing contained in this provision is intended as a limitation of any other rights or remedies which may be available to the Owner, be they civil or criminal.

Article 8. Payments to Construction Manager.

8.1 Based upon Applications for Payment submitted by the CM, OWNER shall make payments to the CM on account of the Contract Price as provided in Article VIII of the General Conditions of the Contract, the provisions of the Owner-Construction Manager Agreement and elsewhere in the Contract Documents.

Article 9. Equal Employment Opportunity, Nondiscrimination and Affirmative Action

9.1 The CM and all of its Subcontractors shall comply at all times and in all respects with Applicable Laws affecting or regulating employment of persons in connection with the Work, and with the provisions in the General Conditions of the Contract relating to Equal Employment Opportunity, Nondiscrimination and Affirmative Action.

Article 10. Miscellaneous Provisions

10.1 Successors and Assigns. OWNER and the CM bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and

legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither the CM nor any partner of the CM shall assign or transfer the Contract or sublet or subcontract it (other than subcontracting portions of the Work as expressly permitted by and in accordance with the Contract Documents), or otherwise transfer or assign any of its or their rights or obligations under all or any portion of the Contract Documents without the prior written consent of OWNER, which consent may be withheld by OWNER in its sole discretion, nor shall the CM or any partner of the CM assign any moneys due or to become due to it hereunder, without such prior written consent of OWNER. Any assignment of the Contract or any interest therein by the CM or any partner of the CM without the prior written approval of the Owner, shall be void, and the assignee in such case shall acquire no rights in the Contract or in such moneys. OWNER may assign the Contract to any successor or assignee of OWNER's interests, provided that OWNER demonstrates to the reasonable satisfaction of the CM that such successor or assignee has the capability of fulfilling OWNER's obligations under the Contract.

10.2 Additional Information. Recognizing that OWNER may find it necessary during the progress of the Work to establish the current status of performance under the Contract Documents, the CM shall, without limitation of any other requirements of the Contract Documents, promptly provide upon request statements, documents or information to OWNER, the Project Manager and the Designer or others regarding the status of the Work, compliance of the Work with the Contract Documents, compliance by the CM or any Subcontractor with the Contract Documents, the names of Subcontractors or suppliers, amounts due or to become due or amounts previously paid to Subcontractors or suppliers, estimates of the portion of the Work completed and the cost of completing the Work, and such other matters within the scope of the CM's performance under the Contract Documents as OWNER may reasonably require.

10.3 Information Confidential. To the extent permitted by law, the CM shall treat as confidential any information relating to the Project that is specifically designated or identified by OWNER as confidential or proprietary, and shall not permit the release of such information to other parties without OWNER's prior written authorization.

10.4 Governing Law. The Contract shall be governed by the laws of the Commonwealth of Massachusetts, regardless of choice of law principles.

10.5 No Personal Liability

10.5.1 No member, officer, consultant, volunteer, participant, employee, agent or representative of OWNER, Project Manager or Designer shall be personally liable to the CM under any term or provision of this Contract for OWNER's payment obligations or otherwise, or because of any breach hereof.

10.6 Conflict of Interest. The CM understands that the Massachusetts Conflict of Interest Law, Chapter 268A of the Massachusetts General Laws, applies to the CM with respect to the services required to be provided under this Agreement. The CM and its officers, employees, agents, subcontractors and affiliated agencies shall not participate in any activity which constitutes a violation of the Massachusetts Conflict of Interest Law or which creates an appearance of a violation of the Massachusetts Conflict of Interest Law. The CM warrants and represents that it currently has no interest and shall not acquire any interest, direct or indirect, which would be adverse to or conflict in any manner with the performance of its services under this Agreement or with the interest of the Owner or the Project. The CM further agrees that in the performance of this Agreement no person or entity having any such adverse or conflicting interest shall be employed or granted a Subcontract. Except with the Owner's knowledge and express consent, the CM

shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to be adverse to the interests of the Owner or to compromise the CM's professional judgment with respect to the Project. The CM has a continuing obligation to divulge to the Owner all circumstances of its relationships with third parties, as well as any other interests that may have an effect on the Owner or the Project at the time of execution of this Agreement or during its effectiveness. If the Owner believes that there is or has been a conflict of interest, or the appearance of a conflict of interest, it will so notify the CM. The CM shall make full disclosure of all material facts, and shall have a period of thirty (30) days after receipt of such notice to cure the conflict of interest or the appearance of conflict of interest, including the right to request a meeting with the Owner to explain its position. If the conflict of interest or appearance of conflict of interest is not cured to the satisfaction of the Owner or the controversy otherwise resolved prior to expiration of such thirty (30) day period, the CM shall be deemed to be in default of this Agreement and the Owner may exercise any remedies available to it under this Agreement or applicable law.

10.7 Termination of Contract. The Contract may be terminated as provided in Article XVII of the General Conditions.

10.8 Exhibits. The following Exhibits are attached to and incorporated in this Agreement:

- Exhibit 1. CM Contract Amount Breakdown
- Exhibit 2. Insurance Certificates and Bonds (may be added after contract execution and prior to construction services).
- Exhibit 3. Prevailing Wage Rates (may be added after contract execution and prior to construction services).
- Exhibit 4. Certificate of Vote.

Article 11. Approved Subcontractors. No Trade Contractors or Other Subcontractors shall be used to perform any portions of the Work other than the work described in their subcontracts, without the prior written approval of OWNER.

Article 12. Certifications. By entering into this Agreement, the CM certifies under penalties of perjury that its proposal was made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals. By entering into this Agreement, the CM certifies under the penalties of perjury, pursuant to M.G.L. c.62C, Section 49A(b), that it has complied with all laws of the Commonwealth relating to taxes, to reporting of employees and contractors, and to withholding and remitting child support. The individual signing this Contract on behalf of the Contractor further certifies under penalties of perjury that the Contractor is not presently suspended or debarred from doing public construction work in the Commonwealth under the provisions of M.G.L. c. 29, s. 29F, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder and is not presently suspended or debarred from doing public construction work by any agency of the United States.

By submitting a Proposal, Bid or signing a contract for the Project, the Construction Manager hereby certifies, pursuant to G.L. c.30 Section 39S, the following under the pains and penalties of perjury:

- (1) that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work

- (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who will furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

Article 13. Minority Business Enterprise and Women Business Enterprise Participation Goals and Minority/Women Workforce Utilization Percentages See Appendix A, Appendix B, Appendix C and Appendix D to the General Conditions of the Contract and Article XIII of the General Conditions of the Contract, with which the CM shall comply.

Article 14. Contract Execution

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in triplicate as of the date set forth above.

OWNER – TOWN OF STONEHAM

CONSTRUCTION MANAGER

By: _____
Name: Dennis Sheehan
Title: Town Administrator
Town of Stoneham

By: _____
Name: _____
Title: _____

I certify that the amount of \$_____ is available for the initial preconstruction phase compensation to the CM for the work described in this Contract and that the signatory named has been authorized to execute the Contract and approve all requisitions and change orders, pursuant to M.G.L. c.44, s.31C.

Town Accountant
Town of Stoneham

Approved as to Form:

Town Counsel

EXHIBIT 4**CERTIFICATE OF VOTE**

I, _____, hereby certify
(Clerk/Secretary)

that I am the duly qualified and acting _____ of _____
(Title) (Corporation Name)

and I further certify that at a meeting of the Directors of said Corporation duly called and held on _____
20 __, at which meeting all Directors were present and voting, the following vote was unanimously
passed:

VOTED: To authorize and empower either _____,
(Name) (Title);
_____, _____; or
(Name) (Title)
_____, _____
(Name) (Title),

any one acting singly, to execute all contracts and bonds on behalf of the Corporation.

I, further certify that the above vote is still in effect on this the ____ day of _____, 20__ and has not
been changed or modified in any respect.

Signature

Printed Name

Printed Title

The certification contained hereabove shall be executed by the corporation or copy of current
"certification of authority to sign for the Corporation" shall be attached.)

TOWN OF STONEHAM
STONEHAM HIGH SCHOOL PROJECT
CONSTRUCTION MANAGER AT RISK CONTRACT
GENERAL CONDITIONS OF THE CONTRACT
JANUARY 11, 2021

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ARTICLE I: DEFINITION OF TERMS

The following words shall have the following meanings as used in this Contract:

Approval: (or Approved): An approval in writing signed by the authorized signatory of THE OWNER. Depending upon the nature of the approval, the Designer or the Project Manager may, when authorized by the Owner, issue approvals on the Owner's behalf.

Architect: The architect identified in the Owner-CM Agreement, also referred to as the Designer.

As directed, as permitted, as required, as determined or words of like effect: The direction, permission, requirement or determination of the Owner unless otherwise stated in the Contract Documents. Similarly, *approved, acceptable, satisfactory* or words of like import shall mean approved by or acceptable or satisfactory to the Designer and THE OWNER.

Building Code: All applicable rules and regulations to which THE OWNER is subject and which are contained or referenced in the code authorized by M.G.L. c. 143, § 93 et seq., including all amendments thereto.

Certificate of Use and Occupancy: A certificate signed by the Designer pursuant to the requirements of Article VI of these General Conditions of the Contract, indicating that (1) the Work has been completed in accordance with the Contract Documents, except for Punch List items, (2) certificates of inspection, testing and/or approval (including a certificate of occupancy under the Building Code), operating permits for any mechanical apparatus which may be required to permit full use and occupancy of the Work by its intended users have been delivered to THE OWNER, (3) any applicable written warranties, operating instructions and related materials have been delivered to THE OWNER, and (4) the Work may be used for its intended purpose without substantial inconvenience or interference.

Change Order: (1) A written order not requiring the consent of the CM, approved by the Owner and signed by the Project Manager and designated as a Change Order, directing the CM to make changes in the Work within the general scope of the Contract.

Clerk of Works or Owner's Representative: The on-Site representative of THE OWNER, who may be an employee of the Project Manager or may work directly for the Owner. The Clerk of Works or Owner's Representative has no authority to make changes in the Work, interpret provisions of the Contract, approve or disapprove payment requests from the CM, or otherwise provide direction to the CM.

Construction Manager, Contractor, CM and General Contractor These words are used interchangeably and mean the person, corporation or other entity with whom THE OWNER has executed the CM Agreement.

Construction Manager's Key Personnel: The personnel listed in the Construction Manager's Proposal and the Owner-CM Agreement, all of whom shall be dedicated to the Project on a full time basis, unless otherwise agreed to. Such personnel shall include at a minimum the Project Executive, the Project Manager, the Superintendent (who shall be a properly licensed construction supervisor), and the Project Scheduler. Unless otherwise designated by the CM, the Project Executive shall have complete authority to act for the CM.

Contract: The Contract formed by the Contract Documents.

Contract Documents: The documents listed in Article 2 of the Owner-CM Agreement.

Contract Modification: Any alteration of the Contract Documents accomplished by a written agreement properly executed by the parties to this Contract.

Contract Price: The Contract Price constitutes full compensation to the CM for everything to be performed and furnished in connection with the Work and for all damages arising out of the performance of the Work for which THE OWNER is responsible, and constitutes the maximum compensation regardless of any difficulty incurred by the CM in connection with the Work or in consequence of any suspension or discontinuance of the Work. See also definition of Guaranteed Maximum Price.

Day: calendar day.

Designer: The architect or engineer identified as the Designer in the Owner-CM Agreement.

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

Final Acceptance: The written determination by THE OWNER upon recommendation of the Designer, that the Work has been 100% completed, except for the CM's indemnification obligations, warranty obligations, obligations to continue to maintain insurance coverage for the time periods provided in the Contract Documents, and any other obligations which are intended to survive Final Acceptance and/or the termination of the Contract.

Guaranteed Maximum Price: Guaranteed maximum price", or "GMP", is the agreed total dollar amount for the construction management at risk services, including the cost of the work, the general conditions and the fees charged by the CM; also known as the Contract Price.

Laws: All applicable statutes, regulations, ordinances, codes, laws, orders, decrees, approvals, certificates and requirements of governmental and quasi-governmental authorities.

MSBA: The Massachusetts School Building Authority, which has agreed to finance a portion of the costs for the Project, and whose procedures require the Owner and CM to submit payment related information in a format acceptable to the MSBA.

Mockup: Full scale representation of either exterior or interior portions of the building to be built on site using approved materials, installed to display the minimum level of quality and workmanship expected by all trades. Mockup will be examined and must pass the approval of the Architect prior to installing those building components in the structure. Mockup will be used to reference to the level of workmanship required throughout the Project.

Notice to Proceed (NTP): The written notice provided by THE OWNER to the CM which authorizes the CM to commence the Work as of a date specified therein, from which date the times specified in Article 4 of the Owner-CM Agreement are measured. THE OWNER may issue more than one NTP, for Preconstruction and Construction Services, in which case the date from which the time for completion of construction is measured shall be as stated in the appropriate NTP.

Or equal (or words of like import): Equal in the opinion of THE OWNER determined pursuant to the provisions of M.G.L. c.30, s. 39M and the provisions of the Contract.

Owner: The Town of Stoneham acting by and through the Stoneham School Building Committee.

Owner-CM Agreement: The Owner-Construction Manager Agreement between the Owner and the CM for the Project, which is incorporated into the Contract Documents.

Stoneham School Building Committee: Appointed by the Town to oversee the design, implementation, management, and construction of the Project.

Plan(s): Drawing(s).

Product Data: Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM or its Subcontractors and suppliers to illustrate materials or equipment for some portion of the Work. Product data shall also include any such information or instructions produced by the manufacturer or distributor of such materials or equipment and made readily available by said manufacturer or distributor.

Progress Schedule: The progress schedule submitted by the CM and approved by THE OWNER in accordance with the Contract Documents.

Project: The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by separate contractors.

Project Manager: The Owner's Project Manager identified in the Owner-CM Agreement.

Punch List: A list of items determined by THE OWNER upon the recommendation of the Designer, to be minor, incomplete or unsatisfactory work items that do not materially impair the use of the Work by THE OWNER for its intended purpose.

Samples: Samples are physical examples, that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

Schedule of Values: The schedule prepared by the CM and approved by THE OWNER pursuant to Article VIII of these General Conditions of the Contract which allocates the Contract Price to the various portions of the Work and is used as a basis for determining payments due to the CM.

Shop Drawings: Drawings, diagrams, details, schedules, and other data specially prepared for the Work by the CM or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate a portion of the Work.

Site: The land and, if any, building(s) or space within any such building(s) on which or in which the CM is to perform the Work.

Specifications: The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services.

Subcontractor: Person or entity with whom the CM or a subcontractor contracts in order to perform the Work, except as otherwise specifically provided or required herein or by Law. "Subcontractor" also means "Trade Contractor" except when otherwise specified.

Substantial Completion: "Substantial Completion" shall occur when (1) the CM fully completes the Work or substantially completes the Work, or a designated Phase thereof, so that the value of the Work remaining to be done is, in the estimate of the Designer, less than one percent of the adjusted contract price, or (2) the CM substantially completes the Work and THE OWNER takes possession for occupancy, whichever occurs first.

Superintendent: The licensed construction supervisor who is an employee of the CM designated to be in full time attendance at the Site throughout the prosecution and progress of the Work and who shall have complete authority to act for the CM.

Trade Contractor: Subcontractors under Contract with the CM to perform the work of the trades listed in paragraph 1.1 of the Procedures for Award of Subcontracts at Appendix G, and selected under the process authorized in M.G.L. c. 149A and Section I of the aforementioned Procedures by the CM. Sometimes referred to as "Filed Subcontractor" or "Filed Sub bidder".

User Agency: The Town of Stoneham School Department.

Other terms, abbreviations and references are defined as they appear herein.

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ARTICLE II: EXECUTION OF THE CONTRACT, SCOPE OF WORK, INTERPRETATION OF CONTRACT DOCUMENTS, DISTRIBUTION OF WORK, SUBCONTRACTS

1. Execution.

The execution of the Owner – CM Agreement by the CM is a representation that the CM has visited the Site, has become familiar with local conditions under which the Work is to be performed, has correlated observations at the site with requirements of the Contract Documents and is aware of requirements contained in the permits that have issued that apply to the construction of the Work as well as the requirements of the MSBA, as stated in the Project Funding Agreement between the MSBA and the Owner.

2. Scope of Work.

The “Work” consists of all the work identified in the Contract Documents. The Work includes Pre-Construction Services the CM has agreed to provide as well as the completed construction required by the Contract Documents and includes all labor, tools, materials, supplies, equipment, permits, approvals, paperwork, calculations, submittals, and certificates necessary to develop, construct and complete the Work in accordance with all Laws, and all construction and other services required to be supervised, overseen, performed or furnished by CM or that the Contract Documents require the CM to cause to be supervised, overseen, performed or furnished. The CM shall provide and perform all of the Work, duties and obligations set forth in the Contract Documents.

3. Interpretation.

A. The Plans and Specifications and other Contract Documents are to be considered together and are intended to be mutually complementary, so that any work shown on the Plans though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is to be executed by the CM as a part of this Contract. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity shall govern, unless THE OWNER directs otherwise. Figured dimensions shall take precedence over scaled dimensions.

B. All things that in the opinion of THE OWNER may be reasonably inferred from the Plans, Specifications and other Contract Documents are to be executed by the CM. The Designer shall determine whether the detail Plans conform to the general Plans and Contract Documents, except as may be otherwise determined by THE OWNER.

C. The tables of contents, titles, headings and marginal notes or sub-scripts contained herein are solely to facilitate references, are not intended to be construed as provisions of the Contract, and in no way affect the interpretation of the provisions to which they refer.

D. Where reference is made in the Contract Documents to publications, standards, or codes issued by associations or societies, such reference shall be interpreted to mean the current edition of such publications, standards, or codes, including revisions in effect on the date of the issuance of the RFP for the contract notwithstanding any reference to a particular date. The foregoing sentence shall not apply to the dates, if any, specified with respect to insurance policy endorsement forms.

E. In case of any conflict among the Contract Documents, unless the context clearly otherwise requires, the Contract Documents shall be construed according to the following priorities:

First Priority:	Contract Modifications and Change Orders
Second Priority:	Owner-CM Agreement, the General Conditions of the Contract, Specifications and Drawings, as amended.
Third Priority:	CM's Proposal, as accepted by OWNER
Fourth Priority:	Owner's Request for Proposals.
Fifth Priority:	Owner's Request for Qualifications

F. All plans, general and detailed, are to be deemed a part of the Contract, and the Drawings and Specifications and Contract are to be considered together, and are intended to be mutually complementary, so that any work shown on the Drawings, though not specified in the Specifications, and any work specified in the Specifications, though not shown on the Drawings, is to be executed by the CM as part of the Contract. All things which in the opinion of the Designer may reasonably be inferred from the Contract Documents are to be executed by the CM in accordance with the terms of the Contract. In the event of a conflict, CM is to assume that the Contract requires the greater quantity or quality of work, and the CM shall immediately bring to the attention of the Designer said purported conflict.

G. The CM shall refer to all of the Drawings, and to all of the sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. Neither THE OWNER nor the Designer assume any liability arising out of jurisdictional issues raised or claims advanced by Subcontractors, trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings. In the event of any claim arising out of any duplication, conflict, inconsistency or discrepancy within the Specifications or on the Drawings as to the allocation of the Work among the Subcontractor the CM shall be solely responsible for resolving the claim and shall be responsible for ensuring that all of the Work is completed, regardless of where it appears in the Specifications or on the Drawings.

4. Distribution of Work.

Other than as required by M.G.L. c. 149A and any other applicable provisions of the Massachusetts General Laws and these Contract Documents, the CM shall be responsible for distributing the Work in the best interests of the Project.

5. Subcontracts

Procedures for the procurement and the award of contracts by the CM for the furnishing of labor, materials and equipment in the performance of the Work ("Subcontracts") shall be as specified in the procedures attached hereto as Appendix "G". The CM shall not replace any Subcontractor previously selected without the prior written approval of THE OWNER. The CM shall maintain and periodically update and distribute to THE OWNER, the Project Manager and the Designer a Project Directory listing the names, addresses and telephone numbers of the principal members of the staff of each Subcontractor. The principal contact and a back-up for each Subcontractor and each of their office telephone numbers, mobile telephone numbers and pager numbers, if available, shall be indicated in the Project Directory so that such persons can be reached in emergency situations occurring beyond regular business hours.

All work shall be performed pursuant to written subcontracts. When subcontracting with Trade Contractors the CM shall use the Form for Trade Contract attached hereto. All subcontracts shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM by the terms of the Contract Documents, and to assume toward the CM all the obligations and responsibilities which the CM, by the Contract Documents, assumes toward THE OWNER. Each Subcontract shall preserve and protect the rights of THE OWNER under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The CM shall require each Subcontractor to enter into similar agreements with its Subcontractors. The CM shall provide to each proposed Subcontractor, prior to the execution of a Subcontract with such Subcontractor, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph.

In the event of termination of the Contract due to the default of the CM or for any other reason, THE OWNER shall have the right (but shall have no obligation) to assume, and/or accept assignment of and further assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CM under the Subcontract with such Subcontractor. In the event of such assumption or assignment by THE OWNER, the Subcontractor shall have no claim against THE OWNER or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and THE OWNER or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment.

No Subcontract, and nothing contained herein or in any Subcontract, shall be construed to create any contractual relationship between any Subcontractor and THE OWNER.

6. Contract Price.

The Contract Price constitutes the amount of compensation authorized to be paid to the CM for everything to be performed and furnished by the CM in connection with the Work, as provided in the Owner CM Agreement, and constitutes the maximum compensation regardless of any difficulty incurred by the CM in connection with the Work or in consequence of any suspension or discontinuance of the Work..

ARTICLE III: CONTROL OF WORK / ADMINISTRATION OF THE CONTRACT

1. Designer.

Notwithstanding anything to the contrary expressed or implied in this Contract, any of the powers, rights, and duties of the Designer may be exercised by THE OWNER, provided that THE OWNER shall be under no obligation to do so. THE OWNER may rely on the Designer for the performance and exercise of certain rights and obligations of the Owner hereunder. Except as otherwise authorized by the Owner, any Approval required to be obtained from THE OWNER

hereunder shall not be valid without the signature of THE OWNER. THE OWNER may explicitly overrule in writing any action, determination or decision of the Designer should THE OWNER choose to do so, except to the extent that the same would violate applicable law. Subject to the foregoing, the Designer shall be responsible for the general administration of the Contract and shall perform the duties and exercise the rights herein conferred on the Designer. Except as otherwise specifically provided herein, the Designer shall decide all questions which may arise as to the conduct, quantity, quality, equality, acceptability, fitness, and rate of progress of the several kinds of work and materials to be performed and furnished under this Contract, and shall decide all questions which may arise as to the interpretation of the Plans and Specifications. In the case of the death, resignation, inability or refusal of the Designer to act, or the termination of his or her or its employment, THE OWNER may appoint another person to act as Designer for the purposes of this Contract. THE OWNER shall give written notice to the CM of any such appointment.

2. Right of Access to Work.

THE OWNER, the Project Manager, and the Designer (and persons designated by them) may for any purpose enter upon the Work, the Site, and premises used by the CM, and the CM shall provide safe facilities therefor. Other contractors of THE OWNER may also enter upon the same for the purposes which may be required by their contracts or work. Any differences or conflicts which may arise between the CM and other contractors of THE OWNER with respect to their work shall be initially resolved by the Project Manager.

3. Inspection No Waiver.

No inspection by THE OWNER, the Designer, the Project Manager, or employees or agents of either of them, and no order, measurement, certificate, approval, payment order, payment, acceptance or any other action or inaction of any of them, shall operate as a waiver by THE OWNER of any provision of this Contract.

ARTICLE IV: GENERAL PERFORMANCE OBLIGATIONS OF THE CM

The CM shall complete for the Contract Price all of the Work in a proper, thorough, and workmanlike manner in accordance with the Contract Documents. Without limiting the foregoing and without limiting the CM's obligations under any other provision of the Contract Documents, the CM shall for the Contract Price perform the following general obligations:

1. Review of Contract Documents and Field Conditions.

A. Before commencing the Work, the CM shall carefully study the Contract Documents and carefully compare all Specifications, Plans, Drawings, figures, dimensions, lines, marks, scales, directions of the Designer, and any other information provided by THE OWNER and shall at once report to the Designer any questions, errors, inconsistencies, or omissions which the CM may discover.

B. Before commencing the Work, the CM shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM with the Contract Documents and shall at once report to the Designer any questions, errors, inconsistencies, or omissions.

2. Supervision and Construction Procedures; Coordination; Cutting, and Patching.

A. The CM shall supervise and direct the Work, using the CM's best skill and attention. The CM shall be solely responsible for, and shall have control over, construction means, methods, techniques, sequences and procedures, and shall be responsible for coordinating all portions of the Work under the Contract.

B. The CM shall be responsible for the proper fitting of all Work and the coordination of the operations of all trades, Subcontractors, and materialmen engaged upon the Work.

C. All necessary cutting, coring, drilling, grouting, and patching required to fit together the several parts of the Work shall be coordinated by the CM.

D. The CM shall be responsible to THE OWNER for the acts and omissions of the CM's employees, agents and Subcontractors of all tiers, and their agents and respective contractors employees, and other persons performing portions of the Work or supplying materials therefor.

E. The CM shall be responsible for the inspection of portions of the Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

F. The Designer shall establish baselines and benchmarks on the Drawings for the location of the Work but all other lines and grades shall be determined by the CM. The CM shall employ a registered land surveyor to perform any engineering

required for establishing grades, lines, levels, dimensions, layouts, and reference points for the trades. The CM shall be responsible for maintaining benchmarks and other survey marks and shall replace any benchmarks or survey marks that may have become disturbed or destroyed. The CM shall verify the materials shown on the Drawings before laying out the Work and shall be responsible for any error resulting from its failure to exercise this precaution.

G. Work shall be performed during regular Working Hours which, unless otherwise approved by the Owner shall be 7:00 a.m. to 7:00 p.m. School drop off and pickup time for arrival is from 7:45 AM to 8:15 AM, and for dismissal is from 1:30 PM to 2:00 PM, from construction commencement through completion. Due to school operations, deliveries are to be scheduled to avoid the school arrival and dismissal times, unless otherwise specifically approved by the Owner. If the CM desires to carry on the Work outside of regular working hours or on Saturdays, Sundays, or Massachusetts or federal holidays, the CM shall provide the Owner's Representative with 48 hours' notice to allow satisfactory arrangements to be made for inspecting Work in progress. Any work performed during regular Working Hours or at any other time shall comply with all Town Bylaws. The additional costs incurred by the Designer, the Project Manager or the Clerk of Works to monitor work during extended hours, shall be paid by the CM out of an allowance which shall be included in the GMP for such purposes.

H. Work performed outside of regular Working Hours without prior notice to the Designer and/or THE OWNER shall be subject to additional inspection and testing as directed by the Designer. The Owner's costs for this inspection and testing shall be borne by the CM whether the Work is found to be acceptable or not. THE OWNER shall be entitled to assess and issue the CM a credit to cover such cost from payments due the CM.

I. Under no circumstances shall the CM or its subcontractors and suppliers allow trucks to be parked or idling along any streets in the neighborhoods adjacent to the Project site.

J. Under no circumstances shall the CM, its subcontractors, consultants, or suppliers park personal vehicles along any streets in the neighborhoods adjacent to the Project site unless approved in writing by the Owner. All parking for workers will be on the Project site or at a designated off site location as included in the Contract Documents. Adequate on-site parking shall be provided for the Architect, Project Manager and Owner personnel.

3. Key Personnel.

The CM shall employ the Key Personnel as defined in Article I of the General Conditions unless otherwise agreed to by THE OWNER. The Project Executive shall be the CM's senior person on Site and shall have full authority to accept communications to, make decisions for, and otherwise fully represent the CM in connection with all matters relevant to the Project. The CM's Project Manager(s) shall be responsible for one or more portions of the Work as assigned by the Project Executive. CM's Project Manager may be the designee of the Project Executive to exercise the Project Executive's responsibilities in the CM's Project Executive's absence. The Superintendent shall be properly licensed in accordance with the Building Code. THE OWNER shall have the right to direct the removal of any of the CM's Key Personnel for failure to comply with the CM's obligations hereunder, inappropriate conduct, or lack of appropriate skills or qualifications.

A. In addition to the Project Manager(s) the CM will have a full time on site MEP Manager with a minimum 15 years' experience and demonstrated experience managing the MEP portion of at least one similarly sized Project.

4. Labor.

A. The CM shall employ only competent workers. All workers shall have OSHA 10 hour Certification. The CM shall enforce and shall require all its Subcontractors to enforce strict discipline and good order among their respective employees and other persons carrying out the Work. The CM shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Whenever the Designer or THE OWNER shall notify the CM in writing that any worker is, in the Owner's opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee shall be discharged from the Work and shall not again be employed on the Project except with the consent of THE OWNER. See Section 9 of this Article.

B. The CM shall ensure that all its Subcontractors employ a sufficient number of workers to carry on the Work with all proper speed in accordance with Laws, the requirements of the Contract Documents, and the Progress Schedule.

C. The CM shall procure materials from such sources and shall manage its own forces and the forces of its Subcontractors in such a manner as will result in harmonious labor relations on the Project Site. The CM shall cause persons to be employed in the Work who will work in harmony with others so employed.

5. Notices and Permits.

A. The CM shall obtain all approvals, permits, user fees, certificates and licenses required by Laws, pay all charges and fees, and pay for or cause the appropriate Subcontractor to pay for all utilities required for the proper execution of the Work. The costs of any required permits shall be considered Cost of the Work. The CM shall perform the work in strict accordance with all permit requirements that have issued for the Project.

NOTE: The Town of Stoneham has waived the costs for all Town issued permits that the CM and its subcontractors will need to obtain to perform the work on the Project.

B. The CM shall comply with all Laws and shall give all notices required thereby.

C. If the CM observes that portions of the Contract Documents are at variance with the requirements of Laws, the CM shall promptly notify the Designer and THE OWNER in writing, and necessary changes shall be accomplished by an appropriate Contract Modification.

D. If the CM performs Work knowing it to be contrary to Laws without giving such notice to the Designer and THE OWNER, the CM shall bear full responsibility for such Work and all costs attributable thereto, including, without limitation, corrections to the Work.

6. Excavation.

The CM shall prevent by sheeting and shoring or bracing, if necessary, any caving or bulging of the sides of any excavation made by the CM, leaving sheeting and shoring in place, or if any is removed, filling solid the spaces left thereby.

7. Corrections to the Work; Inspection No Bar to Subsequent Corrections.

The review of the Work by the Designer, THE OWNER or its consultants shall not relieve the CM of its responsibilities to fulfill the Contract obligations. Defective work may be rejected by the Designer, THE OWNER or its consultants whether or not such work and/or materials have been previously overlooked or misjudged by the Designer, THE OWNER or its consultants and accepted for payment. If the Work or any part thereof shall be found defective at any time before the Final Acceptance of the whole Work, or during the Warranty Period, the CM shall forthwith correct such defect in a manner satisfactory to the Designer, THE OWNER or its consultants. If any material brought upon the Site for use in the Work, or selected for the same, shall be rejected by the Designer, THE OWNER or its consultants as unsuitable or not in conformity with the Contract Documents, or as damaged by casualty or deteriorated due to improper storage at the Site or to any other factor, the CM shall forthwith remove such materials from the Site. The CM shall pay for the cost of making good all work or property of other contractors or of the Owner destroyed or damaged by such removal or replacement; repair any injury, defect, omission or mistake in the Work as soon as it is discovered, finish and immediately make good any defect, omission or mistake in the Work and complete and leave the Work in perfect condition. The costs of correcting such defects or mistakes shall not be considered Cost of the Work, unless the Owner approves funding such cost as a Construction Contingency Item, as provided in Section 7.2 of the CM Agreement.

8. School Project; No Contact with Students and CORI Reporting

A. The CM shall ensure that all the workers on the Project shall not intermingle with the student population or otherwise enter Owner-occupied premises, except with the knowledge and approval of the Owner. The Principal of the School and the Owner shall have the ability to immediately stop work in the event such work has not been authorized in advance, or is being performed in a manner that threatens the safety of the existing elementary school occupants, the building structure, or otherwise interferes with the User Agency's educational program. The CM's and Subcontractors' costs for complying with the Massachusetts CORI Reporting requirements shall be considered as a Cost of the Work.

B. CORI Reporting: Except to the extent otherwise provided for in law, in accordance with G.L. c. 71 Section 38R, the Superintendent of Schools or School Principal shall require criminal offender record information ("CORI") from the Department of Criminal Justice Information Services, relating to any worker who is scheduled to work on the Project site. The Contractor and the Subcontractors shall submit all CORI documentation to the Superintendent of Schools or Principal a minimum of two (2) weeks prior to the workers' arrival on site. The Superintendent or Principal will notify the Contractor of any worker who will not be allowed to work on the Project, as a result of the CORI check. The Owner reserves the right to stop work if there has been a failure to comply with this paragraph, in which event the Contractor and subcontractors shall have no claim for damages, delays or time extensions against the Owner. The CM shall be responsible for administering the CORI qualification system with the Subcontractors and for coordinating reviews of forms with Town personnel.

C. The Owner and the CM shall develop a system that ensures that all workers and visitors to the Project can be immediately identified as authorized to be on the Project. The CM shall be responsible for administering that system.

9. Sanitary Facilities.

The CM shall provide and maintain sanitary facilities for all persons employed on the Work, beginning with the first worker at the Site. Said facilities shall meet the following minimum requirements unless otherwise specified in Division 1 of the Specifications.

A. There shall be no fewer facilities than the number required by applicable Laws;

B. Facilities shall be kept in a clean sanitary condition at all times and shall be adequately screened to be inaccessible to flies.

10. Temporary Offices.

A. Except as otherwise specified in the Contract Documents, the CM shall erect the following temporary offices near the Site as directed by the Owner and shall adequately furnish and maintain them in a clean, orderly condition:

(1) A CM's field office at which CM's authorized representatives shall be present at all times while work is in progress. Instructions, notices, and other communications delivered there by the Designer or THE OWNER or the Project Manager, shall be deemed delivered to the CM. CM's trailer shall be a double wide trailer (1,600 +/- SF) that will accommodate meetings with a conference table and chairs sufficient to accommodate 12 persons at one time and digital overhead projection via "Smartboard" or equivalent technology or as mutually agreed upon prior to the execution of the GMP Amendment.

(2) **Office Trailer for the Architect/Project Manager/On-Site Rep.** Such trailer shall be in close proximity to the CM's field office, shall be roughly 800 +/- square feet in area, and shall be equipped with four offices, electric lights, heat, air conditioning, window screens, secure locking devices, and a toilet room with a working chemical toilet. Such office shall be equipped with at least the following new furniture and equipment: 3 lockable steel desks, 3 swivel chairs, two stools, 2 metal plan racks, plan table at least 32 by 84 inches, 3 metal filing cabinets with locks, 12 feet of 10 inch deep shelving, one electric water cooler with disposable cups and water supply service, one hard hat for each project representative and 6 visitor hard hats and one networked plain paper copy machine with a legal and standard paper tray or as mutually agreed upon prior to the execution of the GMP; all of which shall become the property of the CM at the conclusion of the Work.

(3) CM shall also provide the Owner's office with the following:

- 4 internet data lines and secure Wi-Fi service with a minimum service as defined in GMP
- Internet access for email service, provide a hub for multi-use.
- 4 telephone outlets
- 3 telephone lines – (1) tel line, (2) hunt lines
- Networked copier or as mutually agreed upon prior to the execution of the GMP.
- (3) Computers with all applicable hardware and software to communicate and coordinate efforts between the CM, Designer and Owner or as mutually agreed upon prior to the execution of the GMP.
- Miscellaneous tack boards and white boards.

11. Contract Documents and Samples at the Site.

The CM shall provide the Owner's On-Site Project Manager one (1) complete set of drawings, specifications, addenda, change orders, approved shop drawings, product data, samples, updated progress schedule and all other submittals. The CM shall maintain at the Site for the use and information of THE OWNER one record copy of the Drawings, Specifications, Addenda, Change Orders, Approved Shop Drawings, Product Data, Samples, updated Progress Schedule, and all other submittals, all in good order and marked currently to record changes and selections made during construction. These shall be available to the Designer and Project Manager and shall be delivered to the Designer for submittal to THE OWNER upon completion of the Work. The Drawings, Specifications and other documents prepared by the Designer, and copies thereof furnished to the CM, are for use solely with respect to this Project. The CM shall not permit their release to other parties except as may be necessary in dealing with governmental authorities in the ordinary course of permitting and constructing

the Project. Further, they are not to be used by the CM or any Subcontractor or Supplier on other projects without the specific written consent of THE OWNER and the Designer.

12. Telephones. See Division 1 of the Specifications. In addition to Division 1 of the specifications, the CM shall provide its on-site personnel with telephones that have "push to talk" capabilities matching the school's service provider or as mutually agreed upon prior to the execution of the GMP Amendment.

13. Safety Laws, Regulations, and Practices.

A. The CM shall comply with all health and safety Laws applicable to the Work, without limitation,

(1) If the CM uses or stores toxic or hazardous substances it shall comply with M.G.L. c. 111F, s. 2, the "Right to Know" law and regulations promulgated by the Department of Public Health, 105 CMR 670, the Department of Environmental Protection, 310 CMR 33, and the Department of Labor and Workforce Development, 441 CMR 21; and shall post a Workplace Notice obtainable from the Department of Labor and Workforce Development.

(2) The CM shall comply with the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act, M.G.L. c. 21C, M.G. L. c. 21E, and any other Laws affecting toxic or hazardous materials, solid, special or hazardous waste (collectively "Hazardous Materials Laws"). Should the CM discover unforeseen materials subject to Hazardous Materials Laws at the Site, the CM shall immediately notify THE OWNER of such discovery.

(3) The CM shall be responsible for the location of all utilities in connection with the Work. Without limiting the foregoing, the CM shall comply with Dig-Safe Laws. Dig-Safe is the Utility Underground Plant Damage Prevention System, 111 South Bedford Road, Burlington, MA 01803, 1-800-322-4844. The CM shall notify Dig-Safe of contemplated excavation, demolition, or explosive work in public or private ways, and in any utility company right of way or easement, by certified mail, with a copy to Department of Environmental Protection (DEP). This notice shall be given at least 72 hours prior to the performance of the work, but not more than sixty days before the work is to be done. Such notice shall state the name of the street or the route number of the way and shall include an accurate description of the location and nature of the proposed work. Dig-Safe is required to respond to the notice within 72 hours of receipt by designating the location of pipes, mains, wires or conduits at the Site. The CM shall not commence work until Dig-Safe has responded. The work shall be performed in such manner and with reasonable precautions taken to avoid damage to utilities under the surface at the work location. The CM shall provide the Superintendent with current Dig-Safe regulations, and a copy of M.G.L. c. 82, s. 40. Any costs related to the services performed by Dig-Safe shall be borne by the CM.

(4) The CM shall comply with Public Law 92-596, "Occupational Safety and Health Act of 1970" (OSHA), with respect to all rules and regulations pertaining to construction, U.S. Code Title 29, sections 651 et seq. including Volume 36, numbers 75 and 105, of the Federal Register as amended, and as published by the U.S. Department of Labor.

(5) The CM shall comply with M.G.L. c. 149, s. 129A, and c. 82A, relative to shoring and bracing of trenches.

B. The CM shall take reasonable precautions to prevent damage, injury or loss to persons or property. Nothing herein shall relieve Subcontractors of their responsibility for the safety of persons and property, and for compliance with all Laws applicable to the Work and their activities in connection therewith. Without limitation, the CM shall take all reasonable precautions for the safety of, and the prevention of injury or damage to (1) all agents and employees and contractors on the Work and all other persons who may be affected thereby including the general public, (2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care custody or control of the CM or any of its Subcontractors or any contractors directly or indirectly contracting through any of them, and (3) other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work. The CM shall promptly remedy all damage or loss to any such property caused in whole or in part by the CM, any Subcontractor, or anyone directly or indirectly contracted or employed by any of them or by anyone for whose acts any of them may be liable. Without limiting the foregoing, the CM shall:

(1) post and maintain adequate danger signs and other warnings against hazards;

(2) promulgate safety regulations and give appropriate notices to THE OWNER and users of adjacent utilities and property;

(3) insure the adequate strength and safety of all scaffolding, staging and hoisting equipment, temporary shoring, bracing and tying;

- (4) protect adjoining private or public property;
- (5) provide barricades, temporary fences, and covered walkways required by prudent construction practices, Laws and/or the Contract Documents;
- (6) furnish approved hard hats and other personal protective equipment, furnish approved first aid supplies, furnish the name of the first aid attendant, and maintain a posted list of emergency facilities;
- (7) provide proper means of access to property where the existing access is cut off by the CM;
- (8) maintain from the beginning of any darkness or twilight through the whole of every night sufficient lights on or near any obstruction so as to guard to protect travelers from injury from such obstruction;
- (9) maintain reasonable security at the Site so as not to expose the Work and surrounding property to vandalism or malicious mischief;
- (10) provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumbers' torches and other flame and spark producing apparatus;
- (11) take prompt action to correct any dangerous or hazardous conditions.

C. The CM shall not use or store explosives in the performance of the Work unless the CM first obtains THE OWNER's prior written approval.

D. The CM shall not permit cutting or welding in or immediately adjacent to existing property of the Owner or of anyone else without THE OWNER's prior Approval in each instance.

E. The CM shall submit a safety plan to THE OWNER and designate by notice to THE OWNER a full time responsible member of its organization at the Site whose duties shall include preventing accidents.

F. The CM shall submit to THE OWNER without delay verbal and written reports of all accidents involving bodily injury or property damage arising in connection with the Work.

G. In any emergency affecting the safety of persons or property the CM shall immediately act in the exercise of reasonable judgment to prevent threatened damage, injury, or loss. The CM shall immediately notify THE OWNER of such emergency.

H. The CM shall implement and promote a "no idling" provision in all vendor contracts for vehicles on site.

14. Debris and Chemical Waste.

A. The CM shall not permit the accumulation of interior or exterior debris. The CM shall keep the Work area clean at all times. Without limitation, garbage shall be removed daily.

B. The CM shall properly classify and remove debris and waste from the Site and transport and dispose of it, all in accordance with Laws, employing a qualified and properly licensed transporter, at any landfill, disposal or recycling facility licensed under applicable Laws, including without limitation, hazardous materials laws. The CM shall make all arrangements and give and obtain all notices, communications, documentation, permits, certificates, and approvals necessary for said disposal from the Owner or officials in charge of such landfills, disposal or recycling facilities. The CM shall bear all fees and costs in connection with such classification, removal, transportation, disposal and storage. The CM shall not permit any storage of debris or waste except in accordance with Laws.

C. The CM shall not permit any open fire on the Site.

D. Chemical Waste: Chemical waste shall be stored in corrosion resistant containers, removed from the Site, and disposed of not less frequently than monthly unless more frequently required by Laws, including without limitation hazardous materials laws, or by the Contract Documents. Disposal of chemical waste shall be performed in accordance with requirements of the U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (DEP). Fueling and lubricating of vehicles and equipment shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants shall be disposed of in accordance with procedures meeting all applicable Laws. The CM shall immediately notify the Designer of any hazardous materials release large enough to require reporting under applicable Laws. The CM shall be responsible for immediately cleaning up in accordance with Laws any oil or hazardous materials releases resulting from its operations. Any costs incurred in cleaning up any such releases shall be borne by the CM.

15. Weather Protection (M.G.L. c. 149, s. 44G. and 44F(1)).

The CM shall provide "weather protection," which means temporary protection of that Work adversely affected by moisture, wind and cold. Weather protection shall be achieved by covering, enclosing and/or heating working areas such that a minimum temperature of 40 degrees Fahrenheit is maintained at the working surface during the months of November through March in order to permit construction to be carried on during such period in accordance with the Progress Schedule. After the building or portion thereof is completely enclosed by either permanent construction or substantial temporary materials having a resistance comparable to the specified permanent construction, the CM shall provide heat therein of not less than 55 degrees F. nor more than 75 degrees F. The foregoing provisions do not supersede any specific requirements for methods of construction, curing of materials and the like. Such weather protection shall be consistent with the Progress Schedule, shall permit the continuous progress of the Work necessary to maintain an orderly and efficient sequence of construction operations, shall include one digital thermometer for every 2,000 square feet of floor space or fraction thereof, shall be subject to the Approval of THE OWNER, and shall meet such additional requirements as may be specified by THE OWNER and by the Contract Documents. Protection costs shall be considered a Cost of the Work unless the parties have specifically included those costs under General Conditions.

16. Furnishings and Equipment.

When, in the opinion of the Designer, any portion of the Work is in a reasonable condition to receive fittings, furniture, or other property of the Owner not covered by this Contract, the CM shall allow THE OWNER to bring such fittings, furniture, and/or other property into such portions of the Work and shall provide all reasonable facilities and protection thereof. No such occupancy shall be construed as interfering with the provisions relating to time of completion, or as constituting an acceptance of the whole or any part of the Work. Any furniture or fittings so installed shall be placed in the Work at the risk of THE OWNER except that the CM shall be liable for damages or losses to such furniture or fittings to the extent such damages or losses arise in whole or in part from the negligence or intentional misconduct of CM, Subcontractors, their agents and/or employees, or anyone for whose acts CM is responsible. The CM shall provide for debris removal facilities at a central location on the Project, in order to provide for the disposal of debris associated with the delivery of furnishings and equipment and technology equipment that will be delivered and installed by others.

17. Sales Tax Exemption and Other Taxes.

All building materials and supplies as well as the rental charges for construction vehicles, equipment and machinery rented exclusively for use on the Site, or while being used exclusively for the transportation of materials for the Work are entitled to an exemption from sales taxes under M.G.L. c. 64H, s. 6(f). The CM shall take all action required to obtain the benefit of such sales tax exemption. The CM shall bear the cost of any sales taxes that CM incurs in connection with the Work and THE OWNER shall not reimburse the CM for any such taxes. The exemption number assigned to the CM as an exempt purchaser shall be provided to the CM by THE OWNER upon the written request of the CM. If the CM incurs any costs for taxes, such costs shall be considered Costs of the Work.

18. Final Cleaning.

At the completion of the Work or any portion or Phase thereof, in preparation for turnover to the Owner, the CM shall remove all waste materials, rubbish, tools, equipment, electrical panels, machinery and surplus materials, and professionally clean all sight-exposed surfaces so that the Work is clean and ready for occupancy. Subsequent to installation of Owner furniture, equipment, technology equipment, and telephones, the CM shall provide such additional cleaning as may be necessary to remove any soil resulting from installation of such furniture, telephones and equipment.

19. Maintenance Data.

Subject to such additional requirements as may be provided in the Contract Documents, the CM shall compile four complete and identical binders and one digital copy of operating and maintenance data for the entire Work. The CM shall submit record maintenance data to the Designer for approval, shall submit approved maintenance data to THE OWNER, and shall instruct and train the User Agency's personnel in proper inspection and maintenance procedures. CM shall professionally videotape the instruction and provide an electronic copy of the instruction as part of the Closeout Documents.

20. Closeout Procedures.

The CM shall take all actions and submit all items required for the issuance of the Certificate of Use and Occupancy and Final Acceptance as specified in Division 1 of the Contract Specifications.

ARTICLE V: MATERIALS AND EQUIPMENT**1. Materials Generally.**

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

The CM shall obtain prior written approval from THE OWNER for permission to store materials or equipment at off-site locations, to be incorporated in the Work, for which progress payments may be requested. Any and all charges for storage, inspection and verification by the Designer and THE OWNER, including insurance, shall be borne solely by the CM. Before approval, THE OWNER may require, without limitation (i) evidence that the off-site location is properly secure, (ii) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the site, and (iii) a certificate from the CM stating:

1. The name of the CM, Subcontractor or Supplier that leases or owns the warehouse or other storage facility;
2. The location of such storage facility, including the storage space; i.e., the entire premises or certain areas of a warehouse giving the number of floors or portions thereof, and a certification that the CM has visited such location, verified the storage of such material or equipment therein or thereon (including confirmation that the materials or equipment are marked and segregated as provided below), and verified payment of all current storage charges;
3. The date(s) on which the material or equipment is first stored at such facility; and
4. A description of the materials or equipment stored, including quantities, types, manufacturers and other identification information, such as serial numbers.

The CM shall furnish to THE OWNER, not less often than once per month, a current inventory of all materials or equipment being stored at any off-site location.

The CM shall mark each sealed carton or other item with the name of the Project and THE OWNER, and all materials or equipment stored off-site shall be segregated to the extent required by the Project Manager or the Designer.

The Owner, OPM, and Designer Representative shall be given full unimpeded access to visit the location where the materials or equipment is being stored and be allowed to photograph and/or inventory such materials or Equipment independent of the CM's records.

Payment for materials or equipment stored off-site shall be at the reasonable discretion of THE OWNER, taking into account the schedule requirements of the Work. Title to materials or equipment stored off-site shall be transferred at the time at which THE OWNER pays for them, free of any lien or other interest of the Supplier or any other lien or encumbrance. Notwithstanding such transfer of title, the CM shall retain sole care, custody and control of, and shall have complete responsibility for the security and protection of, all materials or equipment included in any Application for Payment which are stored at locations other than the site, and the CM assumes all risk of loss or damage to such materials or equipment, and the CM shall hold harmless THE OWNER from and against all liabilities arising out of or resulting from loss or damage, from any cause, to such materials or equipment for which payment is requested, including liens, security interests or other claims of any kind by Suppliers or other third parties relating to such materials or equipment.

B. Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices. The CM shall inform itself as to, and shall comply with, the provisions of M.G.L. c. 7, s. 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Work, including the provisions of M.G.L. c.7, s. 22, paragraph 17 which provides that there be "*a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and, second, of supplies and materials manufactured and sold elsewhere within the United States.*"

2. Shop Drawings, Product Data, and Samples.

A. The CM shall prepare and submit to the Designer, in accordance with the Designer's requirements for "Submittal Procedures", Shop Drawings, Product Data, Samples, and such other Submittals as may be required by the Contract Documents. The Designer will review and approve or take other appropriate action upon the Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review and approval by the Designer of Shop Drawings, Product Data, Samples and other Submittals shall in no way relieve the CM from responsibility for proper fitting, coordinating, construction, and construction sequencing. The CM shall furnish to the Project Manager and the Designer such information and vouchers relative to the Work, the materials therefor, and the persons employed thereon, as the Designer shall from time to time request. CM will provide coordination drawings in Revit or Navisworks and Subcontractors will use same or compatible BIM software.

B. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submission is to demonstrate for those portions of the Work for which submittals are required the way the CM proposes to conform to the information given and the design concept expressed in the Contract Documents.

C. The CM shall review, and submit to the Designer, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of THE OWNER or of separate contractors. Submittals made by the CM which are not required by the Contract Documents or which do not comply with the Contract Documents may be returned without action. The CM's attention is directed to the provisions of Section 4 of this Article V and to the Specifications.

D. The CM shall prepare and keep current for the Designer's approval a schedule of submittals which is coordinated with the Progress Schedule and allows the Designer reasonable time to review submittals.

E. The CM shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Designer. Such Work shall be in accordance with Approved submittals.

F. By submitting Shop Drawings, Product Data, Samples and similar submittals, the CM represents that the CM has determined and verified materials, field measurements, and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

G. The CM shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Designer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CM has specifically informed the Designer in writing of such deviation at the time of submittal and the Designer has given explicit written approval to the specific deviation. The CM shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals as a result of the Designer's or THE OWNER's actions.

H. The CM shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Designer on previous submittals.

I. Informational submittals upon which the Designer is not expected to take responsive action may be so identified in the Contract Documents.

J. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, such certification must be stamped by a registered Massachusetts professional in the discipline required. The Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

K. Materials furnished or used or employed under the Contract must be equal in quality to the samples furnished and be satisfactory to the Designer.

3. Tests.

A. Any material to be used in the Work may be tested or inspected at any time by the Designer with an independent testing company with the prior Approval of THE OWNER and may be rejected if it fails to comply with specified tests. THE OWNER shall pay for all testing of specified material. If the CM requests permission to use a material that was not specified, then the CM shall pay for such testing. The cost of testing of any materials that fail the testing criteria shall be borne by the CM.

B. The CM shall notify the Designer and THE OWNER of the proposed sources of materials in time to permit all required testing and inspection before the material is needed for incorporation into the Work. The CM shall have no claim arising from CM's failure to designate the proposed source or to order the material in time for adequate testing and inspection. Necessary arrangements shall be made to permit the Designer to make factory, shop or other inspection of materials or equipment ordered for the Work in process of manufacture or fabrication, or in storage elsewhere than the Site.

4. "Or Equal" Submissions.

A. Where products or materials are prescribed by manufacturer name, trade name, or catalog reference, the words "or Approved equal" shall be understood to follow, except where the Owner has approved a proprietary specification as provided in G.L. c.30 section 39M(b). An item shall be considered equal to the item so named or described if in the opinion of the Designer (a) it is at least equal in quality, durability, appearance, strength and design, (b) it performs at least equally the function imposed in the general design for the Work, and (c) it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Specifications. Any changes in the work made necessary to accommodate products or materials substituted as an "or equal" shall be at the expense of the CM. "Approved equal" shall mean an item with respect to which Designer shall have issued a written statement to the CM to the effect that the item is, in Designer's opinion, equal within the meaning of this paragraph to that prescribed in the Contract Documents.

B. The CM shall be responsible for providing the Designer with any information and test results that the Designer reasonably requires to determine whether or not a material is equal to a material named or described in the Contract Documents.

C. Whenever the CM submits a material for approval as a substitute for a material named or described in the Contract Documents, such submission shall be made at least sixty (60) days prior to the date the materials will be used in the Work. In no event shall the CM maintain a claim for delays based upon the Designer's review of such substituted materials if the CM has failed to comply with the sixty (60) day submission requirement.

D. Substitution requests that result in an increase in the Cost of the Work shall not be considered without the prior consent of the OWNER.

5. Delivery and Storage of Materials; Inspection.

A. Materials and equipment shall be progressively delivered to the Site so that there will be neither delay in the progress of the Work nor an undue accumulation of materials that are not to be used within a reasonable time and so that their security, quality, and fitness of the materials for the Work is preserved. CM shall prepare adequate storage and staging areas for materials and equipment delivered to the Site.

B. Materials stored off Site shall be insured and stored at the expense of the CM so as to guarantee the preservation of their security, quality and fitness for the Work. Without derogating from the CM's responsibilities in the previous sentence, when necessary to avoid deterioration or damage, material (on or off Site) shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be properly protected.

C. Expenses for inspection of material by the Designer and/or the Project Manager personnel including travel, quarters, and subsistence shall be borne by the CM or Subcontractor requesting the inspection of material stored beyond fifty miles from the project site, as part of the Contract Price. If the CM requests an inspection of material stored outside the Commonwealth of Massachusetts, THE OWNER will initially pay for all expenses of inspecting the material incurred by the Designer and/or the Project Manager's personnel including travel, quarters, and subsistence. THE OWNER will then give CM an invoice for those costs and the CM shall submit a credit Change Order for the amount of those expenses.

D. Stored materials either at the Site or at some other location agreed upon in writing shall be so located as to facilitate prompt inspection and even though approved before storage, may again be inspected prior to their use in the Work.

E. All storage sites shall be restored to their original condition by the CM at the CM's expense.

F. The CM shall take charge of materials for its use delivered to or in the vicinity of the place where the Work is being done, whether furnished by the Owner or otherwise; the CM shall notify the Designer as soon as any such materials are so delivered, allow them to be examined by the Designer, and furnish workers to assist therewith.

6. Defective, Damaged, or Deteriorated Materials and Rejection Thereof.

The Designer may reject materials if the Designer reasonably determines that such materials do not conform to the Contract Documents in any manner, including but not limited to materials that have become damaged or deteriorated from improper

storage whether or not such materials have previously been accepted. The CM at its own expense shall remove rejected materials from the Work. No rejected material, the defects of which have been subsequently corrected, shall be used except with the written permission of the Designer. Should the CM fail to remove rejected material within a reasonable time, THE OWNER may, in addition to any other available remedies, remove and/or replace the rejected material, and deduct the cost of such removal and/or replacement from any moneys due or to become due the CM by issuing a credit change order against the GMP. No extra time shall be allowed for completion of Work by reason of such rejection. The inspection of the Work shall not relieve the CM of any of its obligations herein prescribed, and any defective Work shall be corrected. Work not conforming to the Contract Documents may be rejected notwithstanding that such Work and materials have been previously overlooked or misjudged by the Designer and accepted for payment. If the Work or any part thereof shall be found defective at any time before Final Acceptance of the whole Work, the CM shall forthwith make good such defect in a manner satisfactory to the Designer. Nothing in the Contract shall be construed as vesting in the CM any property rights in the materials used after they have been attached or affixed to the Work or the Site; but all such materials shall upon being so attached or affixed become the property of the Owner.

ARTICLE VI: PROSECUTION AND PROGRESS

1. Beginning, Progress Schedule, and Completion of Work.

A. The Contract time shall commence upon the date specified and in accordance with any conditions in the Notice to Proceed.

B. Prior to the submission of the first progress payment, CM shall submit to the Designer and the Project Manager for approval a progress schedule which complies with the contract requirements. Upon Approval by THE OWNER, said schedule shall constitute the Progress Schedule.

C. Time is of the essence of this Contract. The Work shall be completed within the time specified in the Owner-CM Agreement. Should the CM require additional time to complete the Work, the CM shall document the reasons therefor and submit a written request for an extension of time within 20 days of the occurrence of the event alleged to be the cause of the delay, as provided in this Article and in Article VII of these General Conditions of the Contract. Failure to submit said written request within the time required by the preceding sentence shall preclude the CM from subsequently claiming any time extension due to said delay.

D. CM must use diligent efforts to mitigate any potential schedule impacts and must demonstrate actual impact on critical path activity to receive a Contract Time extension. CM acknowledges that managing day-to-day design changes, clarifications, RFIs and the like is part of CM's base scope of Work, and CM has contemplated such work in preparing its critical path schedule. CM agrees to meet with the Architect on a weekly basis to assist in prioritizing RFI responses in order to avoid potential delays or claims. CM agrees that neither the specification by CM of a "due date" or "return date" for any request for clarification, RFI or the like, nor the failure of Owner or Architect to meet any such required due date or return date, shall necessarily be grounds for a claim for adjustment of the Contract Time. Without limiting the foregoing, CM expressly agrees that due dates or return dates inserted by "default" by any computer software program shall not be binding upon Owner or Architect or be the basis for any claim for adjustment of the Contract Time.

E. If, in the opinion of THE OWNER, the CM fails to comply with the Progress Schedule, due to reasons that are within the reasonable ability of the CM to control, THE OWNER may but shall not be required to give the CM written notice of such failure and five days to cure the same. Unless the CM shall within that five days take all necessary steps to do so, including, if THE OWNER requires, increasing its forces, equipment and plant and continue to do so until, in the opinion of the Designer or Project Manager the failure is corrected, THE OWNER may at the CM's expense and without terminating this Contract employ and direct the labors of existing or such additional forces, equipment and plant as may in the Designer's or Project Manager's opinion be necessary to insure the completion of the Work or such part thereof within the time specified in the Contract Documents or at the earliest possible date thereafter. THE OWNER may exercise its rights under this Article at any time and from time to time without waiving any of its rights under this Contract, at law or in equity, including, without limitation, the right to deem this Contract terminated or to order the CM to discontinue the Work at any time thereafter. The CM shall continue to perform the remaining Work under this Contract even if THE OWNER elects to have another contractor perform a portion of the Work under this Article.

F. THE OWNER shall deduct the cost of any actions THE OWNER takes under this Article from any amount then due or which might have become due to the CM under this Contract had the CM performed as required. On demand, the CM shall pay THE OWNER any amount by which the cost of completing all or any portion of the Work exceeds the amount attributable to that Work under the Contract Documents. THE OWNER shall have no obligation to obtain

competitive bids or the lowest cost for completing the Work or any part thereof. THE OWNER's election to complete all or part of the Work shall not release the CM from any liability for failure to complete the Work as the Contract Documents require, and shall not entitle the CM to a claim for an increase in the Contract Price or an extension of the time for completing the Work.

2. Failure to Complete Work on Time - Liquidated Damages.

A. If liquidated damages are specified in the Owner - CM Agreement, THE OWNER has determined that its damages as a result of CM's failure to complete the Work to the point at which it qualifies for the issuance of a Certificate of Substantial Completion will be difficult or impracticable to ascertain. Accordingly, if the Work is not substantially completed by the date specified in this Contract, including Phased Completion dates when specified, or by any extended date approved by the Owner, the CM shall pay to THE OWNER the sum designated as liquidated damages in the Contract. Such moneys shall be paid as liquidated damages, not as a penalty, to cover losses and expenses to THE OWNER and/or the User Agency resulting from the fact that the Work is not substantially completed on time.

B. THE OWNER may recover such liquidated damages by deducting the amount thereof from any moneys due or that might become due the CM, and if such moneys shall be insufficient to cover the liquidated damages, then the CM or the Surety shall pay to THE OWNER the amount due.

C. Permitting the CM to continue and finish the Work or any portion of it after the time fixed in the Contract for its completion shall not be deemed as a waiver of any of the Owner's rights hereunder, at law or in equity.

D. Liquidated damages or a portion thereof may be waived by THE OWNER at the Owner's sole discretion.

E. Failure by THE OWNER to specify a sum as liquidated damages in the Owner-CM Agreement, or the insertion of "N/A" or "none" in the space provided therein for liquidated damages, shall not be deemed a waiver of THE OWNER's right to recover actual damages arising from the CM's failure to complete the Work on time.

3. Delays; Time Extensions, No Damages for Delay Statutory Provisions (M.G.L. c. 30, s. 39O).

A. Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by law as set forth in paragraph B below, the CM shall not be entitled to an increase in the Contract Price or to receive damages on account of any hindrances or delays, avoidable or unavoidable; but if any delay occurs that is caused in the opinion of THE OWNER, by parties or events beyond the reasonable ability of the CM to control, the CM shall be entitled to an extension of time. Delays caused by suppliers, Subcontractors and sub-subcontractors shall be considered to be within the control of the CM. The length of the extension shall be sufficient in the opinion of THE OWNER for the CM to complete the Work.

B. The CM may be entitled to an extension of time if the CM can demonstrate to the reasonable satisfaction of the Owner, upon the recommendation of the Designer and the Project Manager, that the critical path schedule for the Project has been adversely impacted by events of delay that are beyond the reasonable ability of the CM to control, and that the CM cannot revise its critical path schedule to eliminate the need for a time extension; provided however that the Owner and CM are entitled to share the "float" time in the CPM schedule if the utilization of such time avoids a time extension. Should the CM require additional time to complete the Work, it shall document its reasons therefor and request an extension of time at the time the alleged delay occurred, as provided in this Article. Failure to notify the Owner of any delay in writing within ten days from the date the event arose that caused such delay, shall preclude the CM from requesting and obtaining a time extension due to said delay. Requests for extensions of time shall be submitted as a Change Order request to the Owner.

C. No extension of time shall be granted because of seasonal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the CM, whether occurring within the time originally scheduled for completion or within the period of any extension granted. There shall be no increase in the Contract Price on account of any additional costs of operations or conditions resulting therefrom.

D. (1) Extension of Time. Upon a timely and proper request, the CM shall be entitled to an appropriate extension of time to complete the Project should any hindrances, suspensions, interruptions or delays to the critical path schedule result from one or more of the following circumstances:

- (i) failure of the Owner to provide the CM with a Notice to Proceed in a timely manner;
- (ii) encountering unanticipated special wastes or historical or archaeological resources;
- (iii) encountering unanticipated subsurface conditions differing from those anticipated from the information provided prior to construction;

- (iv) inability of the CM to obtain the required permits and/or jurisdictional approvals despite the best efforts of the CM to obtain such permits and/or approvals;
- (v) any other cause beyond the reasonable ability of the CM to control which the Owner determines justifies an extension of time.

E. The CM's estimates of the extension of time must be accompanied by a detailed analysis identifying each action(s) or additional work item(s) which caused the delay and also identifying exactly which items along the critical path were impacted or delayed. Accumulating the amount of time required to complete a series of additional work items or delays and adding this time to the original Contract Time will not be considered justification for an extension of time. In order to justify an extension of Contract Time, the CM must prove that the critical path for construction has been impacted by circumstances beyond the control of the CM.

F. If a suspension, delay, interruption or failure to act of THE OWNER increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the CM with respect to such increase as the CM shall have against THE OWNER by virtue of (a) and (b) of M.G.L. c. 30, s. 39O set forth below, but nothing in provisions (a) and (b) shall alter any other rights which the CM or the Subcontractor may have against each other. As used in the statutory language of (a) and (b) below, "contract" means this Contract, "general contractor" means the CM and "Awarding Authority" means THE OWNER:

"(a) The Awarding Authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Awarding Authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the Awarding Authority to act within the time specified in this contract, the Awarding Authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the Awarding Authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The general contractor must submit the amount of a claim under provision (a) to the Awarding Authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and except for costs due to a suspension order, the Awarding Authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the Awarding Authority in writing of the act or failure to act involved in the claim."

G. No Damages for Delay

Except as provided in Paragraph F, when the Owner issues a written order suspending the work, as provided in Paragraph F, the CM shall have no claim for damages of any kind against the Owner on account of any delay in the commencement or performance of any of the Work or any delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Designer, or otherwise.

4. Use and Occupancy Prior to Final Acceptance.

A. The CM agrees to the Owner's use and occupancy of the Project or any portion thereof before Final Acceptance of the Work by the OWNER.

B. THE OWNER and the User Agency will cooperate with the CM with respect to the completion of the Work by taking such reasonable steps as may be possible to avoid interference with the CM's Work provided that they do not interfere with the proper functioning of the facility.

C. The CM shall not be responsible for wear and tear or damage resulting solely from temporary occupancy.

D. Use and occupancy of any part of the Work prior to Final Acceptance by THE OWNER shall not relieve the CM from maintaining the required payment and performance bonds and insurance (to the extent that insurance is required to be maintained after Substantial Completion) required by this Contract.

5. Certificate of Substantial Completion, Final Completion.

A. When the Work, or portion thereof which THE OWNER agrees to accept separately, has reached the state of Substantial Completion, the CM shall develop and provide to the Owner, OPM and Designer a Preliminary Contractor Punch List. The CM shall complete all items on the Preliminary Punch List with its Subcontractors prior to the

CM's request to have the Work inspected by the Owner, Project Manager and Designer. The CM shall participate with the Designer, Project Manager and THE OWNER, in the development of a Final Punch List identifying those items of unfinished or unacceptable Work that remain to be performed or corrected under the Contract. Failure to include any incomplete or defective item on the Punch List shall not relieve the CM of the obligation to complete all Work in accordance with the Contract Documents.

B. Before the Work shall be deemed completed to the point where it is ready for the issuance of a Certificate of Substantial Completion and a Certificate of Final Completion, the CM shall comply with all the requirements designated in the Contract including but not limited to the requirements listed below in Paragraph C.

C. The CM shall provide a written request to the Designer for certification of Substantial Completion. This request shall provide written certification that:

- a. Equipment systems have been tested in the presence of the Owner and the MSBA's Commissioning Agent and are fully operational for its intended use.
- b. Owner's designated staff have been instructed on all equipment and systems and an Owner signed receipt has been furnished to the Designer, along with the video of the training.
- c. Operation and Maintenance Manuals and record drawings have been submitted to and reviewed by the Designer and have been delivered to the Owner with required corrections prior the CM's request for Substantial Completion. Submit copies of receipts signed by Owner.
- d. Owner has received the specified guarantees, spare parts and attic stock, and the Owner has signed a receipt of same.
- e. The Work has been completed and is ready for final inspection and an appropriate Certificate of Occupancy has been issued.
- f. "Final Completion" will not occur until all bills have been paid, all claims have been settled, and appropriate releases are provided to the Designer and THE OWNER for approval, and all requirements of the Contract Documents and Laws have been satisfied.

6. One-Year Warranty Repair List and Inspection.

Approximately 30 days prior to the expiration of the comprehensive one-year warranty period required by Article IX, the CM shall schedule an appointment with THE OWNER for a re-inspection of the Work with THE OWNER and User Agency, and shall thereafter inspect the work at the time scheduled. Based on this inspection and on prior inspections, THE OWNER and/or User Agency shall issue a "Warranty Repair List" of items to be corrected by the CM. The CM shall make the repairs and/or replacements listed within 30 days of the issuance of the Warranty Repair List unless otherwise agreed by THE OWNER in writing.

ARTICLE VII: CHANGES IN THE WORK

1. Change Orders Generally.

A. No changes in the Work, the Contract Price, the Substantial and Final Completion dates, or any other provision of an Approval by THE OWNER of the Contract Documents shall be made in absence of a Change Order as defined in Article I of these General Conditions of the Contract, directing the CM to perform such changes. Any request for a change in the provisions of this Contract submitted by the CM must be made in writing and in accordance with the provisions of this Contract. A Change Order Request shall be submitted to the Designer, and a copy shall simultaneously be submitted to the Project Manager.

B. A request for a change in the provisions of this Contract may originate with THE OWNER, the CM, or the Designer. The request must be made in writing and in accordance with the provisions of this Contract. When the CM believes that an event or circumstance gives rise to an adjustment in the Contract Price and/or the Contract Time it shall submit a request for a change order to the Designer and simultaneously to the Project Manager, in accordance with the Contract.

C. Prior to the approval of a Change Order, the Owner, through the Designer or the Project Manager, may issue a written directive to the CM (sometimes called a Notice to Proceed or a Proposed Change Order) instructing the CM to make changes in the Work within the scope of the Contract, including but not limited to, changes in: (1) the Plans and

Specifications; (2) the method or manner of performance of the Work; (3) the Owner-furnished facilities, equipment, materials, services or Site; (4) the schedule for performance of the Work.

D. The CM shall immediately perform any changes in the work that are ordered by THE OWNER.

E. Whenever a Change Order or written directive issued under Paragraph C will cause a change in the CM's cost or the time required to perform the Work, the CM or THE OWNER may request an adjustment in the Contract Price. Such request shall be in writing and shall be submitted by the party making such claim to the other party before commencement of the pertinent work or as soon thereafter as possible.

F. THE OWNER and the CM shall negotiate in good faith an agreement on an equitable adjustment in the Contract Price, pursuant to the methods described in the following Paragraph 2, and/or time if appropriate, before commencement of the pertinent work or as soon thereafter as is possible. In the absence of an agreement for an equitable adjustment, THE OWNER shall determine the costs attributable to the change and provide the CM with a written notice to that effect, in which event the CM may follow the procedure described in Paragraph 3. Work Performed under Protest.

G. During the negotiation of an equitable adjustment in the Contract Price, the CM shall, if requested, provide THE OWNER with all cost, pricing data and any other information or documentation used by it in computing the amount of the equitable adjustment, and the CM shall certify that the pricing data used was accurate, complete, current and reasonable. If THE OWNER subsequently determines that the data submitted by the CM was incomplete, incorrect, not current, or unreasonable, THE OWNER may exclude such data from consideration under the equitable adjustment request.

H. Whenever the Construction Manager is entitled or believes it is entitled to a Change Order adjusting the Contract Price, the Construction Manager shall maintain separate accounts (by job order or other suitable accounting procedure) of all costs incurred and attributable to such work. The Construction Manager shall maintain a computerized accounting system, acceptable to THE OWNER, in which current information as to the status of all such work is maintained. The Construction Manager shall maintain such contemporaneous records as are necessary to provide a clear distinction between the costs of all Change Order Work and proposed Change Order Work, and the costs of other Work.

I. Notwithstanding any provisions in the Contract Documents to the contrary, no additional General Conditions Cost shall be due for any Change Order or portion of a Change Order resulting from or attributable to:

- (1) Increases in the cost of Allowance items;
- (2) Substitutions of equipment or materials which are functionally similar to equipment or materials specified in the Contract Documents.

2. Methods of Computing Equitable Adjustments.

A. Equitable adjustments in the Contract Price shall be determined according to one of the following methods, or a combination thereof, as determined by THE OWNER:

(1) fixed price basis, provided that the fixed price shall be inclusive of items listed in (3) (a) through (d) below and shall be computed in accordance with those provisions;

(2) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices, provided that the unit prices shall be inclusive of all costs related to such equitable adjustment;

(3) time and materials basis to be subsequently adjusted on the basis of actual costs (but subject to a predetermined "not to exceed limit") calculated as follows:

(a) the direct cost (or credit) for labor at the prevailing wage rates established for this Contract pursuant to M.G.L. c. 149, ss. 26-27H, and the direct cost for material and use of equipment;

(b) plus (or minus) the cost of Workmen's Compensation Insurance, Liability Insurance, Federal Social Security and Massachusetts Unemployment Compensation, or as an alternative the CM may elect to use a flat 30% of the total labor rate computed in accordance with subparagraph (a) above;

(c) plus an allowance equal to 10% of the amount of (a) above for General Conditions, overhead, superintendence, fee, and profit. For that portion of the change order costs in paragraph (a) that the CM self performs, the CM shall retain the 10% allowance. For that portion of the change order costs that a Subcontractor performs, the CM shall pay the Subcontractor 5% of the allowance to cover the subcontractor's overhead, superintendence, fee and profit and the CM shall retain the remaining 5%.

(d) plus the actual direct premium cost of payment and performance bonds required of CM and Trade Subcontractors for this Contract.

B. If the net change is an addition to the Contract Price, it shall include the CM's overhead, superintendence and profit. For any change that does not include labor performed or materials installed in the project, there will be no markup for the CM's or Subcontractor's overhead, superintendence, and profit, even though there may be a net increase in the Contract Price. Charges for small tools known as "tools of the trade" are not to be computed in the amount of any change in the Contract Price.

C. Adjustment to the amounts of Subcontracts made under the provisions of the Procedure for Award of Subcontracts shall not be considered Change Orders and shall not entitle the CM to any adjustments for overhead, profit, and superintendence, although THE OWNER may require that such Contract adjustments be processed on standard Change Order and equitable adjustment forms.

3. Work Performed Under Protest.

The CM agrees to perform all Work as directed by THE OWNER, and if THE OWNER determines that certain Work that the CM believes to be or to warrant a Change Order under this Article does not represent a change in the Work, the CM shall perform said Work. The CM shall be deemed to have concurred with THE OWNER's determination as aforesaid unless the CM shall perform Work under protest in compliance with the following sub-paragraphs (1) and (2) below:

(1) If the CM claims compensation for a change in the Work that is not deemed by THE OWNER to be a change or to warrant additional compensation as claimed by the CM, the CM shall on or before the first working day following the commencement of any such work or the sustaining of any such damage submit to THE OWNER a written statement of the nature of such work or claim. The CM shall not be entitled to additional compensation for any work performed or damage sustained for which written notice is not given within the time limit specified in the preceding sentence, even though similar in character to work or damage with respect to which notice is timely given.

(2) On or before the second working day after the commencement of such work or the sustaining of such damage, and daily thereafter, the CM shall file with the Clerk of Works, the Designer, and the Project Manager, itemized statements of the details and costs of such work performed or damage sustained. The CM shall submit Daily Time and Materials Reports to record all labor and material used. If the CM fails to submit such statements, then the CM shall not be entitled to later pursue a claim against Owner for additional compensation for any such work or damages.

4. False Claims, Statutory Provisions Regarding Changes.

A. Criminal Penalties: The CM's attention is directed to M.G.L. c. 30, s. 39I which provides criminal penalties for unauthorized deviations from the Plans and Specifications, and to M.G.L. c. 30, s. 39J and M.G.L. c. 7, s. 42E-42I. The CM's attention is also directed to M.G.L. 266, s. 67B which provides criminal penalties for false claims by Contractor under this Contract:

"Whoever makes or presents to any employee, department, agency or public instrumentality of the commonwealth, or of any political subdivision thereof, any claim upon or against any department, agency, or public instrumentality of the commonwealth, or any political subdivision thereof, knowing such claim to be false, fictitious, or fraudulent, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than five years, or in the house of correction for not more than two and one-half years, or both."

B. Differing Site Conditions (M.G.L. c. 30, s. 39N): *"If, during the progress of the work, the contractor or the Awarding Authority discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing Site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly."*

C. Timely Decision By THE OWNER(M.G.L. c. 30, s. 39P): *"Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the Awarding Authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the Awarding Authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made."*

ARTICLE VIII: PAYMENT PROVISIONS

1. Schedule of Values.

Before submission of the first request for payment under this Contract, the CM shall submit to THE OWNER a schedule of values for its approval, which shall include all preconstruction activities as well as all construction activities and shall be in sufficient detail to reflect the various preconstruction activities and the major components of each construction trade (with relevant Subcontractors as well as MBE/WBEs noted), including quantities when requested, aggregating the GMP with detail for the Contingency and divided so as to facilitate payments for work under each section of the Specifications. The schedule of values shall be formatted so as to conform with the Massachusetts School Building Authority's "ProPay" cost code system. The schedule shall be prepared in such form and supported by such data to substantiate its accuracy as THE OWNER may require. When Approved by THE OWNER, it shall constitute the Schedule of Values and shall be used only as a basis for the CM's requests for payments and credits, the first of which payments shall not be made until such Schedule of Values is approved by THE OWNER. If the MSBA requires any revisions to the format of the Schedule of Values, the CM and the Owner shall make the revisions.

2. Payment Liabilities of CM.

A. The CM shall pay to THE OWNER all expenses, losses and damages, as determined by THE OWNER, incurred in consequence of any default, defect, omission or mistake of the CM or his employees or Subcontractors or the making good thereof.

B. If the Work (or a portion thereof) is not substantially completed and the CM has not satisfied the requirements for the issuance of a Certificate of Substantial Completion by the date specified in the Contract, the CM shall pay to the Owner liquidated damages as provided in the Contract.

3. Retention of Moneys by THE OWNER.

A. THE OWNER may keep any moneys which would otherwise be payable at any time hereunder, and apply the same, or so much as may be necessary therefor, to (1) THE OWNER 's expenditures for the CM's account, (2) to secure THE OWNER's remedies against the CM for the CM's breach of its obligations under this Contract or the breach of any person performing any part of the Work and (3) the payment of any expenses, losses or damages incurred by THE OWNER as a result of the failure of the CM to perform its obligations hereunder. THE OWNER may retain, until all claims are settled, such moneys as THE OWNER estimates to be the fair value of THE OWNER's claims against the CM, and of all claims for labor performed or furnished and for materials used or employed in or in connection with the Work and for the rental of vehicles, appliances and equipment employed and for the employment of substitute contractors and labor in connection with the Work filed in accordance with M.G.L. c. 30, s. 39A and s. 39F. THE OWNER may make such settlements and apply thereto any moneys retained under this Contract.

4. Applications for Payment.

A. The CM shall, once in each month submit to THE OWNER an application for payment for its periodic payment estimate, showing the total amount of Work done to the time of such estimate and the value thereof as approved by THE OWNER. It shall be the sole responsibility of the CM to deliver or cause to be delivered to the Designer said periodic estimate, in proper form, approved as provided above and arithmetically correct, and signed by the Designer and the Project Manager, if requested by the Owner. All periodic estimates shall contain such certifications and other evidence supporting the CM's right to payment as THE OWNER may require, including without limitation, forms THE OWNER may require establishing that title to the equipment or materials is unencumbered and has been transferred to THE OWNER. Within the periodic estimates the CM shall include a detailed log along with supporting invoices for all General Requirements costs incurred. The CM shall include in such periodic estimate only such materials as are incorporated in the Work, except as provided in paragraph C below. THE OWNER shall retain five percent of such estimated value as part security for the

completion of the Work and shall pay to the CM while carrying on the Work the balance not retained as aforesaid, subject to the Approval of THE OWNER after deducting therefrom all previous payments and all sums to be kept under the provisions of this Contract, provided that the Owner shall not assess retainage against applications for payment for the CM's Preconstruction Services Fee.

B. Each periodic payment estimate shall constitute the CM's representation that (1) the payment then requested to be disbursed has been incurred by the CM on account of the Work and is justly due to Subcontractors or, to the CM in the case of other Work performed by the CM on account thereof, (2) the materials, supplies and equipment for which Application for Payment is being submitted have been installed or incorporated into the Work or have been stored at the Site or at such off Site storage locations as THE OWNER shall have Approved, (3) the materials, supplies and equipment are insured in accordance with the provisions of this Contract, (4) the materials, supplies and equipment are owned by the Owner and are not subject to any liens or encumbrances, (5) the Work which is the subject of such periodic estimate has been performed in accordance with the Contract Documents and (6) that all due and payable bills with respect to the Work have been paid to date and shall be paid from the proceeds of such periodic estimate. The CM's attention is directed to the criminal penalties for false claims.

C. The CM may include in a periodic payment estimate the value of materials or equipment delivered at the Site (or at some location agreed to in writing by THE OWNER) only upon delivery to THE OWNER of: (1) an acceptable transfer of title on the form provided by THE OWNER; (2) written certification by the CM (or applicable subcontractor) on the form provided by THE OWNER that the CM (or the Subcontractor which executed the transfer of title) is the lawful owner and that the materials or equipment are free from all encumbrances, accompanied by receipted invoices or other acceptable proof of encumbrance-free ownership if such proof is deemed necessary by THE OWNER; (3) a stored materials insurance binder that covers the materials for which payment is requested, that names the Owner as an insured party should the stored materials be subjected to any casualty, loss, or theft prior to their inclusion in the Work. The material(s) or equipment must, in the judgment of the Designer (1) meet the requirements of the Contract, including prior drawing, product data, and sample approval, (2) be ready for use, and (3) be properly stored by the CM and be adequately protected until incorporated into the Work. Off site materials shall be made available to the Owner for inspection with seven days prior notice provided to the Owner,

D. THE OWNER may make changes in any periodic payment estimate submitted by the CM and the payment due shall be computed in accordance with the changes so made.

E. No certificate for payment and no progress payment shall constitute acceptance of Work that is not in accordance with the Contract Documents.

F. The CM and all Subcontractors furnishing labor on this Contract agree to furnish certified payroll reports, at no additional expense to THE OWNER on a monthly basis. THE OWNER may at all reasonable times audit such reports.

5. Periodic Payments

THE OWNER shall make payment to the CM in accordance with M.G.L. c. 30 sect. 39K, which provides as follows:

"Within fifteen days after receipt from the CM at the place designated by the Owner, if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the Owner shall make a periodic payment to the CM for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the CM has title or to which a trade contractor has title and has authorized the CM to transfer title to the Owner less (1) a retention based on its estimate of the fair value of its claims against the CM and less (2) a retention not exceeding five percent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the Owner, less than one percent of the adjusted contract price, or (b) the CM substantially completes the work and the Owner takes possession for occupancy, whichever occurs first, the Owner shall pay the CM the entire balance due on the Contract less a retention based on its estimate of the fair value of its claims against the CM and the cost of completing the incomplete and unsatisfactory work."

THE OWNER may make changes in any periodic payment estimate submitted by the CM and the payment due on said periodic payment estimate shall be computed in accordance with the change so made, but such changes or any requirement for a corrected periodic payment estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that THE OWNER may, within seven days after receipt, return to the CM for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic payment estimate shall be the date of receipt of the corrected periodic estimate in

proper form and with arithmetically correct computations. The date of receipt of a periodic payment estimate received on a Saturday shall be the first working day thereafter.

All periodic payment estimates shall be submitted to THE OWNER as provided herein, and the date of receipt by THE OWNER or its designee shall be marked on the payment estimate. All periodic estimates shall be based on the Schedule of Values and shall be submitted in form satisfactory to the Designer and the Project Manager.

6. Termination for Failure to Complete Punchlist

Notwithstanding the provisions of this section, at any time after the value of the work remaining to be done is, in the estimation of THE OWNER, less than 1 per cent of the adjusted contract price, or THE OWNER has determined that the CM has substantially completed the work and THE OWNER has taken possession for occupancy, THE OWNER may send to the CM by certified mail, return receipt requested, a complete and final punchlist of all incomplete and unsatisfactory work items, including, for each item on the punchlist, a good faith estimate of the fair and reasonable cost of completing such item. The CM shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the CM fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by THE OWNER or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the CM by certified mail, return receipt requested, THE OWNER may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the CM and such termination shall be without prejudice to any other rights or remedies THE OWNER may have under the contract. THE OWNER shall note any such termination in the evaluation form to be filed by THE OWNER pursuant to the provisions of section 44D of chapter 149.

7. Payment of Subcontractors (M.G.L. c. 30, s. 39F).

The CM shall make payments to Subcontractors in accordance with M.G.L. c.30, s. 39F which is quoted in this section below. For the purposes of this Contract, the word "forthwith" appearing in paragraph (1)(a) of the quoted provision shall be deemed to mean "within five (5) business days."

"1(a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the Plans and Specifications, the entire balance due under the subcontract less amounts retained by THE OWNER as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Awarding Authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the Awarding Authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(c) Each payment made by the Awarding Authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the Awarding Authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the Awarding Authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (1) and (2) the Awarding Authority shall act upon the demand as provided in this section.

(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the Awarding Authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the Awarding Authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the Awarding Authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the Awarding Authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement to or sent by certified mail to the Awarding Authority and a

copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the Awarding Authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Awarding Authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the Awarding Authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided that the Awarding Authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The Awarding Authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The Awarding Authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (5) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the Awarding Authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to subparagraph (6) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the General contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the Awarding Authority to the general contractor to the extent of such payment.

(h) The Awarding Authority shall deduct from payments to a General contractor amounts which, together with the deposits in interest bearing accounts pursuant to subparagraph (6) are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

(i) If the subcontractor does not receive payment as provided in subparagraph (1) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (1), the subcontractor may demand direct payment by following the procedure in subparagraph (4) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the Awarding Authority shall proceed as provided in subparagraph (e), (f), (g) and (h)."

(2) Any assignment by a subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of section twenty-nine of chapter one hundred forty-nine shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the Awarding Authority or which are on deposit pursuant to subparagraph (6) shall be subordinate to the rights of all subcontractors who are entitled to be paid under this section and who have not been paid in full.

(3) "subcontractor" as used in this section (I) for contracts awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall mean a person who files a sub-bid and received a subcontract as a result of that filed sub-bid or who is approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, (ii) for contracts awarded as provided in paragraph (1) of section thirty-nine M of chapter thirty shall mean a person approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the commonwealth not awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall also mean a person contracting with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.

(4) A general contractor or a subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposit as provided in subparagraph (6) by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in subparagraph (6) by a petition in equity in the superior court against the Awarding Authority and the

general contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. Sections fifty-nine and fifty-nine B of chapter two hundred thirty-one shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to sections fifty-nine and fifty-nine B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any subcontractor with the petition of one or more subcontractors or the same general Contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a subcontractor filing a demand for direct payment for which no funds due the general contractor are available for direct payment shall have a right to file a petition in court of equity against the Awarding Authority claiming a demand for direct payment is premature and such subcontractor must file the petition before the Awarding Authority has made a direct payment to the subcontractor and has made a deposit of the disputed portion as provided in part (iii) of subparagraph (5) and in subparagraph (6).

(5) In any petition to collect any claim for which a subcontractor has filed a demand for direct payment the court shall, upon motion of the general contractor, reduce by the amount of any deposit of a disputed amount by the Awarding Authority as provided in part (iii) of subparagraph (5) and in subparagraph (6) any amount held under a trustee writ or pursuant to a restraining order or injunction."

8. Final Payment; Release of Claims by CM.

Upon Final Acceptance of the Work the CM shall be entitled to payment of the balance of the Contract Price. Final payment shall be as provided in this Article above and in accordance with any process set forth in the Contract Documents. The CM agrees to execute a Certificate of Final Inspection, Release and Acceptance as a condition precedent to Final Payment. The acceptance by the CM of the Final Payment made as aforesaid, or the execution of the Certificate of Final Acceptance by the CM, shall constitute a release of the Owner, the Designer, the Project Manager and every member and agent of any of them, from all claims of and liability to the CM for anything done or furnished for or relating to the Work, or for any act or neglect of the Owner, the Designer, the Project Manager, or of any person relating to or affecting the Work. Final Acceptance shall not relieve CM of the requirements of any of the provisions of this Contract, to the extent that the same are intended to survive Final Acceptance.

ARTICLE IX. GUARANTEES AND WARRANTIES

1. General Warranty.

If at any time during the period of one (1) year from the date the Owner accepts the Work as Substantially Complete, any part of such Work from any Phase, shall in the reasonable opinion of THE OWNER, be defective or require replacing or repairing, or damage to other property of the Owner is caused by any defect in the Work, THE OWNER shall notify the CM in writing to make the required repairs or replacements and repair such damage. If the CM shall neglect to commence such repairs or replacements to the satisfaction of THE OWNER within ten (10) days from the date of the giving of such notice, then THE OWNER may employ other persons to make the same. In the case of an emergency, the Owner may direct the CM to perform guaranty work in a shorter period of time and the Owner may undertake any immediate actions and incur reasonable costs to preserve the safety of the building or its occupants. The CM agrees, upon demand, to pay to THE OWNER all amounts which it expends for such repairs, replacements, and/or damages. During this one-year guarantee period any corrective work shall be performed under all the applicable terms of this Contract. This one-year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract.

2. Special Guarantees and Warranties.

A. The CM's obligation to correct Work as set forth in paragraph 1 above is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various sections of the Specifications.

B. Guarantees and warranties required in the various sections of the Specifications must be delivered to the Designer before final payment to the CM may be made, or in the case of guarantees and warranties which originate with a subcontractor's section of the Work, before final payment for the amount of that subtrade or for the phase of Work to which the guarantee or warranty relates.

C. The failure to deliver a required guarantee or warranty shall constitute a failure to fully complete the Work in accordance with the Contract Documents.

ARTICLE X: MISCELLANEOUS LEGAL REQUIREMENTS.

1. CM to be Informed.

The CM shall inform itself of all existing and future Laws in any manner affecting those engaged or employed in the Work, or the materials used or employed in the Work, or in a anyway affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any applicable jurisdiction or authority over the Work.

2. Compliance with all Laws.

The CM shall cause all persons employed in the performance of the Work to comply with, all existing and future Laws, including but not limited to those set forth below:

A. Corporate Disclosures. The CM, if a foreign corporation, shall comply with M.G.L. c. 181, s.3 and s. 5, and M.G.L. c. 30, s.39L.

B. Veterans Preference. In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the performance of Work in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined M.G.L. c.4, s.7 (34), and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.

C. Prevailing Wages. The CM shall comply with M.G.L. c. 149, ss. 26- 27H. The prevailing wage schedule is found in Exhibit 3 to the Owner-CM Agreement, listing the prevailing minimum wage rates that must be paid to all workers employed in the Work. THE OWNER is not responsible for any errors, omissions, or misprints in the said schedule. Such Schedule shall continue to be the minimum rate wages payable to workers employed in the Work throughout the term of this Contract, subject to the exceptions provided in M.G.L c.149, ss. 26-27H. The CM shall not have any claim for extra compensation from the Owner if the actual wages paid to workers employed in the Work exceeds the rates listed on the schedule or as otherwise provided by law. The CM shall cause a copy of said Schedule to be kept in a conspicuous place at the Site during the term of the Contract. If reserve police officers are employed by the CM, they shall be paid the prevailing wage of regular police officers. (See M.G.L c.149, s.34B). *Mass General Laws c. 149, section 27 as amended on August 8, 2008 requires annual updates to prevailing wage schedules for all public construction projects lasting longer than one year. The CM is required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. The CM and all Subcontractors are required to anticipate such annual updated prevailing wage schedules and neither the CM nor any Subcontractors shall be entitled to claim additional compensation for base contract work due to updated prevailing wage schedules.*

D. Payroll Records and Statement of Compliance. The CM shall comply and shall cause its Subcontractors to comply with Massachusetts General Law c. 149, s. 27B, which requires that a true and accurate record be kept of all persons employed on the a project for which the prevailing wage rates have been provided. The CM and all Subcontractors shall keep these records and preserve them for a period of three years from the date of completion of the Contract. Such records shall be open to inspection by any authorized representative of the Owner at any reasonable time, and as often as may be necessary. The CM shall, and shall cause its Subcontractors to, submit weekly copies of their weekly payroll records to THE OWNER. In addition, the CM and each Subcontractor shall furnish to the Department of Labor and Workforce Development within fifteen days after completion of its portion of the Work a signed statement in the form required by THE OWNER.

STATEMENT OF COMPLIANCE

I, _____ (Name of Signatory Party), _____ (Title), do hereby state that I pay or supervise the payment of the persons employed by _____ (Contractor or Subcontractor) on the _____ (Building or Project) and that all mechanics and apprentices, teamsters, chauffeurs, and laborers employed on said project have been paid in accordance with wages determined under the provisions of G.L. c. 149, §§26 and 27.

Signature: _____
Title: _____

The above mentioned copies of payroll records and statement of compliance shall be available for inspection by any interested party filing a written request to the Contractor for such inspections (G.L. c. 149, §27B).

E. Vehicle operators. If the Director of the Department of Labor and Workforce Development has established a Schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for the Work, the CM shall be obligated to pay such operators at least the minimum wage rate contained on such Schedule. (See M.G.L. c.149, ss.26-27H).

F. Eight Hour Day. The CM shall comply with M.G.L. c. 149, s. 30, 34 and 34A which provide that no laborer, workman, mechanic, foreman or inspector working within the Commonwealth in the employ of the CM, subcontractor or other person doing or contracting to do the whole or part of the Work shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in cases of extraordinary emergency.

G. Timely Payment of Wages. The CM shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, s. 148 which requires the weekly or biweekly payment of employees within six days of the end of the pay period during which wages were earned if employed for five or six days of a calendar week, and within other periods of time under certain circumstances as set forth therein.

H. Lodging, etc. The CM shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, s. 25 which provides that every employee under this Contract shall lodge, board and trade where and with whom he elects, and neither the CM nor his agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.

I. Truck Rates. The use by the CM of trucks or other motor vehicles hired from either common or contract motor carriers in the course of performance of this Contract is subject to such minimum rates and charges, and rules and regulations as may from time to time be promulgated by the Department of Public Utilities of the Commonwealth of Massachusetts or other agency of the State of Federal government which may be authorized by law to set rates or otherwise regulate the use of such vehicles. The CM expressly assumes the risk of any additional expense that may arise by reason of any change in such minimum rates and charges, and rules and regulations, and shall be entitled to no additional compensation or reimbursement by reason thereof.

ARTICLE XI: CM'S ACCOUNTING METHOD REQUIREMENTS (M.G.L. c. 30, s. 39R)

1. Definitions.

The words defined herein shall have the meaning stated below whenever they appear in this Article XI:

- "Contractor" means the CM.
- "Contract" means any Contract awarded, which is for an amount or estimated amount greater than one hundred thousand dollars.
- "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with aspect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with THE OWNER.
- "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
- "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons, or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

2. Record Keeping.

A. The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts that in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor.

B. Until the expiration of six years after final payment, the Inspector General, THE OWNER, and THE OWNER shall have the right to examine any books, documents, papers or records of the Contractor and Subcontractors that directly pertain to, and involve transactions relating to the Contractor and Subcontractors. Any request for a change in the provisions of this Contract submitted by the CM must be made in writing and in accordance with the provisions of this Contract.

C. The Contractor shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with THE OWNER including the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes.

D. The Contractor represents that it has, prior to the execution of the Contract, filed a statement of management on internal accounting controls as set forth in Section 3 below.

E. The Contractor represents that it has, prior to the execution of the Contract, filed an audited financial statement for the most recent completed fiscal year as set forth in section 4 below and will continue to file such statement annually during the term of the Contract.

3. Statement of Management Controls.

A. The Contractor shall file with THE OWNER a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:

- (1) transactions are executed in accordance with management's general and specific authorization;
- (2) transactions are recorded as necessary to: (a) to permit preparation of financial statements in conformity with generally accepted accounting principles, and (b) to maintain accountability for assets;
- (3) access to assets is permitted only in accordance with management's general or specific authorization; and
- (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

B. The Contractor shall file with THE OWNER a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- (1) whether the representations of management in response to subparagraph 3 above are consistent with the results of management's evaluation of the system of internal accounting controls; and
- (2) whether such representations of management are reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statement.

4. Annual Financial Statement.

A. Every Contractor awarded a contract shall annually file with THE OWNER during the term of the Contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report.

B. The office of Inspector General and THE OWNER shall have the right to enforce the provisions of this Article. A Contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to M.G.L. c. 149, s. 44C.

5. Bid Pricing Materials.

The Contractor shall save the written calculations, pricing information, and other data that the Contractor used to calculate the bid or other cost quotations that are presented by the Contractor to THE OWNER to enter into this Contract (the "Bid Pricing Materials") and to establish the Guaranteed Maximum Price for the Project.

ARTICLE XII: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

This Contract includes all provisions of the "Equal Employment Opportunity, Non-Discrimination, and Affirmative Action Program" appearing in Appendix A to these General Conditions of the Contract attached hereto and incorporated herein by reference.

ARTICLE XIII: GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES

This Contract includes all provisions of THE OWNER's program relating to Goals for Participation by Minority Business Enterprises and Women Business Enterprises attached appearing in Appendix A, Appendix B, Appendix C and Appendix D to these General Conditions of the Contract attached hereto and incorporated herein by reference.

ARTICLE XIV: INSURANCE REQUIREMENTS

1. Insurance Generally.

A. The CM shall purchase and maintain the insurance of the type and limits listed in this Article, and in accordance with any additional requirements of the Massachusetts School Building Authority, including those in the Project Funding Agreement between the Authority and THE OWNER, with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the CM's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

B. All policies shall be written on an occurrence basis and be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth with a financial strength rating of A- or better assigned by AM Best Company, or equivalent rating assigned by a similar rating agency acceptable to the Owner or as otherwise acceptable to the Owner.

C. CM shall submit three originals of each certificate of insurance, acceptable to the Owner, simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles and/or self insured retentions, and policy effective and expiration dates. Certificates shall show the Massachusetts School Building Authority (hereinafter "Authority"), the Owner and anyone else that the Owner may request as additional insureds as to all policies of liability insurance. Certificates shall specifically note the following:

- a. that the automobile liability, umbrella liability and pollution liability policies include the Owner and the Authority as additional insureds;
- b. that all policies include the coverage and endorsements in accordance with the terms and conditions as required by this Contract;
- c. that none of the coverages shall be cancelled, terminated, or materially modified unless and until thirty (30) days prior notice is given in writing to the Owner and the Authority;
- d. CM shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage.

D. The CM shall file one certified complete copy of all policies and endorsements with the Owner within fifteen (15) days after Contract award. If the Owner or the Authority is damaged by the CM's failure to maintain such insurance and to comply with the terms of this Article, then the CM shall be responsible for all costs and damages to the Owner and the Authority attributable thereto.

E. Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to Owner, and the Authority to the extent that the Authority is an additional insured, at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice.

F. The CM is responsible for the payment of any and all deductibles under all of the insurance required below unless the Owner and the Authority specifically provide a written waiver to the CM.

2. CM's Commercial General Liability.

A. The CM shall purchase and maintain general liability coverage on the ISO form CG 00 01 or equivalent, including products and completed operations, on an occurrence basis. The form must be amended to state that the aggregate limit applies on a per location/per project basis. The policy shall provide the following minimum coverage to protect the CM from claims with respect to the operations performed by CM and any employee, subcontractor, or supplier, unless a higher coverage is specified in Section 8 below, in which case the CM shall provide the additional coverage:

Bodily Injury &	\$1,000,000 each occurrence
Property Damage	\$2,000,000 general aggregate, per project

Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$5,000

B. This policy shall include coverage relating to explosion, collapse, and underground property damage.

C. This policy shall include contractual liability coverage.

D. The completed operations coverage shall be maintained for a period of three (3) years after Substantial Completion and acceptance by the Owner. The CM shall provide renewal certificates of insurance to the Owner as evidence that this coverage is being maintained.

E. If the Work includes work to be performed within fifty (50) feet of a railroad, any exclusion for liability assumed under contract for work within fifty (50) feet of a railroad shall be deleted.

F. This policy shall include the Authority, the Designer, the Owner's Project Manager, the Stoneham School Building Committee as additional insureds via endorsements CG 20 10 for ongoing operations and CG 20 37 for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.

G. The policy shall include endorsement CG 24 04, a Waiver of Subrogation in favor of the Owner and the Authority.

3. Vehicle Liability.

A. The CM shall purchase and maintain the following minimum coverage with respect to the operations of any owned, non-owned, and hired vehicles including trailers used in the performance of the work, unless a higher coverage is specified in Section 8 below, in which case the CM shall provide the additional coverage:

Bodily Injury & Property Damage \$1,000,000 combined single limit

B. The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in Section 8 below, the CM, if hauling contaminants and/or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall contain coverage Form MCS-90.

C. The policy shall name the Owner, the Designer, the Owner's Project Manager, the Stoneham School Building Committee and the Authority as additional insureds.

D. The policy shall contain a Waiver of Subrogation in favor of the Owner, the Designer, the Owner's Project Manager, the Stoneham School Building Committee and the Authority.

4. Contractor's Pollution Liability.

The CM shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The insurance policy shall cover the liability of the CM during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-Site and off-Site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. The Owner, the Designer, the Owner's Project Manager, the Stoneham School Building Committee and the Authority shall be named as additional insureds and coverage must be on an occurrence basis. The amount of coverage shall be as follows unless a higher amount is specified in Section 8 below, in which case the CM shall provide the additional coverage:

Limit of Liability	\$5,000,000 per occurrence
	\$5,000,000 aggregate

5. Worker's Compensation.

A. The CM shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended, unless a higher coverage is specified in Section 8 below, in which case the CM shall provide the higher coverage:

Workers' Compensation	Statutory limits
Employer's Liability	\$ 1,000,000 each accident

\$ 1,000,000 disease per employee
 \$ 1,000,000 disease policy aggregate

6. Builder's Risk/ Installation Floater/Stored Materials.

A. The CM shall purchase and maintain coverage against loss or damage on all Work included in this Contract in an amount equal to the GMP. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism ("certified" and "non-certified"), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's, Project Manager's and CM's services and expenses required as a result of such insured loss. Unless otherwise specified in this Contract, the limits for earthquake and flood shall each be the lesser of the Contract Price or \$10,000,000. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in **C.** below.

B. When Work will be completed on existing buildings owned by the Owner, the CM shall provide an installation floater, in the full amount of the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's, Program Manager's and CM's services and expenses required as a result of such insured loss. Unless otherwise specified in this Contract, the limits for earthquake and flood shall each be the lesser of the Contract Price or \$10,000,000. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in **C.** below.

C. The CM shall maintain insurance on delivered and/or stored material designated to be incorporated in the Work against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at some approved off Site location shall be forthwith replaced by the CM at no expense to the Owner or the Authority.

D. The policy or policies shall specifically state they are for the benefit of and payable to the Authority, the Owner, the CM, subcontractors and all persons furnishing labor or labor and materials for the Contract Work, as their interests may appear. The policy or policies shall list the Authority, the Owner, the CM, and Subcontractors of any tier as named insureds.

E. Coverage shall include any costs for work performed by the Designer or any consultant as the result of a loss experienced during the term of this Contract.

F. Coverage shall include permission for temporary occupancy and a Waiver of Subrogation in favor of the Owner and the Authority.

G. Coverage shall be maintained until final acceptance by Owner of the Work and final payment has been made.

H. A loss under the property insurance shall be adjusted by CM as fiduciary and made payable to the Contractor as fiduciary for the insureds. CM shall pay the subcontractors their just shares of insurance proceeds received by the CM and shall require subcontractors to make payments to their sub-subcontractors in similar manner.

7. Umbrella Coverage.

The Contractor shall provide Umbrella Coverage in a form at least as broad as primary coverages required by Sections 2, 3 and 5 of this Article in the following amount unless a higher amount is specified in Section 8 below in which case the Contractor shall provide the higher amount:

<u>Contract Price</u>	<u>Limit of Liability</u>
Under \$ 1,000,000	\$ 2,000,000 per occurrence
\$1,000,001 to \$5,000,000	\$ 5,000,000 per occurrence
\$5,000,001 to \$10,000,000	\$10,000,000 per occurrence
\$10,000,001 and over	\$25,000,000 per occurrence

8. Additional Insurance Requirements

The CM shall provide such other and/or additional types and/or amounts of insurance as may be set forth below: Not Applicable.

ARTICLE XV: INDEMNIFICATION**1. Generally.**

The CM shall indemnify, defend (with counsel acceptable to Owner) and hold harmless, the Owner, the Designer, the Owner's Project Manager, and their officers and agents from and against all claims, damages, losses and expenses arising out of or resulting from the performance of the Work, including, but not limited to labor performed or furnished and materials used or employed for the work; to inventions, patents and patent rights used in and in doing the work, unless such patent infringement is due to a product or process specified by the Owner; to injuries to any person or damage to any property in connection with the Work or in consequence of any improper materials, implements or labor used or employed therein; and to any act, omission or neglect of the CM and its employees and its Subcontractors and employees; to the extent such claims are caused or alleged to be caused by the acts or omissions of the CM, a Subcontractor, anyone directly or indirectly employed by them or anyone for whom the CM is responsible. To the extent legally permissible, the CM shall ensure that all Subcontractors are similarly bound to the Owner as provided for in this Article. The indemnification obligations are notwithstanding any insurance requirements and no insurance provision shall excuse any indemnification requirement.

2. CM's Indemnification of The MSBA

To the fullest extent permitted by law, the CM and its contractors and Subcontractors hereby agree to indemnify, defend and hold harmless, the Massachusetts School Building Authority ("Authority") and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Authority arising out of or resulting from the performance or nonperformance of the Work performed by the CM, or its contractors and Subcontractors, provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are alleged to be caused in whole, or in part, by an act or omission of any of the CM, its contractors, or Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

3. Asbestos Abatement Subcontractor Indemnification

The CM shall obtain an indemnification agreement from the Asbestos Abatement Subcontractor that provides as follows: The Asbestos Abatement Subcontractor shall assume full responsibility and liability for the compliance with all applicable Federal, State and local regulations pertaining to work practices, hauling and disposal of asbestos-containing material and protection of workers and visitors to the Site, and persons occupying areas adjacent to the Site. The CM shall hold the Owner, Owner's Project Manager and the Architect harmless for failure to comply with any applicable work, hauling, disposal, safety, health or other regulation on the part of himself, his employees or his subcontractors.

4. Designer's Actions.

The obligations of the CM under Section 1 above shall not extend to the liability of the Designer, its agents or employees, arising out of (i) the preparation or approval of maps, Drawings, opinions, reports, surveys Change Orders, designs or Specifications, or (ii) the giving of or the failure to give directions or instructions by the Designer, its agents to employees provided such giving or failure to give is the primary cause of the injury or damage.

5. Survival.

The provisions of this Article XV are intended to survive Final Acceptance and/or any termination of this Contract.

ARTICLE XVI: PERFORMANCE AND PAYMENT BONDS**1. CM Bonds.**

A. The CM shall provide performance and payment (labor and materials) bonds in the form attached, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance. Each such bond shall be in the amount of the GMP.

B. If at any time prior to final payment to the CM, the Surety:

- is adjudged bankrupt or has made a general assignment for the benefit of its creditors;
- has liquidated all assets and/or has made a general assignment for the benefit of its creditors;
- is placed in receivership;
- otherwise petitions a state or federal court for protection from its creditors; or
- allows its license to do business in Massachusetts to lapse or be revoked;

then the CM shall, within 7 days of any such action listed above, provide THE OWNER with new performance and payment bonds as described in Paragraph A above. Such bonds shall be provided solely at the CM's expense. No Work shall proceed until such new bonds have been provided.

2. Subcontractor Bonds.

A. Trade Contractors shall provide payment and performance bonds to the CM and the Subcontractors shall include the premiums for those bonds in their Sub-Trade Bids.

B. If the CM requires subcontractors other than Trade Contractors to provide the CM with payment and performance bonds for the full amount of their respective Subcontracts, then the costs for said bonds shall be the responsibility of the CM.

C. Irrespective of whether the CM requests payment and performance bonds from its respective Subcontractors, the CM understands that if the Subcontractor defaults or is terminated, the CM shall have full responsibility for all costs and expenses related to said default or termination.

3. Cost of Bond Premiums.

The costs of bond premiums for bonds provided by the Trade Contractors and Subcontractors shall be considered Costs of the Work.

ARTICLE XVII: TERMINATION OF CONTRACT

1. Termination for Cause.

A. THE OWNER may without prejudice to any other right or remedy terminate this Contract for cause if any of the following defaults shall occur and not be cured within seven (7) days after the giving of written notice thereof by the Owner to the CM:

(1) The CM has filed a petition, or a petition has been filed against the CM with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the CM without its consent and is not dismissed within sixty (60) days; or if the CM is generally not paying its debts as they become due; or if the CM becomes insolvent; or if the CM consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the CM or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the CM makes an assignment for the benefit of creditors;

(2) The CM refuses or fails, except in cases for which extension of time is provided under this Contract, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or the Owner has determined that the rate of progress required for the timely completion of the Work is not being met;

(3) The CM fails to make prompt payment to Subcontractors or for materials, equipment, or labor;

(4) All or a part of the Work has been abandoned;

(5) The CM has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the Owner, except as expressly permitted in this Contract;

(6) The CM has failed to comply with Laws;

(7) The CM fails to maintain, or provide to the Owner evidence of the insurance or bonds required by this Contract, or

(8) The CM has failed to perform the Work or any portion thereof as required by this Contract or has otherwise breached any material provision of this Contract.

B. THE OWNER shall give the CM written notice of such termination for cause, but the giving of notice of such termination shall not be a condition precedent or subsequent to the termination's effectiveness. In the event of such termination, and without limiting any other available remedies, THE OWNER may, at its option:

- (1) hold the CM and its sureties liable in damages for a breach of Contract;
- (2) notify the CM to discontinue all work, or any part thereof, and the CM shall discontinue all work, or any part thereof, as the Owner may designate;
- (3) complete the Work, or any part thereof, and charge the expense of completing the Work or part thereof, to the CM;
- (4) require the surety or sureties to complete the Work and perform all of the CM's obligations under this Contract.
- (5) take such other lawful action as is deemed by THE OWNER to be in its best interest.

If THE OWNER elects to complete all or any portion of the Work as specified in (3) above, it may take possession of all materials, equipment, tools, machinery, implements at or near the Site owned by the CM and finish the Work at the CM's expense by whatever means THE OWNER may deem expedient; and the CM shall cooperate at its expense in the orderly transfer of the same to a new contractor or to THE OWNER as directed by THE OWNER. In such case THE OWNER shall not make any further payments to the CM until the Work is completely finished. The Owner shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the CM shall be solely responsible for their removal from the Site after the Owner has no further use for them. Unless so removed within fifteen days after notice to the CM to do so, they may be sold at public auction, after publication of notice thereof at least twice in any newspaper published in the county where the Work is being performed, and the proceeds credited to the CM's account; or they may, at the option of THE OWNER, be stored at the CM's expense subject to a lien for the storage charges.

C. Damages and expenses incurred under paragraph B above shall include, but not be limited to, costs for the Designer's and Project Manager's extra services required, as reasonably determined by THE OWNER, to successfully inspect and administer the construction through final completion of the Work.

D. Expenses charged under paragraph B above may be deducted and paid by THE OWNER out of any moneys then due or to become due the CM under this Contract.

E. All sums, damages, and expenses incurred by the Owner to complete the Work shall be charged to the CM. In case the damages and expenses charged are less than the sum that would have been payable under this Contract if the same had been completed by the CM, the CM shall be entitled to receive the difference. In case such expenses shall exceed the said sum, the CM shall pay the amount of the excess to the Owner.

2. Termination For Convenience.

A. THE OWNER may terminate this Contract for convenience even though the CM is not in default by giving notice to the CM specifying in said notice the date of termination.

B. In case of such termination without cause, the CM shall be paid:

(1) all sums due and owing under this Contract through the date of termination, including any retainage withheld to the date of termination, less any amount which THE OWNER determines is necessary to correct or complete the Work performed to the date of termination; plus (2) a reasonable sum to cover the expenses which CM would not have incurred but for the early termination of the Contract, such as demobilization of the work force and restocking charges.

C. Lost profits shall not be payable. The payment provided in paragraph B above shall be considered to fully compensate the CM for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination.

3. CM's Duties Upon Termination For Convenience.

Upon termination of this Contract for convenience as provided in Section 2 of this Article, the CM shall: (1) stop the Work; (2) stop placing orders and Subcontracts in connection with this Contract; (3) cancel all existing orders and Subcontracts; (4) surrender the Site to THE OWNER in a safe condition; (5) transfer to THE OWNER all materials, supplies, work in process, appliances, facilities, equipment and machinery of this Contract, and all plans, Drawings, Specifications and other information and documents used in connection with this Contract.

ARTICLE XVIII: MISCELLANEOUS PROVISIONS

1. Written Approval of Assignment by CM.

The CM shall not assign by power of attorney or otherwise, or sublet or subcontract, the Work or any part thereof, without the previous written consent of THE OWNER and shall not, either legally or equitably, assign any of the moneys payable under this Contract, or CM's claims hereunder, except with the written consent of THE OWNER, whether said assignment is made before, at the time of, or after the execution of the Contract. The CM shall remain responsible for satisfactory performance of all Work sublet or assigned complying with all applicable requirements of the Contract.

2. Certificate of Appropriation.

This paragraph applies to contracts for construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public work by any city, town or District costing more than the amount set forth in M.G.L. c.44, § 31C.

This Contract shall not be deemed to have been made until the Owner's accountant or other officer of the Owner having similar duties has certified thereon that an appropriation in the amount of this Contract is available therefor and that an officer or agent of the Owner has been authorized to execute said Contract and approve all requisitions and change orders. No order to the Contractor for a change in or addition to the work, whether in the form of a drawing, plan, detail, or any other written instruction, unless it is an order which the Contractor is willing to perform without any increase in the Contract price, shall be deemed to be given until the Owner's accountant, or other officer of the awarding authority having similar duties, has certified thereon that an appropriation in the amount of such order is available therefor; but such certificate shall not be construed as an admission by the Owner of its liability to pay for such work. The certificate of the accountant or other officer of the Owner having similar duties, that an appropriation in the amount of this Contract, or in the amount of such order, is available shall bar any defense by the Owner on the grounds of insufficient appropriation.

3. Claims by Others Not Valid.

No person other than the CM and the surety on any bond given pursuant to the terms of this Contract shall acquire any interest in this Contract or any claim against THE OWNER hereunder, and no claim by any other person against Owner shall be valid except as provided in M.G.L. c. 30, s. 39F of the General Laws.

4. No Personal Liability of Public Officials.

No public official, employee, or agent of THE OWNER shall have any personal liability for the obligations of THE OWNER set forth in this Contract.

5. Severability.

The provisions of this Contract are severable, and if any of these provisions shall be held unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this Contract.

6. Choice of Laws.

This Contract shall be governed by the laws of the Commonwealth of Massachusetts for all purposes, regardless of choice of law principles. All proceedings under this Contract or related to the Project shall be brought in the courts of the Commonwealth of Massachusetts in the County in which the project lies.

7. No Waiver of Subsequent Breach.

No waiver of any breach or obligation of this Contract shall constitute a waiver of any other or subsequent breach or obligation.

8. Remedies Cumulative.

All remedies of THE OWNER provided in this Contract shall be construed as cumulative and may be exercised simultaneously or in any order as determined by THE OWNER in its sole discretion. THE OWNER shall also be entitled as of right to specific performance and equitable relief including the right to an injunction against any breach of any of the provisions of this Contract

9. Notices.

Notices to the CM shall be deemed given when hand delivered, attached to an email to CM's Project Manager, or faxed to the CM's temporary field office at or near the Site, or when deposited in the U.S. mail addressed to the CM at the CM's address specified in the Owner-CM Agreement, or when delivered by courier to either location. Unless otherwise specified in writing by THE OWNER, notices and deliveries to THE OWNER shall be effective only when delivered to THE

OWNER at the address specified in the Owner-CM Agreement and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by THE OWNER to receive official notices.

10. Interpretation of Contract – Cost of Work.

A. Wherever these General Conditions or the Agreement for Construction Manager at Risk Services uses words to the effect that the CM shall be responsible for incurring costs on the Project, it is understood that, except where the language used otherwise indicates, such costs shall be considered a Cost of Work under Paragraph 7.1 of the Agreement for Construction Manager at Risk Services, unless they fall within Non-Compensable Costs described in Paragraph 7.3 of said Agreement.

B. Likewise, wherever the General Conditions or the Agreement for Construction Manager at Risk Services uses words to the effect that the Owner may assess costs against the CM, it is understood that such assessment shall ordinarily take the form of a credit change order that reduces the GMP, except where the language used otherwise indicates.

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APPENDIX A: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Since this contract is considered a state-assisted construction contract, the provisions of Appendix A shall apply:

(Statutory reference: M.G.L. c.151B; Executive Order No. 526 and ANF Bulletin #14).

I. Definitions

For purposes of this contract,

“Minority” means a person who meets one or more of the following definitions:

- (a) American Indian or Native American means: all persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
- (b) Asian means: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands.
- (c) Black means: All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
- (d) Eskimo or Aleut means: All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.
- (e) Hispanic means: All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.

“State construction contract” means a contract for the construction, reconstruction, installation, demolition, maintenance or repair of a building or capital facility, or a contract for the construction, reconstruction, alteration, remodeling or repair of a public work undertaken by a department, agency, board, or commission of the commonwealth.

“State assisted construction contract” means a contract for the construction, reconstruction, installation, demolition, maintenance or repair of a building or capital facility undertaken by a political subdivision of the commonwealth, or two or more political subdivisions thereof, an authority, or other instrumentality and whose costs of the contract are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part, by the commonwealth.

II. Equal Opportunity, Non-Discrimination and Affirmative Action

During the performance of this Contract, the Contractor and all subcontractors (hereinafter collectively referred to as “the Contractor”) for a state construction contract or a state assisted construction contract, for him/herself, his/her assignees and successors in interest, agree to comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability, shall not discriminate in the selection or retention of subcontractors, and shall not discriminate in the procurement of materials and rentals of equipment.

The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship or on-the-job training opportunity. The Contractor shall comply with the provisions of chapter 151B of the Massachusetts General Laws, as amended, and all other applicable anti-discrimination and equal opportunity laws, all of which are herein incorporated by reference and made a part of this Contract.

The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws Chapter 151B).

In connection with the performance of work under this contract, the Contractor shall undertake, in good faith, affirmative action measures to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap. Such affirmative action measures shall entail positive and aggressive measures to ensure non-discrimination and to promote equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, apprenticeship and on-the-job training programs. A list of positive and aggressive measures shall include, but not be limited to, advertising employment opportunities in minority and other community news media; notifying minority, women and other community-based organizations of employment opportunities; validating all job specifications, selection requirements, and tests; maintaining a file of names and addresses of each worker referred to the Contractor and what action was taken concerning such worker; and notifying the administering agency in writing when a union with whom the Contractor has a collective bargaining agreement has failed to refer a minority or woman worker. These and other affirmative action measures shall include all actions required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, sex, gender identity, sexual orientation (which shall not include persons whose sexual orientation involves minor children as the sex object), age, genetic information, ancestry, children, marital status, veteran status or membership in the armed services, the receiving of public assistance, and handicap. One purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.

III. Minority and Women Workforce Participation

Pursuant to his/her obligations under the preceding section, the Contractor shall strive to achieve on this project the labor participation goals contained herein. Said participation goals shall apply in each job category on this project including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers and those classes of work enumerated in Section 44F of Chapter 149 of the Massachusetts General Laws. The participation goals for this project shall be 15.3% for minorities and 6.9% for women. The participation goals, as set forth herein, shall not be construed as quotas or set-asides; rather, such participation goals will be used to measure the progress of the Commonwealth's equal opportunity, non-discrimination and affirmative action program. Additionally, the participation goals contained herein should not be seen or treated as a floor or as a ceiling for the employment of particular individuals or group of individuals.

IV. Liaison Committee

At the discretion of the agency that administers the contract for the construction project there may be established for the life of the contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering the contract for the construction project, hereinafter called the administering agency, a representative from the Office of Affirmative action, and such other representatives as may be designated by the administering agency.

The Contractor (or his/her agent, if any, designated by him/her as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

V. Reports and Records

The Contractor shall prepare projected workforce tables on a quarterly basis when required by the administering agency. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also, when updated, to the administering agency and the Liaison Committee when required.

The Contractor shall prepare weekly reports in a form approved by the administering agency, unless information required is required to be reported electronically by the administering agency, the number of hours worked in each trade by each employee, identified as woman, minority, or non-minority. Copies of these shall be provided at the end of each such week to the administering agency and the Liaison Committee.

Records of employment referral orders, prepared by the Contractor, shall be made available to the administering agency on request.

The Contractor will provide all information and reports required by the administering agency on instructions issued by the administering agency and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the administering agency to effect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary non-discrimination, equal opportunity and access and opportunity contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency and shall set forth what efforts he has made to obtain the information.

VI. Access to Work Site

A designee of the administering agency and a designee of the Liaison Committee shall each have a right to access the work site.

VII. Solicitations for Subcontracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and equal opportunity.

VIII. Sanctions

Whenever the administering agency believes the General or Prime Contractor or any subcontractor may not be operating in compliance with the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws Chapter 151B), the administering agency may refer the matter to the Massachusetts Commission Against Discrimination ("Commission") for investigation.

Following the referral of a matter by the administering agency to the Massachusetts Commission Against Discrimination, and while the matter is pending before the MCAD, the administering agency may withhold payments from contractors and subcontractors when it has documentation that the contractor or subcontractor has violated the Fair Employment Practices Law with respect to its activities on the Project, or if the administering agency determines that the contractor has materially failed to comply with its obligations and the requirements of this Section. The amount withheld shall not exceed a withhold of payment to the General or Prime Contractor of 1/100 or 1% of the contract award price or \$5,000, whichever sum is greater, or, if a subcontractor is in non-compliance, a withhold by the administering agency from the General Contractor, to be assessed by the General Contractor as a charge against the subcontractor, of 1/100 or 1% of the subcontractor price, or \$1,000 whichever sum is greater, for each violation of the applicable law or contract requirements. The total withheld from any one General or Prime Contractor or subcontractor on a Project shall not exceed \$20,000 overall. No withhold of payments or investigation by the Commission or its agent shall be initiated without the administering agency providing prior notice to the Contractor.

If, after investigation, the Massachusetts Commission Against Discrimination finds that a General or Prime Contractor or subcontractor, in commission of a state construction contract or state-assisted construction contract, violated the provisions of the Fair Employment Practices Law, the administering agency may convert the amount withheld as set forth above into a permanent sanction, as a permanent deduct from payments to the General or Prime Contractor or subcontractor, which sanction will be in addition to any such sanctions, fines or penalties imposed by the Massachusetts Commission Against Discrimination:

No sanction enumerated under this Section shall be imposed by the administering agency except after notice to the General or Prime Contractor or subcontractor and an adjudicatory proceeding, as that term is used, under Massachusetts General Laws Chapter 30A, has been conducted.

IX. Severability

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

X. Contractor's Certification

A bidder for a state construction contract or state assisted construction contract will not be eligible for award of the contract unless such bidder has submitted to the administering agency the following certification, which will be incorporated into the resulting contract:

CONTRACTOR'S CERTIFICATION

_____certifies that they:

(Contractor Name)

1. Will not discriminate in their employment practices;
2. Intend to use the following listed construction trades in the work under the contract

; and

3. Will make good faith efforts to comply with the minority employee and women employee workforce participation ratio goals and specific affirmative action steps contained herein; and
4. Are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and
5. Will provide the provisions of the "Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program" to each and every subcontractor employed on the Project and will incorporate the terms of this Section into all subcontracts and work orders entered into on the Project.
6. Agree to comply with all provisions contained herein.

(Signature of authorized representative of Contractor)

Date

(Printed name of authorized representative of Contractor)

XI. Subcontractor Requirements

Prior to the award of any subcontract for a state construction contract or a state assisted construction contract, regardless of tier, the Prime or General Contractor shall provide all prospective subcontractors with a complete copy of this Section entitled "Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program" and will incorporate the provisions of this Section by reference into any and all contracts or work orders for all subcontractors providing work on the Project. In order to ensure that the said subcontractor's certification becomes a part of all subcontracts under the prime contract, the Prime or General Contractor shall certify in writing to the administering agency that it has complied with the requirements as set forth in the preceding paragraph.

APPENDIX B – PROCEDURE FOR PRE-BID REDUCTION/WAIVER OF MBE/WBE PARTICIPATION GOALS**PROCEDURE FOR PRE-BID REDUCTION/WAIVER OF MBE/WBE PARTICIPATION GOALS****I. Pre-Bid Reduction/Waiver Procedures****A. Affirmative Marketing Participation Goals**

Each Municipality (Awarding Authority) must enforce the current Affirmative Marketing Goals developed by the Division of Capital Asset Management (DCAM) in consultation with SDO as follows:

Construction Participation: Combined MBE/WBE goal of (10.4%)

The combined goals require a reasonable representation of both MBE and WBE firm participation on the project as further set forth in Appendix C, Section A, Paragraph 2.

B. Criteria for Reduction/Waiver of Goals

The Construction Manager (CM) may request a reduction or waiver of goals before the GMP is submitted. The Awarding Authority reserves the right to accept and review written requests but does not have the authority to grant such requests made by the CM to reduce or waive the MBE or WBE construction participation goals established for this contract. In accordance with Section 7 of Chapter 193 of the Acts of 2004, such written requests must demonstrate to the satisfaction of the Awarding Authority that there is no feasible way for the CM to meet the goals established for this contract and that a **“Diligent Good Faith Effort”** was made to comply. If this criteria is met the Awarding Authority must submit the CM’s request to the Executive Director of the Supplier Diversity Office (SDO) for final determination. Factors that may be considered in granting a reduction or waiver of the contract goals include any or all of the following:

- Actual availability of certified Minority- and/or Women-Owned Business Enterprises (MBE/WBEs);
- The geographic location of the project;
- The scope of work and opportunities for subcontracting the work;
- Other relevant factors including documented inability by the CM to obtain commitments from MBE/WBE subcontractors sufficient to meet the MBE/WBE goals after having made a diligent, good faith effort to do so.

C. Supporting Documentation Required from the Construction Manager

1. A list of all items of work under the Contract that the CM made available for subcontracting to MBE/WBEs. The CM shall identify all items of work, other than work to be performed by filed sub-Bidders, that the CM did not make so available and shall state the reasons for not making such work available for subcontracting to MBE/WBEs. The CM shall also demonstrate that, where commercially reasonable, subcontracts were divided into scopes or tasks capable of being performed by MBE/WBEs.
2. Documentation that the CM sent written notices soliciting Bids or proposals to perform the items of work made available by the CM for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The CM shall identify (i) each MBE/WBE solicited, and (ii) each MBE/WBE listed in the SDO directory under the applicable trade category that was not solicited and reasons therefore. The CM shall also state the date that notices were mailed and provide a copy of the written notice(s) sent.

Documentation that the CM made reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted.

3. A statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a bid or proposal.

4. Documentation of reasonable efforts, if any, made to assist MBE/WBEs that needed assistance in obtaining bonding or insurance, or lines of credit with suppliers if the inability of MBE/WBEs to obtain bonding, insurance, or lines of credit is the reason given for the CM's inability to meet the MBE/WBE goals.
5. The CM may also submit any other information supporting its request for a waiver or reduction in the MBE/WBE participation goals, including without limitation evidence that the CM placed advertisements in appropriate media and trade association publications announcing the CM's interest in obtaining bids or proposals from MBE/WBEs, and/or sent written notification to MBE/WBE economic development assistance agencies, trade groups and other organizations notifying them of the Contract and the work to be subcontracted by the CM to MBE/WBEs. The CM shall also submit any other information reasonably requested by the Awarding Authority to show that the CM has taken all actions that could reasonably be expected to achieve the MBE/WBE participation goals.

D. Process for Requesting Waiver/Reduction of Construction Goals

1. Requests from the CM to reduce or waive the MBE/WBE participation goals for the Contract must be received by the Awarding Authority no later than ten (10) working days before the GMP is due.
2. The Awarding Authority shall not consider any request to reduce or waive the MBE/WBE Participation goals for the Contract that is received after the aforementioned deadlines. Any reduction or waiver of the MBE/WBE participation goals for the Contract will be made in writing.
3. Procedures and Timelines for the Waiver/Reduction of Construction Goals can be found in the attached Bidding Instructions.

APPENDIX C to the BIDDING INSTRUCTIONS**GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES (MBE) AND WOMEN BUSINESS ENTERPRISES (WBE) (EXECUTIVE ORDER 390, M.G.L. c. 7, s. 4)****Construction Participation: Combined MBE/WBE goal of (10.4%)**

The combined goals require a reasonable representation of both MBE and WBE firm participation on the project as further set forth in Appendix C, Section A, Paragraph 2.

A. MBE AND WBE PARTICIPATION

1. The CM's compliance with the requirements of this Section is a pre-requisite for receiving the Award of the Contract.
2. The CM must utilize a mix of both MBE and WBE firms whose participation, when added together, meets or exceeds the overall combined goal set for the Contract. It is important that both MBE and WBE firms have an opportunity to work on public projects with a combined MBE/WBE goal. Therefore, projects with a combined goal must include a reasonable representation of both MBE and WBE firms to meet or exceed the combined goal. Proposed MBE/WBE participation plans that include solely MBE or solely WBE participation, or have only nominal participation by one or the other to meet the combined goal, will not be considered responsive. CMs that are themselves MBE or WBE certified will be required to bring a reasonable amount of participation by a firm(s) that holds the certification which is not held by the CM to the project. Although the Contract contains a combined goal, participation by MBE and WBE firms must be reported and tracked separately.
3. The MBE and WBE participation goals for this Contract are as set forth above. The Awarding Authority reserves the right to accept and review written requests but does not have the authority to grant such requests made by the CM within the time frame set forth in paragraph 9 below to reduce or waive the MBE or WBE participation goals established for this contract. If such written requests demonstrate to the satisfaction of the Awarding Authority that it is not feasible for a non- MBE or non-WBE CM to meet the goals established for this contract based upon all of the following: (i) actual MBE/WBE availability, (ii) the geographic location of the project to the extent related to MBE/WBE availability, (iii) the scope of the work, (iv) the percentage of work available for subcontracting to MBE/WBEs and/or (v) other relevant factors, including a documented inability by the CM to obtain commitments from MBE/WBE subcontractors sufficient to meet the MBE/WBE goals after having made a Diligent, Good Faith Effort to do so. If these criteria are met the Awarding Authority must submit the CM's request along with all the foregoing documentation to the Executive Director of the Supplier Diversity Office (SDO) for final determination. Such documentation shall include, at a minimum, the following:
 4. A list of all items of work under the Contract that the CM made available for subcontracting to MBE/WBEs. The CM shall identify all items of work, other than work to be performed by filed sub-Bidders, that the CM did not make so available and shall state the reasons for not making such work available for subcontracting to MBE/WBEs. The CM shall also demonstrate that, where commercially reasonable, subcontracts were divided into scopes or tasks capable of being performed by MBE/WBEs.
 5. Evidence that the CM sent written notices soliciting Bids or proposals to perform the items of work made available by the CM for subcontracting to all MBE/WBEs qualified to perform such work. The CM shall identify (i) each MBE/WBE solicited, and (ii) each MBE/WBE listed in the SDO directory under the applicable trade category that was not solicited and reasons therefore. The CM shall also state the date that notices were mailed and provide a copy of the written notice(s) sent.
 6. Evidence that the CM made reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted.

7. A statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a bid or proposal.
8. Evidence of reasonable efforts made, if any, to assist MBE/WBEs that needed assistance in obtaining bonding or insurance, or lines of credit with suppliers if the inability of MBE/WBEs to obtain bonding, insurance, or lines of credit is the reason given for the CM's inability to meet the MBE/WBE goals.
9. The CM may also submit any other information supporting its request for a waiver or reduction in the MBE/WBE participation goals, including without limitation evidence that the CM placed advertisements in appropriate media and trade association publications announcing the CM's interest in obtaining bids or proposals from MBE/WBEs, and/or sent written notification to MBE/WBE economic development assistance agencies, trade groups and other organizations notifying them of the Contract and the work to be subcontracted by the CM to MBE/WBEs. The CM shall also submit any other information reasonably requested by the Awarding Authority to show that the CM has taken all actions that could reasonably be expected to achieve the MBE/WBE participation goals.
10. If filed Sub-Bids are solicited for this Contract, requests from CM to reduce or waive the MBE/WBE participation goals for this Contract must be received by the Awarding Authority no later than five (5) working days after the list of filed sub-Bidders is mailed by the Awarding Authority to the CM. If there are no filed sub-Bids solicited for this Contract, requests to reduce or waive the MBE/WBE participation goals for this Contract must be received by the Awarding Authority no later than ten (10) working days before the date set for the receipt of the GMP. **THE AWARDING AUTHORITY WILL NOT CONSIDER ANY REQUEST TO REDUCE OR WAIVE THE MBE/WBE PARTICIPATION GOALS FOR THIS CONTRACT THAT IS RECEIVED AFTER THESE DEADLINES.** Any reduction or waiver of the MBE/WBE participation goals for this Contract will be made in writing by the CM.
11. No later than five (5) working days after the submission of the GMP, the CM shall submit the following documents to the Awarding Authority's Affirmative Marketing Construction Officer (AMCO): (i) a completed Schedule for Participation by MBE/WBE ("Schedule for Participation") in the form provided by the Awarding Authority showing MBE/WBE participation in amounts equal to or exceeding the MBE/WBE participation goals for this Contract, (ii) a completed Letter of Intent in the form provided by the Awarding Authority for each MBE/WBE listed in the Schedule for Participation, and (iii) a SDO most recent certification letter for each MBE/WBE listed in the Schedule of MBE/WBE Participation showing that the MBE/WBE is certified in the area of work for which it is listed on the Letter of Intent.
12. Each Letter of Intent shall identify and describe the work to be performed by the named MBE/WBE (the "MBE/WBE Work") with enough specificity to permit the Awarding Authority to identify the particular items of contract work that the MBE/WBE will perform for MBE/WBE participation credit. The Awarding Authority reserves the right to reject any Letter of Intent if the price to be paid for the MBE/WBE Work does not bear a reasonable relationship to the value of such work under the Contract as determined by the Awarding Authority.
13. Within five (5) working days after receipt of the Schedule for MBE/WBE Participation, Letters of Intent, and SDO most recent certification letter, the Awarding Authority shall review and either approve or disapprove the CM's submissions. If the CM has not submitted an appropriate Schedule for MBE/WBE Participation and appropriate Letters of Intent and SDO most recent certification letter establishing that the MBE/WBE participation goal for the project will be met, the CM will be considered ineligible for Award of the Contract.
14. The Bidder's attention is called to the General Conditions of the Contract which requires the CM to submit, within thirty (30) days of the Contract Date, signed subcontracts with all subcontractors or a purchase order or invoice from each material supplier and/or manufacturer listed on the Schedule for MBE/WBE Participation.
15. A filed sub-Bidder is not required to submit a Schedule of MBE/WBE Participation with its Bid. A filed sub-Bidder may, at its option, submit a Letter of Intent with its Bid if it is a SDO certified MBE/ WBE. If a filed sub-Bidder intends to sub-subcontract work to a SDO certified MBE/WBE, and the awarding authority permits limited sub-sub-contracting for purposes of MBE/WBE participation, and the filed sub-Bidder wishes that sub-subcontract

to be credited toward the participation goals for this Contract, the filed sub-Bidder should submit a Letter of Intent from that MBE/WBE with its Bid.

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APPENDIX D to the General Conditions of the Contract**GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES (MBE) AND WOMEN BUSINESS ENTERPRISES (WBE) (EXECUTIVE ORDER 390, M.G.L. c. 7, s. 4)****Construction Participation: Combined MBE/WBE goal of (10.4%)**

The combined goals require a reasonable representation of both MBE and WBE firm participation on the project as further set forth in Attachment C, Section A, Paragraph 2.

1. Goals

The goals for minority business enterprise (MBE) and woman business enterprise (WBE) participation established for this Contract are as set forth above and in the Owner - Contractor Agreement.

2. MBE/WBE Participation Credit

- A. If the CM is itself an MBE or a WBE, MBE/WBE participation credit shall be given in an amount equal to the entire Contract Price. If the CM is not an MBE or WBE, then MBE/WBE participation credit will be given for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.
- B. If the CM is a joint venture with one or more MBE/WBE joint ventures, MBE/WBE participation credit shall be given to the joint venture as follows:
 - (1) If the joint venture is certified by SDO as an MBE or WBE, MBE/WBE Participation credit shall be given in an amount equal to the entire Contract Price.
 - (2) If the joint venture is not certified as an MBE or WBE by SDO, MBE/WBE participation credit shall be given to the joint venture for the value of the Work that is performed by the MBE/WBE joint venture(s), and for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.
- C. If an MBE/WBE supplies, but does not install equipment or materials, MBE/WBE participation credit shall be given only if the MBE/WBE supplier is regularly engaged in sales of equipment or supplies to the construction industry from an established place of business. MBE/WBE participation credit shall be given the full amount of the purchase order only if the MBE/WBE supplier manufactures the goods or substantially alters them before resale. Otherwise, the CM may count toward its MBE/WBE goal 60 percent of the total bid price for its expenditures of its materials and supplies required under a contract and obtained from a MBE/WBE regular supplier.
- D. MBE participation credit shall be given for the work performed by MBEs only, and WBE participation credit shall be given for the work performed by WBEs only. MBE participation may not be substituted for WBE participation, nor may WBE participation be substituted for MBE participation.

3. Establishing MBE/WBE Status.

- A. A minority owned business shall be considered as an MBE only if it has been certified as a minority business enterprise by the Supplier Diversity Office ("SDO").
- B. A woman owned business shall be considered as a WBE only if it has been certified as a woman business enterprise by SDO.
- C. Certification as a disadvantaged business enterprise ("DBE"), certification as MBE/WBE by any agency other than SDO, or submission of an application to SDO for certification as an MBE/WBE shall not confer MBE/WBE status on a firm for the purposes of this Contract.

4. Subcontracts with MBE/WBEs

Within thirty (30) days after the award of this Contract, the CM shall (i) execute a subcontract with each MBE/WBE Subcontractor which has executed a Letter of Intent Approved by the Awarding Authority, (ii) cause its Subcontractors to execute a sub-subcontract with each MBE/WBE sub-subcontractor, and (iii) furnish the Awarding Authority with a signed copy of each such subcontract and sub-subcontract.

5. Performance of Contract Work by MBE/WBEs

- A. The CM shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any MBE/WBE in the Letters of Intent or Schedule of MBE/WBE Participation without the prior Approval of the Awarding Authority, nor shall any MBE/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its MBE/WBE Work without the prior Approval of the Awarding Authority. Any such unapproved assignment, subcontracting, sub- subcontracting, or performances of MBE/WBE Work by others shall be a change in the MBE/WBE Work for the purposes of this Contract. THE AWARDDING AUTHORITY WILL NOT APPLY TO THE MBE/WBE PARTICIPATION GOAL(S) ANY SUMS ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB- CONTRACTS, SUB-SUBCONTRACTS, OR PERFORMANCE OF MBE/WBE WORK BY OTHERS.
- B. The CM shall be responsible for monitoring the performance of MBE/WBE Work to ensure that each scheduled MBE/WBE performs its own MBE/WBE Work with its own workforce.
- C. The CM and each MBE/WBE shall provide the Awarding Authority with all information and documentation that the Awarding Authority determines is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work. At the discretion of the Awarding Authority, failure to submit such documentation to the Awarding Authority shall establish conclusively for the purpose of giving MBE/WBE participation credit under this Contract that such MBE/WBE did not perform such work.
- D. With each progress payment request submitted by the CM to the Awarding Authority, the CM must provide the Contractor Progress Payment Report indicating the value of payments for each MBE and WBE firms for that period.

6. Notification of Changes in MBE/WBE Work

- A. If at any time during the performance of the Contract the Contractor determines or has reason to believe that a scheduled MBE/WBE is unable or unwilling to perform its MBE/WBE Work, or that there has been or will be a change in any MBE/WBE Work, or that the CM will be unable to meet the MBE/WBE participation goal(s) for this Contract for any reason, the CM shall immediately notify the Awarding Authority Contract Compliance Office in writing of such circumstances.
- B. Any notice of a change in MBE/WBE Work pursuant to subparagraph “A” above shall include a revised Schedule of MBE/WBE Participation, and additional or amended Letters of Intent and subcontracts, as the case may be.

7. Actions required if there is a Reduction in MBE/WBE Participation

- A. In the event there is a change or reduction in any MBE/WBE Work which will result in the CM failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a Change Order initiated by the Awarding Authority, then the CM shall immediately undertake a diligent, good faith effort to make up the shortfall in MBE/WBE participation as follows:
 - (1) The CM shall identify all items of the Work remaining to be performed under the Contract that may be made available for subcontracting to MBE/WBEs. The CM shall send a list of such items of work to the Awarding Authority, together with a list of the remaining items of the Work that was not made available to MBE/WBEs and the reason for not making such work available for subcontracting to MBE/WBEs.
 - (2) The CM shall send written notices soliciting proposals to perform the items of the Work that may be made available for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The CM

- shall advise the Awarding Authority of (i) each MBE/WBE solicited, and (ii) each MBE/WBE listed in the SDO directory under the applicable trade category that was not solicited and the reasons therefore. The CM shall also advise the Awarding Authority of the dates notices were mailed and provide a copy of the written notice(s) sent.
- (3) The CM shall make reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to the Awarding Authority evidencing this effort.
 - (4) The CM shall make reasonable efforts to assist MBE/WBEs that need assistance in obtaining insurance, bonds, or lines of credit in order to perform work under the Contract, and shall provide the Awarding Authority with evidence that such efforts were made.
 - (5) The CM shall provide the Awarding Authority with a statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a proposal.
 - (6) The CM shall take any additional measures reasonably requested by the Awarding Authority to meet the MBE/WBE participation goal(s) established for this Contract, including, without limitation, placing advertisements in appropriate media and trade association publications announcing the CM's interest in obtaining proposals from MBE/WBEs, and/or sending written notification to MBE/WBE economic development assistance agencies, trade groups and other organizations notifying them of the project and of the work available to be subcontracted by the CM to MBE/WBEs.
- B. If the CM is unable to meet the MBE/WBE participation goals for this Contract after complying fully with each of the requirements of paragraph "A" above, and the CM is otherwise in full compliance with the terms of this Article, the Awarding Authority may reduce the MBE/WBE participation goals for this Contract to the extent that such goals cannot be achieved.

8. Suspension of Payment and/or Performance for Noncompliance.

- A. If at any time during the performance of this Contract, the Awarding Authority determines or has reason to believe that (1) there has been a change or reduction in any MBE/WBE Work which will result in the CM failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a change in the Contract work ordered by the Awarding Authority, and (2) the CM has failed to comply fully with all of the terms and conditions of paragraphs 1 through 7 above, the Awarding Authority may:
- (1) Suspend payment to the CM of an amount equal to the value of the work which was to have been performed by an MBE/WBE pursuant to the CM's Schedule of MBE/WBE Participation but which was not so performed, in order to ensure that sufficient Contract funds will be available if liquidated damages are assessed pursuant to paragraph 9, and/or
 - (2) Suspend the CM's performance of this Contract in whole or in part.
- B. The Awarding Authority shall give the CM prompt written notice of any action taken pursuant to paragraph A above and shall give the CM and any other interested party, including any MBE/WBEs, an opportunity to present evidence to the Awarding Authority that the CM is in compliance with the requirements of this Article, or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. The Awarding Authority may invite SOMWBA to participate in any proceedings undertaken pursuant to this paragraph.
- C. Upon a showing that the CM is in full compliance with the requirements of this Article, or that the CM has met or will meet the MBE/WBE participation goals for this Contract, the Awarding Authority shall release any funds withheld pursuant to clause A (1) above, and lift any suspension of the CM's performance under clause A (2) above.

9. Liquidated Damages; Termination

- A. If payment by the Awarding Authority or performance by the CM is suspended by the Awarding Authority as provided in paragraph 8 above, the Awarding Authority shall have the following rights and remedies if the CM thereafter fails to take all action necessary to bring the CM into full compliance with the requirements of this

Article, or if full compliance is no longer possible because the default of the CM is no longer susceptible to cure, if the CM fails to take such other action as may be required by the Awarding Authority to meet the MBE/WBE participation goals set forth in this Contract:

- (1) The Awarding Authority may terminate this Contract, and/or
 - (2) The Awarding Authority may retain from final payment to the CM, as liquidated damages, an amount equal to the difference between:
 - (a) The total of the MBE/WBE participation goals set forth in this Contract, and;
 - (b) The amount of MBE/WBE participation credit earned by the CM for MBE/WBE Work performed under this Contract as determined by the Awarding Authority, the parties agreeing that the damages for failure to meet the MBE/WBE participation goals are difficult to determine and that the foregoing amount to be retained by the Awarding Authority represents the parties' best estimate of such damages. Any liquidated damages will be assessed separately for MBE and WBE participation.
- B. Before exercising its rights and remedies hereunder, the Awarding Authority may give the CM and any other interested party another opportunity to present evidence to the Awarding Authority that the CM is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. The Awarding Authority may invite SDO to participate in any proceedings undertaken hereunder.

10. Reporting Requirements

The CM shall submit to the Awarding Authority all information or documentation that is necessary in the judgment of the Awarding Authority to ascertain whether or not the CM has complied with any of the provisions of this Article.

11. Awarding Authority's Right to Waive Provisions of this Article in Whole or In Part

The Awarding Authority reserves the right to waive any provision or requirement of this Article if the Awarding Authority determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by the Executive Director of the Supplier Diversity Office (SDO). No other action or inaction by the Awarding Authority shall be construed as a waiver of any provision of this Article.

EXHIBIT A - SCHEDULE FOR PARTICIPATION BY MINORITY/WOMEN BUSINESS ENTERPRISE

Project Number _____

Project Location _____

Project Name _____

- A. Filed Sub-bidders utilizing MBE/WBE firms, and MBE/WBE Sub-bidders - attach to Filed Sub-bid.
 B. The Construction Manager must submit to the Awarding Authority within five (5) working days of the submission of the GMP.

BIDDER CERTIFICATION:

The CM agrees that if awarded the contract it will expend at least the amount of the contract set forth below for MBE/WBE participation. For purposes of this commitment, the MBE and WBE designation means that a business has been certified by SDO as either a MBE, WBE or MBE/WBE. The CM must indicate the MBE/WBE firms it intends to utilize on the project as follows (attach additional sheets if necessary):

Company Name & Address	MBE or WBE	Describe MBE/WBE Scopes of Work (clarify "Labor Only", "Material Only" or "Labor and Material")	If Supplier, Indicate Total Value of Supplies (60% of Total Counts toward Participation)	Total Dollar Value of Participation
1.				
2.				
3.				
4.				
5.				

MBE Goal \$ _____ Total Dollar Value of MBE Commitment:

\$ _____

WBE Goal \$ _____ Total Dollar Value of WBE Commitment:

\$ _____

The undersigned hereby certifies that he/she has read the terms and conditions of the contract with regard to MBE/WBE participation and is authorized to bind the Bidder to the commitment set forth above.

Name of Firm _____

Business Address _____

Print Name _____

Authorized Signature _____

Title _____

Telephone No. _____ Fax No. _____

Date _____

EXHIBIT B - LETTER OF INTENT - MINORITY/WOMEN BUSINESS ENTERPRISE PARTICIPATION

(To be completed by MBE/WBE, and submitted by the Construction Manager to the Municipal Affirmative Marketing Construction Officer (AMCO) within five (5) working days of the submission of the GMP or by Filed Sub-bidder with its bid.)

Project Number _____
 Project Name _____
 Project Location _____
 To _____
 Name of CM/Sub-bidder _____

Indicate SDO Certification:

_____ MBE
 _____ WBE
 _____ M/WBE

1. This firm intends to perform work in connection with the above project.
2. This firm is currently certified by SDO to perform the work identified below, and has not changed its minority/women ownership, control, or management without notifying SDO within thirty (30) days of such a change.
3. This firm understands that if the CM/Sub-bidder referenced above is awarded the contract, the Bidder intends to enter into an agreement with this firm to perform the activity described below for the prices indicated. This firm also understands that the above-referenced firm, as General Bidder/Sub-Bidder, will make substitutions only as allowed by the terms of the Contract.
4. This firm understands that under the terms of the contract, only work actually performed by an MBE/WBE will be credited toward MBE/WBE participation goals, and this firm cannot assign or subcontract out any of its work without prior written approval of the Awarding Authority, and that any such assignment or subcontracting will not be credited toward MBE/WBE participation goals.

MBE/WBE PARTICIPATION

Section/Item Number (If Applicable)	Describe MBE/WBE Scopes of Work (Clarify "Labor Only", "Material Only" or "Labor and Material")	If Supplier, Indicate Total Value of Supplies (60% of Total Counts Toward Participation)	Dollar Value of Participation

Total Dollar Value: \$ _____

Name of MBE/WBE Firm _____

Business Address _____

Print Name _____

Authorized Signature _____

Title _____

Telephone No. _____ Fax _____

No. _____

Date: _____

EXHIBIT C - CONTRACTOR PROGRESS PAYMENT REPORT - MINORITY/WOMEN BUSINESS ENTERPRISES PARTICIPATION**Project Number:** _____**Project Name:** _____**Project Location:** _____**Date:** _____**Periodical Payment No.:** _____**Construction Manager:** _____**MBE and/or WBE:** _____

One copy of this report is to be submitted for each Minority Business Enterprise (MBE) and/or Women Business Enterprise (WBE) at the time of submitting a request for payment. Copies of the report must be sent to the Minority Business Enterprise (MBE) and/or Women Business Enterprise (WBE) named above and to the municipalities Affirmative Marketing Construction Officer (AMCO). The AMCO will forward a copy of each Contractor Progress Payment Report to SDO on a quarterly basis.

1. The total price to be paid to the above-named Minority Business Enterprise _____ and/or Women Business Enterprise _____: \$ _____
2. The amount remitted to the Minority Business Enterprise and/or Women Business Enterprise as of the above date for work performed under this project:
\$ _____
3. Balance due the Minority Business Enterprise and/or Women Business Enterprise as of the above date for work performed under the above-named project:
\$ _____
4. Comments or explanation of amounts indicated under items 1 and 2 above:

5. We hereby certify that the information supplied herein (including pages attached) is correct and complete.

Construction Manager:**Minority and/or Women Business Enterprise**_____
(Signed)_____
(Signed)_____
(Title)_____
(Title)_____
(Date)_____
(Date)

APPENDIX E – CONTRACTOR’S CERTIFICATION

STONEHAM, MASSACHUSETTS

A. Contractor’s Certification

A Contractor will not be eligible for award of a contract unless such Contractor has submitted the following certification.

CONTRACTOR’S CERTIFICATION

_____ certifies that:

1. It intends to use the following listed construction trades in the work under the contract.

_____ ; and

2. It will comply with the minority manpower ration and specific affirmative action steps contained herein; and
3. It will obtain from each of the contractors prior to the award of any contract under this contract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of contractor)

NOTE: To be submitted by the General Contractors to the Town

This form may be Xeroxed.

APPENDIX F – SUBCONTRACTOR’S CERTIFICATION

STONEHAM, MASSACHUSETTS

A. Subcontractor’s Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTOR’S CERTIFICATION

_____ certifies that:

1. It intends to use the following listed construction trades in the work under the contract
_____; and
2. It will comply with the minority manpower ratio and specific affirmative action steps contained within; and
3. It will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractor’s certifications becomes a part of all subcontracts under prime contract, no subcontract shall be executed until an authorized representative of the Town agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

NOTE: To be submitted by the General Contractors to the Town

This form may be Xeroxed.

APPENDIX G – PROCEDURES FOR AWARD OF SUBCONTRACTS**PROCEDURES FOR AWARD OF SUBCONTRACTS**

Pursuant to M.G.L. c.149 A, the Owner is required to develop a process consistent with legal requirements for the selection of subcontractors for construction manager at risk projects. This process is described in these Procedures for Award of Subcontracts (the “Procedures”). The Procedures are divided into three parts. The first part describes the prequalification and procurement of “Trade Contractors”, which, for the purposes of the Procedures, shall mean the subcontractors performing work in trade categories covered by Section 44F of Chapter 149. The second part describes the prequalification and procurement of all subcontractors that are not Trade Contractors. The third part addresses additional procurement matters.

For the purposes of the Procedures, the term Project shall mean the specific construction project to which the Procedures are being applied; the term CM shall mean the construction manager at risk selected by the Owner to construct the Project; the term Designer shall mean the firm (and its subconsultants) selected by THE OWNER to design the project; the term Project Manager shall refer to the firm serving as Project Manager on the project; and the term Applicant shall mean any firm that submits a response pursuant to the Procedures.

I. Trade Contractors**1. Applicability of Procedures**

1.1 Subcontracts Subject to Trade Contract Procedures. The procedures set forth in Sections 2 and 3 below shall govern the award of subcontracts by the CM for the furnishing of labor, materials, and equipment in the performance of the categories of work listed below whenever the estimated construction cost of such category of work exceeds \$25,000:

- a. Masonry work;
- b. Roofing and Flashing;
- c. Metal Windows;
- d. Glass and Glazing;
- e. Waterproofing, Dampproofing and Caulking;
- f. Miscellaneous and Ornamental Iron;
- g. Lathing and Plastering;
- h. Acoustical Tile;
- i. Marble;
- j. Tile;
- k. Terrazzo;
- l. Resilient Floors;
- m. Painting;
- n. Elevators;
- o. Fire Protection;
- p. Plumbing;
- q. Heating, Ventilating, and Air-Conditioning;
- r. Electrical work; and
- s. Any other categories of work for which the Awarding Authority deems if necessary or convenient to receive sub-bids.

The subcontractors performing these trades are referred to throughout the Contract Documents as “Trade Contractor(s).” Contracts for work in these categories of work where the estimated cost of such work exceeds \$25,000 are referred to as “trade contracts.”

2. Qualification of Trade Contractors

2.1 Prequalification Committee. Owner shall establish a prequalification committee (“the Prequalification Committee”) consisting of four members. They shall include two representatives of THE OWNER, a representative

of the Designer, and a representative of the CM. The Prequalification Committee shall conduct the prequalification of trade contractors as set forth in Sections 2 and 3 of the Procedures. The CM will provide assistance to the Prequalification Committee in the exercise of its responsibilities under the Procedures, including assistance from CM staff.

If the CM proposes to perform Trade Subcontract work or other Subcontract Work with its own forces, the CM's representative on the Prequalification Committee shall abstain from participation in any review of the CM's own proposal.

Three members of the Prequalification Committee shall constitute a quorum for the purposes of conducting the Prequalification Committee's official business.

2.2 Request for Qualifications. THE OWNER shall issue a request for qualifications ("RFQ") for each category of work listed in Section 1.1 if such work is required on the Project. The RFQ shall be placed on the CommBUYS web site; advertised in a newspaper of general circulation in the area of the Project and in the *Central Register* established under Massachusetts General Laws, Chapter 9, Section 20, and in such additional media as THE OWNER and the Prequalification Committee may deem appropriate at least fourteen (14) calendar days before the deadline for Applicants to submit a response to the RFQ by submission of a Statement of Qualifications ("SOQ"). All interested Trade Contractors shall be eligible to respond to the RFQ and participate in the prequalification process. The CM firm may submit its qualifications to bid on trade contract work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. The RFQ shall be prepared by THE OWNER in a form consistent with the requirements of M.G.L. c. 149A and in consultation with the Prequalification Committee and the CM. The RFQ shall contain a form or forms (individually or collectively, THE OWNER "Statement of Qualifications" or "SOQ") requiring the information necessary for the Prequalification Committee to determine if the Applicant is qualified to perform the category of work for which it seeks prequalification on the Project. The RFQ shall include, at a minimum:

- a. the date, time, and place for submission;
- b. relevant information about the project and the bidding process;
- c. the specific criteria for trade contractor prequalification and selection;
- d. a statement indicating that the RFQ will be used to prequalify trade contractors that will be invited to submit a bid; and
- e. that the responders' names are to be posted, but that there shall be no public opening of responses.

2.3 Prequalification Criteria. The Prequalification Committee shall evaluate the information submitted by each Applicant on its Statement of Qualifications, the results of reference checks performed by the Prequalification Committee and/or the CM, and any other information required or obtained by the Prequalification Committee. The following subparagraphs enumerate the legally required categories to be used by the Prequalification Committee in evaluating the Applicants, the subcategories of information within each category, and the specific point allocation required for prequalification within each category. Applicants must achieve an overall score of 70 or greater and must also achieve the minimum required points within each category in order to be deemed prequalified. Applicants that do not achieve both the minimum scores within each category and do not achieve an overall score of 70 or above shall not be deemed prequalified.

a. Management Experience (50 points, minimum of 25 required for approval)

- i) Business owners - The name, title, years with firm of the owner(s) of the business
- ii) Management personnel - The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel.
- iii) Similar project experience - The project name(s), description, description of scope, original trade contract sum, final trade contract sum with explanation, and date completed of similar projects.
- iv) Terminations – A list of any projects on which the trade contractor was terminated or failed to complete the work.

- v) Lawsuits – A list of commercial lawsuits in which the trade contractor is a defendant or defendant-in-counterclaim with regard to construction contracts within the last 3 years. The lawsuits shall not include any actions that primarily involve personal injury or workers' compensation claims, or where the sole cause of action involves the trade contractor's exercise of its rights for direct payment under the law.
- vi) Safety record – The three-year history of the trade contractor's workers' compensation experience modifier.

b. References (30 points; minimum of 15 required for approval)

- i) Client references - for all projects listed in clause (iii) of Management experience above, including the project name, client's name, address, telephone and fax number, and contact person.
- ii) Credit references - A minimum of five credit references, including telephone and fax number of contact person from key suppliers, vendors and banks.
- iii) Public project record – A list of all completed public building construction projects as defined in section 44A of chapter 149 during the past three years with client's name, address, telephone and fax number and contact person.

c. Capacity to Complete Projects – (20 points; minimum of 10 required for approval)

- i) Annual revenue for prior three fiscal years. There shall be no requirement for submission of financial statements.
- ii) Revenue under contract for next three fiscal years.

d. Commitment Letter – (mandatory no points assigned)

Mandatory commitment letters from surety companies or authorized agents stating that payment and performance bonds at 110% of the estimated trade contract value will be provided to the applicant if it is the successful bidder. The surety company providing the commitment letter must be licensed to do business in the Commonwealth and appear on the United States Treasury Department Circular 570.

e. Certificate of Eligibility – (mandatory, no points assigned)

All SOQs submitted after January 1, 2006 must include a certificate of eligibility from DCAM listing the Applicant as currently certified as a subcontractor in the scope of work for which the Applicant is submitting its SOQ.

f. Update Statement – (mandatory, no points assigned)

All SOQs submitted after January 1, 2006 must include a fully completed and current DCAM Update Statement prepared by the Applicant.

Applicants that are certified by the Massachusetts Supplier Diversity Office ("SDO") as either a Minority Business Enterprise, a Women Business Enterprise or a Minority/Women Business Enterprise and provide documentation of current SDO certification with their SOQ will have an additional 5 points added to their overall score.

If the Applicant is a joint venture, the Applicant must submit a copy of the joint venture agreement, signed by each member, and the joint venture agreement must clearly identify, for each member of the joint venture, such member's proportionate share or interest in the financial or other benefits, risks or liabilities of the venture ("joint venture interest"). One member of the joint venture must have a joint venture interest greater than fifty (50) percent ("the Lead Venturer"). The requirements for prequalification in 2.3 a-f above shall be met by each member of the joint venture; and the bonding requirements of 2.3 d above shall be met by the Lead Venturer or by the joint venture as an entity. A joint venture prequalified by the Prequalification Committee must obtain a Certificate of Eligibility from THE OWNER prior to the time bids are filed and must submit the Joint Venture's Certificate of Eligibility with its bid.

Joint ventures must be submitted for consideration by the Prequalification Committee. Following the deadline for submission of SOQs for a specific category of work, joint ventures for that category of work which were not submitted to the Prequalification Committee may not bid on that category of work, except that two firms both of whom were

independently prequalified by the Prequalification Committee for that category of work, may form a joint venture to bid that category of work without further consideration by the Prequalification Committee provided the Joint Venture has been THE OWNER Certified prior to submitting its bid and submits the Joint Venture's Certificate of Eligibility with its bid.

2.4 Deliberations of the Prequalification Committee. The Prequalification Committee shall consider each SOQ submitted based on the criteria set forth in Paragraph 2.3 above. The Prequalification Committee shall require that all mandatory submissions are submitted by the Applicant and apply a numerical scoring system, with both the minimum point scores for each category, and a score of 70 out of a possible 100 overall points, required to be prequalified. The Prequalification Committee shall prepare a written record of the evaluation of each Applicant.

The scoring system shall provide for the assigning of scores as follows. The Prequalification Committee shall first consider whether the Applicant has met the requirements of Subparagraphs d, e and f, bonding commitment letter, certificate of eligibility and update statement. If the Applicant has satisfied those criterion, it shall be awarded up to 100 points using the criteria listed above. Applicants that do not meet the requirements of Subparagraphs d, e and f shall not be presented to the Prequalification Committee for consideration.

Any Applicant that fails to achieve either an overall score of at least 70 or that fails to achieve the minimum required points within each category shall be deemed not to be prequalified for the category of work for which the Applicant sought prequalification. If it is determined at any time during the evaluation process, that an Applicant has willfully supplied materially false or misleading information in its application or otherwise, the Applicant may be eliminated from further consideration for prequalification for the Project and, in the discretion of the Owner, for any other projects requiring prequalification under these Procedures.

The decision of the Prequalification Committee shall be final and not subject to appeal except on the grounds of fraud or collusion. An Applicant firm's prequalification score shall be made available to that Applicant firm only and only upon request. An Applicant firm's score shall not be a public record as defined in M.G.L. c. 4, §7 and shall not be open to public inspection to the fullest extent possible under the law.

A list of the Applicants that have been determined by the Prequalification Committee to be prequalified and therefore eligible to bid shall be posted at the offices of THE OWNER listing the firms by trade categories. Applicants shall also be notified of the Prequalification Committee's determination on prequalification by mail at the address furnished by each Applicant.

The Prequalification Committee reserves the right to reopen the prequalification process for any category of work before it has completed its evaluation of firms that previously submitted SOQs and/or to hold multiple rounds of prequalification for any given category of work. In either case, any Applicant that has submitted a complete SOQ shall not be required to submit another one, although any Applicant not prequalified may elect to amend its SOQ prior to the latest deadline for submitting information for the trade contract for which the Applicant seeks to be prequalified.

No person or firm suspended or debarred pursuant to Massachusetts General Laws Chapter 29, Section 29F, or Chapter 149, Section 44C, or disqualified pursuant to Chapter 7, Section 38D, or which has been debarred by the Federal Government shall be determined to be qualified to compete for a trade contract or any other contract or subcontract to be issued on the Project. If any Applicant determined to be qualified to perform one or more trade contracts is subsequently suspended or debarred pursuant to such laws, the qualification of such Applicant shall be rescinded and such Applicant shall be notified of such action and eliminated from the list of prequalified bidders.

2.5 Determinations to Remain in Effect. The Prequalification Committee's determinations as to which Applicants are prequalified shall remain in effect, subject to the following provisions of this Section 2.5, for the duration of the Project. Upon receipt at any time of additional information deemed material and significant by the Prequalification Committee regarding a previously prequalified Applicant's qualifications or responsibility, including, but not limited to, compliance with any minimum prequalification requirements, the Prequalification Committee may determine, that the Applicant is not qualified to perform the applicable trade contract(s) for the Project. In such event, the Prequalification Committee shall notify the Applicant of its determination, and inform the Applicant of

any information on which the Prequalification Committee's determination is based that was not furnished by the Applicant.

3. Bidding

3.1 Requests for Bids. A request for bids ("RFB") will be issued for each trade contract subject to Sections 2 and 3 of these Procedures. The RFB will only be issued to the Trade Contractors appearing on the list of prequalified Applicants for the applicable trade contract determined pursuant to Section 2 above. The RFB shall include at least the following attachments:

- a. the date, time and place for submission of responses to the request for bids. All Trade Contractor bids will be submitted and opened at THE OWNER's Bid Room;
- b. fully detailed drawings and specifications by class of work in accordance with paragraph (a) of Subsection 1 of Section 44F of Chapter 149 of the Massachusetts General Laws (i.e., separate specification sections for the trades listed in Paragraph 1.1 above) which shall provide for full competition for each item of material to be furnished under the contract as set forth under subsection (b) of M.G.L. c.30, §39M;
- c. a detailed definition of the Trade Contractor's scope of work, including alternates and unit price items, if any, within that scope of work;
- d. a project schedule indicating the planned sequence and duration of each trade contractor's work;
- e. list of the Trade Contractors prequalified for the work covered by the RFB;
- f. a Trade Contractor bid form, that shall require, without limitation, a listing of price, addenda, alternates and unit price items, if any, for the trade work; certification that the trade contractor will perform the complete trade work with employees on his own payroll, except for work customarily performed by sub-trade subcontractors within the trade; and the names of all sub-trade subcontractors to be used if awarded the trade contract and each sub-trade contract sum; to the extent applicable, an identification by the Trade Contractor that it is a MBE or WBE or a list of the MBEs and/or WBEs proposed to be used by the Trade Contractor;
- g. an affidavit of tax compliance that must be executed by all bidders;
- h. an affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, §§ 26 and 27 that must be executed by all bidders;
- i. a non-collusion affidavit that must be executed by all bidders;
- j. a requirement that a bidder post a 5% bid bond from a surety company licensed to do business in the Commonwealth and whose names appears on U.S. Treasury Department Circular 570; but the bid bond shall be returned to the bidder if the bidder is not selected as the Trade Contractor;
- k. a budget for the project, and the budget amount for the trade contract scope of work as provided in the project guaranteed maximum price, if available, or as provided in the most recent budget for the project;
- l. a requirement that a bidder submit a current Certificate of Eligibility issued by DCAM to the Trade Contractor showing that the Trade Contractor is certified for the trade category for which the bid is submitted.
- m. a requirement that a bidder submit a completed Update Statement with its bid; and
- n. a Trade Contractor agreement form as set forth in M.G.L. c. 149A, §8 (k).

The prequalified Trade Contractors shall submit bids in compliance with the requirements of the Request for Bids package.

3.2 Bid Opening, Award, Rejection and Negotiation of Bids. Bids shall be opened publicly by THE OWNER. Bids for each trade shall be: a) accepted only from firms appearing on the list of prequalified firms described in Paragraph 2.4 for such trade; b) submitted as set forth in the RFB, and c) opened publicly. Any bid which does not include the bid bond or affidavits required pursuant to law or any response in which the information requested is incomplete, conditional, or obscure or which contains any additions not required in the request for bids package shall be rejected. The trade contract for each trade shall be awarded to the lowest prequalified bidder except that

THE OWNER reserves the right to reject the bids of any and all Trade Contractors if: a Trade Contractor is not eligible to submit a bid; if the bid does not represent the bid of a person competent to perform the work specified; or if less than three such bids were received and the prices are not reasonable for acceptance without further negotiation or competition. In addition if fewer than three responsive bids are received for any trade category and the lowest bid exceeds the estimated cost for the work, the CM shall attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the construction manager shall terminate negotiations with the lowest prequalified bidder and shall initiate negotiations with the trade contractor who was the second lowest prequalified bidder. If the CM is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the CM, on behalf of and with the consent of the public agency, shall solicit additional bids utilizing the procedures for selection of subcontractors who are not trade contractors, set out below and in M.G.L. c. 149A, § 8 (j).

3.3 Trade Contract Execution. Each trade contractor selected to perform work on the Project shall return an executed trade contract including the required performance and payment bonds and insurance certificate to the CM within 10 business days of receipt of the trade contract from the CM. The trade contract shall be the trade contract agreement required by law.

II. Other Subcontracts

1. Applicability of Procedures

Subcontracts Subject to Procedures For Other Subcontracts. The process set forth in these Sections 4 and 5 of the Procedures shall apply to the procurement of subcontracts and subcontractors that are not subject to the provisions of Sections 2 and 3 above, specifically subcontractors that are not Trade Contractors, and where the subcontract scope of work has an estimated value that is equal to or exceeds \$25,000.

2. Prequalification and Procurement

2.1 **Subcontract Other than Trade Contracts in With An Estimate Cost equal to or greater than \$25,000.**

For Subcontracts that are not trade contracts with an estimated cost equal to or greater than \$25,000, the CM shall submit to THE OWNER for its approval the qualifications which it believes a subcontractor must have to perform the work of the subcontract and a list of a minimum of three (3) subcontracting firms, and preferably at least five (5) subcontracting firms, which the CM believes meet the qualifications. The CM shall submit information in a form and content satisfactory to the Prequalification Committee concerning the qualifications and responsibility of the proposed subcontractors and, when relevant, how the selection will further the CM's compliance with its Project MBE and WBE participation goals. The CM firm may submit its qualifications to bid on subcontract work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. The Prequalification Committee may eliminate firms from the list of firms submitted by the CM, and the Prequalification Committee may add firms to the list submitted by the CM. The CM must add the firms requested by the Prequalification Committee to the list if the firms are acceptable to the CM. If the firms Prequalification Committee requested be added are not acceptable to the CM based upon qualifications, ability or for any other reason, the CM must advise the Prequalification Committee of its objections and the basis for the objections in writing. If the Prequalification Committee determines that the CM's objections to THE OWNER requested firm(s) are valid then the requested firms will not be added to the list, otherwise the firm(s) will be added.

The CM will invite all subcontractors on the approved list to submit bids for the subcontract work, using forms and procedures approved by THE OWNER. The bids shall be based on detailed bidding information developed by the CM for the subcontract work. The CM will submit to THE OWNER a list of bids submitted for each subcontract and with the list will indicate the bidder it recommends be selected to be awarded a subcontract. The CM shall along with its submission provide a written explanation as to the reasons for its selection and recommendation. The CM's recommendation will be based on relevant factors including, but not limited to, price, quality of work, and MBE and/or WBE participation. THE OWNER approval is required before a subcontract can be awarded by the CM to a subcontractor, which approval shall not be unreasonably

withheld provided the selection will not have an adverse effect on meeting project goals including, but not limited to, price, quality of work and/or MBE/WBE participation. In no event will the selection of a subcontractor affect the GMP agreed to by the CM.

The CM may, with the approval of THE OWNER, reject the proposals for a subcontract and either resolicit that scope of work or negotiate with one or more of the firms that submitted the rejected proposals. Such rejection may be based on the proposal being too high compared to the amount carried in the GMP for that scope of work or upon any other basis approved by THE OWNER.

- 2.2 Subcontracts With An Estimated Cost Less Than \$25,000.** Subcontracts with an estimated cost less than \$25,000, and subcontracts for the supply of materials or equipment not including performance of labor in construction at the Project site, regardless of the estimated cost, may be awarded by the CM using any method selected by the CM with the approval of THE OWNER.

III. Other Procurement Provisions

1. Emergencies

- 1.1** In case of an emergency, THE OWNER or the CM, with the prior approval of DCAM, may award a contract for such work as is necessary to preserve or protect the health or safety of persons or property on the basis of such competitive bids or proposals as it can reasonably obtain in time to respond to the emergency and without public advertisement or opening of bids or proposals; or the CM may perform such work with its own forces.

2. Termination of Contracts

- 2.1 Termination of Trade Contracts and Other Subcontracts.** If a trade contract, or other subcontract, is terminated in whole or in part by the CM after the subcontractor commences work but prior to completion of the work covered by such trade contract or other subcontract on account of breach or default by the trade contractor or other subcontractor, or for other reasons in the public interest approved by THE OWNER, the CM may engage a replacement subcontractor using any method selected by the CM and approved by THE OWNER, or may perform the affected work with its own forces, as necessary to preserve, protect, or complete the work without following these procedures and without public advertisement or opening of bids or proposals. The termination of a trade or other subcontract prior to completion of its work shall not be the basis for an increase in the GMP.

3. Miscellaneous Provisions

- 3.1 Procurement Records.** The Prequalification Committee and the CM shall ensure that THE OWNER has a complete set of the following records:

- a. All RFQs issued pursuant to Section 2 of these Procedures, including all addenda.
- b. All SOQs and other information furnished to or otherwise obtained by the Prequalification Committee and the CM concerning qualification of each Applicant responding to an RFQ including any references or scoring obtained or generated in connection with the SOQs.
- c. All RFBs issued by the CM to prequalified Trade Contractors pursuant to Section 3 of these Procedures.
- d. All bids received from such Trade Contractors in response to such RFBs.
- e. All solicitations for bids or proposals issued by the CM to firms other than Trade Contractors.
- f. All bids and proposals received by the CM from such firms in response to such solicitations.
- g. All contracts awarded pursuant to these procedures.

- h. All other written documents required pursuant to the terms of these Procedures.
- i. All other documents referring or relating to the evaluation of qualifications, proposals or bids, including but not limited to, all notes (to the extent included in Project files), memoranda, correspondence and meeting minutes, whether formal or informal, in either electronic media or hard copy.

THE OWNER shall retain copies of such records for a period of six (6) years from the date of final payment under the contract to which such records relate. The Secretary of Administration and Finance and the Inspector General of the Commonwealth shall have access to all such records at any time upon reasonable notice.

3.2 Severability. If any provision of these Procedures shall be determined to be invalid or unenforceable, the remaining provisions of the Procedures shall remain in full force and effect.

3.3 Time. The periods of time within which any party is required to act under the terms of these procedures when described in terms of “days” shall, unless otherwise specified, mean calendar days (and not business days), except that if the last day of any such time period falls on a Saturday, Sunday, or legal holiday in Massachusetts, the period of time during which the required action must be taken will be extended to the next following business day.

DRAFT

APPENDIX H – FORM FOR SUBCONTRACT BETWEEN CONSTRUCTION MANAGER AND TRADE CONTRACTOR

DRAFT

FORM FOR TRADE CONTRACT BETWEEN CONSTRUCTION MANAGER AND TRADE CONTRACTOR

THIS AGREEMENT made this _____ day of _____, 20____, by and between

_____ a corporation organized and existing under the law of _____
 a partnership consisting of _____
 an individual doing business as _____
 hereinafter called the "Construction Manager or CM" and

_____ a corporation organized and existing under the laws of _____
 a partnership consisting of _____
 an individual doing business _____
 hereinafter called the "Trade Contractor",

WITNESSETH that the CM and the Trade Contractor for the considerations hereafter named, agree as follows:

1. The Trade Contractor agrees to furnish all labor and materials required for the completion of all work specified in Section No. _____ of the Specifications for _____

(Name of Sub-trade)

and the Plans referred to therein and addenda No. _____, _____, _____ and _____ for the _____

(complete title of project and project no. taken from the title page of the Specifications)
 all as prepared by _____.

(Name of Designer or Engineer)

All work shall be in accordance with the (project) all as prepared by _____ designer. All work shall be in accordance with the contract documents listed on Exhibit A; and the detailed Scope of Work listed on Exhibit B. The CM agrees to pay the Trade Contractor as full payment for all the work in Exhibit B, the sum of \$_____. This price includes the following alternates (and other items set forth in the sub-bid):

Alternate No(s) _____, _____, _____,
 _____, _____, _____.

(a) The Trade Contractor agrees to be bound to the CM by the terms of the hereinbefore described Plans, Specifications (including all general conditions stated therein) and addenda No. _____, and _____, and _____, and to assume to the CM all the obligations and responsibilities that the CM by those documents assumes to

the _____ hereinafter called

(Public Agency)

the "Public Agency", except to the extent that provisions contained therein are by their terms or by law applicable only to the CM.

(b) The CM agrees to be bound to the Trade Contractor by the terms of the hereinbefore described documents and to assume to the Trade Contractor all the obligations and responsibilities that the Public Agency by the terms of the hereinbefore described documents assumes to the CM, except to the extent that provisions contained therein are by their terms or by law applicable only to the Public Agency.

2. The CM agrees to begin, prosecute and complete the entire work specified by the Public Agency in an orderly manner so that the Trade Contractor will be able to begin, prosecute and complete the work described in this Trade Contract; and, in consideration thereof, upon notice from the CM, either oral or in writing, the Trade Contractor agrees to begin, prosecute and complete the work described in this Trade Contract in an orderly manner in accordance with the Project Schedule attached as Exhibit C as it may be reasonably modified from time to time by agreement of the CM and the Trade Contractor.

3. The Trade Contractor agrees to furnish to the CM on execution of this Trade Contractor Agreement and prior to commencing the work, evidence of workmen's compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Public Agency by the CM.

4. The CM agrees that no claim for services rendered or materials furnished by the CM to the Trade Contractor shall be valid unless written notice thereof is given by the CM to the Trade Contractor during the first ten (10) days of the calendar month following that in which the claim originated.

5. The Trade Contractor Agreement is contingent upon the execution of an amendment to the contract between the CM and the Public Agency for the work of the Trade Contractor.

6. If the Trade Contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to sub-trade subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the CM, or otherwise be guilty of a substantial violation of any provision of the contract, then the CM may, without prejudice to any other right or remedy and after giving the Trade Contractor and his surety seven days' written notice, terminate the employment of the Trade Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Trade Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the trade contract price shall exceed the expense of finishing the work including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Trade Contractor. If such expense shall exceed such unpaid balance, the Trade Contractor shall pay the difference to the CM. The CM and Trade Contractor shall have the right to seek damages for breach of this Trade Contract without terminating this Trade Contract or ceasing performance hereunder.

7. The following exhibits are incorporated into their subcontract:

Exhibit A: Contract Documents

Exhibit B: Detailed Scope of Work

Exhibit C: Project Schedule

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above-written.

SEAL ATTEST

(Name of Trade Contractor)

By: _____

SEAL ATTEST

(Name of CM)

By: _____

APPENDIX I – PERFORMANCE BOND**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we _____
(Name of Contractor)

a _____ hereinafter called "Principal" and
(Corporation, Partnership, Joint Venture or Individual)

_____ of _____, State of _____
(Surety) (City)

_____ hereinafter called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of _____, Massachusetts, hereinafter called "Owner", in the penal sum of _____ Dollars

(\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas the Principal has entered into a certain contract with the Owner (the "Construction Contract"), dated the _____ day of _____, 20____, for the construction described as follows: _____.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of the Construction Contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under the Construction Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise, this obligation shall remain in full force and effect.

PROVIDED, FURTHER, that the Surety's obligation under this Bond shall arise after

(1) the Owner has declared the Principal in default of the Construction Contract or any provision thereof, or (2) has declared that the Principal has failed, or is otherwise unable or unwilling, to execute the work consistent with, and in conformance to, the Construction Contract (collectively referred to as a "Contractor Default"). The determination of a Contractor Default shall be made solely by the Owner. The Owner need not terminate the Construction Contract to declare a Contractor Default or to invoke its rights under this Bond, and Principal agrees, notwithstanding any agreement between it and the surety to the contrary, not to bring any claim against the Surety on account of the Surety's good faith fulfillment of its obligations before or without termination of the Construction Contract.

When the Surety's obligation under this Bond arises, the Surety, at its sole expense and at the consent and election of the Owner, shall promptly take one of following steps: (1) arrange for the Principal to perform and complete the work of the Construction Contract; (2) arrange for a contractor other than the Principal to perform and complete the work of the Construction Contract; (3) reimburse the Owner, in a manner and at such time as the Owner shall reasonably decide, for all costs and expenses incurred by the Owner in performing and completing the work of the Construction Contract. Surety will keep Owner reasonably informed of the progress, status and results of any investigation of any claim of the Owner.

If the Surety does not proceed as provided in this Bond with due diligence and all deliberate speed, the Surety shall be deemed to be in default of this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.

After the Surety's obligation under this Bond arises, the Surety is obligated, to the limit of the amounts of this Bond, for (1) the correction of defective work and completion of the Construction Contract; (2) additional design, professional services, and legal costs, including attorney's fees, resulting from the Contractor Default or from the default of the Surety under this Bond; (3) any additional work beyond the Construction Contract made necessary by the Contractor Default or default of the Surety under this Bond; (4) indemnification obligations of the Principal, if any, as provided in the Construction Contract; and (5) liquidated damages as provided in the Construction Contract, or if no such damages are specified, actual damages and consequential damages resulting from the Contractor Default or any default of the Surety under this Bond.

Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction in the Commonwealth of Massachusetts.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed in ____ () counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20____.

ATTEST:

(Principal Secretary) By _____
Principal

(Address-Zip Code)

(SEAL)
Witness as to Principal

(Address-Zip Code)
ATTEST:

By _____
Surety
(Attorney-in-Fact)

(Address-Zip Code)

(SEAL)
Witness as to Surety

(Address-Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

APPENDIX J – CERTIFICATE AS TO CORPORATE PRINCIPAL (PERFORMANCE BOND)

**CERTIFICATE AS TO CORPORATE PRINCIPAL
(PERFORMANCE BOND)**

I, _____, certify that I am the _____ of the corporation named a principal in the within bond; that _____ who signed said Bond on behalf of the Principal was then _____ of said corporation and I know his signature and his signature thereon is genuine; and that said Bond was duly signed, sealed and attested for and on behalf of said corporation by authority of its governing body.

Signed: _____ [Seal]

Date: _____, 201_

END OF PERFORMANCE BOND

DRAFT

APPENDIX K – LABOR AND MATERIAL PAYMENT BOND

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that _____

_____ as principal, and

_____ as surety, are held and firmly bound unto the Awarding Authority in the sum of _____

lawful money of the United States of America, to be paid to the Awarding Authority, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principal has made a contract with the Awarding Authority under date of _____, 200_,

for: _____

Now the condition of this obligation is such that if the principal shall promptly pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the surety of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purposes of items set out in, and to be subject to, the provision of Massachusetts General Laws (Ter. Ed.), Chapter 30, Section 39A, and Chapter 149, Section 29 as amended, then this obligation shall become null and void; otherwise it shall remain in full force and effect.

In witness whereof we hereunto set our hands and seals this ____ day of _____, 201_.

By Principal: _____ [Seal]

By Surety: _____

Address: _____

Surety Agent: _____ [Seal]

Address: _____

Telephone: _____

APPENDIX L – CERTIFICATE AS TO CORPORATE PRINCIPAL (LABOR AND MATERIAL BOND)

**CERTIFICATE AS TO CORPORATE PRINCIPAL
(LABOR AND MATERIAL BOND)**

I, _____, certify that I am the _____

of the corporation named as principal in the within bond; that _____

who signed said Bond on behalf of the Principal was then _____

of said corporation and I know his signature and his signature thereon is genuine; and that said Bond was duly signed, sealed and attested for and on behalf of said corporation by authority of its governing body.

Signed: _____ [Seal]

Date: _____, 201_

END OF LABOR AND MATERIAL PAYMENT BOND

DRAFT