

**General Conditions of the Contract for Construction
 For Construction Manager At Risk (CMR)
 Department of Construction Services
 State of Connecticut**

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**ARTICLE 1
DEFINITIONS**

WHENEVER THE FOLLOWING TERMS, OR PRONOUNS IN PLACE OF THEM, ARE USED THE INTENT AND MEANING SHALL BE AS FOLLOWS:

1.1 ACCEPTANCE OF THE WORK: The Owner's acknowledgement of the Acceptance of the Work from the CMR upon issuance of a Certificate of Acceptance by the Owner's Representative and Architect or Engineer that all Work has been completed, with the exception of heating and cooling systems requiring Seasonal Testing, and Approved Deferred Functional Performance Testing, to Certify Functional Completion of those systems. Owner's prior written approval shall be required for any and all such exceptions.

1.2 ADDITIONAL OR DELETED WORK: Work required by the Department that, in the judgment of the Commissioner, involves any addition to, deduction from, or modification of the Work required by the Contract Documents.

1.3 AGENCY: The (User) Agency of the State of Connecticut having administrative authority of the facility in which the Work is being performed.

1.4 APPLICATION FOR PAYMENT, PROGRESS PAYMENT OR REQUISITION: Construction Manager's certified request for payment for completed portions of the Work and, if the Contract so provides, for materials or equipment suitably stored pending their incorporation into the Work.

1.5 APPROVED DEFERRED FUNCTIONAL PERFORMANCE TESTING. Execution of checklists and Functional Performance Testing that is delayed only upon written request by the CMR and the written approval of the CT DCS PM for any required check or test that cannot be completed including, but not limited to, the building's structure, required occupancy conditions or other deficiency.

1.6 ARCHITECT OR ENGINEER: A sole proprietor, partnership, firm, corporation or other business organization under Contract with the Owner, commissioned to prepare Contract Drawings and Specifications, to advise the Owner and in certain cases, to perform regular inspections during construction and when authorized to perform the duties of the Owner's Representative.

1.7 AS-BUILT DRAWINGS: Construction Drawings revised by the CMR to show all significant Modifications made during the construction process.

1.8 BID BOND: Form of Bid Security executed by the Bidder as Principal and by a Surety to guarantee that the Bidder will enter into a Contract within a specified time and furnish any required bond as mandated by Connecticut General Statutes Section 4b-92.

1.9 BIDDER: A sole proprietor, partnership, firm, corporation or other business organization submitting a Bid on the Bid Proposal Form for the Work contemplated, including Work to be performed under any Subcontract with the CMR.

1.10 BIDDING DOCUMENTS: Collectively, the Bidding Requirements and the proposed Contract Documents, including any addenda issued prior to receipt of Bids, relevant to competitive bidding for Subcontracts for designated portions of the Work.

1.11 BID OR BID PROPOSAL FORM: A complete and duly signed proposal to perform Work (or a designated portion thereof) for a stipulated sum submitted in accordance with the Bidding Documents.

1.12 BID SECURITY: Certified check or Bid Bond submitted with Bid Proposal Form, which provides that the Bidder, if awarded a Subcontract, will execute such Subcontract in accordance with the requirements of the Bidding Documents and specified time and furnish any required bond as mandated by Connecticut General Statutes Section 4b-92, as applicable to the subcontract amount.

1.13 BUILDER'S RISK INSURANCE: Builders Risk Insurance insures a building under construction. The contractor normally purchases a builders risk policy to cover their materials and the property under construction until it is claimed by the owner. Builders Risk policies cover new construction or remodeling projects. Builders risk policies are project specific and are purchased in addition to a contractor's general liability insurance.

1.14 CALENDAR DAY: Each Day in a calendar including weekends and holidays.

1.15 CASH ALLOWANCE: An amount established in the Contract Documents for inclusion in the Contract Sum to cover the cost of prescribed items not specified in detail, and as shown in the Allowance Schedule, which shall be factored into and become a part of the Guaranteed Maximum Price.

1.16 CERTIFICATE OF ACCEPTANCE: A document issued by the Owner to the CMR stating that all Work, excepting those items previously agreed to and approved by the Owner, has been completed and accepted by the Owner.

1.17 CERTIFICATE OF COMPLIANCE: A document stating that for the portion of the Project completed, either the design portion or the construction portion, has been performed in substantial compliance with all applicable building codes.

1.18 CERTIFICATE OF OCCUPANCY: Document issued by the authority having jurisdiction certifying that all or a designated portion of a building is approved for its designated use.

1.19 CERTIFICATE OF FUNCTIONAL COMPLETION: A document issued by the Owner to the CMR when all remaining Testing, Adjusting and Balancing (TAB) and commissioning responsibilities of the Construction Manager and their subcontractors (except for seasonal or Approved Deferred Functional Performance Testing and controls training), have been certified as complete by the Owner's Commissioning Agent (CxA).

1.20 CERTIFICATE OF SUBSTANTIAL COMPLETION: A document prepared by the Architect or Engineer and approved by the Owner on the basis of an inspection stating:

1.20.1 that the Work, or a designated portion thereof, except for Functional Testing, Approved Deferred Performance Functional Testing, and controls training, is determined to be Substantially Complete;

1.20.2 the date of Substantial Completion;

1.20.3 the responsibilities of the Owner and the CMR for security, maintenance, heat, utilities, damage to the Work and insurance; and

1.20.4 the time within which the CMR shall complete the remaining Work.

1.21 CHANGE ORDER: Written authorization signed by the Owner, authorizing a modification in the Work, an adjustment in the Contract Sum, or an adjustment in the Contract Time.

1.22 COMMERCIAL GENERAL LIABILITY INSURANCE: Including contractual liability, products/completed operations, broad form property damage and independent Contractors. Coverage for hazards of explosion, collapse and underground (X-C-U) and for asbestos abatement when applicable to this Contract, must also be included when applicable to the Work to be performed. The State of Connecticut, the Department of Administrative Services, Division of Construction Services, and their respective officers, agents, and employees shall be named as an Additional Insured. This coverage shall be provided on a primary basis and include:

1.22.1 Asbestos Abatement: When applicable includes but is not limited to removal and/or abatement of: pipe and boiler insulation, sprayed on fireproofing, troweled on acoustical plaster, floor tile and mastic, floor linoleum, transite shingles, roofing materials, wall and ceiling plaster, ceiling tiles, and gasket materials.

1.22.2 X" (Explosion Damage): Damage to property caused by blasting or explosions.

1.22.3 "C" (Collapse Damage): Collapse includes structural property damage and property damage to any other property rising out of grading of land, excavating, burrowing, filling or backfilling, tunneling, pile driving, or coffer dam or caisson work, or moving, shoring, underpinning, razing or demolishing any building or structure.

1.22.4 "U" (Underground Damage): Underground damage includes damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any similar property beneath the surface of the ground or water caused by and occurring during the use of mechanical equipment for the purpose of

grading land, paving, excavating, drilling, burrowing, filling, backfilling, or pile driving.

1.23 COMMISSIONER: The State of Connecticut, Department of Administrative Services, Division of Construction Services (CT DCS) Commissioner acting directly or through specifically authorized CT DCS personnel or agent(s) having authority to perform duties defined in Article 25, "All Work Subject to Control of the Commissioner".

1.24 COMMISSIONING AGENT (CxA): An entity identified by the Owner who leads, plans, schedules, and coordinates the commissioning team to implement the Commissioning Process.

1.25 COMMISSIONING (Cx): A systematic process of ensuring that all building systems perform interactively according to the contract documents, the design intent, and the building's operational needs. Commissioning involves three phases: pre-design, construction, and warranty.

1.26 COMMISSIONING (Cx) PLAN: A plan that includes a list of all equipment to be commissioned, delineation of roles for each of the primary commissioning participants, and details on the scope, timeline, and deliverables throughout the commissioning process.

1.27 CONSTRUCTION CHANGE DIRECTIVE: A written authorization signed by the Owner, directing a modification in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum, Contract Time or both. Any Construction Change Directive effecting an adjustment to the Contract Sum or Contract Time shall result in a Change Order.

1.28 CONSTRUCTION DOCUMENTS: Drawings, and Specifications, Signed and sealed by the Architect and Engineers that set forth in detail the requirements for the construction of the Project and have received a Building Permit from the State of Connecticut Department of Administrative Services, Division of Construction Services, Office of State Building Inspector.

1.29 CONSTRUCTION MANAGER AT RISK (CMR): A sole proprietor, partnership, firm or Corporation, under a construction manager at risk agreement with the Department of Construction Services. The CMR is responsible for the performance of the Work under the Contract Documents. Whenever the term "Contractor" is used in these General Conditions and the pertinent Contract Documents, it may be understood to mean Construction Manager at Risk ("CMR") as defined herein and identified in the Construction Manager at Risk Agreement between Owner and CMR or, if appropriate, Contractor may refer to a Subcontractor or Sub-subcontractor for the Work.

1.30 CONSTRUCTION PHASE START DATE OR DATE OF COMMENCEMENT OF THE WORK: The date, specified by the Owner in the Notice to Proceed which date shall be contingent upon Owner's acceptance of CMR's Guaranteed Maximum Price pursuant to Article 1 Definitions herein.

1.31 CONTRACT DOCUMENTS OR CONTRACT:

The Agreement between Owner and CMR (the "CMR Agreement"), Conditions of the Contract (General Conditions, Supplementary Conditions, General Requirements and other Conditions), Drawings, Specifications, and any addenda the Request For Proposals, the CMR's Proposal and any other Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued thereto after execution of the Contract, all of which shall constitute the Contract. When the words "Contract Document" or "Contract" are used in these General Conditions, they may, as appropriate, refer to the documents, Drawings, Specifications and Addenda relevant to bid packages competitively bid and awarded for Subcontracts with the CMR for designated portions of the Work, pursuant to the CMR Agreement.

1.32 CONTRACT SUM: The sum stated in the Contract, which is the total amount payable by the Owner to the CMR for performance of the Work under the Contract Documents. When used in the CMR Agreement, the Contract Sum shall mean the Guaranteed Maximum Price as defined in Article 1 "Definitions" herein.

1.33 CONTRACT TIME: The period of time allotted in the Contract Documents for Substantial Completion of the Work, including authorized adjustments thereto. The Contract Time is the sum of all Working Days and Non-Working Days as further defined herein and specified in the Contract Documents.

1.34 COST OF THE WORK: Those costs necessarily incurred by the CMR in the proper performance of the Work, including the CMR Construction Phase Services Costs. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior approval of the Owner.

1.35 DAY: Whenever the word Day is used it shall be understood to mean Calendar Day stated in the Bidding Documents, unless stated otherwise.

1.36 DEPARTMENT OF ADMINISTRATIVE SERVICES, DIVISION OF CONSTRUCTION SERVICES (CT DCS) PROJECT MANAGER: The individual employed by the Owner, designated and authorized by the Commissioner, to be responsible for the overall management and oversight of the Project, and to represent the (User) Agency.

1.37 DIESEL VEHICLE EMISSIONS CONTROL: The reduction of air pollution emissions from diesel powered vehicles through the use of diesel engine emission control technologies.

1.38 EQUAL(S): Any deviation from the Specification which is defined as follows: A replacement for the specified material, device, procedure, equipment, etc., which is recognized and accepted as substantially equal to the first listed manufacturer or first listed procedure specified after review by the Architect/Engineer, and may be rejected or approved at the sole discretion of the Owner. All equals must

be substantially equivalent to the first manufacturer or first procedure listed in the Specifications with reference to all of the following areas: the substance and function considering quality, workmanship, economy of operation, durability, and suitability for purposes intended; size, rating, and cost. The equal does not constitute a modification in the scope of Work, the Schedule, or Architect/Engineer's design intent of the specified material, device, procedure, equipment, etc.

1.39 FINAL INSPECTION: Review of the Work by the Architect or Engineer and Owner to determine whether Acceptance of the Work has been achieved.

1.40 FINAL PAYMENT: The last payment made by the Owner to the CMR, made after notice of the Acceptance of the Work. Payment shall include the entire unpaid balance of the Contract Sum as adjusted by modifications.

1.41 FUNCTIONAL COMPLETION: Functional Completion is when all remaining TAB (Testing, Adjusting, Balancing) and Commissioning responsibilities of the CMR and their subcontractors (except for Seasonal and/or Approved Deferred Functional Performance Testing and controls training), have been functionally certified as complete by the Owner's Commissioning Authority (CxA) and the Certificate of Functional Completion has been issued.

1.42 FUNCTIONAL PERFORMANCE TEST (FT) PROCESS: A documented testing of system parameters, under actual or simulated operating conditions. Functional testing is the dynamic testing of systems (rather than just components).

1.43 GENERAL CONDITIONS: The part of the Contract Documents entitled "General Conditions of the Contract for Construction Manager at Risk", part of Division 00 of the Specifications.

1.44 GENERAL REQUIREMENTS: That part of the Contract Documents entitled General Requirements, which is Division 01, "General Requirements", of the Specifications.

1.45 GUARANTEE: See Warranty.

1.46 GUARANTEED MAXIMUM PRICE (GMP): GMP shall mean the sum of the Cost of the Work as developed by the CMR and the CMR Fee for the construction and post-construction phase work, including all sales, use and consumer and other taxes required by law; all other fees, general conditions, bonds, required permits and insurance; tools, construction machinery, and temporary facilities required at the construction site; and all other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated in the Work. If the Owner and CMR cannot agree on a GMP, the Owner may terminate the Agreement and proceed with the construction phase through other means, including but not limited to a different CMR or different project delivery method.

1.47 INLAND MARINE INSURANCE

(TRANSPORTATION INSURANCE): Inland marine insurance (transportation insurance) coverage for (1) property damage or destruction of an insured's property and (2) liability exposure of an insured for damage or destruction of someone else's property under his or her care, custody, or control. The insured (shipper) needs this insurance because the carrier (who can also be the insured and purchase inland marine insurance) may be found not at fault for damage to a property; or the carrier may not have any insurance or adequate insurance. Perils covered include fire, lightning, windstorm, flood, earthquake, landslide, theft, collision, derailment, overturn of the transporting vehicle, and collapse of bridges.

1.48 LIQUIDATED DAMAGES: A sum established in a Contract, usually as a fixed sum per Day, as the predetermined measure of damages to be paid to the Owner due to the CMR's failure to complete the Work within the Contract Time.

1.49 LUMP SUM: An item or category priced as a whole rather than broken down into its elements.

1.50 MOBILE SOURCE: A source designed or constructed to move from one location to another during normal operation except portable equipment and includes, but is not limited to, automobiles, buses, trucks, tractors, earth moving equipment, hoists, cranes, aircraft, locomotives operating on rails, vessels for transportation on water, lawnmowers, and other small home appliances.

1.51 NON-WORKING DAYS: All Saturdays, Sundays, **twelve (12)** Legal State Holidays, and any other Days identified in the Contract Documents or any Subcontracts held by the CMR relevant to its performance of the Work that the CMR or Subcontractors, as appropriate, are not permitted to execute the Work. The restriction of Non-Working Days may be suspended upon the approval or direction of the Commissioner.

1.52 NOTICE TO BIDDER: A notice contained in the Bidding Documents informing prospective Bidders of the opportunity to submit Bids and setting forth the procedures doing so.

1.53 NOTICE TO PROCEED: Written notice, issued by the Commissioner or the Commissioner's authorized representative, to the CMR authorizing the CMR to proceed with the Work and establishing the date for commencement of the Contract Time.

1.54 OWNER OR DEPARTMENT: The State of Connecticut, Department of of Administrative Services, Division Construction Services acting through its Commissioner or specifically authorized Department personnel or agent.

1.55 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE: Liability coverage for negligent acts of contractors and subcontractors hired by the insured. This specialized coverage is written for a specific project and

protects the owner, who is responsible for actions of contractors on the project.

1.56 OWNER'S REPRESENTATIVE: A sole proprietor, partnership, firm, corporation or other business organization, under Contract or employed by the Owner authorized to oversee the fulfillment of the requirements of the Contract Documents.

1.57 OVERHEAD: Indirect costs, including but not limited to: supervision (any position over the foreman) and transportation vehicles (Including fuel) for such supervisors; communication equipment; field and home office expenses; change order coordination; as-built drawings; liability insurance; and small tools and consumables.

1.58 PAYMENT, BOND, LABOR BOND OR MATERIAL BOND: A bond required to be furnished by the party performing the Contract for the protection of persons supplying labor or materials in the prosecution of the work provided for in the Contract for the use of each such person, in accordance with the threshold amounts and requirements set forth in Connecticut General Statutes Section 49-41.

1.59 PERFORMANCE BOND OR SURETY BOND: A bond furnished by the party performing the Contract and such party's surety, ensuring performance of the work provided for in the Contract, in accordance with the threshold amounts and requirements set forth in Connecticut General Statutes Section 49-41.

1.60 PERFORMANCE SPECIFICATION: A description of the desired results or performance of a product, material, assembly, procedure, or a piece of equipment with criteria for identifying the standard.

1.61 PLANS OR DRAWINGS: All Drawings or reproductions of Drawings pertaining to the construction of the Work contemplated and its appurtenances.

1.62 PRE-COMMISSIONING CHECKLISTS: Installation and start-up items to be completed by the appropriate party prior to operational verification through Functional Testing.

1.63 PROFESSIONAL LIABILITY INSURANCE: (Errors and Omissions Insurance): Insurance coverage generally available to the various professions that require protection for negligent acts and/or omissions resulting in bodily injury, personal injury, and/or property damage liability to a client.

1.64 PROJECT: The total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.65 PROJECT ELEMENTS: The permanent structures, site improvements and other permanent developments at the site specifically defined and specified in the Contract Documents requiring construction and services, which construction and services may constitute the whole or part of the Project.

1.66 PROJECT MANUAL: The set of documents assembled for the Work which includes, but is not limited to, Contract Documents, Bidding Requirements, Sample Forms, Conditions of the Contract, General Requirements, and the Specifications.

1.67 PROPRIETARY SPECIFICATION: A specification that describes a product, procedure, function, material, assembly, or piece of equipment by trade name and/or by naming the manufacturer(s) or manufacturer's procedure, exact model number, item, etc., of those products acceptable to the Owner.

1.68 REQUEST FOR PROPOSALS and CMR's PROPOSAL: The document issued by the Owner to solicit proposals for a Construction Manager at Risk for the Project and the CMR's document submitted in response to such solicitation.

1.69 REQUEST FOR QUALIFICATIONS: The document issued by the Owner to request submittals of qualifications by completing and submitting a Qualification Based Selection ("QBS") Booklet for evaluation by the Owner.

1.70 RETAINAGE: A percentage of each Application for Payment and a percentage of the total Contract Sum retained by the Owner.

1.71 SCHEDULE: A Critical Path Method (CPM) as required by Section 01 32 16.13 "CPM Schedules" – CMR of Division 01 "General Requirements", showing all events expected to occur and operations to be performed and indicating the Contract Time, start dates, durations and finish dates as well as Substantial Completion and Acceptance of the Work, rendered in a form permitting determination of the optimum sequence and duration of each operation.

1.72 SCHEDULE OF VALUES: A document furnished by the CMR to the Architect or Engineer and Owner stating the portions of the Contract Sum allocated to the various portions of the Work, which is to be used for reviewing the CMR's Applications for Payment.

1.73 SEASONAL COMMISSIONING TESTS: Functional Tests that are deferred until the system(s) will experience conditions closer to their intended design conditions.

1.74 SENSITIVE RECEPTOR SITES: Areas where concentrations of diesel emissions may be harmful to sensitive populations, including, but not limited to, hospitals, school and university buildings being occupied during a student semester, residential structures, daycare facilities, elderly housing, and convalescent facilities.

1.75 SHOP DRAWINGS: Drawings that illustrate construction, materials, dimensions, installation, and other pertinent information for the incorporation of an element or item into the construction as detailed Contract Documents.

1.76 SPECIFICATIONS: The description, provisions and other requirements pertaining to the method and manner of

performing the Work and/or to the quantities and quality of materials to be furnished under the Contract.

1.77 SUBCONTRACTOR:

A Subcontractor is a person or entity who has a direct contract with the CMR to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

1.78 SUB-SUBCONTRACTOR: A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

1.79 SUBMITTALS: Documents including, but not limited to, samples, manufacturer's data, Shop Drawing, or other such items submitted to the Owner and Architect or Engineer by the CMR for the purpose of approval or other action, as required by the Contract Documents.

1.80 SUBSTANTIAL COMPLETION: The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, the determination of which shall be represented by the issuance by the Owner of a Certificate of Substantial Completion.

1.81 SUBSTITUTION: Any deviation from the specified requirements, which is defined as follows: A replacement for the specified material, device, procedure, equipment, etc., which is not recognized or accepted as equal to the first manufacturer or procedure listed in the Specification after review by the Architect/Engineer, and may be rejected or approved by the Owner. The Substitution is not equal to the specified requirement in comparison to the first manufacturer or first procedure listed in the Specifications in one or more of the following areas: the substance and function considering quality, workmanship, economy of operation, durability, and suitability for purposes intended; size, cost, and rating. The Substitution constitutes a modification in the scope of Work, the Schedule, or the Architect/Engineer's design intent of the specified material, device, procedure, equipment, etc.

1.82 SUPERINTENDENT: The CMR's representative at the site who is responsible for continuous field supervision, coordination, in, completion of the Work, and, unless another person is designated in writing by the CMR to the Owner and the Owner's Representative, for the prevention of accidents.

1.83 THRESHOLD LIMIT BUILDING: Any proposed (new) structures or additions as defined by the Connecticut General Statutes Section 29-276b.

1.84 UMBRELLA LIABILITY INSURANCE: Umbrella liability insurance provides additional coverage when the limits of insurance on an underlying policy or several different underlying policies are exceeded. The limits provided by this policy will not respond to the loss until after some specified underlying policies limits are spent, exhausted, or otherwise not available.

1.85 UNIT PRICE: The monetary value stated by the Owner or the CMR, as a price per unit of measurement for materials or services as described in the Contract Documents and/or Bidding Documents.

1.86 VALUABLE PAPER AND RECORD LOSS INSURANCE: An "all risk" insurance coverage that covers the cost of research to reconstruct damaged records, as well as the cost of new paper and transcription. The term "valuable papers" refers to written, printed, or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts.

1.87 WARRANTY: A written, legally enforceable assurance of specified quality or performance of a product or Work or of the duration of satisfactory performance.

1.88 WORK: The construction and services required by the Contract Documents, and including all labor, materials, equipment and services provided or to be provided by the CMR to fulfill the CMR's obligations. The Work may constitute the whole or a part of the Project whether on or off the site of the Project, and including all labor, materials, equipment and services provided or to be provided by Subcontractors, Sub-subcontractors, material suppliers or any other entity for whom the CMR is responsible under or pursuant to the Contract Documents.

1.89 WORK AUTHORIZATION ORDER (WAO): An authorization by the Owner to the CMR to perform the services and scope of work described in the WAO and for the total amount set forth in the WAO, which amount shall be factored into the GMP. The total amount shall be determined as previously bid and awarded by the CMR as part of its bidding and award of subcontracts. The services and scope of work shall be for site preparation and demolition as provided under Connecticut General Statutes Section 4b-103. A WAO shall not constitute: (i) a Notice to Proceed or the start of the Construction Phase of the CMR Agreement; (ii) the start of days to Substantial Completion or any increase in general conditions costs as set forth in the CMR Agreement; (iii) evidence of any approval or funding of the GMP.

1.90 WORKERS COMPENSATION / EMPLOYER LIABILITY INSURANCE: Coverage providing four types of benefits (medical care, death, disability, rehabilitation) for employee job-related injuries or diseases as a matter of right (without regard to fault).

ARTICLE 2 CONDITIONS OF WORK

2.1 The CMR shall carefully examine and study the conditions under which the Work is to be performed and the site of the Work, and compare the Contract Documents with each other and to information furnished by the Owner including but not limited to the Plans and Specifications, the form of the Contract, General Conditions, Supplementary Conditions, General Requirements, Bonds and all other Contract Documents associated with the Work.

2.2 The CMR shall report to the Owner's Representative all errors, inconsistencies or omissions discovered. The CMR shall not be liable to the Owner for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the CMR recognized such errors, inconsistencies or omission and failed to report it to the Owner's Representative. If the CMR performs any actions or construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without notice to the Owner's Representative, the CMR shall assume responsibility for such performance and related costs for the correction and shall not be allowed to submit any claim related to error, inconsistencies or omission.

2.3 The CMR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CMR with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner's Representative at once; and it will be assumed that the CMR has been satisfied as to all requirements of the Contract Documents. Any deterrent conditions at the site of the Work which are obvious and apparent upon examination of the site but are not indicated on the Plans shall be corrected by the CMR without additional compensation.

2.4 In performing the Work, the CMR must employ such methods or means as will not cause any interruption of or interference with the Work of any other Contractor, nor any inordinate disruption with the normal routine of the Owner, institution or Agency operating at the site.

2.5 No claims for additional compensation will be considered when additional costs result from conditions made known to, discovered by, or which should have been discovered by, the CMR prior to Contract signing.

2.6 All Communications from the CMR concerning proposed changes to the Contract Sum, Contract Time, or Work shall be in writing.

2.7 The CMR shall be responsible for the performance of the Work in accordance with the Contract Documents and approved Submittals pursuant to Article 5 "Submittals, Product Data, Shop Drawings, and Samples".

ARTICLE 3
CORRELATION OF CONTRACT DOCUMENTS

3.1 The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Where discrepancies or conflict occur in the Contract Documents the following order of precedence shall be utilized:

3.1.1 Amendments and addenda shall take precedence over previously issued Contract Documents.

3.1.2 The General Conditions take precedence over the General Requirements.

3.1.3 The Specifications shall take precedence over the Plans.

3.1.4 Stated dimensions shall take precedence over scaled dimensions.

3.1.5 Large-scale detail Drawings shall take precedence over small-scale Drawings.

3.1.6 The Schedules contained in the Contract Documents shall take precedence over other data on the Plans.

3.2 Neither party to the Contract shall take advantage of any obvious error or apparent discrepancy in the Contract Documents. The CMR shall give immediate written notification of any error or discrepancy discovered to the Owner's Representative, who shall take the necessary actions to obtain such corrections and interpretations as may be deemed necessary for the completion of the Work in a satisfactory and acceptable manner. The CMR shall then promptly proceed under the direction of the Owner and the provisions of Article 13 Compensation for Changes in the Work. The CMR's failure to provide immediate notice shall mean the CMR will not be entitled to any additional compensation, either monetary or Contract Time adjustment, with respect to any discrepancy.

3.3 Execution of the Contract by the CMR is a representation that the CMR has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

3.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings, shall not control the CMR in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

3.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

ARTICLE 4
COMMENCEMENT AND PROGRESS OF WORK

4.1 The Work shall start upon the date given in the Notice to Proceed. The CMR shall complete all the Work necessary for Final Payment, including but not limited to Substantial Completion, Contract close-out, Functional Completion, Acceptance of the Work, punchlist Work, training and submission of Record Documents, manuals, Guarantees and Warranties as stated in the Contract Documents.

4.2 Time is of the essence with respect to the Contract Time. By executing the Contract, the CMR confirms and agrees that the Contract Time is a reasonable period to perform the Work. The CMR shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The CMR may, at their discretion, plan to complete the Work and achieve Substantial Completion in less time than the Contract Time.

4.3 The CMR's early completion Schedule notwithstanding, the Owner reserves the right to order Modifications to the Work in accordance with Article 13 Compensation for Changes in the Work at any time during the Contract Time.

4.4 The CMR shall not be entitled to costs for delay due to Owner ordered Modifications or any other circumstances for the period of time between the CMR's elected early completion and the end of the Contract Time. Such costs include, but are not limited to, extended home office costs, field office costs, or supervisory and management costs incurred in performance of the Work. Early completion of the Work shall not merit additional compensation.

4.5 If the CMR is delayed at any time in the progress of Work by acts of God, such as fire or flood or any action, injunction or stop order issued by any court, judge or officer of the court or any other court action beyond the Owner's control, then the Contract Time may be extended by Change Order for such reasonable time as demonstrated by the CMR's Schedule and as the Owner may determine that such event has delayed the Work. In any event, the granting of an extension of time shall be solely within the discretion of the Owner.

4.6 Except as otherwise may be provided herein, extensions of time shall be the CMR's sole remedy for such delay. No payment or compensation of any kind shall be made to the CMR is for damages because of hindrance in the orderly progress of Work caused by the aforesaid causes.

4.7 The CMR is acknowledges that the Contract amount includes and anticipates any and all delays, whether avoidable or unavoidable, from said orders, which may issue from any court, judge, court officer, or act of God, and that such delays shall not, under any circumstances, be construed as compensable delays.

4.8 Any extension of the Contract Time shall be by Change Order pursuant to Article 13 Compensation for Changes in the Work.

4.9 The CMR shall employ a competent project manager who shall represent the CMR. Communications given to the project manager shall be binding as if given to the CMR. The project manager will be employed full time on the Project and be located and assigned to the Project site during and for the duration of the Work.

4.10 The CMR shall employ a competent Superintendent and necessary assistants who will be in attendance at the project site during the performance of the Work.

4.11 Upon execution of the Contract, materials may be purchased. No material escalation costs will be valid or compensable unless the Owner directs, in writing, a delay in the procurement.

ARTICLE 5 SUBMITTALS, PRODUCT DATA, SHOP DRAWINGS, AND SAMPLES

5.1 The CMR shall review, approve, and submit to the Owner's Representative all Submittals including but not limited to, product data, Shop Drawings, and samples, with such promptness as to cause no delay in the Work.

5.2 Correction or approval of such Submittals, Shop Drawings, product data and samples will be made with reasonable promptness by the Architect or Engineer. Approval will be general only and shall not relieve the CMR from responsibility for errors in dimensions, for construction and field coordination of the Work or for any departure from the Contract Documents, unless such departure has received the Owner's written approval.

5.3 No Work governed by such Shop Drawings, Schedules or samples shall be fabricated, delivered or installed until approved by the Architect or Engineer.

5.4 No damages for delays or time extensions will be granted, even if approvals deviate from the approved Schedule.

ARTICLE 6 SEPARATE CONTRACTS

6.1 The Owner reserves the right to perform Work in connection with the Contract with the Owner's own forces, or to let separate contracts relating to the Contract (Project) site or in connection with Work on adjoining sites. In such cases, the CMR shall afford such parties reasonable opportunity for storage of materials and equipment and coordinate and connect the Work with the work on adjoining sites or other Projects, and shall fully cooperate with such parties in the matter required under Article 7 Cooperation Of Trades herein.

6.2 Contractors working in the same vicinity shall cooperate with one another and, in case of dispute, decision of the Owner shall be final and binding to all Contractors involved, including Contractors under separate Contracts.

6.3 The CMR shall assume all liability, financial or otherwise, in connection with this Contract and shall protect and hold harmless the Owner from any and all damages or claims that may arise because of inconvenience or delay which the CMR may cause other Contractors. If the CMR experiences a loss because of the presence and operations of other Contractors working adjacent to or within the limits of the same Project, then as between the Owner and the CMR, the CMR shall bear such loss.

6.4 Insofar as possible, the CMR shall arrange the Work and shall place and dispose of the materials being used so as not to interfere with the operations of other Contractors adjacent to or within the limits of the same Project. The CMR shall join its Work with that of other Contractors in an acceptable manner, and perform the Work in proper accordance with that of the others.

6.5 In no event shall the Owner be responsible for any claim or damages that are the result of the CMR's failure to coordinate the Work with any other Contractor or Subcontractor.

ARTICLE 7 COOPERATION OF TRADES

7.1 The CMR shall be responsible for and shall control all activities of their Subcontractors. The Subcontractors shall consult and cooperate with one another. Each Subcontractor shall furnish all necessary information to other Subcontractors and shall lay out and install their own Work so as to avoid any delays or interference with the Work of others.

7.2 Any cost or changes, cutting and/or repairing, made necessary by the failure to observe the above requirements shall be borne by the party or parties responsible for such failure or neglect or their Subcontractors' faulty Work installed.

ARTICLE 8 DAMAGES

8.1 The Liquidated Damages, provided in the Bidding Documents, will be assessed at two distinct times, as follows:

8.1.1 Liquidated Damages – Substantial Completion: If the CMR fails to achieve Substantial Completion of the Work by the Substantial Completion Date, and such delay is not otherwise excused under this Contract, then the CMR agrees to pay to the Owner Liquidated Damages for the dollar amount specified in the Cost Proposal Form in the Request for Proposals for this Project, for each Day beyond Substantial Completion that the CMR fails to achieve Substantial Completion. The parties to this Contract acknowledge and agree that the actual damages that are to be anticipated as a result of the neglect, failure, or refusal of the CMR to substantially complete the Project by the established Substantial Completion Date are uncertain in amount or

extremely difficult to determine. Accordingly, the parties to this Contract do intend and in fact now agree to liquidate damages in advance and stipulate that the amount set forth in this subparagraph is reasonable and an appropriate remedy and is intended to constitute compensatory damages and does not constitute a penalty of any kind. The parties understand and agree that, by including a provision for Liquidated Damages in this Contract, or in pursuing any relief pursuant to such provision:

- .1 the parties do not intend to set a price for the privilege not to perform;
- .2 the availability of Liquidated Damages may not be relied upon as a basis for argument that the Owner has an adequate remedy at law; and
- .3 the remedies available to the Owner under this Agreement are cumulative and not exclusive.

8.1.2 Liquidated Damages – Acceptance of the Work: If the CMR fails to complete all of the Work, as more particularly described under the Article 1 Acceptance of the Work and the Liquidated Damages Definitions herein, required for Acceptance of the Work within **ninety (90) Days** of Substantial Completion then the CMR agrees to pay to the Owner Liquidated Damages for the dollar amount specified in the CMR Cost Proposal Form in the Request for Proposals for this Project, for each Day in excess of **ninety (90) Days** beyond the Substantial Completion Date that the CMR fails to achieve Acceptance of the Work. The parties to this Contract acknowledge and agree that the actual damages that are to be anticipated as a result of the failure of the CMR to complete all of the Work required for Acceptance of the Work within **ninety (90) Days** of the established Substantial Completion Date are uncertain in amount or extremely difficult to determine. Accordingly, the parties to this Contract do intend and in fact now agree to liquidate damages in advance and stipulate that the amount set forth in this subparagraph is reasonable and an appropriate remedy and is intended to constitute compensatory damages and does not constitute a penalty of any kind. The parties understand and agree that, by including a provision for Liquidated Damages in this Contract, or in pursuing any relief pursuant to such provision:

- .1 the parties do not intend to set a price for the privilege not to perform;
- .2 the availability of Liquidated Damages may not be relied upon as a basis for argument that the Owner has an adequate remedy at law; and
- .3 the remedies available to the Owner under this Agreement are cumulative and not exclusive.

8.2 The Liquidated Damages or any portion thereof may be waived at the sole discretion of the Commissioner.

8.3 No payment by the Owner, either partial or final, shall be construed to waive the Owner's right to seek Liquidated Damages.

8.4 In the event a court determines that the Contract herein is null and void for any reason, CMR agrees that CMR will not seek or pursue any lawsuit or claim for damages, including, but not limited to, claims for loss of Overhead or anticipated profits, against the Owner and the Owner shall not be liable for any damages which CMR may incur as a result of such decision. In addition, if the court enjoins the Owner from entering into or proceeding with the Contract herein, the Owner shall not be liable for any damages arising out of or relating to the award of such Contract which CMR may have incurred as a result of the injunction.

ARTICLE 9 MINIMUM WAGE RATES

9.1 In accordance with the provisions of the Connecticut General Statutes Section 31-53, the following applies:

"The wages paid on an hourly basis to any person performing the work of any mechanic, laborer, or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (h) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each payday."

9.2 Each Contractor who is awarded a Contract on or after October 1, 2002 shall be subject to provisions of the Connecticut General Statutes, Section 31-55a "Annual Adjustments to wage rates by contractors doing state work."

No wage adjustment will be made to the Contract for any wage increase under this Article.

ARTICLE 10 POSTING MINIMUM WAGE RATES

10.1 The CMR and every Subcontractor performing work for the Owner subject to Connecticut General Statutes Sections 31-53 or 31-54, shall post at conspicuous points on the site of the Contract a Schedule showing all determined wage rates for all trades and all authorized deductions, if any, from wages to be paid.

10.2 The CMR shall maintain a monthly certified payroll for all persons working on the site- to be provided to the Owner and to the Connecticut Department of Labor for its inspection.

**ARTICLE 11
CONSTRUCTION SCHEDULES**

11.1 Unless otherwise specified in the Contract Documents, within **thirty (30) Days** from the Construction Phase Start Date, the CMR shall submit the following to the Owner for approval:

11.1.1 A comprehensive Schedule of Submittals required by the Specifications. Said Schedule shall include Submittal dates, required approval dates and date material must be on site.

11.1.2 The CMR shall allow a minimum of **fifteen (15) Days** for the Owner and its agents' review of Submittals. No extension of the Contract Time shall be granted for revisions and resubmission. Further, the CMR shall allow a minimum of eight weeks for testing and Acceptance of the Work by the Owner.

11.1.3 When the Contract Documents specify a "CPM Schedule" a detailed Critical Path Method Schedule is required using software approved by the Owner and/or Owner's Representative with as many activities as necessary to make the Schedule an effective tool for planning and monitoring the progress of the Work. The CMR shall show all pertinent activities requiring coordination between trades.

11.1.4 When the Contract Documents specify a "Construction Schedule" a detailed "CPM Schedule" is required in accordance with the requirements Section 01 32 16.13 "CPM Schedules – CMR" of Division 01 General Requirements".

11.2 Unless otherwise specified under the Contract Documents, the CMR shall provide a monthly update of the CPM Schedule in the format required by the Owner as well as a disk of the updated Schedule and program. If, in the opinion of the Owner, the Work is falling behind Schedule, the CMR's shall submit a revised Schedule demonstrating a recovery plan to ensure Substantial Completion of the Work within the Contract Time.

11.2.1 Requisitions for partial payment will not be processed until the CMR has complied with all of the requirements of Section 11.2.

11.3 Overtime, increased manpower, and additional shifts: If ordered by the Owner in writing, the CMR shall work overtime, and/or add additional manpower and/or shifts:

11.3.1 If the CMR is not behind Schedule, the Owner will pay the CMR the actual additional premium portion of the wages for overtime or additional shift work not included in the Contract price, but the CMR shall not be entitled to Overhead and Profit.

11.3.2 If the CMR, through its sole or partial fault or neglect is behind Schedule, the Owner may order the CMR, at the CMR's expense, to increase its manpower or to work any overtime or additional shifts or take other action necessary to expedite the Work to meet the Project Schedule.

11.3.3 If the Schedule is shown to be more than **twenty-one (21) Days** behind in any critical activity, overtime, increase manpower and/or additional shifts shall be implemented immediately regardless of who is at fault. A disagreement over the cause of the impact will not relieve the CMR from the obligation of complying with this Article. Once liability for the impact is determined, compensation will be determined in accordance with 11.3.1 or 11.3.2.

11.3.4 The Owner reserves the right to suspend activity under Paragraph 11.3. Suspension shall be in writing and at the sole discretion of the Commissioner.

**ARTICLE 12
PREFERENCE IN EMPLOYMENT**

12.1 Should this Contract be for the construction or repair of any building, then in the employment of labor to perform the Work specified herein, preference shall be given to citizens of the United States in the following order:

12.1.1 who are, and continuously for at least three (3) months prior to the date hereof have been residents of the labor market area, as established by the State of Connecticut Labor Commissioner in which such Work is to be done;

12.1.2 to citizens who have continuously resided in the county in which the Work is to be performed for at least **three (3)** months prior to the date hereof;

12.1.3 to citizens of the state who have continuously resided in the State at least **three (3) months** prior to the date hereof.

12.2 Should this Contract be for a public works project other than for the construction, remodeling or repairing of public buildings covered by Connecticut General Statutes 31-52, then in the employment of mechanics, laborers or workmen to perform the Work specified herein, preference will be given to residents of the state who are, and continuously for at least **six (6) months** prior to the date hereof have been residents; of this State; If no such person is available then to residents of other states.

12.3 The provisions of this Article shall not apply where the state or any subdivision thereof may suffer the loss of revenue granted or to be granted from any Agency or Department of the federal government as a result of this Article or regulations related thereto.

**ARTICLE 13
COMPENSATION FOR CHANGES IN THE WORK**

13.1 At any time, without invalidating the Contract and by a written order and without notice to the sureties, the Owner, through the Owner's Representative, may order modifications in the Work consisting of additions, deletions or other revisions.

13.2 Modifications to the Work will be authorized by a written Change Order, or if necessary to expedite the Work, a written Construction Change Directive, issued by the Owner as provided for in Article 25 "All Work Subject to Control of the Commissioner". Change Orders and Construction Change Directives shall be processed in accordance with the terms of the Contract Documents. Upon receipt of the written Change Order, the CMR shall proceed with the Work when and as directed.

13.3 If a Change Order makes the Work less expensive for the CMR, the proper deductions shall be made from the Contract Sum, said deductions to be computed in accordance with the provisions listed in this Article 13. When both additions and credits covering related Work are involved in a change, the allowance for overhead and profit for the Subcontractors shall be calculated on the basis of the net increase, if any, with respect to that change. In the event a Change Order results in a net decrease, the amount of the credit from the Subcontractor shall be the actual net cost, without any overhead and profit percentage.

13.4 The CMR shall not be entitled to an extension of time if in the opinion of the Owner the Additional Work in conjunction with the Work can be performed without impact on the Contract Time.

13.5 The CMR may request, and the Owner may grant additional Contract Time when, in the opinion of the Owner, the CMR has demonstrated that the Additional Work cannot be performed in conjunction with the Work without impact on the original Substantial Completion and/or Acceptance of the Work (if applicable) date.

13.6 The CMR's compensation for any Additional or Deleted Work that results in a Change Order is limited to the CMR's fee as set forth in Article 5 "Compensation For Construction Phase Services" of the CMR Agreement. The CMR shall not be entitled to any overhead and profit percentages or any additional Construction Phase Services Costs except that if a Change Order results in an increase in the overall Days provided under the CMR Agreement, or if a Change Order requires additional resources from the CMR, the CMR may receive, upon prior review and approval by the Owner, additional Construction Phase Services Costs based upon a construction rate schedule previously approved by the Owner plus necessary, reasonable and verified costs.

13.7 In the event a Change Order results in Deleted Work as described in Article 14, "Deleted Work" herein, the CMR shall not be permitted to retain its fee for such Deleted Work.

13.8 The CMR's proposal for a Change in the Work shall be itemized completely, submitted in a detailed format acceptable to the Owner and shall include itemized cost components to be determined in one of the following manners:

13.8.1 Unit Price: As stated in the Contract Documents.

13.8.2 Unit Price: As subsequently agreed upon by the CMR and Owner.

13.8.3 Lump Sum: Agreed upon sum by the Owner and the CMR. The Owner may rely on costs, prices, and documentation provided by the CMR or Subcontractor in agreeing to a Lump Sum. If the Owner believes that additional information is necessary to substantiate the accuracy of the cost, the Owner reserves the right to request and receive additional information from the CMR. The Lump Sum must be based upon the following itemized costs:

.1 Labor: (Subcontractor's own forces) No Change Order Proposal shall be negotiated if the request is solely for the increased labor rate over those originally carried by the Subcontractor in its original bid. Additional foreman hours shall not be included unless additional crews are added and/or a compensable time extension is granted. Subcontractor's Project Executive time shall not be included as a direct cost as it is part of the overhead mark-up allowed. Subcontractor's Project Manager hours shall not be included unless a compensable time extension is granted.

.2 Material: (Actual cost to the Subcontractor) Cost shall not be based upon list pricing unless it reflects the actual prices being paid and no discounts or other offsets are being received by the Subcontractor. No Change Order Proposal shall be negotiated if the request is solely for the escalation of material prices over those originally carried by the Subcontractor in its original bid. If a trade discount by the actual supplier is available to the CMR or Subcontractor, it shall be credited to the State. If the materials are obtained from a supply or source owned wholly or in part by the CMR or Subcontractor, payment therefor will not exceed the current wholesale price for such materials. If, in the opinion of the State, the cost of materials is excessive, or if the CMR or Subcontractor fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The State reserve the right to furnish such materials as they deem advisable, and the CMR and Subcontractor shall have no claim for costs or profits on material furnished by the State.

13.8.4 Rented Equipment: (Used directly on the Work and by the Subcontractor's own forces).

13.8.5 Owned Equipment: (Used directly on the Work and by the Subcontractor's own forces). Daily rate is not to exceed 3% of the monthly rental rate as identified by a nationally recognized construction cost estimating guide or service.

13.8.6 Small Tools:

Include items such as shovels, picks, rakes, ladders, and power tools which are expected to be utilized on a project. Trade related equipment, hand tools, and power tools normally supplied with the labor or are normally expected to be owned in the performance of the typical work for a trade are not compensable. These costs shall not be approved as part of the Direct Cost of a Change Order as they are included in the Subcontractor's overhead mark-up percentage.

13.9 The amount of compensation to be paid for any Additional or Deleted Work performed by a Subcontractor or a Sub-subcontractor that results in a Change Order shall be determined as follows:

13.9.1 Overhead And Profit Percentages:
 (Maximum allowable percentages for the performance of the changed Work) Subcontractor's mark-up for Work performed by its own forces:

Change Order Amount	Overhead and Profit
\$0 to \$ 5,000	20%
\$5,001 to \$15,000	17%
\$15,001 to \$25,000	15%
\$25,000 and greater	12%

13.9.2 Overhead And Profit Percentages:
 (Maximum allowable percentages for the performance of the changed Work).

.1 Subcontractor's mark-up for Work performed by its Sub-subcontractor's forces and not allowable for any subsidiary in which the Subcontractor has a majority ownership:

Change Order Amount	Overhead and Profit
\$0 and greater	6%

.2 The Owner does not recognize any Overhead and Profit Percentage Markups on any changed Work performed by a Sub-subcontractor.

13.10 Bond Costs:

13.10.1 Actual additional bonding costs associated with the value of the Change Order will be compensable only when supported by written documentation by the bonding company that the Change Order requires an increase to the original Performance, Payment, Labor or Material Bond.

13.10.2 The CMR shall notify the bonding company at each \$500,000 increase to the contract value as the cumulative result of change orders. A copy of the Consent of Surety must be provided to the Owner prior to the execution of any change order which exceeds each cumulative **\$500,000**.

13.11 Trade discounts, rebates, and amounts received from the sales by the CMR of surplus materials and equipment shall accrue to the Owner.

13.12 If the parties cannot agree upon a Lump Sum, then the Commissioner, through the Project Manager, may at the option of the Commissioner take the following action(s):

13.12.1 Issue a Construction Change Directive for the Additional or Deleted Work. The amount of compensation shall be computed by the actual net costs to the CMR determined by time and material or Unit Prices based upon the same information required in Subparagraphs 13.12.1.1 through 13.12.1.5:

- .1 **Labor:** (Subcontractor's own forces).
- .2 **Material:** (Used by Sub-contractor's own forces).
- .3 **Benefits:** (The established rates of the following benefit costs inherent to the particular labor involved):
 - .1 Workers Compensation;
 - .2 Federal Social Security;
 - .3 Connecticut Unemployment Compensation.
 - .4 Fringe Benefits.
- .4 **Rented Equipment:** (Used directly on the Work and by the Subcontractor's own forces).
- .5 **Owned Equipment:** (Used directly on the Work and by the Subcontractor's own forces). Daily rate is not to exceed 3% of the monthly rental rate that can be identified by a nationally recognized construction cost estimating guide or service.

13.12.2 Issue a Change Order adjusting the Contract Sum in the amount as determined by the Commissioner.

13.13 For any Change Order or Construction Change Directive the CMR shall, when requested, promptly furnish in a form satisfactory to the Owner's Representative and the Owner a complete detailed accounting of all costs relating to the Additional Work, including but not limited to certified payrolls and copies of accounts, bills and vouchers to substantiate actual costs. Further, the Owner reserves the right to access and make copies of the CMR's records at any time upon written request from the Commissioner.

13.14 Failure of the CMR to negotiate in good faith issues of time and costs or failure to provide requested documentation within **fourteen (14) Days**, or a time period accepted by the Commissioner, shall constitute a waiver by the CMR of any claim. In such cases the Owner may elect to issue a unilateral Change Order in an amount deemed to be fair and equitable by the Commissioner. The provisions hereof shall not affect the power of the CMR to act in case of emergency, threatened injury to persons, or damage to Work on any adjoining property. In this case the Owner, through the Project Manager, shall issue a Change Order for such amount as the Commissioner finds to be reasonable cost of such Work.

**ARTICLE 14
DELETED WORK**

14.1 Without invalidating any of the terms of the Contract, the Commissioner may order deleted from the Contract any items or portions of the Work deemed necessary by the Commissioner.

14.2 The compensation to be deducted from the Contract Sum for such deletions shall be determined in the manner provided for under the provisions of Article 13 Compensation For Changes In The Work or in the event none of the provisions of Article 13 Compensation For Changes In The Work are applicable then by the value as estimated by the Owner.

**ARTICLE 15
MATERIALS: STANDARDS**

15.1 Unless otherwise specifically provided for in the Specifications, all equipment, materials and articles incorporated in the Work are to be new and of the best grade of their respective kinds for the purposes. Wherever in the Contract Documents a particular brand, make of material, device, or equipment is shown or specified, the first manufacturer listed in the specification section is to be regarded as the standard. When the specification is proprietary and only one manufacturer is listed, the CMR shall use the named manufacturer and no Substitutions or Equals will be allowed.

15.2 Any other brand, make of material, device, equipment, procedure, etc. which is a deviation from the specified requirement is prohibited from use, but may be considered by the Owner for approval as an Equal or Substitution. The CMR is to adhere to the specific requirements of the Contract Documents. Substitutions are discouraged and are only approved by the Commissioner as an exception.

15.3 Submittals – Equals and Substitution Requests:

15.3.1 Substitution of Materials and Equipment before the opening of the bids for the Project Elements. The Owner will consider requests for Equals or Substitutions, if made prior to the receipt of the Bid(s). The information on all materials shall be consistent with the information herein.

.1 Statement of Variances: A statement of variances must list all features of the proposed Substitution which differ from the Drawings, Specifications and/or product(s) specified and must further certify that the Substitution has no other variant features. A request will be denied if submitted without sufficient evidence.

.2 Substitution Denial: Any Substitution request not complying with the above requirements will be denied. Substitution request sent after the deadline

established in the Notice to Bidder will be denied.

.3 Addendum: An addendum shall be issued to inform all prospective Bidders of any accepted Substitution in accordance with Owner's addenda procedures.

15.3.2 Substitution of Materials and Equipment After GMP Agreement Date: Subject to the Architect or Engineer's determination, if the material or equipment is Equal to the one specified or pre-qualified and the CT DCS Project Manager's approval of such determination, Substitution of Material or Equipment may be allowed after the GMP Agreement Date only:

.1 If the specified or pre-qualified item is delayed by unforeseeable contingencies beyond the control of the CMR which would cause a delay in the Project completion;

.2 If any specified or pre-qualified item is found to be unusable or unavailable due to a change by the manufacturer or other circumstances; or

.3 If the CMR desires to provide a more recently developed material, equipment, or manufactured model from the same named manufacturer than the one specified or pre-qualified; or

.4 If the specified material and/or equipment inadvertently lists only a single manufacturer.

15.4 The CMR shall submit each request for Equal or Substitution to the Architect or Engineer who shall review each request and make the following recommendations to the Owner:

15.4.1 Acceptance of the Work or non-acceptance of the adequacy of the submission and required back-up,

15.4.2 Determination of the category of the request for Substitution or Equal, and

15.4.3 Overall recommendation for approval or rejection of the Substitution or Equal. The determination of the category as a Substitution may be grounds for an immediate rejection by the Owner.

15.5 Approval of the Owner for each Equal or Substitution shall be obtained before the CMR proceeds with the Work. The decision of the Commissioner, in this regard, shall be final and binding on the CMR.

15.6 No extension of time will be allowed for the time period required for consideration of any Substitution or Equal. No extension of time will be allowed and no responsibility will be assumed by the Owner when the CMR submits a request for Substitution or Equal, whether such request be approved or denied, and the CMR shall not be entitled to any claim for damages for delay.

15.7 If the CMR submits any request for an Equal or a Substitution, then it shall bear the burden of proof that such requested Equal or Substitution meets the requirements of the Plans and Specifications.

15.8 The CMR shall purchase no materials or supplies for the Work which are subject to any chattel mortgage or which are under a conditional sale or other agreement by which an interest is retained by the seller. The CMR warrants that the CMR has good title to all materials and supplies used by it or any of its Subcontractors in the Work.

15.9 All products and systems supplied to the State as a result of a purchase by a CMR or any of its Subcontractors shall be certified that, to the best of the supplier's knowledge, there are no materials that are classified as hazardous materials being used within the assembly. Hazardous materials include, but are not limited to, products such as asbestos, lead, and other materials that have proven to cause a health risk by their presence.

ARTICLE 16 INSPECTION AND TESTS

16.1 The purpose of the inspections will be to assure that the Work is performed in accordance with the Contract Documents. These inspections shall include, but not be limited to, all inspections and testing as required by the Owner, and any authorities have jurisdiction.

16.2 All material and workmanship, if not otherwise designated by the Specifications, shall be subject to inspection, examination and testing by the Commissioner at any and all times during manufacture and/or construction and at any and all places where such manufacture and/or construction is carried on. The Contract Documents additionally identify the parties responsible for performing and paying for the required testing and inspections. All required tests performed in a laboratory will be obtained and paid for by the Owner, except when the tests show the Work to be defective. The CMR shall pay all costs associated with re-tests and re-inspections for all tests and inspections which fail. The Owner will issue a deduct Change Order to recover said retesting costs from the CMR. All other tests, unless otherwise specified, shall be made at the CMR's expense. Notice of the time of all tests to be made at the site shall be given to all interested parties, including the Owner.

16.3 Without additional cost to the Owner, the CMR shall promptly furnish facilities, labor and materials necessary to coordinate and perform operational tests and checkout of the Work. The CMR shall furnish promptly all reasonable facilities, labor, and materials necessary to make all such testing safe and convenient.

16.4 If, at any time before final payment and Acceptance of the Work, the Commissioner considers it necessary or advisable to examine of any portion of the Work already completed by removing or tearing out the same, the CMR shall, upon request, furnish promptly all necessary facilities, labor, and materials. If such Work is found to be defective in

any material respect, as determined by the Owner, because of a fault of the CMR or any of the CMR or any of its Subcontractors, or if any Work shall have been covered without the approval or consent of the Commissioner (whether or not it is found to be defective), the CMR shall be liable for testing costs and all costs of correction, including removal and/or demolition of the defective Work. Such costs shall include labor, material, testing, re-testing, re-inspecting, services of required consultants, additional supervision, the Commissioner's and the Owner's Representative's administrative costs, and other costs for services of other consultants.

16.5 Cost of Commissioning (Cx) Retesting: The cost to retest a pre-functional or Functional Test, if the CMR is responsible for the deficiency, shall be the CMR's. If the CMR is not responsible, any cost recovery for retesting costs shall be negotiated with the CMR.

16.5.1 For a deficiency identified, not related to any pre-functional checklist or start-up fault, the following shall apply: The Commissioning Agent (CxA) and Owner's Representative will direct the retesting of the equipment once at no "charge" to the CMR for their time. However, the Commissioning Agent (CxA) and Owner's Representative's time for additional testing will be charged to the CMR.

16.5.2 The time for the Commissioning Agent (CxA) and Owner's Representative to direct any retesting required because a specific pre-functional checklist or start-up test item, reported to have been successfully completed, but determined during functional testing to be faulty, will be back charged to the CMR.

16.5.3 Any required retesting by any Subcontractor shall not be considered a justified reason for a claim of delay or for a time extension by the CMR.

ARTICLE 17 ROYALTIES AND PATENTS

17.1 If the CMR desires to use any design, device, material or process covered by a patent or copyright, the CMR shall provide for such use by suitable legal agreement with the holder of said patent or copyright. The CMR shall furnish a copy of this legal agreement to the Owner.

17.2 The CMR shall indemnify and hold harmless the Owner and Owner's Representative for any costs, expenses and damage which it may be obliged to pay by reason of any infringement of a patent or a copyright, at any time during the prosecution or after the Final payment of the Work.

**ARTICLE 18
SURVEYS, PERMITS, AND REGULATIONS**

18.1 Unless otherwise provided for, the CMR shall furnish surveys necessary for the execution of the Work. The Owner will furnish the CMR with two base lines and a benchmark.

18.2 Other than the "Building Permit" the CMR shall obtain and pay for all permits and licenses required for the execution of the Work, and the occupancy and use of the completed Work.

18.3 The CMR shall give all notices and comply with all laws, ordinances, rules and regulations including building and fire safety codes relating to the performance of the Work.

18.4 If underground utilities may be involved in part of the Work the CMR is required to request "Call-Before-You-Dig" to verify the location of underground utilities at least **five (5)** Days prior to the start of any excavation. The CMR shall also notify the Owner and Agency at least **five (5)** Days prior to the start of any excavation. If "Call-Before-You-Dig" fails or refuses to respond to the CMR's request, then the CMR shall obtain the services of a qualified underground utility locating firm, at no additional cost to the Owner, to verify locations of underground utilities prior to the start of any excavation. The CMR shall be held responsible for providing safety, protecting the Work and protecting workers as necessary to perform the Work. The CMR shall be responsible for maintaining and protecting all original utility mark-out at no additional cost to the Owner.

**ARTICLE 19
PROTECTION OF THE WORK,
PERSONS AND PROPERTY**

19.1 The CMR shall continuously and adequately protect the Work against damage from any cause, and shall protect materials and supplies furnished by the CMR or Subcontractors, whether or not incorporated in the Work, and shall make good any damage unless it be due directly to errors in the Contract Documents or is caused by agents or employees of the Owner.

19.2 To the extent required by law, by public authority, or made necessary in order to safeguard the health and welfare of the personnel or occupants of any of the state institutions, the CMR shall adequately protect adjacent property and persons, and provide and maintain all facilities, including but not limited, to passageways, guard fences, lights, and barricades necessary for such protection.

19.3 The CMR shall take all necessary precautions for the safety of employees on the Work and shall comply with applicable provisions of federal and state safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. The CMR shall also comply with the applicable provisions of the Associated General Contractors' "Manual of Accident Prevention in Construction", the standards of the

Connecticut Department of Labor Occupational Safety and Health (CONN-OSHA). A Subcontractor shall also comply with the provisions of the CMR's own safety plan and comply with whichever of the above-mentioned standards are the most stringent.

19.4 The CMR shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of employees of the State and the public, and shall post danger signs warning against any dangerous condition or hazard created by such things as protruding nails, well holes, elevator hatchways, scaffolding, window openings, excavations, tripping hazards or slipping, stairways and falling materials.

19.5 The CMR shall designate a qualified and responsible on-site staff person, whose duty shall be the prevention of accidents. The name and position of the designated person shall be reported to the Owner by the CMR at the commencement of the Contract.

19.6 The CMR shall at all times protect excavations, trenches, buildings, and all items of Work from damage by rain, water from melted snow or ice, surface water run off and subsurface water usual for the vicinity at the time of operations; and provide all pumps and equipment and enclosures to insure such protection.

19.7 The CMR shall construct and maintain all necessary temporary drainage and provide all pumping necessary to keep excavation, basements, footings and foundations free of water.

19.8 The CMR shall remove all snow and ice as may be required for access to the site and proper protection and prosecution of the Work.

19.9 The CMR shall install bracing, shoring, sheathing, sheet piling, caissons and any other underground facilities as required for safety and proper execution of the Work, and shall remove this portion of the Work when no longer necessary.

19.10 During cold weather the CMR shall protect all Work from damage. If low temperature makes it impossible to continue operations safely in spite of cold weather precautions, the CMR may cease Work upon the written approval of the Commissioner.

**ARTICLE 20
TEMPORARY UTILITIES**

20.1 Unless expressly provided for otherwise in Contract Documents, the CMR shall include in its proposed Construction Phase Services Costs, as stated in its Total Cost Proposal on its CMR Cost Proposal Form, the costs of all temporary utilities required for Project completion and protection of the Work. Said temporary utilities include, but are not limited to, lighting, heating, cooling, electrical power, water, telephone, sanitary facilities, and potable water.

**ARTICLE 21
CORRECTION OF WORK**

21.1 The CMR shall promptly and without expense to the Owner remove from the premises all materials rejected by or unacceptable to the Commissioner as failing to conform to the Contract Documents, whether incorporated in the Work or not.

21.2 The CMR shall promptly and without expense to the Owner replace any such materials, which do not conform to the Contract Documents, and shall bear the expense of making good all Work of other Subcontractors or Sub-subcontractors destroyed or damaged by such removal or replacement.

21.3 If the CMR, after receipt of notice from the Owner, shall fail to remove such rejected or unacceptable materials within a reasonable time as fixed in said notice, the Owner may remove and store such materials at the expense of the CMR.

21.4 Such action shall not affect the obligation of the CMR to replace and complete assembly and installation of the Work and to bear the expenses referred to above. Prior to the correction of rejected or unacceptable Work or if the Commissioner deems it inexpedient or undesirable to correct any portion of the Work which was rejected, deemed unacceptable, or not done in accordance with the Contract Documents, the Contract Sum shall be reduced by such amount as, in the judgment of the Commissioner, shall be equitable.

21.5 No extension of time will be given to the CMR for correction of rejected or unacceptable Work. All significant punchlist Work shall be completed before Substantial Completion is determined. The remaining minor punchlist Work, as determined by the Commissioner, shall be completed within **ninety (90)** Days of established Substantial Completion date.

21.6 Final Payment shall not relieve the CMR of responsibility for the defects in material or workmanship.

21.7 Unless expressly provided for otherwise in the Contract Documents, the CMR shall remedy any rejected or unacceptable Work, and any Work found to be not conforming to the Contract Documents which is discovered within **eighteen (18)** Months after the date of Substantial Completion. The CMR shall pay for any damage to other Work caused by such nonconforming Work or any damage created in correcting the nonconforming Work.

**ARTICLE 22
GUARANTEES and WARRANTIES**

22.1 Unless expressly provided for otherwise in the Contract Documents, the CMR shall provide a Warranty on the Work for an **eighteen (18)** Month period from the date of Substantial Completion. The CMR shall warrant that the

equipment, materials and workmanship are of good quality and new, unless permitted elsewhere by the Contract Documents, and that the Work shall be free from defects not inherent in the quality required or permitted and that the Work conforms to the Contract Documents.

22.2 Disclaimers and limitations from manufacturers, Subcontractors, Sub-subcontractors, suppliers or installers to the CMR shall not relieve the CMR of the Warranty on the Work. The Contract Documents detail the related damages, reinstatement of Warranty, replacement cost and Owner's recourse.

**ARTICLE 23
CUTTING, FITTING, PATCHING, AND DIGGING**

23.1 The CMR will perform or will cause the Subcontractors to perform all cutting, fitting, or patching of the portion(s) of the Work that may be required to make the several parts thereof joined and coordinated in a manner satisfactory to the Commissioner and in accordance with the Plans and Specifications.

23.2 The responsibility for defective or ill-timed Work shall be with the CMR, but such responsibility shall not in any way relieve the Subcontractor who performed such Work. Except with the consent of the Commissioner, neither the CMR nor any of its Subcontractors shall cut or alter the Work of any other Contractor or Subcontractor.

**ARTICLE 24
CLEANING UP AND
CONSTRUCTION WASTE MANAGEMENT**

24.1 The CMR shall, on a daily basis, keep the premises free from accumulations of construction waste material and/or rubbish.

24.2 Construction Waste Management: The CMR shall comply with all of the requirements of Section 01 74 19 "Construction Waste Management & Disposal – CMR", Division 01 "General Requirements", for the Project's waste management goals, waste management plan and waste management plan implementation and required submittals.

24.3 Prior to Acceptance of the Work, the CMR shall remove from and about the site of the Work, all construction waste, rubbish, all temporary structures, tools, scaffolding, and surplus materials, supplies, and equipment which may have been used in the performance of the Work. If the Commissioner in his sole discretion determines that the CMR has failed to clean the work site, the Owner may remove the construction waste, rubbish, all temporary structures, tools, scaffolding, and surplus materials, supplies, and equipment and charge the cost of such removal to the CMR. A deduct Change Order will be issued by the Owner to recover such cost.

**ARTICLE 25
ALL WORK SUBJECT TO CONTROL OF THE
COMMISSIONER**

25.1 The Commissioner hereby declares that the CT DCS Project Manager is the Commissioner's only authorized representative to act in matters involving the Owner's, and/or Architect's or Engineer's, ability to revoke, alter, enlarge or relax any requirement of the Contract Documents; to settle disputes between the CMR and the Owner's Representative; and act on behalf of the Commissioner. In all such matters, the provisions of Articles 13 "Compensation for Changes in the Work" and 14 Deleted Work herein shall guide the CT DCS Project Manager.

25.2 In no event may the CMR act on any instruction of the Agency without written consent of the Owner. In the event the CMR acts without such consent, it does so at its own risk and at its own expense, not only for the Work performed, but for the removal of such Work as determined necessary by the Commissioner.

25.3 In the performance of the Work, the CMR shall abide by all orders, directions, and requirements of the Commissioner at such time and places and by such methods and in such manner and sequence as the Commissioner may require.

25.4 The Commissioner shall determine the amount, quality, acceptability and fitness of all parts of the Work, shall interpret the plans, Specifications, Contract Documents and extra work orders and shall decide all other questions in connection with the Work.

25.5 The CMR shall employ no plant, equipment, materials, methods, or persons to which the Commissioner objects and shall remove no plant materials, equipment, or other facilities from the site of the Work without the permission of the Commissioner. Upon request, the Commissioner shall confirm in writing any oral order, direction, requirement or determination.

25.6 In accordance with Section 4b-24 of the Connecticut General Statutes, the Public Auditors of the State of Connecticut and the auditors or accountants of the Commissioner of Construction Services shall have the right to audit and make copies of the books of any CMR employed by the Commissioner.

**ARTICLE 26
AUTHORITY OF THE OWNER'S REPRESENTATIVE**

26.1 The Owner's Representative employed by the Commissioner is authorized to inspect all Work for conformance to the Contract Documents. The Owner's Representative is authorized to reject all Work found to be defective, unacceptable and nonconforming to the Contract Documents. Such inspections and rejections may extend to all or any part of the Work, and to the preparation or manufacture of the material to be used.

26.2 The Owner's Representative is not empowered to revoke, alter, enlarge, or relax any requirements of the Contract Documents, or to issue instructions contrary to the Contract Documents. The Owner's Representative shall in no case act as foreman or perform other duties for the CMR, nor shall the Owner's Representative interfere with the management of the Work by the CMR. Any advice, which the Owner's Representative may give the CMR, shall in no way be construed as binding the Commissioner or Owner in any way, nor releasing the CMR from the fulfillment of the terms of the Contract.

26.3 In any dispute arising between the CMR and the Owner's Representative with reference to inspection and rejection of the Work, the Owner's Representative may suspend Work on the non-compliant portion of the Work until the dispute can be referred to and decided by the Commissioner, which includes the CMR.

**ARTICLE 27
SCHEDULE OF VALUES,
APPLICATION FOR PAYMENT**

27.1 Immediately after the signing of the Contract, the CMR shall furnish for the use of the Commissioner, as a basis for estimating partial payments, a certified Schedule of Values, totaling the Contract Sum and broken down into quantities and unit costs, as outlined in the Contract Documents and as directed by the Owner. The Schedule of Values must reflect true costs and be in sufficient detail to be an effective tool for monitoring the progress of the Work Upon request of the Commissioner; the CMR shall supply copies of signed Contracts, vendor quotations, etc. as back up to the Schedule of Values.

27.2 Approval of the Schedule of Values by the Commissioner is required prior to any payment by the Owner.

27.3 The Schedule of Values shall include a breakdown of the CMR's Construction Phase Services Costs.

27.3.1 Non-recurring costs, (i.e. Mobilization costs, utility hook-ups, temporary heat) will be paid at the time of occurrence.

27.3.2 Reoccurring costs will be paid in proportion to the percent of completion of the Project.

27.3.3 Further detail can be found in the Division 01 General Requirements, Section 01 29 76 "Progress Payment Procedures – CMR" ; Subsection 1.3 Schedule Of Values for this project.

27.4 The Schedule of Values shall include a breakdown of Contract closeout costs including Commissioning Testing and Certification and Acceptance, training, Warranties, Guarantees, As-Built Drawings and attic stock.

27.5 The CMR shall make periodic applications for payment, which shall be subdivided into categories corresponding with the approved Schedule of Values and shall be in such numbers of copies as may be designated by the Commissioner.

**ARTICLE 28
PROGRESS PAYMENTS**

28.1 Commissioner will examine the CMR's Applications For Payments to determine, in the opinion of the Commissioner, the amounts that properly represent the value of the Work completed and the materials suitably stored on the site.

28.2 In making such Application For Payment for the Work, there shall be withheld **seven and five tenths (7.5%) percent** of the amount of each Application for Payment to be retained by the Owner as Retainage until Acceptance of the Work.

28.2.1 The Commissioner has the sole discretion in the determination of reduction in Retainage, including retainage on a Subcontractor. The following criteria shall be utilized in the reduction of Retainage withheld on a per Subcontractor package basis:

.1 At **fifty percent (50%)** completion of the Work the Owner shall issue a "Contractor's Performance Evaluation". If the CMR receives a performance evaluation score of "Good" or better, then the Retainage withheld may be reduced to **five percent (5%)**. All subsequent Applications for Payment shall be subject to **five percent (5%)** Retainage. Upon Substantial Completion, the Retainage may be reduced at the request of the CMR and recommendation of the CT DCS Project Manager. In the event of a reduction in Retainage to below **five percent (5%)**, the minimum Retainage withheld shall not be less than the CT DCS Project Manager's estimate of the remaining Work or **two and five tenths percent (2.5%)**, which ever is greater. All requests for Retainage Reduction shall be done on CT DCS CMR Retainage Reduction Request Form, a Sample which can be found at the end of these General Conditions.

28.2.2 Subsequent to Substantial Completion, in limited circumstances, at the sole discretion of the Commissioner, a reduction of Retainage below Two and **five tenths percent (2.5%)** may be considered.

28.2.3 A "Good" Contractor's Performance Evaluation score shall be defined as a minimum total score of **sixty percent (60%)**.

28.3 The decision of the Commissioner to reduce the Retainage rate will be based upon the "Contractor's Performance Evaluation" score for completed portions of the Work as set out above and other factors that the Commissioner may find appropriate as follows:

28.3.1 The CMR's timely submission of an appropriate and complete CPM Schedule or

Construction Schedule and Schedule of Values, in compliance with the Contract requirements and the prompt resolution of the Owner's and/or Architect's or Engineer's comments on the submitted material resulting in an appropriate basis for progress of the Work.

28.3.2 The CMR's timely and proper submission of all Contract Document required submissions: including, but not limited to, Shop Drawings, material certificates and material samples and the prompt resolution of the Owners and/or Architect's or Engineer's comments on the submitted material, resulting in an appropriate progress of the Work.

28.3.3 The CMR's provision of proper and adequate supervision and home office support of the Project.

28.3.4 The Work completed to date has been installed or finished in a manner acceptable to the Owner.

28.3.5 The progress of the Work is consistent with the approved CPM Schedule.

28.3.6 All approved credit change orders have been invoiced.

28.3.7 All Change Order requests for pricing are current.

28.3.8 The CMR has and is maintaining a clean worksite and managing construction waste in accordance with the Contract Documents.

28.3.9 All Subcontractor payments are current at the time of reduction request.

28.3.10 CMR is compliant with set-aside provisions of the contract and notwithstanding anything to the contrary in the Contract Documents, the CMR shall provide to Owner, in an electronic format acceptable to Owner, the following information for each bid package listed in Exhibit B to the GMP Amendment:

- .1** the subcontract and sub-subcontracts;
- .2** the MBE/SBE status of the subcontractor and each of its sub-subcontractors;
- .3** the amount paid by the CMR to the subcontractor and the amount paid by the subcontractor to its sub-subcontractors;
- .4** a detailed description of the selection process utilized by the subcontractor in awarding its sub-subcontractors; and,
- .5** a list of all competitive bids, proposals, or quotes received by the subcontractor, together with any other information used by the subcontractor, in awarding its sub-subcontractors."

28.4 No payments will be made for improperly stored or protected materials or unacceptable Work.

28.5 At his or her sole discretion, the Commissioner may allow to be included in the monthly requisitions payment requests for materials and equipment stored off the site.

28.5.1 In the event of special circumstances, and only when approved by the Commissioner, the CMR shall be allowed to include in its requisitions payment requests for materials and equipment suitably stored off the site-. The CMR shall submit an Off-Site Storage Authorization Request, on a form required

by the Owner, that lists all additional bonds and/or insurance certificates relating to materials and equipment suitably stored off-site, and follow all procedures as may be required by the State to obtain the Commissioner's written approval of such Off-Site Storage requests.

28.5.2 The Architect or Engineer, or Owner's Representative shall have inspected said materials and equipment and recommended payment therefore. The CMR shall pay for the cost of the Architect's or Engineer's, or Owner's Representative's time and expense in performing these inspection services.

**ARTICLE 29
DELIVERY OF STATEMENT SHOWING AMOUNTS DUE
FOR WAGES, MATERIALS, AND SUPPLIES**

29.1 For each Application for Payment under this Contract, the Owner reserves the right to require the CMR and every Subcontractor to submit a written verified statement, in a form satisfactory to the Owner, showing in detail all amounts then due and unpaid by such CMR or Subcontractor for daily or weekly wages to all laborers employed by it for the performance of the Work or to other persons for materials, equipment or supplies delivered at the site.

29.2 The term "laborers" as used herein shall include workmen, workwomen, and mechanics.

29.3 Failure to comply with this requirement may result in the Owner withholding the Application for Payment pursuant to Article 28 Progress Payments.

**ARTICLE 30
SUBSTANTIAL COMPLETION, FUNCTIONAL
COMPLETION, AND ACCEPTANCE OF THE WORK**

30.1 Substantial Completion:

30.1.1 When the CMR considers that the Work or a portion thereof is Substantially Complete, except for Functional Testing and controls training, the CMR shall request an inspection of said Work in writing to the Owner's Representative. The request shall certify that the CMR has completed its own inspection prior to the request and that the CMR is compliant with all requirements of 01 77 00 "Closeout Procedures - CMR", Division 01 General Requirements. The request must also include a statement that a principal or senior executive of the CMR is ready, willing and able to attend a walk through inspection with the Architect and/or Engineer, Owner, Owner's Representative, and Agency Representative.

30.1.2 Upon receipt of the request, the Architect or Engineer, Owner, and Owner's Representative, and Agency Representative will make an inspection to determine if the Work or designated portion thereof is Substantially Complete, except for Functional Testing and controls training. A principal or senior executive

of the CMR shall accompany the Architect or Engineer during each inspection/re-inspection. If the inspection discloses any item, whether or not included on the inspection list, which is not in accordance with the requirements of the Contract Documents, the CMR shall, before issuance of the Certificate of Substantial Completion, complete or correct such item.

30.1.3 The CMR shall then submit a request for another inspection. The determination of Substantial Completion is solely within the discretion of the Owner. Any costs for re-inspection beyond one, shall be at the expense of the CMR and such costs will be recovered by issuance of a credit Change Order. When the Work or designated portion thereof is determined to be Substantially Complete, except for Functional Testing and controls training, the CMR will be provided a Certificate of Substantial Completion from the Owner. The Certificate of Substantial Completion shall establish the date when the responsibilities of the CMR for security, maintenance, heat, utilities, damage to the Work, and insurance, are transferred to the Owner and shall fix the time within which the CMR shall finish all items on the inspection list accompanying the Certificate. If the punch list is not complete in **ninety (90) Days**, the Owner reserves the right to complete the outstanding punch list items with their own forces or by awarding separate contracts and to deduct the cost thereof from the amounts remaining due to the CMR.

30.1.4 The Certificate of Substantial Completion shall be signed by the Owner's Representative, Owner, and Architect or Engineer. Upon Substantial Completion of the Work or designated portion thereof, except for Functional Testing and controls training, and upon application by the CMR and certification by the Owner's Representative and Architect or Engineer, the Owner shall make payment reflecting adjustment in Retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

30.2 Functional Completion: Prerequisites To Functional Completion:

30.2.1 All TAB work and the commissioning requirements, Section 01 91 00 "Commissioning - CMR" of Division 01 "General Requirements" must be complete prior to Functional Completion, unless approved in writing by the CT DCS Project Manager. This includes for all systems, but is not limited to:

1. Completed and signed start-up and Pre-Commissioning checklist documentation;
2. Requested trending report data;
3. Submission of final approved TAB report;
4. Completion of all Functional Testing;
5. Required training of Agency personnel completed and approved;
6. Submission of the approved O&M manuals;

7. All identified deficiencies have been corrected or are approved by the Owner to be excepted from this milestone;

8. Exceptions to the Prerequisites to Functional Completion are the planned control system training performed after occupancy and any required Seasonal or Approved Deferred Functional Performance Testing.

30.3 Acceptance of the Work:

30.2.1 Upon completion of the Work, including Functional Completion the CMR shall forward to the Owner's Representative a written notice that the Work is ready for inspection and Acceptance of the Work.

30.2.2 When the Work has been completed in accordance with terms and conditions of the Contract Documents as determined by the Owner a Certificate of Acceptance shall be issued by the Owner.

**ARTICLE 31
FINAL PAYMENT**

31.1 The Owner reserves the right to retain for a period of **thirty (30) Days** after filing of the Certificate of Acceptance and Certificate of Functional Completion the amount therein stated less all prior payments and advances whatsoever to or for the account of the CMR.

31.2 All prior estimates and payments, including those relating to extra or additional Work, shall be subject to correction by the Final Payment.

31.3 No Application for Payment, Final or Partial, shall act as a release to the CMR or the CMR's sureties from any obligations under this Contract.

31.4 The Architect or Engineer and Owner's Representative will promptly issue the Certificate for Payment, stating that to the best of their knowledge, information and belief, and on the basis of their observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the CMR and noted in said Final Payment is due and payable.

31.5 Final Payment shall not be released until all of the following have been issued:

31.5.1 Certificate(s) of Occupancy;

31.5.2 Certificate(s) of Compliance;

31.5.3 Certificate of Acceptance;

31.5.4 Certificate of Function Completion (including all required Deferred and Seasonal Commissioning Testing & Functional Completion);

31.5.5 LEED Certification.

31.6 Neither Final Payment nor any Retainage shall become due until the CMR submits to the Owner the following:

31.6.1 An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied.

31.6.2 A certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire without at least **thirty (30) Days** prior written notice to the Owner.

31.6.3 A written statement that the CMR knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.

31.6.4 Written consent of surety, if any, to Final Payment.

31.6.5 If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMR may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the CMR shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

**ARTICLE 32
OWNER'S RIGHT TO WITHHOLD PAYMENTS**

32.1 The Commissioner may withhold a portion of any Payment due the CMR that may, in the judgment of the Commissioner, be necessary:

32.1.1 To assure the payment of just claims then due and unpaid to any persons supplying labor or materials for the Work.

32.1.2 To protect Owner from loss due to defective, unacceptable or non-conforming Work not remedied by the CMR.

32.1.3 To protect the Owner from loss due to injury to persons or damage to the Work or property of other Contractors, Subcontractors, or others caused by the act or neglect of the CMR or any of its Subcontractors.

32.1.4 To assure that CMR performs the required Seasonal and/or Approved Deferred Functional Performance Testing Certifying Functional Completion of those systems.

32.2 The Owner shall have the right to apply any amount withheld under this Article as the Owner may deem proper to satisfy protection from claims. The amount withheld shall be considered a payment to the CMR.

32.3 The Owner has the right to withhold payment if the CMR fails to provide timely and accurate submissions and submission updates of all required submittals, and reports, including but not limited to the following:

- 32.3.1** As-Built Drawings;
- 32.3.2** Request For Information (RFI) Logs;
- 32.3.3** CPM Schedules;
- 32.3.4** Submittal Logs;
- 32.3.5** Change Order Log;
- 32.3.6** Certified Payrolls;
- 32.3.7** Construction Waste Management Calculations and/or Reports and/or Plans;
- 32.3.8** Lien Waivers;
- 32.3.9** Daily Reports; and
- 32.3.10** All other requirements of the Contract Documents.

32.4 If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CMR may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the CMR shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

**ARTICLE 33
OWNER'S RIGHT TO STOP WORK OR TERMINATE
CONTRACT**

33.1 The Commissioner shall have the authority to suspend the Work wholly or in part, for such period or periods as the Commissioner considers being in the best interests of the State, or in the interests of public necessity, convenience or safety. During such periods the CMR shall store all materials and equipment, in such a manner to prevent the materials and equipment from being damaged in any way, and the CMR shall take precautions to protect the Work from damage.

33.1.1 If the Commissioner, in writing, orders the performance of all or any portion of the Work to be suspended or delayed for an unreasonable period of time (i.e. not originally anticipated, customary, or inherent in the construction industry) and the CMR believes that additional compensation and/or Contract Time is due as a result of such suspension or delay, the CMR shall submit to the Commissioner in writing a request for a Contract adjustment within seven (7) Days of receipt of the notice to resume Work. The request shall set forth the specific reasons and support for said adjustment.

33.1.2 The Commissioner shall evaluate any such requests received. If the Commissioner agrees that the cost and/or time required for the performance of the Contract has increased as a result of such suspension and that the suspension was caused by conditions beyond the control of and not the fault of the CMR, its suppliers, or Subcontractors, and was not caused by weather, then the Commissioner will make a reasonable adjustment, excluding profit, of the Contract terms. The Commissioner will notify the CMR of the determination as to what adjustments of

the Contract, if any, that the Commissioner deems warranted.

33.1.3 No Contract adjustment will be made unless the CMR has submitted the request for adjustment within the time prescribed.

33.1.4 No Contract adjustment will be made under this Article to the extent that performance would have been suspended or delayed by any other cause within the CMR's control or by any factor for which the CMR is responsible under the Contract; or that such an adjustment is provided for or excluded under other term or condition of this Contract.

33.2 Termination for Convenience:

Notwithstanding any provision or language in the Contract to the contrary, the State may terminate the Contract for convenience whenever the Commissioner determines at his sole discretion that such termination is in the best interests of the State. Any such termination shall be effected by delivery to the CMR of a written Notice of Termination for Convenience specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination shall be effective

33.2.1 In the event of such termination, the CMR shall be entitled to reasonable compensation as determined by the Commissioner, however, no claim for lost Overhead or Profits shall be allowed.

33.2.2 All Work and materials obtained by the CMR for the Work, that have been incorporated into the Work, inspected, tested as required, accepted by the Commissioner, and paid for by the State, shall become the property of the State.

33.2.3 Materials obtained by the CMR for the Work that have been inspected, tested as required, and accepted by the Commissioner, and that are not incorporated into the Work, shall, at the option of the Commissioner, be purchased from the CMR at actual cost as shown by receipted bills. To this cost shall be added all actual costs for delivery at such points of delivery as may be designated by the Commissioner, as shown by actual cost records.

33.2.4 Termination of the Contract for convenience shall not relieve the CMR or its surety of their responsibilities for the completed Work, nor shall it relieve the CMR's Surety of its obligations to ensure completion of the Work and to pay legitimate claims arising out of *the* Work.

33.3 TERMINATION FOR CAUSE

33.3.1 The Commissioner may give notice in writing to the CMR and its surety of any particular delay, neglect, or default of the CMR due to one or more of the following:

33.3.1.1 Failure to begin the Work within the time specified for same in the Contract Documents.

33.3.1.2 Failure to perform the Work with sufficient workmen, equipment or materials to ensure the prompt completion of the Work within the time specified in the Contract.

33.3.1.3 Unsuitable performance of the Work or failure to remedy or redo such work as DCS Project Manager shall reject as defective, unsuitable, or noncompliant with Contract requirements.

33.3.1.4 Failure or refusal to remove material rejected as defective, unsuitable, or noncompliant with Contract requirements.

33.3.1.5 Discontinuance of the suitable prosecution of the Work for a period of seventy-two (72) hours, excluding Saturdays, Sundays and holidays, without written authorization to do so from the DCS Project Manager.

33.3.1.6 Failure to recommence discontinued Work within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) after being ordered to do so by the DCS Project Manager.

33.3.1.7 Insolvency, filing for bankruptcy or any act or occurrence that may render the CMR financially incapable of completing the Work.

33.3.1.8 Failure to satisfy any final judgment against it for a period of thirty (30) days.

33.3.1.9 Making of any assignment for the benefit of creditors.

33.3.1.10 Violation of any provisions of the Contract Documents.

33.3.2 If the CMR or its surety within a period of ten (10) days after the issuance of such notice does not proceed in conformance with the directions set forth therein, or fails to present a remedial plan of operation, satisfactory to the Commissioner, for remedying the acts or failures complained of in the notice, then the Commissioner may, at his discretion, order the surety to complete the Work or, without violating the Contract, take the right to control and prosecute the Work out of the hands of said CMR and surety, terminating the Contract.

33.3.3 The Commissioner may appropriate or use any or all stockpiled materials and any and all equipment required by the Contract as may be suitable and necessary for completion of the Work and may enter into an agreement, either by negotiation or public letting, for the completion of said Contract by a party other than the CMR, according to the terms and provisions thereof, or use such other methods or combinations thereof as in his or her opinion shall be required or desirable for the completion of the Work.

33.3.4 All costs and charges incurred by the Owner in connection with completing the Work, or as a result of the CMR's default, shall be deducted from any monies due to or which may become due to the

CMR. In case such expense exceeds the sum that would have been payable under the Contract, then the CMR and the surety shall be liable for, and shall pay to the State, the amount of the excess. Termination of the Contract shall not relieve the CMR or its surety of their responsibilities for the completed Work, nor shall it relieve the CMR's surety of its obligations to ensure completion of the Work and to pay legitimate claims arising out of the Work.

ARTICLE 34 SUBLETTING OR ASSIGNING OF CONTRACT

34.1 The Contract or any portion thereof, or the Work provided for therein, or the right, title, or interest of the CMR therein may not be sublet, sold, transferred, assigned, or otherwise disposed of to any person, firm, or corporation without the written consent of the Commissioner.

34.2 No person, firm, or corporation other than the CMR to whom the Contract was awarded shall be permitted to commence Work at the site of the Contract until such consent has been granted.

ARTICLE 35 CONTRACTOR'S INSURANCE

35.1 The CMR shall not start Work under the Contract until they have obtained insurance as stated in the Contract Documents and until the insurance has been approved by the Owner. The CMR shall not allow any Subcontractor to start Work until the CMR's insurance provides coverage on behalf of the Subcontractor or the Subcontractor obtains insurance with sufficient coverage that is approved by the Owner. The CMR shall send Certificates of Liability Insurance to the Legal Services Unit, Department of Construction Services, 165 Capitol Avenue, Room 443, Hartford, CT 06106 unless otherwise directed in writing. For insurance definitions see Article 1 herein. Presented below is a narrative summary of the insurance required.

35.1.1 Commercial General Liability Insurance: Insurance including contractual liability, products/completed operations, broad form property damage and independent Contractors. The limits shall be no less than **\$1,000,000** each occurrence and **\$2,000,000** annual aggregate. Coverage for hazards of explosion, collapse and underground (X-C-U) and for asbestos abatement when applicable to this Contract, must also be included when applicable to the Work to be performed. The State of Connecticut, the Department of Construction Services, and their respective officers, agents, and employees shall be listed as an Additional Insured. This coverage shall be provided on a primary basis.

35.1.2 Owner's and Contractor's Protective Liability Insurance: Insurance providing a total limit of **\$1,000,000** for all damages arising out of bodily injury or death of persons in any one accident or

occurrence and for all damages arising out of injury or destruction of property in any one accident or occurrence and subject to a total (aggregate) limit of **\$2,000,000** for all damages arising out of bodily injury to or death of persons in all accidents or occurrences and out of injury to or destruction of property during the policy period. This coverage shall be for and in the name of the State of Connecticut.

35.1.3 Automobile Liability: The operation of all motor vehicles including those owned, non-owned and hired or used in connection with the Contract shall be covered by Automobile Liability insurance providing for a total limit of **\$1,000,000** for all damages arising out of bodily injuries to or death of all persons in any one accident or occurrence and for all damages arising out of injury to or destruction of property in any one accident or occurrence. In cases where an insurance policy shows an aggregate limit as part of the automobile liability coverage, the aggregate limit must be at least **\$2,000,000**. This coverage shall be provided on a primary basis. Should the Contractor not own any automobiles, the automobile & liability requirement shall be amended to allow the Contractor to maintain only hired and non-owned liability coverage.

35.1.4 Umbrella Liability Insurance: Umbrella Liability Insurance, including a drop down provision covering any exhausted underlying aggregate limits in the specified amount shown below of combined single limit each occurrence in excess of the coverages described in subsections 35.1.1 Commercial General Liability, 35.1.3 Automobile Liability, and 35.1.5 Workers' Compensation and Employer's Liability. The State of Connecticut shall be named as an additional insured. The Umbrella Liability Insurance Limits for the CMR are based on the Contract Value as specified in the following table.

Umbrella Liability Insurance Table:		
Contract Value		Umbrella Limit
\$1.00	\$500,000.00	\$1,000,000.00
\$500,000.01	\$1,000,000.00	\$2,000,000.00
\$1,000,000.01	to \$10,000,000	\$5,000,000.00
\$10,000,000.01	to \$30,000,000	\$10,000,000.00
\$30,000,000.01	to \$80,000,000	\$15,000,000.00
\$80,000,000.01	to \$150,000,000	\$20,000,000.00
\$150,000,000.01	to \$300,000,000	\$25,000,000.00

35.1.5 Workers' Compensation and Employer's Liability: As required by Connecticut Law and Employers' Liability with a limit of not less than **\$100,000** per occurrence, **\$500,000** disease policy limit and **\$100,000** disease each employee. When Work is on or contiguous to navigable bodies of waterways and ways adjoining, the Contractor shall

include the Federal Act endorsement for the U.S. Longshoremen's and Harbor Workers Act.

35.1.6 Special Hazards Insurance: If required, will be stated in the Contract Documents. This includes coverage for explosion, collapse or underground damage ((X-C-U) and for asbestos abatement when applicable to this Contract and shall be no less than **\$1,000,000** each occurrence.

35.1.7 Builder's Risk Insurance: Is required and will include coverage in accordance with the limits set forth in the Contract Documents.

35.1.8 Inland Marine/Transit Insurance: With respect to property with values in excess of **\$100,000** which is rigged, hauled or situated at the site pending installation, the Contractor shall maintain inland marine/transit insurance provided the coverage is not afforded by a Builder's Risk policy.

35.1.9 When required to be maintained, the Builder's Risk and/or Inland Marine/Transit Insurance policy shall endorse the State of Connecticut as a Loss Payee and the policy shall state it is for the benefit of and payable to the State of Connecticut.

35.2 Satisfying Limits Under an Umbrella Liability Insurance Policy: If necessary, the CMR may satisfy the minimum limits required above for 35.1.1 Commercial General Liability, 35.1.3 Automobile Liability, and 35.1.5 Workers' Compensation and Employer's Liability coverage under an Umbrella Liability Insurance policy. The underlying limits may be set at the minimum amounts required by the Umbrella Liability Insurance policy provided the combined limits meet at least the minimum limit for each required policy. The Umbrella Liability Insurance policy shall have an Annual Aggregate at a limit not less than two (2) times the highest per occurrence minimum limit required above for any of the required coverages. The State of Connecticut shall be specifically endorsed as an Additional Insured on the Umbrella Liability Insurance policy, unless the Umbrella of Liability Insurance policy provides continuous coverage to the underlying policies on a complete "Follow-Form" basis.

35.3 The CMR shall, at its sole expense, maintain in full force and effect at all times during the life of the Contract or the performance of Work hereunder, insurance coverage as described herein. Certificates shall include a minimum thirty (30) Day endeavor to notify requirement to the Owner prior to any cancellation or non-renewal.

35.4 The CMR shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention, including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

35.5 The requirement contained herein as to types and limits of insurance coverage to be maintained by the CMR are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the CMR.

35.6 Hold Harmless Provisions: The CMR shall at all times indemnify and save harmless the State of Connecticut, the Department of Construction Services, and their respective officers, agents, and employees, on account of any and all claims, damages, losses, litigation, expenses, counsel fees and compensation arising out of injuries (including death) sustained by or alleged to have been sustained by the officers, agents, and employees of said State or Department, or of the CMR, his Subcontractor, or materialmen and from injuries (including death) sustained by or alleged to have been sustained by the public, any or all persons on or near the Work, or by any other person or property, real or personal (including property of said State or Department) caused in whole or in part by the acts, omissions, or neglect of the CMR including, but not limited to, any neglect in safeguarding the Work or through the use of unacceptable materials in constructing the Work of the CMR, any Subcontractor, materialman, or anyone directly employed by them or any of them while engaged in the performance of the Contract, including the entire elapsed time from the date of the Notice to Proceed or the actual Commencement Of The Work whichever occurs first until its completion as certified by the Department of Construction Services.

ARTICLE 36 FOREIGN MATERIALS

36.1 North American Free Trade Agreement (NAFTA): Preference shall be given to articles or materials manufactured or produced in the United States, Canada, and Mexico, (the members of the North American Free Trade Agreement (NAFTA)); and the products shall meet all of the referenced standards and Specifications for conditions of performance, quality, and price with duty being equal.

36.2 Only articles or materials manufactured or produced in the United States, Canada, and Mexico, (the members of the North American Free Trade Agreement (NAFTA)), will be allowed. The foregoing provisions shall not apply to foreign articles or materials required by the Contract Documents.

36.3 Buy American Act (BAA): Any "public building" or "public work," project funded by the American Recovery and Reinvestment Act of 2009 ("ARRA") require that "all of the iron, steel, and manufactured goods used in the project" must be "produced in the United States" in accordance with the requirements of the Buy American Act (BAA).

ARTICLE 37 HOURS OF WORK

37.1 No person shall be employed to work or be permitted to work more than eight (8) hours in any Day or more than forty (40) hours in any week for any Work provided in the Contract, in accordance with Connecticut General Statute Section 31-57.

37.2 The operation of such limitation of hours of work may be suspended during an emergency, upon the approval of the Commissioner, in accordance with Connecticut General Statute Section 31-57.

ARTICLE 38 CLAIMS

38.1 General: When filing a formal claim under Section 4-61 (referred to as "Section 4-61" below) of the Connecticut General Statutes (as revised), either as a lawsuit in the Superior Court or as a demand for arbitration, the CMR must follow the procedures and comply with the requirements set forth in this Article. This Section does not, unless so specified, govern informal claims for additional compensation which the CMR may bring before the Department. The CMR should understand, however, that the Department may need, before the Department can resolve such a claim, the same kinds of documentation and other substantiation that it requires under this Article. It is the intent of the Department to compensate the CMR for actual increased costs caused by or arising from acts or omissions on the part of the Department that violate legal or contractual duties owed to the CMR by the Department.

38.2 Notice of Claim: Whenever the CMR intends to file a formal claim against the Department under Section 4-61, seeking compensation for additional costs, the CMR shall notify the Commissioner in writing (in strict compliance with Section 4-61) of the details of said claim. Such written notice shall contain all pertinent information described in Paragraph 38.5 below.

38.2.1 Once formal notice of a claim under Connecticut General Statutes Section 4-61(b) (as revised) has been given to the Commissioner, the claimant may not change the claim in any way, in either concept or monetary amount,

.1 without filing a new notice of claim and demand for arbitration to reflect any such change; and

.2 without the minimum period of six (6) months after filing of the new demand commencing again and running before any hearing on the merits of the claim may be held. The only exception to this limitation will be for damages that continue to accrue after submission of the notice, in ways described and anticipated in the notice.

38.3 Record Keeping: The CMR shall keep daily records of all costs incurred in connection with its Work on behalf of the Department. The daily records shall identify each aspect of the Project affected by matters related to any claim for additional compensation that the CMR has filed, intends to file, or has reason to believe that it may file against the Department; the specific Project locations where Project work has been so affected; the number of people working on the affected aspects of the Project at the pertinent time(s); and the types and number of pieces of equipment on the Project site at the pertinent time(s). Any potential or anticipated effect on the Project's progress or Schedule which may result in a claim by the CMR shall be noted contemporaneously with the cause of the effect, or as soon thereafter as possible.

38.4 Claim Compensation: The payment of any claim, or any portion thereof, that is deemed valid by the Department shall be made in accordance with the following provisions of this Article:

38.4.1 Compensable Items: The liability of the Department for claims will be limited to the following specifically identified items of cost, insofar as they have not otherwise been paid for by the Department, and insofar as they were caused solely by the actions or omissions of the Department or its agents (except that with regard to payment for extra work, the Department will pay to the CMR the Overhead and profit percentages provided for in Article 13, Compensation for Changes in the Work):

.1 Additional Project-site labor expenses.

.2 Additional costs for materials.

.3 Additional, unabsorbed Project-site Overhead (e.g., for mobilization and demobilization).

.4 Additional costs for active equipment.

.5 For each Day of Project delay or suspension caused solely by actions or omissions of the Department either:

.1 an additional **ten percent (10%)** of the total amount of the costs identified in Subparagraphs 38.4.1.1 through 38.4.1.4 above; except that if the delay or suspension period prevented the CMR from incurring enough Project costs under Subparagraphs 38.4.1.1 through 38.4.1.4 during that period to require a payment by the Department that would be greater than the payment described in Subparagraph 38.4.1.5.2 below, then the payment for affected home office Overhead and profit shall instead be made in the following per diem amount :

.2 **six percent (6%)** of the original total Contract amount divided by the original number of Days of Contract Time. Payment under either 38.4.1.5.1 or 38.4.1.5.2 hereof shall be deemed to be complete and mutually satisfactory compensation for any unabsorbed home office overhead and any profit related to the period of delay or suspension.

.6 Additional equipment costs. Only actual equipment costs shall be used in the calculation of any compensation to be made in response to claims for additional Project compensation. Actual equipment costs shall be based upon records kept in the normal course of business and in accordance with generally- accepted accounting principles.

Under no circumstances shall Blue Book or other guide or rental rates be used for this purpose (unless the CMR had to rent the equipment from an unrelated party, in which case the actual rental charges paid by the CMR, so long as they are reasonable, shall be used). Idle equipment, for instance, shall be paid for based only on its actual cost to the CMR.

.7 Subcontractor costs limited to, and determined in accordance with, Subparagraphs 38.4.1.1 through 38.4.1.5 above and applicable statutory and case law. Such Subcontractor costs may be paid for by the Department only: (a) in the context of an informal claims settlement; or (b) if the CMR has itself paid or legally assumed, present unconditional liability for those Subcontractor costs.

38.4.2 Excusable But Not Compensable Items: The CMR may be allowed Days but the Department will have no liability for the following non-compensable items:

.1 Abnormal or unusually severe weather;

.2 Acts of God;

.3 Force Majeure;

.4 Concurrent Delay.

38.4.3 Non-Compensable Items: The Department will have no liability for the following specifically-identified non-compensable items:

.1 Profit, in excess of that provided for herein.

.2 Loss of anticipated profit.

.3 Loss of bidding opportunities.

.4 Reduction of bidding capacity.

.5 Home office overhead in excess of that provided for in Subparagraph 38.4.1.5 hereof.

.6 Attorneys fees, claims preparation expenses, or other costs of claims proceedings or resolution.

.7 Subcontractor failure to perform.

.8 Any other consequential or indirect expenses or costs, such as tort damages, or any other form of expense or damages not provided for in these specifications or elsewhere in the Contract.

38.5 Required Claim Documentation: All claims shall be submitted in writing to the Commissioner, and shall be sufficient in detail to enable the Department to ascertain the basis and the amount of each claim, and to investigate and evaluate each claim in detail. As a minimum, the CMR must provide the following information for each and every claim and sub-claim asserted:

38.5.1 A detailed factual statement of the claim, with all dates, locations and items of Work pertinent to the claim.

38.5.2 A statement of whether each requested additional amount of compensation or extension of time is based on provisions of the Contract or on an alleged breach of the Contract. Each supporting or breached Contract provision and a statement of the reasons why each such provision supports the claim must be specifically identified or explained.

38.5.3 Excerpts from manuals or other texts which are standard in the industry, if available, that support the CMR's claim.

38.5.4 The details of the circumstances that gave rise to the claim.

38.5.5 The date(s) on which any and all events resulting in the claim occurred, and the date(s) on which conditions resulting in the claim first became evident to the CMR.

38.5.6 Specific identification of any pertinent document, and detailed description of the substance of any material oral communication, relating to the substance of such claim.

38.5.7 If an extension of time is sought, the specific dates and number of Days for which it is sought, and the basis or bases for the extension sought. A critical path method, bar chart, or other type of graphical schedule that supports the extension must be submitted.

38.5.8 When submitting any claim over **\$50,000**, the CMR shall certify in writing, under oath and in accordance with the formalities required by the contract, as to the following:

.1 That supporting data is accurate and complete to the CMR's best knowledge and belief;

.2 That the amount of the dispute and the dispute itself accurately reflects what the CMR in good faith believes to be the Department's liability;

.3 The certification shall be executed by:

.1 If the CMR is an individual, the certification shall be executed by that individual.

.2 If the CMR is not an individual, the certification shall be executed by a senior company official in charge at the CMR's plant or location involved or an officer or general partner of the CMR having overall responsibility for the conduct of the CMR's affairs.

38.6 Auditing of Claims: All claims filed against the Department shall be subject to audit by the Department or its agents at any time following the filing of such claim. The CMR and its Subcontractors and suppliers shall cooperate fully with the Department's auditors. Failure of the CMR, its Subcontractors, or its suppliers to maintain and retain sufficient records to allow the Department or its agents to fully evaluate the claim shall constitute a waiver of any portion of such claim that cannot be verified by specific, adequate, contemporaneous records, and shall bar recovery on any

claim or any portion of a claim for which such verification is not produced. Without limiting the foregoing requirements, and as a minimum, the CMR shall make available to the Department and its agents the following documents in connection with any claim that the CMR submits:

38.6.1 Daily time sheets and foreman's daily reports.

38.6.2 Union agreements, if any.

38.6.3 Insurance, welfare, and benefits records.

38.6.4 Payroll register.

38.6.5 Earnings records.

38.6.6 Payroll tax returns.

38.6.7 Records of property tax payments.

38.6.8 Material invoices, purchase orders, and all material and supply acquisition contracts.

38.6.9 Materials cost distribution worksheets.

38.6.10 Equipment records (list of company equipment, rates, etc.).

38.6.11 Vendor rental agreements.

38.6.12 Subcontractor invoices to the CMR, and the CMR's certificates of payments to Subcontractors.

38.6.13 Subcontractor payment certificates.

38.6.14 Canceled checks (payroll and vendors).

38.6.15 Job cost reports.

38.6.16 Job payroll ledger.

38.6.17 General ledger, general journal (if used), and all subsidiary ledgers and journals, together with all supporting documentation pertinent to entries made in these ledgers and journals.

38.6.18 Cash disbursements journals.

38.6.19 Financial statements for all years reflecting the operations on the Project.

38.6.20 Income tax returns for all years reflecting the operations on the Project.

38.6.21 Depreciation records on all company equipment, whether such records are maintained by the company involved, its accountant, or others.

38.6.22 If a source other than depreciation records is used to develop costs for the CMR's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.

38.6.23 All documents which reflect the CMR's actual profit and overhead during the years that the Project was being performed, and for each of the five years prior to the commencement of the Project.

38.6.24 All documents related to the preparation of the CMR's Subcontractor Bids and GMP, including the final calculations on which their GMP was based as stated in all of their Subcontractor Bid Proposal Forms.

38.6.25 All documents which relate to the claim or to any sub-claim, together with all documents that support the amount of damages as to each claim or sub-claim.

38.6.26 Worksheets used to prepare the claim, which indicate the cost components of each item of the claim, including but not limited to the pertinent costs of labor, benefits and insurance, materials, equipment, and Subcontractors' damages, as well as all documents which establish the relevant time

periods, individuals involved, and the Project hours and the rates for the individuals.

38.6.27 The name, function, and pertinent activity of each CMR's or Subcontractor's official, or employee, involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.

38.6.28 The amount(s) of additional compensation sought and a break-down of the amount(s) into the categories specified as payable under Paragraph 38.4 above.

38.6.29 The name, function, and pertinent activity of each Department official, employee, or agent involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.

ARTICLE 39 DIESEL VEHICLE EMISSIONS CONTROL

39.1 The CMR shall be responsible for compliance with the following provisions:

39.1.1 All CMR and Subcontractor diesel powered non-road construction equipment with engine horsepower (HP) ratings of 60 HP and above, that are on the Project or are assigned to the Contract for a period in excess of 30 consecutive Days, shall be retrofitted with emission control devices in order to reduce diesel emissions. In addition, all motor vehicles and/or construction equipment (both on-highway and non-road) shall comply with all pertinent State and Federal regulations relative to exhaust emission controls and safety.

39.1.2 Retrofit emission control devices shall consist of oxidation catalysts, or similar retrofit equipment control technology that is:

.1 Included on the U.S. Environmental Protection Agency (EPA) "Verified Technology List," as may be amended from time to time <http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm> and

.2 Verified by EPA to provide a minimum emissions reduction of 20% particulate matter (PM10), 40% carbon monoxide (CO), and 50% hydrocarbons (HC).

39.1.3 Construction shall not proceed until all diesel powered non-road construction equipment meeting the criteria in provision 39.1.1 have been retrofitted, unless the Commissioner grants a waiver under provision 39.2.

39.1.4 The CMR shall at least monthly, assess which diesel powered non-road construction equipment are subject to these provisions. The CMR shall notify the CT DCS Project Manager of any violations of these provisions.

39.1.5 Idling of delivery and/or dump trucks, or other diesel powered equipment shall be limited to three (3) minutes during non-active use in accordance with the Regulations of Connecticut

State Agencies Section 22a-74-18(b)(3)(C), which states, in part:

"[N]o person shall cause or allow a Mobile Source to operate for more than three (3) consecutive minutes when such Mobile Source is not in motion, except as follows:

When a Mobile Source is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control,

When it is necessary to operate defrosting, heating or cooling equipment to ensure the safety or health of the driver or passengers;

When it is necessary to operate auxiliary equipment that is located in or on the Mobile Source to accomplish the intended use of the Mobile Source (To bring the Mobile Source to the manufacturer's recommended);

When a Mobile Source is in queue to be inspected by U.S. military personnel prior to gaining access to a U.S. military installation."

39.1.6 All Work shall be conducted to ensure that no harmful effects are caused to adjacent Sensitive Receptor Sites. Diesel powered engines shall be located away from fresh air intakes, air conditioners, and windows.

39.1.7 If any diesel powered non-road construction equipment is found to be in non-compliance with these provisions by the CT DCS Project Manager, the CMR will be issued a Non-Conformance Notice and given a twenty-four (24) hour period in which to bring the equipment into compliance or remove it from the Project. The CMR's failure to comply with these provisions shall be reason to withhold payment as described in Article 33 Owner's Right To Stop work or Terminate Contract.

39.1.8 Any costs associated with these provisions shall be included in the general cost of the contract. In addition, there shall be no time granted to the CMR for compliance with these provisions. The CMR's compliance with these provisions and any associated regulations shall not be grounds for a Change Order.

39.2 The Commissioner reserves the right to waive all or portions of these provisions at his/her discretion. The CMR may request a waiver to all or portions of these provisions with written justification to the Commissioner as to why the CMR cannot comply with these provisions. A waiver, to be effective, must be granted in writing by the Commissioner.

END
Section 00 72 23

Appendix 1

Connecticut



Division of
Construction Services

7050

Construction Manager at Risk (CMR)
Retainage Reduction Request

(SAMPLE)

Page 1 of 1

To: Allen V. Herring, P.E., CT DCS Chief Engineer
Room 477, 165 Capitol Avenue, Hartford, CT 06106

From: (Insert CMR's Name), Construction Manager at Risk (CMR)

Subject: Project No. (Insert CT DCS Project No.) Reduction of Retainage at (insert numerical percent)%
project completion

Date: Insert Date

In accordance with the General Conditions, Article 28 Progress Payments, (insert CMR's name) hereby requests a reduction of retainage to an amount of insert written percent Percent (insert numerical percent%). The following list of items required under the General Conditions is in compliance with the terms of the contract and has been verified by the CMR.

- DAS Contractor Performance Evaluation Score is a minimum of **Sixty (60%) Percent**.
- Timely submission of an appropriate and complete CPM Schedule and Schedule of Values, in compliance with the Contract requirements and the prompt resolution of the Owner's and/or A/E's comments on the submitted material resulting in an appropriate basis for progress of the Work.
- Timely and proper submission of all Contract Document required submissions: including but not limited to Shop Drawings, material certificates and material samples and the prompt resolution of the Owner's and/or Architect's or Engineer's comments on the submitted material resulting in an appropriate progress of the Work.
- Proper and adequate supervision and home office support of the Project.
- The Work completed to date has been installed or finished in a manner acceptable to the Owner.
- The progress of the Work is consistent with the approved CPM Schedule.
- All approved credit Change Orders have been invoiced.
- All Change Order requests for pricing are current.
- The CMR has and is maintaining a clean worksite in accordance with the Contract Documents.
- All Subcontractor payments are current at the time of reduction request.
- CMR is compliant with set-aside provisions of the contract.

CMR Certification:	_____	_____	_____
	(Written Name)	(Signature)	(Date)
Project Manager Recommendation:	_____	_____	_____
	(Written Name)	(Signature)	(Date)
Approved:			
CT DCS Chief Engineer:	Allen V. Herring, P.E.	_____	_____
	(Written Name)	(Signature)	(Date)

END