

MIDDLETON SELECT BOARD
MEETING AGENDA
FLINT PUBLIC LIBRARY
MEETING ROOMS A & B
1 SOUTH MAIN STREET, MIDDLETON, MA 01949
TUESDAY, MAY 16, 2023
6:00 PM

This meeting is being recorded

*This meeting will be a hybrid of in-person and remote via Zoom. To join the meeting remotely, go to:
<https://us02web.zoom.us/j/88446830179?pwd=WHBjbjY0Z01rYmNiREVHRDE5dXRvZz09>*

- 6:00 pm 1. Business
- a. Warrant: 2323
 - b. Minutes:
 - c. Town Administrator Updates and Reports
- 6:10 pm 2. Update on 49 S. Main St/10-18 Boston St Project, if needed; votes may be taken
- 6:20 pm 3. Quarter 3 Report from Finance Director/Town Accountant Sarah Wood; votes may be taken
- 6:25 pm 4. Review and discuss liquor license fees to add an application fee of \$200.00 for all applications for liquor licenses, to be deducted from the total cost of the license once issued by the Select Board and Alcoholic Beverages Control Commission (ABCC); vote to authorize refund of local licensing costs, minus \$200 application fee for any home rule license petitioners who are not granted the license by either the Select Board or ABCC; votes may be taken
- 6:30 pm 5. Liquor License Public Hearings under MGL Chapter 138, Section 15A:
- a. All Alcohol Off Premise at Maple Street (1 license available)
 - i. 229 Maple Street: Review and vote on petition of Luv Kush Marketing, Inc. d/b/a Howe Station Market for new all alcohol off premise liquor license; manager Dipak Karia
 - ii. 223 Maple Street: Review and vote on petition of JU, Inc., d/b/a Town Liquors for a new all alcohol off premise liquor license; manager Dharmesh Patel
 - b. All Alcohol Off Premise at South Main Street (1 license available)
 - i. 265 South Main Street: Review and vote on petition of J&A Convenience d/b/a Fast Freddie's for a new all alcohol off premise liquor license; manager Ritaben Patel
 - ii. 251 South Main Street: Review and vote on petition of JRS Business LLC, d/b/a Middleton Beer, Wine, Tobacco, and More for a new all alcohol off premise liquor license; manager Sukantho Halder
 - iii. 232-B South Main Street: Review and vote on petition of Vinum Wine Shop for a new all alcohol off premise liquor license; manager John Miller

The Board reserves the right to consider items on the agenda out of order. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

- c. Wine and Malt Off Premise at South Main Street (1 license available)
 - i. 152 South Main Street: Review and vote on petition of Middleton Shreeji, Inc., d/b/a Richdale for a new wine and malt off premise liquor license; manager Sureshkumar Patel
 - d. All Alcohol On Premise (3 licenses available)
 - i. 209 South Main Street: Review and vote on petition of Mercato Magia Corp. for a new all alcohol on premise liquor license; manager Adriana Ioana Travaglione; for a new common victuallers license; for a new entertainment license
- 7:15 pm 6. Review and discuss approving the Construction Manager At Risk Contract, effective June 1, 2023, with W.T. Rich Company, for pre-construction phase (not to exceed \$124,910); and to authorize the Clerk of the Select Board to sign on the Board's behalf; votes may be taken
- 7:25 pm 7. Follow up from Annual Town Meeting on May 9th; votes may be taken
- 7:35 pm 8. Review Special Act re: Charter Amendments as approved by Annual Town Meeting and vote to submit to the Legislature for approval; votes may be taken
- 7:45 pm 9. Acceptance of grants and donations:
 - a. Donation in the value of \$1,200 of Lot No. 1117 (two 3'x10' sized lots) located in Oak Dale Cemetery from Patricia Gregoire, Judith Daniels, Jeanne Lomelis, and Linda Higson
- 7:55 pm 10. Extension of Interim Town Administrator Contract through July 9, 2023; votes may be taken
- 8:00 pm 11. Updates & Announcements

Upcoming Meetings: May 29
 May 30
 June 13
 July 11

Memorial Day Parade and Ceremony
 Regular Select Board Meeting
 Regular Select Board Meeting
 Regular Select Board Meeting



TOWN OF MIDDLETON
Office of Finance Director/Town Accountant
48 South Main Street
Middleton, MA 01949
(978) 777-4966

3.

TO: Select Board/Finance Committee

FROM: Sarah Wood, Finance Director/Town Accountant

DATE: 5/8/2023

SUBJECT: FY 2023, 3rd Quarter Highlights

This report includes a summary of the 3rd quarter results as of March 31, 2023 of FY 2023 for the General Fund, CPA Fund, Water Enterprise Fund, Appropriation Funds and Revolving Accounts. The General Fund accounts for the Town's annual operating budget and the majority of the capital budget. Exceptions include MELD and SESD assessments, which are accounted for as enterprise funds and capital budget items that are for another fund (i.e. CPA Fund, capital project funds and water enterprise fund).

General Fund Expenditures

As of March 31, 2023, 71.3% of the FY 2023 General Fund budget had been expended. Please see the chart below for a breakdown of each major category's budget versus actual figures as of the second quarter in FY 2023. Encumbrances and warrant articles are not included in these figures.

Major Category	Adjusted Budget	Actual Expended	Percent Expended
General Government	\$ 2,528,550	\$1,521,971	60%
Public Safety	4,970,589	3,459,961	70%
Education	25,099,367	17,487,050	70%
Public Works	1,941,939	1,220,074	63%
Health and Human Services	536,448	324,457	60%
Culture and Recreation	734,790	479,614	65%
Debt Service	4,212,643	3,336,855	79%
State Assessments & Charges	315,607	252,771	80%
Unclassified	3,644,117	3,275,104	90%

At the end of the third quarter of the fiscal year the total year-to-date expenditures should be around 75% of the departmental budget.

The Recreation Commission, Essex North Shore Tech assessment, Snow and Ice, debt service, retirement assessment and liability insurance all typically have percentages exceeding 75% in the third quarter due to the timing of payments.

There are several other departments that exceed the 75% threshold for the third quarter as well: Town Accountant (77%), Town Counsel (79%), State Assessments & Charges (80%), and Compensation Reserve (81%). Town Accountant and Town Counsel are still slightly higher due to the timing of payments from the second quarter, State Assessments and Charges is higher due to the December recalculation the State performs, it was determined we have a student participating in school choice so we are being assessed for that. There is no budget associated with this assessment but this category can go into a legal deficit. The compensation reserve is slightly higher than trend due to vacation time buyouts for employees who have retired/left the town's service.

At this point in the fiscal year, I am continuously monitoring the departments to ensure there is enough funds within their budget to finish out the fiscal year. There is only two departments that I believe will come close to overspending their budget but I am hopeful that there are funds in our unclassified budget line items to perform departmental transfers at the end of the fiscal year.

There is still currently \$885,040 in approved general fund capital projects that are outstanding. Departments were sent the list with the FY24 capital budget instructions with the request to update the status of these projects. Within that listing there are several projects that are earmarked to close at the end of the fiscal year as the articles came in under budget but there are still several items that are outstanding due to continued supply chain issues.

General Fund Revenues

Overall revenue collections were largely in line with current estimates. As of March 31, 2023, 77.8% or \$33,567,638 of total estimated revenues for FY 2023 (\$43,134,134) had been collected.

Of the local receipts cemetery fees is the only line item that is below the 75% benchmark. In my second quarter report, Cemetery charges were down 25%, currently they are down 11% over the third quarter 2022. This is a line item that will vary from year to year so I am not concerned at this point in time with meeting our budgetary goals.

The majority of our other revenue categories greatly exceed our 75% benchmark, with several categories already over 100% of the budgeted amounts.

CPA Fund Expenditures & Revenues

CPA expenditures are at 99% of budgeted expenditures, not inclusive of capital items. This is consistent with expectations as debt service payments are paid in the first half of the fiscal year.

CPA revenues are at 95.1% of the budget, exclusive of the state match revenues are at 85.1% of the budget.

The current fund balance of the CPA fund is \$945,728 (inclusive of prior appropriated fund)

Water Fund Expenditures & Revenues

Water expenditures are at 36% of the budget. This is not unexpected as the majority of expenditures occur towards the end of the fiscal year as well as \$50,000 budgeted for extraordinary/unforeseen expenses.

The water fund revenues are at 3.7% of budget. The majority of the budget is made up of a payment from the Town of Danvers that occurs at the end of the fiscal year. The negative amount in the third quarter is our payment to the Town of Danvers for water liens that are then added onto residents' real estate tax bill.

The current fund balance in the water enterprise fund is \$1,313,697.

I hope the information presented is informative and helpful. If you have any questions, please do not hesitate to contact me.

Town of Middleton, MA									
Fiscal Year 2023 Expenditures (unaudited)									
For the Period Ended GENERAL FUND	9/30/2022		12/31/2022		3/31/2023		6/30/2023		Total
	Quarter 1	Quarter 2	Quarter 3	Quarter 4	YTD EXPENDED	AVAILABLE BUDGET	% USED		
	BUDGET								
	\$	200	\$	\$	\$	\$	\$	\$	
Total 114 TOWN MODERATOR		425,040	73,927	94,273	89,873	-	-	200	0%
Total 122 SELECT BOARD		3,954	318	134	536	-	-	166,967	61%
Total 131 FINANCE COMMITTEE		100,000	12,000	-	20,000	-	-	2,966	25%
Total 131 RESERVE FUND		205,807	36,808	79,332	42,179	-	-	68,000	32%
Total 135 TOWN ACCOUNTANT		224,916	97,251	-	46,204	-	-	47,488	77%
Total 141 ASSESSORS		302,793	63,009	66,994	63,583	-	-	81,462	64%
Total 145 TREASURER/COLLECTOR		2,500	-	2,500	-	-	-	109,208	64%
Total 146 CUSTODIAN OF TOWN LANDS		80,000	15,903	35,450	12,186	-	-	-	100%
Total 151 TOWN COUNSEL		516,130	94,301	83,039	108,587	-	-	16,461	79%
Total 155 MIS		209,338	42,329	49,612	39,372	-	-	230,203	55%
Total 161 TOWN CLERK		78,524	8,422	16,161	2,944	-	-	78,025	63%
Total 162 ELECTIONS		95,133	19,759	24,587	21,892	-	-	50,997	35%
Total 171 CONSERVATION COMMISSION		136,197	21,527	27,786	30,077	-	-	28,894	70%
Total 175 PLANNING BOARD		4,730	526	427	981	-	-	56,807	58%
Total 176 BOARD OF APPEALS		1,574	-	-	-	-	-	2,795	41%
Total 181 MASTER PLAN COMMITTEE		135,714	14,877	22,869	36,267	-	-	1,574	0%
Total 192 TOWN BUILDING		6,000	-	3,168	-	-	-	61,701	55%
Total 195 TOWN REPORT		2,261,490	459,472	549,613	463,092	-	-	2,832	53%
Total 210 POLICE		2,399,136	643,470	556,209	580,286	-	-	789,313	65%
Total 220 FIRE		285,169	55,973	73,273	64,086	-	-	619,171	74%
Total 241 BUILDING INSPECTION		24,594	4,203	5,538	4,747	-	-	91,837	68%
Total 292 ANIMAL CONTROL		200	-	-	-	-	-	10,106	59%
Total 296 CONSTABLE		13,796,753	1,759,331	3,612,961	3,431,571	-	-	200	0%
Total 301 SCHOOL DEPARTMENT		10,477,590	2,619,398	2,619,368	2,619,398	-	-	4,992,889	64%
Total 314 MASCONOMENT ASSESSMENT		825,024	208,713	417,426	198,885	-	-	2,619,428	75%
Total 315 ESSEX TECH ASSESSMENT		1,129,955	207,922	290,391	156,587	-	-	-	100%
Total 420 DPW ADMINISTRATION		285,713	3,205	23,991	231,930	-	-	475,055	58%
Total 423 SNOW & ICE REMOVAL		526,271	74,625	124,455	106,969	-	-	26,588	91%
Total 425 TRANSFER STATION		150,847	34,420	30,862	28,565	-	-	220,222	58%
Total 511 BOARD OF HEALTH		283,700	49,674	70,061	60,252	-	-	57,000	62%
Total 541 COUNCIL ON AGING		66,976	8,964	6,134	10,398	-	-	103,712	63%
Total 543 VETERANS AGENT		29,925	7,481	7,481	7,481	-	-	41,480	38%
Total 545 TRI TOWN COUNCIL		5,000	-	2,683	-	-	-	7,481	75%
Total 548 GARDEN CLUB		670,782	137,128	155,419	151,559	-	-	2,317	54%
Total 610 LIBRARY						-	-	226,677	66%

Total 630 RECREATION COMMISSION	53,008	31,504	3,831	175	-	35,509	17,498	67%
Total 691 HISTORICAL COMMISSION	1,000	-	-	-	-	-	1,000	0%
Total 692 MEMORIAL DAY	5,000	-	-	-	-	-	5,000	0%
Total 693 CHIEF WILLIS FESTIVAL	5,000	-	-	-	-	-	5,000	0%
Total 710 DEBT SERVICE	4,212,643	1,044,803	2,035,075	256,978	-	3,336,855	875,788	79%
Total 820 STATE ASSESSMENTS & CHARGES	315,607	78,912	83,052	90,807	-	252,771	62,836	80%
Total 910 COMPENSATION RESERVE	84,600	3,500	52,145	13,211	-	68,856	15,744	81%
Total 911 RETIREMENT	1,882,539	2,338,503	(455,965)	-	-	1,882,538	1	100%
Total 913 UNEMPLOYMENT	15,000	2,869	-	-	-	2,869	12,131	19%
Total 914 HEALTH INSURANCE	876,778	190,859	191,961	189,140	-	571,959	304,819	65%
Total 915 GROUP INSURANCE	2,600	607	624	424	-	1,655	945	64%
Total 916 MEDICARE/DEP TAX	115,000	23,334	29,008	24,754	-	77,097	37,903	67%
Total 945 LIABILITY INSURANCE	265,600	430,680	2,128	(164,678)	-	268,130	(2,530)	101%
Total 962 TRANSFERS TO OTHER FUNDS	402,000	152,000	250,000	-	-	402,000	-	100%
Total GENERAL FUND	\$ 43,984,050	\$11,019,932	\$10,184,935	\$ 8,322,106	\$ -	\$ 31,357,858	\$ 12,626,191	71.3%
Total CPA	\$ 124,500	\$ 83,300	\$ 40,000	\$ -	\$ -	\$ 123,300	\$ 1,200	99%
Total WATER ENTERPRISE FUND	\$ 296,695	\$ 41,548	\$ 32,627	\$ 32,909	\$ -	\$ 107,084	\$ 189,611	36%
Total SESD ENTERPRISE FUND	\$ 110,035	\$ 26,437	\$ 50,377	\$ 26,463	\$ -	\$ 103,276	\$ 6,759	94%

Town of Middleton, MA
Fiscal Year 2023 Warrant Articles Expenditures (unaudited)

<u>Fund</u>	<u>STM/ATM</u>	<u>Fiscal Year</u>	<u>Article #</u>	<u>Account Name</u>	<u>Original Appropriation</u>	<u>Available Balance at 10/18/22</u>	<u>YTD Expended</u>	<u>Available Balance at 3/31/23</u>
GF	STM	2015	2	ATHLETIC FLD MAINT	35,000	1,604	-	1,604
GF	ATM	2017	17	REMEDiate NATSUE WAY	165,000	133,915	980	132,935
GF	ATM	2019	25	BYLAW CONSULTANT	50,000	50,000	-	50,000
GF	STM	2019	3	MAINTENANCE OF GOLF COURSE	25,000	17,500	-	17,500
GF	ATM	2020	19	HR SOFTWARE	14,727	8,900	1,280	7,620
GF	ATM	2020	19	BRIGADOON TREE/SIDEWALK	75,000	75,000	-	75,000
GF	ATM	2020	19	COA REFINISH HARDWOOD FLOORS	7,500	2,812	-	2,812
GF	STM	2020	9	40 SCHOOL STREET ENVIRONMENTAL TESTING	10,000	1,100	-	1,100
GF	STM	2020	11	105 S MAIN STREET MAINTENANCE	5,000	3,747	-	3,747
GF	ATM	2021	10	FIBER OPTIC NETWORK	100,000	100,000	94,150	5,850
GF	ATM	2021	10	MEMORIAL HALL RAMP REPLACEMENT	20,000	20,000	820	19,180
GF	ATM	2021	10	MEALS ON WHEELS CAR	35,500	545	-	545
GF	ATM	2022	19	CHARTER REVIEW	15,000	15,000	-	15,000
GF	ATM	2022	19	CYCLICAL INSPECTIONS	10,000	2,340	-	2,340
GF	ATM	2022	19	CYBERSECURITY PROTECTION	10,000	10,000	-	10,000
GF	ATM	2022	19	MUNIS UPGRADE	10,000	8,566	-	8,566
GF	ATM	2022	19	HANDICAP RAMP RELACEMENT	25,000	25,000	21,950	3,050
GF	ATM	2022	19	TOWN-WIDE HANDICAP IMPROVEMENTS	10,000	10,000	-	10,000
GF	ATM	2022	19	PURCHASE CRUISER RADIOS	8,500	2,016	-	2,016
GF	ATM	2022	19	PURCHASE RADAR GUNS	5,000	1,220	-	1,220
GF	ATM	2022	19	POLICE STATION UPGRADES	10,000	2,484	-	2,484
GF	ATM	2022	19	RADIO/TELEPHONE RECORDER	17,080	2,526	2,421	105
GF	ATM	2022	19	DIGITIZE INSPECTIONAL SERVICE RECORDS	45,000	9,642	5,400	4,242
GF	ATM	2022	19	DPW BUILDING IMPROVEMENTS	25,000	4,063	-	4,063
GF	ATM	2022	19	COA BUILDING IMPROVEMENTS	5,700	902	-	902
GF	STM	2022	9	BOSTON ST SIDEWALK	33,000	33,000	1,125	31,875
GF	STM	2022	11	IT & CYBERSECURITY	55,000	45,154	20,108	25,045
GF	STM MAY22	2022	7	PURCHASE BULLET PROOF VESTS	5,000	2,030	-	2,030
GF	STM MAY22	2022	7	ADDITIONAL FUNDS FOR FIRE PUMPER	40,000	40,000	-	40,000
GF	ATM	2023	18	DPW SALARY SURVEY	10,000	10,000	4,350	5,650
GF	ATM	2023	18	PEDESTRIAN & TRAFFIC SAFETY IMPLEMENTATION	20,000	20,000	11,292	8,708
GF	ATM	2023	18	NEARMAP & PUSHPIN GIS	7,740	7,740	6,500	1,240
GF	ATM	2023	18	DPW SERVER REPLACEMENT	4,000	4,000	-	4,000
GF	ATM	2023	18	VMWARE UPGRADE PHASE 2	14,000	14,000	10,000	4,000
GF	ATM	2023	18	ANTIVIRUS UPGRADE	4,800	4,800	-	4,800
GF	ATM	2023	18	ELECTION/POLL EQUIPMENT	7,200	7,200	719	6,481
GF	ATM	2023	18	PURCHASE POLICE CRUISER	50,000	50,000	46,737	3,263
GF	ATM	2023	18	REPLACE POLICE AED'S	9,000	9,000	8,403	597
GF	ATM	2023	18	PURCHASE PATROL RIFLES	5,000	5,000	-	5,000
GF	ATM	2023	18	PURCHASE RADAR GUN CRUISER	5,000	5,000	-	5,000
GF	ATM	2023	18	REPLACE MARINE 1	15,000	15,000	-	15,000
GF	ATM	2023	18	FIRE ALARM MATERIALS	15,000	15,000	10,824	4,176
GF	ATM	2023	18	ICE RESCUE SLED	6,000	6,000	-	6,000
GF	ATM	2023	18	RADIO EQUIPMENT	72,800	72,800	2,753	70,047
GF	ATM	2023	18	TRAIN NEW FIREFIGHTER	27,303	27,303	14,107	13,196
GF	ATM	2023	18	DIGITIZE INSPECTIONAL SERVICE RECORDS PHASE 2	35,000	35,000	-	35,000
GF	ATM	2023	18	REPLACE HM SECURITY SYSTEM	50,000	50,000	-	50,000
GF	ATM	2023	18	REPLACE SMART BOARDS	155,000	155,000	152,256	2,744
GF	ATM	2023	18	REPLACE TRUCK 12	81,700	81,700	72,129	9,571
GF	ATM	2023	18	STAND UP LEAF BLOWER	13,000	13,000	12,005	995
GF	ATM	2023	18	REPLACE TOWN SIGNS	20,000	20,000	10,866	9,134
GF	ATM	2023	18	ADDITIONAL CHAPTER 90 FUNDS	100,000	100,000	53,895	46,105
GF	ATM	2023	18	REPLACE ROLLOFF CONTAINER	30,000	30,000	1,483	28,517
GF	STM	2023	5	CLERICAL WAGE STUDY	10,000	10,000	-	10,000
GF	STM	2023	5	HVAC REPAIRS LIBRARY	26,000	26,000	21,014	4,986
GF	STM	2023	7	REDEVELOPMENT OF 49 S MAIN ST TOWN EXPENSES	50,000	50,000	-	50,000
CAP PROJ	ATM	2019	2	MASTER DESIGN STUDY 105 S MAIN	325,000	62,290	-	62,290
CAP PROJ	ATM	2022	19	PURCHASE 1 TON TRUCK	75,000	2,938	687	2,251
CAP PROJ	ATM	2022	19	REPLACE ENGINE 1	710,000	710,000	-	710,000
CAP PROJ	ATM	2022	22	MUNICIPAL COMPLEX	61,590,000	61,438,689	921,023	60,517,666
CEMETERY	ATM	2016	26	OAKDALE CEMETERY WORK	63,000	2,798	-	2,798
CPA	ATM	2014	27	OLD TOWN HALL REPAIRS	22,000	3,472	-	3,472
CPA	ATM	2019	10	EMILY MAHER PARK IMPROVEMENTS	45,000	14,758	-	14,758
CPA	ATM	2020	21	DIGITIZE HISTORIC RECORDS	89,000	236	-	236
CPA	ATM	2020	21	RUBCHINUK PARK IRRIGATION	24,500	7,904	-	7,904
CPA	ATM	2021	6	COMPLETE DIGITIZATION OF HISTORIC RECORDS	5,000	5,000	-	5,000
CPA	ATM	2022	12	TRAMP HOUSE ROOF REPAIRS	17,000	17,000	-	17,000
CPA	ATM	2022	12	MUNICIPAL COMPELX COMMONS	300,000	300,000	-	300,000
CPA	ATM	2023	11	RESTORE HISTORIC MONUMENT	25,000	25,000	-	25,000
CPA	ATM	2023	11	ADDITIONAL RAIL TRAIL	50,000	50,000	34,266	15,734
WATER	ATM	2021	13	WATER EMERGENCY REPAIRS RESERVE	50,000	50,000	-	50,000

Town of Middleton, MA
Fiscal Year 2023 Encumbrances (unaudited)

<u>Fund</u>	<u>Department</u>	<u>Account Name</u>	<u>Approved</u>	<u>YTD Expended</u>	<u>Balance at 3/31/23</u>
General	Town Administrator	Training & Education	\$ 75.00	75	-
General	Town Administrator	Supplies	\$ 59.25	59	-
General	Info. Technology	Consultant - Legal	\$ 92.00	92	-
General	Info. Technology	Telephone	\$ 1,753.37	1,753	-
General	Info. Technology	Contractual Services	\$ 88.00	88	-
General	Town Clerk	Capital (operating)	\$ 10,000.00	6,117	3,883
General	Town Buildings	Fuel DPW Bldng	\$ 47.64	48	-
General	Town Buildings	Elec/Water Mem Hall	\$ 37.54	38	-
General	Town Buildings	Elec/Water Town Hall	\$ 42.24	42	-
General	Town Buildings	Elec/Water DPW	\$ 75.50	76	-
General	Town Buildings	Office Supplies	\$ 27.00	27	-
General	Police	Electricity	\$ 57.89	58	-
General	Police	Patrol Uniform Allowance	\$ 303.41	303	-
General	Police	Reserve Uniform Allowance	\$ 341.00	341	-
General	Police	Invest. Serv. Supplies	\$ 1,873.00	1,873	-
General	Police	Travel/Fuel	\$ 5,098.58	5,099	-
General	Police	New Cruiser	\$ 10,340.00	10,340	-
General	Police	Contractual Services	\$ 810.00	810	-
General	Fire	Hose,Tires, Etc	\$ 335.00	335	-
General	Insp. Services	Office Supplies	\$ 82.25	82	-
General	DPW	Office Supplies	\$ 230.00	230	-
General	DPW	Supplies Signs	\$ 890.00	890	-
General	DPW	Road Mach. Maint	\$ 182.07	-	182
General	Transfer Station	Contractual Services	\$ 15,871.50	15,872	-
General	COA	Postage	\$ 14.48	14	-
General	COA	Other Supplies	\$ 452.35	452	-
General	Library	Supplies	\$ 289.60	290	-
General	Library	Building Maintenance	\$ 450.00	450	-
General	School	Salaries	\$ 519,494.75	518,506	989
General	School	Supplies	\$ 78,151.04	68,659	9,492
Water	Water Ent Fund	Contractual Services	\$ 6,005.00	6,005	-
Water	Water Ent Fund	Parks Field Watering	\$ 358.53	359	-
			<u>\$ 653,927.99</u>	<u>\$ 639,381</u>	<u>\$ 14,547</u>

Town of Middleton, MA

Fiscal Year 2023 Revenues (unaudited)

For the Period Ended		9/30/2022		12/31/2022		3/31/2023		6/30/2023		Total		(UNDER)/OVER					
GENERAL FUND		BUDGET		Quarter 1		Quarter 2		Quarter 3		Quarter 4		YTD REVENUE		BUDGET		% RECEIVED	
		\$		\$		\$		\$		\$		\$		\$			
PERSONAL PROPERTY TAXES		\$ 695,787		\$ 239,692		\$ 112,605		\$ 233,221		\$ -		\$ 585,518		(110,269)		84.2%	
REAL ESTATE**		34,927,203		8,397,232		8,022,644		9,515,459		-		25,935,335		(8,991,868)		74.3%	
TAX LIEN/TITLE/FORECLOSURE		*		-		67		(6,955)		-		(6,888)		N/A		N/A	
MOTOR VEHICLE EXCISE		2,000,000		192,832		73,007		1,518,353		-		1,784,192		(215,808)		89.2%	
OTHER EXCISE - ROOM		140,000		55,924		54,635		14,270		-		124,829		(15,171)		89.2%	
OTHER EXCISE - MEALS		300,000		96,534		88,420		75,409		-		260,363		(39,637)		86.8%	
PENALTIES AND INTEREST ON TAXES		80,000		31,149		13,739		37,526		-		82,414		2,414		103.0%	
PILOT		130,000		-		-		98,478		-		98,478		(31,522)		75.8%	
PILOT - MELD		262,979		-		262,979		-		-		262,979		-		100.0%	
CHARGES FOR SERVICES - SOLID WASTE FEES		210,000		130,600		77,650		5,075		-		213,325		3,325		101.6%	
FEES		125,000		26,821		81,546		29,767		-		138,134		13,134		110.5%	
DEPARTMENTAL REVENUES - CEMETERIES		40,000		8,200		7,688		10,876		-		26,764		(13,236)		66.9%	
OTHER DEPARTMENTAL REVENUE		125,500		54,316		91,813		53,210		-		199,339		73,839		158.8%	
BUILDING PERMITS		362,000		136,380		297,650		70,373		-		504,403		142,403		139.3%	
OTHER LICENSES AND PERMITS		148,000		25,718		88,553		23,695		-		137,966		(10,034)		93.2%	
FINES AND FORFEITS		5,000		1,828		3,139		3,100		-		8,067		3,067		161.3%	
INVESTMENT INCOME		40,000		52,223		142,711		170,960		-		365,894		325,894		914.7%	
MEDICAID REIMBURSEMENT		20,000		-		16,192		7,193		-		23,385		3,385		116.9%	
STATE AID		2,472,934		600,906		664,222		602,623		-		1,867,751		(605,183)		75.5%	
TRANSFERS IN		878,038		783,697		-		-		-		783,697		(94,341)		89.3%	
MISC NON RECURRING		171,693		171,693		-		-		-		171,693		-		0.0%	
Total GENERAL FUND		\$ 43,134,134		\$ 11,005,745		\$ 10,099,260		\$ 12,462,633		\$ -		\$ 33,567,638		\$ (9,559,608)		77.8%	
Total CPA		\$ 347,893		\$ 72,289		\$ 151,611		\$ 106,924		\$ -		\$ 330,824		\$ (17,069)		95.1%	
Total WATER FUND		\$ 296,695		\$ 10,637		\$ 8,594		\$ (8,288)		\$ -		\$ 10,943		\$ (285,752)		3.7%	
Total SESD ENTERPRISE FUND		\$ 110,035		\$ 44,813		\$ 240		\$ 102,038		\$ -		\$ 147,091		\$ 37,056		133.7%	

* Indicates budgeted figures not available.

** Net of Overlay raised on recap

Note: Budgeted revenues does not include the free cash appropriated for fiscal year expenditures

Town of Middleton, MA Revolving Funds (unaudited)				
	Fund Balance as of 7/1/2022	Revenue as of 3/31/23	Expenditures as of 3/31/23	Fund Balance as of 3/31/23
RECREATION REVOLVING	\$ 15,226	\$ -	\$ -	\$ 15,226
USER FIELD FEES	5,960	-	(3,647)	2,313
COA TRIP FUND	25,365	427	(2,584)	23,208
STORMWATER MANAGEMENT	6,600	2,000	-	8,600
FIREARMS LICENSES AND PERMITS	26,995	3,200	(252)	29,943

Town of Middleton, MA
Appropriation Funds (unaudited)

	Fund Balance as of 3/31/23	Revenue as of 3/31/23	FY 24 Appropriation	Fund Balance after Appropriations
AMBULANCE FUND	\$ 1,186,824	\$ 568,380	\$ (650,000)	\$ 536,824
PEG	519,460	165,101	(153,155)	366,305
SPED RESERVE FUND*	151,248	3,008	-	151,248
OPEB*	2,167,064	55,943	100,000	2,267,064
STABILIZATION*	2,250,589	43,766	-	2,250,589
CAPITAL STABILIZATION*	946,324	17,826	(370,000)	576,324
SPED STABILIZATION*	415,505	8,875	(132,000)	283,505
RETIREMENT STABILIZATION*	480,187	8,556	-	480,187
SIDEWALK/PEDESTRIAN STABILIZATION*	130,219	2,590	-	130,219
FACILITIES COMPLEX STABILIZATION*	308,782	5,147	250,000	558,782

* Revenue amount indicates interest only.

**Town of Middleton
Select Board
48 South Main Street
Middleton, MA 01949**

4.

Please use this form to obtain your license renewal. Please pay all license fees no later than **November 30, 2023**. License fees shall be paid by either cashier's check, bank check or on <https://unipaygold.unibank.com/CustomerInfo.aspx> (Town of Middleton - Select Board).

All license fees must be received in this office no later than November 30, 2023 in order to have your license renewed for January 1, 2024. Late fees are \$100 if after November 30, \$200 after December 15 and \$300 if after January 1.

**ALCOHOLIC BEVERAGE/COMMON VICTUALLER
LICENSE RENEWAL FORM FOR 2024**

TYPE OF LICENSE	QUANTITY	LICENSE FEE	AMOUNT DUE
All Alcohol Inn Holder	<input type="text"/>	\$2,500.00	<input type="text"/>
All Alcohol Package Store	<input type="text"/>	\$2,000.00	<input type="text"/>
All Alcohol Package Store Home Rule	<input type="text"/>	\$2,000.00	<input type="text"/>
All Alcohol Restaurant	<input type="text"/>	\$4,000.00	<input type="text"/>
Amusement Machines (per machine)	<input type="text"/>	\$35.00	<input type="text"/>
Beer & Wine Package Store	<input type="text"/>	\$1,500.00	<input type="text"/>
Beer & Wine Package Store Home Rule	<input type="text"/>	\$1,500.00	<input type="text"/>
Beer & Wine Restaurant	<input type="text"/>	\$2,000.00	<input type="text"/>
Beer & Wine Restaurant Home Rule	<input type="text"/>	\$2,000.00	<input type="text"/>
Club License	<input type="text"/>	\$500.00	<input type="text"/>
Common Victualler	<input type="text"/>	\$100.00	<input type="text"/>
Entertainment	<input type="text"/>	\$10.00	<input type="text"/>
Gas License (per nozzle)	<input type="text"/>	\$45.00	<input type="text"/>
Golf License	<input type="text"/>	\$100.00	<input type="text"/>
Juke Box	<input type="text"/>	\$35.00	<input type="text"/>

**Total Amount Due by
November 30, 2023**

Late Fees to be Applied: \$100 after November 30, \$200 after December 15 and \$300 after January 1

Business Name:

Business Manager Name:

Phone Number:

Email Address:

**MIDDLETON MUNICIPAL COMPLEX PROJECT
Town of Middleton, Massachusetts**

**CONSTRUCTION CONTRACT FOR CONSTRUCTION
MANAGER AT RISK SERVICES**

OWNER - CONSTRUCTION MANAGER AGREEMENT

Awarding Authority: Town of Middleton

This agreement ("Contract") is made as of the June 1, 2023 by and between the TOWN OF MIDDLETON, with a principal place of business at 48 S. Main Street, Middletown, MA, and represented by Owner's Project Manager, PCA 360, LLC, and W.T. Rich Company, a Construction Manager with a principal place of business at 1075 Worcester Street, Suite 310, Natick, MA 01760, hereinafter called the "Construction Manager or CM."

The terms used in this Owner - Construction Manager Agreement, which are defined in the General Conditions of the Contract, shall have the meanings designated therein.

Preliminary Statement

- A. Pursuant to M.G.L. c. 149A the TOWN OF MIDDLETON ("Owner") is undertaking the construction of the MIDDLETON MUNICIPAL COMPLEX ("the Project").
- B. The Construction Manager shall be liable to Owner for all of the obligations, responsibilities and liabilities of the Construction Manager under this Contract.
- C. The Town has engaged Context Architecture (the "Designer") under separate agreements to provide design services for the Project.
- D. PCA 360, LLC (the "Owners Project Manager") under separate agreements to provide project management services for the Project.

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

Article 1. The Work.

- 1.1 The Construction Manager's Responsibilities. The CM shall perform the Work as required by the Contract Documents to construct Middleton Municipal Complex.
- 1.2 Site. The Site is defined in Article I of the General Conditions.
- 1.2.1 Site Inspection. By executing this Agreement, the CM acknowledges that it has visited the Site and has learned as much about the Site as may reasonably be learned from such an inspection. No information which would reasonably have been obtained by such a site inspection may serve as the basis for any change order proposal or claim for additional costs and/or additional time.
- 1.2.2 Site Conditions. Information about soil and other subsurface conditions at the Site are provided in Specifications of the Request for Proposals of this Agreement. Neither Owner nor the Designer represents that such information is complete, accurate, or an approximate indication of subsurface conditions. No change order proposal or claim for additional costs and/or additional time resulting from the CM's reliance on such information shall be allowed except as expressly provided in the Contract Documents.
- 1.2.3 Site Testing By CM. Prior to the commencement of the deep and/or shallow foundation portions of the Work, the CM, if directed by the Owner or if the CM elects at his own discretion, shall conduct further testing of the subsurface conditions at the Site. If such testing is performed at the direction of the Owner, or to the extent that the CM demonstrates to the Owner that further testing as proposed by the CM is likely to significantly reduce differing site condition and other costs for which the Owner may be responsible under the Contract and the Owner approves such testing, the costs of such testing shall be paid by the Owner.

Article 2. The Contract Documents.

- 2.1 Contract Documents. The following documents form the Contract, are (will be) incorporated by reference herein, and are referred to as the "Contract Documents:"
- The Request for Proposals for Construction Management Services for the Middleton Municipal Complex
 - The Construction Manager's Proposal
 - The Owner – Construction Manager Agreement including amendments and negotiated terms
 - The General Conditions of the Contract
 - The Supplemental General Conditions of the Contract (Division 1)
 - The Plans and Specifications prepared by the Designer, including Addenda
 - All Approved Change Orders/Contract Modifications issued after execution of this agreement.

Article 3. Relationship of the Parties.

- 3.1 CM's Obligation. The CM accepts the relationship of trust and confidence between Owner and the CM established by this Agreement and covenants with Owner to cooperate at all times with

Owner, the Designer and any other consultants or project representatives engaged or employed by Owner, and to utilize the CM's best skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and, consistent with the requirements of the Contract Documents, to perform the Work in the best way and most expeditious and economical manner consistent with the interests of Owner and to make every effort to achieve time savings and construction efficiencies without compromising any safety with respect to the Work. The CM, in performing its services under this Agreement, is an independent contractor and is not an agent or employee of, or a joint venture with Owner. The CM shall endeavor to promote harmony and cooperation among Owner, the Designer, the CM, Subcontractors, separate contractors and other persons or entities engaged by Owner or otherwise employed in connection with the Project, as well as other public agencies having jurisdiction with respect to the Project. Owner agrees to use its best efforts to enable the CM to perform the Work in an expeditious manner by furnishing on a timely basis information required by the CM and making payments to the CM in accordance with the requirements of the Contract Documents.

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

Article 4. Contract Time.

- 4.1 Commencement Date. The CM shall begin preconstruction and construction phase services pursuant to the terms and conditions included in written Notices to Proceed ("NTP") issued by Owner.
- 4.1.1 Preconstruction Services. The NTP for Schematic Design Phase preconstruction services shall be issued within a reasonable time following execution of the Contract. NTPs for Remaining Design Phase preconstruction services will be provided in separate NTPs.
- 4.1.2 Construction Services. The NTP for construction services shall be issued within a reasonable time following the execution of the GMP Amendment as defined in Paragraph 6.7.2, provided that, in Owner's discretion, it may elect to issue such NTP prior to the execution of the GMP Amendment. If the NTP is issued prior to the execution of the GMP Amendment, Owner may, in its discretion, limit the scope of the NTP in whatever manner it deems appropriate until the execution of the GMP Amendment, at which time, such limitations, if any, shall be rescinded.
- 4.2 Substantial and Final Completion. The Contract Time commences immediately from the date a written Notice to Proceed (NTP) for Construction of the Project is issued to the CM. The CM is to achieve Substantial Completion of the entire Work, no later than eighteen (18) months after NTP, subject to any adjustments in the Contract Time approved by Owner in accordance with the Contract Documents (the "Substantial Completion Date"). The CM shall achieve Final Completion of the Work, no later than nineteen (19) months after NTP, subject to adjustments of the Contract Time approved by Owner in accordance with the Contract Documents (the "Final Completion Date").

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

4.4 Liquidated Damages.

4.4.1 If the CM shall neglect, fail or refuse to achieve Substantial Completion of the Work within the Contract Time, as adjusted in accordance with the provisions of the Contract Documents, the CM and the CM's surety agree, as a part of the consideration for the execution of this Contract by Owner, to pay Owner the amounts set forth in this Subsection 4.4.1 below, not as a penalty, but as liquidated damages to cover certain losses, expenses and damages of Owner for such breach of contract as herein set forth. The CM acknowledges that delay in Substantial Completion of the Project will cause disruption of Owner's operations. Such disruptions include without limitation, loss of productivity and efficiency and duplication of effort of the Owner and of employees and contractors engaged by the Owner for operation of the completed facilities. Owner will incur other direct administrative, professional, rental, storage, moving, transportation and other costs in the event of such delay. Delay in Substantial Completion will also require Owner to incur additional costs for compensation to the Designer and other consultants or contractors for extended or additional work on the Project. In light of the costs, damages, losses, risks and liabilities described above, the parties have agreed upon the liquidated damages stated below. Such damages have been fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages Owner would in such event sustain, and said amounts may be retained by Owner on or after the scheduled date of Substantial Completion from current progress payments or any other amounts owing to the CM. The agreed liquidated damages amounts are \$3,000 per day for each calendar day of delay in achieving Substantial Completion.

4.4.2 Except as otherwise expressly provided, none of the following shall constitute a waiver of the CM's or its surety's obligations to pay liquidated damages or any portion thereof:

- (a) Acceptance of any portion of the Work or payment to the CM or its surety therefore;
- (b) Completion of a portion of the Work or the use or occupancy thereof by Owner or others;
- (c) Owner's requiring or allowing the CM or its surety to complete the Work.

4.4.3 Substantial Completion. As used in this Article, the term Substantial Completion shall mean Substantial Completion as defined in the General Conditions of the Contract.

Article 5. Construction Manager's Services.

5.1 Preconstruction Services. Commencing upon the date of this Agreement, unless otherwise directed in a notice to proceed issued by Owner, the CM shall perform preconstruction services as provided in this Article and elsewhere in the Contract Documents.

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

5.2 Preconstruction and Construction Services. The CM shall perform its preconstruction and construction services, responsibilities and obligations concurrently as necessary during the term of this Agreement as directed by Owner.

5.2.1 Design Review. The CM shall review, on a continuous basis, development of the Drawings, Specifications and other design documents produced by the Designer. Review of the documents is to discover inconsistencies, errors and omissions between and within design disciplines. The CM shall consult with Owner and the Designer regarding the selection of materials, building systems and equipment, and shall recommend alternative solutions whenever design details affect construction feasibility, schedules, cost or quality (without, however, assuming the Designer's responsibility for design) and shall provide other value engineering services to Owner. Without limitation, the CM shall review the design documents for clarity, consistency, constructability, maintainability/operability and coordination among the trades, coordination between the specifications and drawings, compliance with M.G.L. c.149A for procurement, installation and construction, and sequence of construction, including recommendations designed to minimize adverse effects of labor or material shortages. The CM reviews shall be performed by the project team members as approved by Owner. The reviews shall be provided in writing with detailed notations on the drawings and specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution. The CM shall attend meetings as necessary with the Designer and Owner in order to discuss and resolve all issues. If the CM uses BIM then the CM shall provide a Building Information Modeling (BIM) Coordinator to perform a BIM clash detection on exports of the Architectural, Structural, and MEP models with reports to review with Design Team.

5.2.2 Master Development Schedule. The CM shall assist Owner to meet any scheduling responsibilities assigned by Owner. The CM shall also coordinate and integrate its

Project schedules with the services and activities of Owner and other parties. The requirements provided herein are in addition to and not in limitation of the CM's obligation to prepare and maintain the Baseline Critical Path Method (CPM) Schedule and other schedules as provided in the Contract Documents.

5.2.3 Cost Estimates.

- (a.) The CM shall prepare for the review of the Designer and approval of Owner at least three fully detailed estimates of the Construction Cost of the Project: one estimate based on the Design Development Phase Documents, one at 60% Construction Documents and one at 90% Construction Documents during the Construction Documents Phase. Each detailed estimate must be submitted with supporting data including but not limited to unit costs of all materials, equipment and labor hours required to complete the work of all sections of the specification. As used herein, "Construction Cost" shall mean the total cost or, to the extent the Project is not completed, the total estimated cost of constructing the Project, including the Hard Cost of the Work, the General Conditions Payment, and the CM Fee. The Construction Cost does not include costs of land acquisition, financing costs, or design fees. The CM shall provide value engineering analysis and recommendations during design and construction as directed and in order to meet the requirements of the project budget.
- (b.) Owner may, but shall not be required to, arrange for periodic estimates of Construction Cost to be performed by other consultants or staff of Owner. The CM shall work in good faith and in cooperation and coordination with the Designer, and any other consultants or staff of Owner involved in preparing estimates of Construction Cost, in order to reconcile any differences between cost estimates prepared by the CM and such parties, to clarify assumptions upon which cost estimates are based, and otherwise to address any concerns or questions with respect to such cost estimates raised by the Designer, Owner or such other consultants. If in any case the agreed-upon, reconciled estimate of Construction Cost exceeds the Construction Budget established by Owner, the CM shall advise and cooperate with Owner and the Designer in identifying, specifying and recommending changes in, or additional specification of materials, equipment, component systems and types of construction, or other adjustments in the scope or quality of the Project (collectively, "Cost Reduction Alternatives"), including contingencies or alternative bid items, so as to facilitate revision of the design of the Project to reduce the Construction Cost so as to comply with the Construction Budget. Implementation of any Cost Reduction Alternative shall be subject to the approval of Owner, and Owner shall have the right, in its sole discretion, to choose which of the Cost Reduction Alternatives developed by the parties shall be implemented, provided, however, that the Designer shall not be required to incorporate Cost Reduction Alternatives into the design of the Project if doing so would result in a violation of Applicable Laws.
- (c.) The process and responsibilities of the CM described in this Section 5 shall also apply to any separate cost limits within the Construction Budget that have been established by Owner for certain phases, components or elements of the Work.

- 5.2.4 Permits and Approvals. Consistent with the General Conditions, the CM shall assist Owner and the Designer in identifying all governmental permits, user fees, approvals and licenses of any kind which must be obtained and be met in connection with the construction, use and occupancy of the Project ("Permits and Approvals"). The CM shall be responsible for obtaining all Permits, user fees and Approvals. The CM shall perform the Work in accordance with all conditions, mitigation measures and other requirements of all Permits and Approvals. The CM shall obtain and pay for all permits, inspections and certificates of occupancy for the Project. All applications, requests, appeals, filings and other documents, materials and information prepared by the CM to be submitted to governmental authorities in connection with the Permits and Approvals shall be subject to the prior approval of Owner, and shall be delivered to Owner sufficiently in advance of the time of their proposed filing or submission so as to permit a reasonable period for the review and comment of Owner and its consultants. If requested by Owner at any time, any such documents or materials to be used in connection with the Permits and Approvals may be prepared by Owner or other persons designated by Owner, and Owner or other persons designated by Owner may appear on behalf of Owner at any hearing, presentation or conference. In addition, the CM shall promptly complete and provide such other documentation as may be required by Owner, other agencies of the Commonwealth of Massachusetts or such other parties as Owner may indicate, provided that if the CM believes in any instance that compliance with such requirement materially modifies, enlarges or abridges the CM's duties, obligations or rights under the Contract Documents, the CM may submit a proposal for an increase in the Contract Price and/or the Contract Time in accordance with the applicable provisions of the Contract Documents.
- 5.2.5 Monthly Progress Reports. On the fifth (5th) day of each month, or on such other day established by Owner, the CM shall submit to Owner the documents listed in this paragraph for the preceding month, in form and substance acceptable to Owner, containing, without limitation, the following information:
- (a) Project status overview including, without limitation, the following:
 - (i) Progress report by division of work or area;
 - (ii) Quality control/quality assurance report;
 - (iii) Safety and loss control report;
 - (iv) MBE/WBE and workforce participation status;
 - (b) Procurement status report, including, without limitation, a status of MBE/WBE participation;
 - (c) Project schedule update including, without limitation, a Summary Schedule (progress bar chart) from the CPM;
 - (d) Project cost update, including, without limitation, the following:
 - (i) Cost summary;
 - (ii) Cash flow update;
 - (iii) List of outstanding Change Orders and Change Directives;
 - (iv) List of potential changes and outstanding Change Proposal requests and CM Change Requests; and
 - (e) Such other reports, logs or documents as Owner may reasonably require for the management of the Project.

- 5.2.6 Executive Summary Progress Report. On the fifteenth (15th) day of each month, or such other day established by Owner, the CM shall submit to Owner an Executive Summary Progress Report in form and content satisfactory to Owner. Such Report shall include but not be limited to a summary of the important information from the submittals listed in Paragraph 5.2.5 and a discussion of the important issues facing the Project as of the date of the Report's submittal.
- 5.2.7 Subcontracts. Unless otherwise specifically approved by Owner, all Work shall be performed by the CM pursuant to Subcontracts awarded by the CM in accordance with the General Conditions of the Contract, Appendix D: Procedures for Award of Subcontracts.
- (a) The CM shall consult with Owner with respect to proposed bidding and proposal forms and procedures for all subcontracts. The CM understands and agrees that Owner may participate in negotiations with Subcontractors and that Owner and its representatives shall have access to any documents submitted by all Trade Contractors and Other Subcontractors to the CM, for review as to compliance with bidding and proposal procedures and other requirements of the Contract Documents. No Subcontract or other agreement between the CM and any third party for the furnishing or supply of any labor, materials or equipment in the performance of the Work shall be entered into without Owner's prior written approval. Owner shall respond promptly to any request for approval of a Subcontract. Standard forms of subcontract agreement for all Trade Contractors and Other Subcontractors are attached as Appendix F to the General Conditions of the Contract. No material revisions shall be made to any such Subcontract or other agreement approved by Owner without the prior approval of Owner. Copies of all executed Subcontracts shall be provided to Owner promptly.
- (b) Purchases from Affiliated Entities. Except in the event of an emergency as provided herein, neither the CM nor any Subcontractor shall enter into any subcontract, contract, agreement, purchase order, or other arrangement (collectively, an "Arrangement") for the performance of any portion of the Work or the furnishing of any materials, services or equipment in connection therewith with any party or entity if such party or entity is an Affiliated Entity (as defined below), unless such Arrangement has been approved by Owner, after full disclosure in writing by the CM and Subcontractor, if applicable, to Owner of such affiliation and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the CM and/or any Subcontractor, as applicable, or with respect to which the CM and/or any Subcontractor, as applicable, has direct or indirect ownership or control, including, without limitation, any entity owned in whole or in part by the CM and/or any Subcontractor, as applicable; any holder of the issued and outstanding shares of, or the holder of any interest in, the CM and/or Subcontractor, as applicable; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the CM and/or any Subcontractor, as applicable, has a direct or indirect interest which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

- 5.3 Construction Services. Commencing upon the date of the Notice to Proceed with Construction, unless otherwise directed by Owner, the CM shall perform Construction Services as provided in these paragraphs and elsewhere in the Contract Documents.
- 5.3.1 Construction Cost Monitoring. The CM shall provide a system of Project cost monitoring and reporting, and shall develop cash flow reports and forecasts in such format as approved by Owner to coordinate with the cost loaded CPM. The CM shall identify variances between actual costs and its estimated costs and shall immediately advise Owner whenever projected costs exceed previous reports. Such reports and other information shall be included in the Monthly Progress Reports to be submitted to Owner.
- 5.3.2 Quality Assurance/Quality Control. The CM shall prepare and submit to Owner for its approval a Quality Assurance/Quality Control program. Such program shall provide that the CM shall be responsible for insuring that adequate quality assurance and quality control programs are developed, implemented and enforced by the CM's staff and all Subcontractors, including an experienced full-time quality manager, employed by the CM, whose sole responsibility shall be quality assurance and quality control and shall be stationed at the Project Site and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work. The quality manager shall report to Owner and its representatives on a weekly basis the status of the program for each trade, and any deficiencies, and a recommended plan for corrective action. The CM's BIM coordinator shall organize and manage a BIM coordination process with Subcontractors, developing a separate BIM Construction Model for the Architectural, Structural, Mechanical, Electrical, Plumbing, Fire Protection, and Communication trades. The BIM coordinator shall work with a specialized MEP coordinator during the coordination process. This shall include:
- (a) Preparation of Clash Reports
 - (b) Preparation of Construction Record Model & Documents
 - (c) Three-dimensional Coordination Modeling and Documents
- 5.3.3 Prevailing Wage. Work under this project is subject to the prevailing wage laws M.G.L c149, s.26-27 H. The Schedule for prevailing wages will be provided during the CD/BID phase.
- 5.3.4 Intentionally Omitted.
- 5.3.5 CM Responsibility for Managing Construction. The CM shall be responsible for managing, coordinating, and supervising all aspects of the Work as described in this Agreement, the General Conditions, and all other Contract Documents.
- 5.3.6 Conditions Where CM May Perform Work. The CM may submit its qualifications to bid on trade contract or subcontract work in accordance with the provisions of the Trade Contractor Section Process set forth in the General Condition; provided that the CM firm customarily performs the work for which it submits qualifications; provided further, that

the CM firm must perform the work with employees on its own payroll; and provided further, that the CM firm meets all the requirements of the selection process. The CM firm may also self-perform work included in the Supplementary General Conditions (also known as "Division 1") made necessary by an emergency to protect life or to prevent serious property damage pursuant to an advance written approval by Owner where possible. Where advance written approval is not possible due to an extreme emergency, written approval must be obtained from Owner as soon as possible after work begins to alleviate the emergency.

5.4 General Requirements for Preconstruction and Construction Services

- 5.4.1 Design Related. The recommendations and advice of the CM concerning design modifications or alternatives shall be subject to the review and approval of Owner. If the CM recognizes or discovers that any portion of the Drawings and Specifications is at variance with Applicable Laws, the CM shall promptly notify the Designer and Owner in writing, and if the CM fails to promptly so notify the Designer and Owner, having recognized or discovered such variance, the CM shall be liable for an equitable portion of any loss, cost or damage sustained by Owner on account of such variance.
- 5.4.2 CM's Organization and Staff. The CM shall establish an organization and lines of communication required to carry out the requirements of this Agreement in order to organize and direct the complete construction of the Project. A listing of the CM's key staff is set forth as **Exhibit GC** attached hereto and incorporated herein. **Exhibit GC** shall incorporate information provided by the CM in their proposal **Forms B, C and D** as modified by any negotiations. Proposed staffing provided in **Form D** shall be reviewed as part of the negotiations for the GMP. All key staff shall be available for and actively participate in the performance of the services provided under the Contract Documents unless such failure is for good cause beyond the control of the CM. No substitution of any assigned and approved key staff shall be made by the CM without the prior written consent of Owner in its sole discretion. Before any such substitution is made, the CM shall submit to Owner the qualifications of any proposed replacement. The removal or replacement, without Owner's consent, of any of the key staff listed in **Exhibit GC**, other than as a result of retirement, disability, death or bona fide termination of employment, shall constitute a material breach of this Agreement and Owner reserves the right to terminate the contract and assess damages. Within thirty (30) days after execution of this Agreement, the CM shall furnish to Owner a detailed organizational chart (the "Organizational Chart") for approval by Owner. Such chart shall reflect the same persons as set forth in the Proposal unless otherwise approved by Owner. The Organization Chart shall expand upon and update the General Conditions Cost Administrative Breakdown set forth in **Exhibit GC**, and shall identify each staff position, the anticipated start date and end date for each identified staff person and the estimated personnel cost on account of each such staff person. Upon approval by Owner, which approval shall not be unreasonably withheld, the Organizational Chart shall supersede and replace the General Conditions Cost Administrative Breakdown set forth on **Exhibit GC**. The CM's management and field supervisory staffing shall be in accordance with the approved Organizational Chart. All modifications to the Organizational Chart after initial approval by Owner must be approved by Owner, such approval not to be unreasonably withheld. Owner may require replacement of any member of the CM's staff with or without cause, and may require increased levels of staffing by the CM, at no increase in

the Contract Price, if necessary to achieve proper production, management, administration or superintendence, or if otherwise necessary to maintain progress in accordance with the Project Schedule. By executing this Agreement, the CM certifies that the CM and each member of its key staff comply with all licensing, registration and other requirements applicable to the CM and the performance of its services hereunder pursuant to Applicable Laws. Furthermore, Owner shall have the right to require the CM and any Subcontractor to replace any on-site personnel who it reasonably finds objectionable, with other personnel approved by Owner.

Article 6. Contract Price.

6.1 Contract Price.

- 6.1.1 Owner shall pay to the CM in current funds for the CM's proper performance of the Contract and completion of the Work, the "Contract Price" consisting of the General Conditions Payment, as defined in Section 6.2, the Hard Cost of the Work, as defined in Article 7, and the CM Fee as defined in Section 6.3. The total payments to the CM (the Contract Price) shall not exceed the Guaranteed Maximum Price agreed to by the Parties, subject to authorized additions and deductions as provided in the Contract Documents
- 6.1.2 For Change Orders or Contract Modifications authorized by Owner pursuant to the Contract Documents, the Contract Price shall be adjusted as provided in Section 6.4 below and Article VII of the General Conditions and not otherwise. After agreement by Owner and the CM on a guaranteed maximum price for construction of the Work (the "GMP") and execution of the GMP Amendment, as provided in Section 6.7, any increase or decrease in the Contract Price approved by Owner by execution of a Change Order shall increase or decrease the GMP, accordingly.

6.2 General Conditions Payment.

- 6.2.1 In consideration of the performance by the CM of the work described in the Contract Documents Owner shall pay to the Construction Manager, as full and complete compensation to the Construction Manager for all General Conditions costs incurred in the performance of such work an amount not to exceed the payment specified in Form B of **Exhibit GC** ("General Conditions Costs"), subject to Subsection, 6.2.5 below. The total dollar values for Construction General Conditions Costs set forth in Form B of **Exhibit GC** represent the maximum amount to be paid to the CM for all Preconstruction and Construction General Conditions Costs. The provisions in the Contract Documents concerning the anticipated schedule for the Project and the durations of the Preconstruction Period, and Construction Period, are not for the purpose of describing the compensation for General Conditions Costs and do not extend or authorize any extension of the Contract Substantial Completion date and/or the Final Completion date. The CM may make a claim for extension of the Contract Substantial Completion date and/or the Final Completion date only as provided in, and subject to the limitations specified in, the Contract Documents.
- 6.2.2 Intentionally Omitted

- 6.2.3 Construction. During the Construction Period monthly payments to the CM on account of General Conditions Costs shall be made on a basis of actual costs incurred or an agreed lump sum basis, at the Owner's option. If a lump sum basis is agreed upon the amount of the monthly payments shall be determined by applying the percentage of the Hard Cost of the Work approved for payment by Owner to the total amount of the Construction Period General Conditions Costs set forth in Exhibit GC, and deducting from such value any amounts previously paid to the CM on account of Construction Period General Conditions Costs. For each month or partial month during the period from the commencement of the Construction Period, through Final Completion, the CM shall submit a monthly invoice to Owner requesting payment of the Construction Period General Conditions Costs. Payment shall be processed in accordance with the provisions of Article VIII of the General Conditions of the Contract.
- 6.2.4 Either Owner, or the Construction Manager, subject to the approval of Owner, may request that one or more specific items included in General Conditions Costs be included in a Subcontract bid or proposal package or otherwise separately procured. Whether included in a Trade Contractor bid package or Subcontractor proposal or otherwise separately procured, each such item shall be bid as an alternate and, if accepted by Owner, the cost of such item shall be considered part of the Hard Cost of the Work, and the amount of the General Conditions Payment due hereunder shall be reduced by the total cost of such item.
- 6.2.5 If the Construction Manager performs additional work of the type described in Exhibit GC under a Change Order approved by Owner, compensation, if any, due to the Construction Manager shall be computed in accordance with Section 6.4, below, and Article VII of the General Conditions of the Contract; otherwise, Owner shall have no obligation to compensate the Construction Manager on account of the cost of the work for any amounts exceeding the total payments as set forth in Form B in **Exhibit GC**.
- 6.2.6 The General Conditions Costs for payment bond, performance bond and builders risk Insurance that appear in Form D, Section D of Exhibit GC shall be adjusted up or down by change order, based on the difference between the GMP and the estimated Project amount carried in Exhibit GC. There will be no CM Fee attributable to any such adjustment.

6.3 Construction Manager's Fee.

- 6.3.1 In further consideration of the performance of the Contract by the CM, Owner shall pay to the CM a not-to-exceed fee associated with Preconstruction Services in the amount of \$25,000 as identified on Form B in Exhibit GC for the DD phase and a not-to-exceed amount of \$99,910 for the CD/Bidding phase (the "Preconstruction Services Fee"). For each month or partial month during the period from the commencement of the Preconstruction Period through the period when Preconstruction services end, the CM shall submit a monthly invoice to Owner requesting payment of the Preconstruction Services Fee based on actual costs. No monthly fee can exceed \$25,000.

- 6.3.2 Construction. In further consideration of the performance of the Contract by the CM, Owner shall pay to the CM a fee associated with construction services in the amount of One point nine percent (1.90%) x the direct cost of the work as identified on "Line 2" in Form B of Exhibit GC (the "CM Construction Fee") in monthly payments. The amount of the monthly payments shall be determined by applying the percentage of the Hard Cost of the Work approved for payment by Owner, to the total amount of the CM Construction Fee set forth in Exhibit GC and deducting from such value any amounts previously paid to the CM on account of the CM Construction Fee.
- 6.4 Changes in the Work. Owner may make changes in the Work when Owner considers it to be necessary or desirable, as further provided in Article VII of the General Conditions of the Contract.
- 6.5 Intentionally Omitted.
- 6.6 Retainage. Owner shall retain five percent (5%) from the amount approved for payment in the monthly Applications for Payment, as provided in the General Conditions of the Contract. Such retainage shall be applied with respect to all amounts payable under the Application for Payment, including the Hard Cost of the Work, the CM Fee and the General Conditions Payment. Retainage shall be paid as provided in the General Conditions.
- 6.7 Guaranteed Maximum Price.
- 6.7.1 On the date agreed upon by Owner and the CM, or, if no such date is agreed upon, on the date established by Owner by written notice to the CM, which date shall be at least 20 days after the date of such written notice, the CM shall submit to Owner a proposed GMP, which shall be the sum of the estimated total Hard Cost of the Work, the Construction Contingency (hereafter defined), total payment for General Conditions Costs, and the CM Fee. The CM shall include with the GMP proposal a written statement of its basis in form and substance satisfactory to Owner, which shall include at least:
- (a) a list of the Project design documents upon which the GMP proposal is based;
 - (b) N/A;
 - (c) a list of any assumptions, qualifications and clarifications made by the CM in the preparation of the GMP proposal to supplement the information contained in the Project design documents;
 - (d) a statement that the proposed GMP is based on the Baseline CPM Schedule and the Substantial Completion Date specified in this Agreement;
 - (e) the proposed GMP, including a detailed statement of the actual and estimated Hard Cost of the Work organized by CSI (Construction Specification Institute) format with quantities, units, and unit rates, Preconstruction and Construction General Conditions Costs, Construction Contingency, Preconstruction and Construction CM Fee and other items that comprise the GMP;

- (f) a schedule of applicable alternate prices;
- (g) a schedule of applicable unit prices; and
- (h) the time limit for acceptance of the GMP proposal (which shall not be less than 90 days). The CM shall meet with Owner/OPM to review the GMP proposal and the written statement of its basis. In the event that Owner or the Designer discovers any inconsistencies or inaccuracies in the GMP proposal and accompanying information, they shall promptly notify the CM, which shall make appropriate revisions thereto. Owner may elect, in its sole discretion, to accept or not to accept the CM's GMP proposal. The CM understands that any agreement on a GMP shall be subject to approval of Owner. Prior to Owner's acceptance of the CM's GMP proposal, the CM shall not incur any cost to be compensated by Owner except as provided in this Contract or as Owner may specifically authorize in writing. If Owner accepts the CM's GMP proposal, Owner and CM shall execute and deliver within fifteen (15) days after such acceptance an amendment to this Agreement, in form acceptable to Owner and the CM, incorporating the items listed in Subparagraph 6.7.1, above, subject to any modifications agreed upon by the parties (the "GMP Amendment"). The CM shall execute and deliver together with the GMP Amendment, performance and payment (labor and materials) bonds in the form provided by Owner, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance. Each such bond shall be in the amount of the GMP. These bonds shall be substituted for the bonds obtained from the CM at the time of signing the contract, which said bonds shall be returned to the CM by Owner. If Owner does not accept the CM's GMP proposal, Owner may elect to solicit bids or proposals for the construction of the Project from other contractors, using any solicitation method or methods chosen by Owner, consistent with Applicable Laws and procedures, or, if Owner determines that it is in its best interest to do so, Owner may enter into negotiations for a contract with one or more of the offerors that submitted proposals in response to the Request for Proposals for this Contract. If Owner does not accept the CM's GMP proposal within the time limit for acceptance specified in the GMP proposal, as it may be extended by agreement of the parties, then this Contract shall terminate upon the completion of the CM's performance of the Work then in progress or upon notice from Owner as provided in the General Conditions.

Article 7. Hard Cost of the Work.

7.1 Hard Cost of the Work. The "Hard Cost of the Work" shall mean those costs listed in this Section. Hard Cost of the Work shall not include any item included in the General Conditions Costs.

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

7.1.2 Costs of Materials and Equipment Incorporated in the Completed Construction

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

7.1.3 Intentionally Omitted

7.1.4 Emergencies and Repairs to Damaged or Nonconforming Work.

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

- (a) in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the General Conditions.
- (b) in repairing damaged Work, provided that such damage did not result from the fault or negligence of the Construction Manager or the Construction Manager's personnel or any Subcontractor, and only to the extent that the cost of such repairs is not recoverable by the Construction Manager from others or the Construction Manager is not compensated therefor by insurance or otherwise.
- (c) in correcting defective or nonconforming Work, provided that such defective or nonconforming Work did not result from the fault or negligence of the Construction Manager or the Construction Manager's personnel or any Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the construction Manager from third parties or the Construction Manager is not compensated by insurance or otherwise.

Any costs incurred by the CM which would otherwise be within the scope of this Subsection but are excluded because such costs result from the fault or negligence of the CM, the CM's personnel, any Subcontractor or any other party for whom the CM is

responsible may be charged against the Construction Contingency to the extent permitted by and in accordance with the provisions of Paragraph 7.2.1, and any such costs incurred after the Construction Contingency has been exhausted shall not be reimbursable as a Hard Cost of the Work.

7.1.5 Miscellaneous Hard Costs

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

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

7.2 Construction Contingency

7.2.1 The term “Construction Contingency” shall mean the line item included by the CM in the GMP and the Schedule of Values that is available to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the CM awards a Subcontract or the parties execute the GMP Amendment, as applicable, to the extent that such conditions or events do not result in or constitute a change in the Work. Any claim against the construction contingency shall be submitted in accordance with Article VII of the General Conditions. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- (a) unanticipated cost overruns on the CM’s procurement of Subcontracts or other purchases of materials or labor costs, provided that the same are not caused by the fault, negligence, or breach of contract of the CM or any Subcontractor;
- (b) expediting or acceleration costs required to meet the Baseline CPM Schedule, as long as the same are not made necessary by the fault or negligence of the CM or any Subcontractor; and
- (c) such other unforeseen events and conditions as may be specified in the Contract Documents as chargeable to the Construction Contingency. After execution of the GMP Amendment, if the contract price of any subcontract as awarded is less than the amount carried for such subcontract in the GMP breakdown, the Construction Contingency referenced in this section shall be increased by the amount of such savings.

7.2.2 Costs authorized to be paid from the Construction Contingency by Paragraph 7.2.1 shall be paid to the CM as Hard Cost of the Work only if and to the extent reasonably approved by Owner. The Construction Contingency shall be reduced by the net amount of the additional Hard Cost of the Work resulting from the use of the Construction

Contingency as authorized by Paragraph 7.2.1. The CM shall not receive any CM Fee in connection with any use of the Construction Contingency.

7.2.3 Contingency Balance. If, at the time Owner issues the Certificate of Substantial Completion pursuant to Article VI of the General Conditions of the Contract, there is a balance in the Construction Contingency, it shall be retained by Owner.

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

- (a) Salaries, bonuses and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal offices, or other offices, except the site office for this project.
- (b) Expenses of the Construction Manager's principal offices, site office or other offices, except the site office for this project (including, without limitation, in-house computer costs, and other costs of doing business, services, and related expenses to maintain such offices).
- (c) Overhead and general expenses of any kind, including but not limited to office or fabrication shop overhead and drafting and printing costs, except as specifically provided in **Exhibit GC**.
- (d) The CM's capital expenses, including interest on the CM's capital employed for the Work.
- (e) Costs of machinery and equipment owned or rented by the CM, except as specifically provided in **Exhibit GC**.
- (f) Costs incurred due to the fault, negligence or breach of contract of the CM, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, death or injury to person or damage to property, the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, unanticipated cost overruns incurred by the CM in the procurement of Subcontracts, materials or labor, and making good damage to property not forming part of the Work, except: (i) to the extent reimbursement is received through the recovery of insurance proceeds, or (ii) to the extent such items may be charged to the Construction Contingency pursuant to Paragraph 7.2.1.
- (g) Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated into the Work, except as specifically provided in **Exhibit GC**.
- (h) Penalties, fines or costs imposed by governmental authorities in connection with, or resulting from any violation of, or noncompliance with Applicable Laws by the Construction Manager or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

- (i) Any legal fees incurred by the Construction Manager, unless the same are incurred at the written direction, or with the prior written approval, of Owner.
- (j) Travel or meal expenses and personnel relocation expenses, except as specifically provided in **Exhibit GC**.
- (k) General Conditions Costs in excess of the total of all General Conditions costs as set forth in Form B in **Exhibit GC**.
- (l) Any cost incurred by the CM as a result of knowing violation of or failure to comply with this Agreement or the other Contract Documents by the CM.
- (m) Costs which would cause the GMP to be exceeded.
- (n) Costs incurred by the CM after final payment; provided, however, that to the extent there is Contingency remaining at final payment, such Contingency shall be available to pay costs incurred during the one year period after final payment, but only if Contingency would be available, subject to reasonable approval by Owner, to pay such costs had such costs been incurred prior to final payment.

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

7.5 Accounting Records

7.5.1 The Construction Manager shall check all materials, equipment and labor entering into the Work, and shall keep such full and detailed accounts and exercise such controls as may be necessary for proper accounting and financial management under this Agreement. All books and records shall be maintained in accordance with generally accepted accounting principles, consistently applied. Without limitation, the CM shall comply with the requirements set forth in Article XI of the General Conditions. Owner and its authorized representatives shall, upon request by Owner, be afforded copies of, and at all times shall be afforded access to, all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, invoices, vouchers, memoranda, estimates, budgets, breakdowns, accounting data, bid proposals, cost control information and any other documents and data relating to this Agreement, including data in electronic media or any other media (collectively, "records") and the Construction Manager shall preserve all such records for a period of six years, or for

such longer period as may be required by law, after Final Payment. With respect to work performed by the CM's own forces on a lump sum basis, the CM shall only be required to maintain certified payrolls, documentation required by the Supplementary Conditions for Equal Employment Opportunity, Non-Discrimination and Affirmative Action, and such other records as are required by Applicable Laws or the terms of the Contract Documents.

- 7.5.2 Without limitation of the foregoing, Owner shall have the right, at any time and from time to time, upon notice to the Construction Manager, to audit the Construction Manager's records in connection with the Work at the Construction Manager's offices. The Construction Manager shall facilitate any such audit by making necessary facilities available to Owner and its accountants or other representatives.
- 7.5.3 Subcontractors shall have the same obligations to maintain books and records and to permit audits by the Construction Manager or Owner as are applicable to the Construction Manager under the Contract Documents.
- 7.5.4 If any inspection of the Construction Manager's or any Subcontractor's books, records or other documents reveals an overcharge, the Construction Manager shall pay Owner or, at Owner's election, Owner may reimburse itself by taking as a credit against future payments due the Construction Manager, an amount equal to the overcharge. If one or more overcharges is equal to or greater than two hundred thousand dollars (\$200,000) in the aggregate, the CM shall also pay all administrative and auditing expenses up to an aggregate of forty thousand dollars (\$40,000) incurred by Owner in determining the existence and amount of the overcharge. Nothing contained in this provision is intended as a limitation of any other rights or remedies which may be available to Owner and/or the Commonwealth, be they civil or criminal.

Article 8. Payments to Construction Manager.

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

Article 9. Equal Employment Opportunity, Nondiscrimination and Affirmative Action.

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

Article 10. Miscellaneous Provisions.

- 10.1 Successors and Assigns. Owner and the CM bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither the CM nor any partner of the CM shall assign or transfer the Contract or sublet or subcontract it (other than subcontracting portions of the Work

as expressly permitted by and in accordance with the Contract Documents), or otherwise transfer or assign any of its or their rights or obligations under all or any portion of the Contract Documents without the prior written consent of Owner, which consent may be withheld by Owner in its sole discretion, nor shall the CM or any partner of the CM assign any moneys due or to become due to it hereunder, without such prior written consent of Owner. Any assignment of the Contract or any interest therein by the CM or any partner of the CM shall be void, and the assignee in such case shall acquire no rights in the Contract or in such moneys. Owner may assign the Contract to any successor or assignee of Owner's interests, provided that Owner demonstrates to the reasonable satisfaction of the CM that such successor or assignee has the capability of fulfilling Owner's obligations under the Contract.

- 10.2 Additional Information. Recognizing that Owner may find it necessary during the progress of the Work to establish the current status of performance under the Contract Documents, the CM shall, without limitation of any other requirements of the Contract Documents, promptly provide upon request statements, documents or information to Owner or others regarding the status of the Work, compliance of the Work with the Contract Documents, compliance by the CM or any Subcontractor with the Contract Documents, the names of Subcontractors or suppliers, amounts due or to become due or amounts previously paid to Subcontractors or suppliers, estimates of the portion of the Work completed and the cost of completing the Work, and such other matters within the scope of the CM's performance under the Contract Documents as Owner may reasonably require.
- 10.3 Information Confidential. The CM shall treat as confidential any information relating to the Project that is specifically designated or identified by Owner as confidential or proprietary, and shall not permit release of such information to other parties without Owner's prior express written authorization.
- 10.4 Governing Law. The Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 10.5 No Personal Liability; Consequential Damages.
- 10.5.1 No member, officer, consultant, volunteer participant, employee, agent or representative of Owner or the Designer shall be personally liable to the CM under any term or provision of this Contract for Owner's payment obligations or otherwise, or because of any breach hereof, the CM agreeing to look solely to the assets of Owner or the Designer entities for the satisfaction of any liability hereunder.
- 10.5.2 In no event shall Owner or the Designer be liable to the CM except for obligations expressly assumed by Owner or the Designer under the Contract Documents, nor shall Owner or the Designer ever be liable to the CM for indirect, special or consequential damages.
- 10.6 Conflict of Interest. The CM shall familiarize its employees assigned to perform services under this Agreement with the provisions of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict-of-interest statute). The CM acknowledges that Owner is a "state agency" for purposes of the aforementioned statute and that the CM is an "interested party" for purposes of the aforementioned statute. Accordingly, the CM, its employees and agents shall

not offer or provide any employee of Owner any gift, gratuity, favor, meal, entertainment, loan or other item of monetary value. The CM warrants and represents that it currently has no interest and shall not acquire any interest, direct or indirect, which would be adverse to or conflict in any manner with the performance of its services under this Agreement or with the interest of Owner or the Project. The CM further agrees that in the performance of this Agreement no person or entity having any such adverse or conflicting interest shall be employed or granted a subcontract. Except with Owner's knowledge and express consent, the CM shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to be adverse to the interests of Owner or to compromise the CM's professional judgment with respect to the Project. The CM has a continuing obligation to divulge to Owner all circumstances of its relationships with third parties, as well as any other interests that may have an effect on Owner or the Project at the time of execution of this Agreement or during its effectiveness. If Owner believes that there is or has been a conflict of interest, or the appearance of a conflict of interest, it will so notify the CM. The CM shall make full disclosure of all material facts, and shall have a period of thirty (30) days after receipt of such notice to cure the conflict of interest or the appearance of conflict of interest, including the right to request a meeting with a representative of the Owner to explain its position. If the conflict of interest or appearance of conflict of interest is not cured to the satisfaction of Owner or the controversy otherwise resolved prior to expiration of such thirty (30) days period, the CM shall be deemed to be in default of this Agreement and Owner may exercise any remedies available to it under this Agreement or applicable law.

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

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

Exhibit A	Additional Insurance Provisions & Certificate of Insurance
Exhibit B	Executed Request for Proposal Forms: Form A – Request for Proposal Response Form WT Rich Company - DCAMM Certificate of Contractor Eligibility WT Rich Company - DCAMM Update Statement, dated March 1, 2023 Attachment K.2 – Non-Collusion Affidavit Attachment K.3 – Informational Sheet Attachment K.4 – Affidavit of Compliance Attachment K.5 – Affidavit of Prevailing Wage Compliance Attachment K.6 – Affidavit of Certification of Tax Compliance Surety Commitment Letter, dated February 23, 2023
Exhibit C	Prevailing Wage Rates
Exhibit D	General Conditions to the Construction Contract
Exhibit GC	Price Proposal Forms Form B - Construction Manager Service Fee Proposal Form Form C – Schedule of Construction Management Costs Pre-Construction Phase Form D - Schedule of Construction Management Costs Construction Phase

Article 11. Approved Subcontractors.

No Trade Contractors or other Subcontractors shall be used for any portions of the Work without the prior written approval of Owner.

Article 12. Certifications.

Pursuant to M.G.L. c. 62(c), s.49 (a), the individual signing this Contract on behalf of the Construction Manager hereby certifies, under the penalties of perjury, that to the best of his or her knowledge and belief the Construction Manager has complied with any and all applicable state and federal tax laws. The individual signing this Contract on behalf of the Construction Manager further certifies under penalties of perjury that the Construction Manager is not presently suspended or debarred from doing public construction work in the Commonwealth under the provisions of M.G.L. c. 29, s. 29F, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder and is not presently suspended or debarred from doing public construction work by any agency of the United States.

Article 13. Minority Business Enterprise and Women Business Enterprise Participation Goals and Minority/Women Workforce Utilization Percentages.

The Minority Business Enterprise (MBE) goal for this construction contract is 4.2% and Women Business Enterprise (WBE) participation goal for this Construction Contract is 8.8% of the Guaranteed Maximum Price (GMP). The Construction Manager shall work to achieve a goal of workforce participation of not less than 6.9% for women and 15.3% for minorities employed work hours to total work hours. Procedures to ensure compliance with the Workforce Participation Goals, including reporting and enforcement provisions to comply with M.G.L. c. 149, § 44A(2)(G).

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

CONSTRUCTION MANAGER

Owner:	
Name (Signature):	
Title:	
Date:	

TOWN OF MIDDLETON

By executing this Agreement, the undersigned authorized signatory of Owner, who incurs no personal liability by reason of the execution hereof or anything herein contained, hereby certifies under penalties of perjury that this Contract is executed in accordance with a prior approval of the TOWN OF MIDDLETON.

Owner:	TOWN OF MIDDLETON
Name (Signature):	
Title:	
Date:	

Town of Middleton – Finance Director – Sufficient funds available for this contract	
Name (Signature):	
Title:	
Date:	

Town of Middleton – Town Council (legal) - Approved as to Legal Form & Character	
Name (Signature):	
Title:	
Date:	

Attach Exhibits A, B, C, D and GC

**MIDDLETON MUNICIPAL COMPLEX
TOWN OF MIDDLETON, Massachusetts**

**CONSTRUCTION CONTRACT FOR CONSTRUCTION
MANAGER AT RISK SERVICES**

OWNER - CONSTRUCTION MANAGER AGREEMENT

<p>Exhibit A Additional Insurance Provisions</p>
--

The CM shall take out and maintain General Liability and Excess (Umbrella) Liability policies that name the Town, PCA360, LLC, and Context Architecture, as additional named insureds and will include a waiver of subrogation for the General Liability policies in favor of the Town, PCA360, LLC and Context Architecture.

Copy of Certificate of Insurance on following page.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/5/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER The Driscoll Agency 141 Longwater Drive Suite 203 Norwell MA 02061	CONTACT NAME: Kelly Seip PHONE (A/C No. Ext): 781-681-6686 E-MAIL ADDRESS: kseip@driscollagency.com FAX (A/C No): 781 681 6656												
INSURED W.T. Rich Company, Inc. 1075 Worcester Street, Suite 310 Natick MA 01760	INSURER(S) AFFORDING COVERAGE <table><tr><td>INSURER A: United States Fire Insurance Co</td><td>NAIC # 21113</td></tr><tr><td>INSURER B: Travelers Property Casualty Co of America</td><td>25674</td></tr><tr><td>INSURER C: New Hampshire Insurance Co.</td><td>23841</td></tr><tr><td>INSURER D: Continental Casualty Company</td><td>20443</td></tr><tr><td>INSURER E: Pacific Insurance Company, Ltd</td><td>10046</td></tr><tr><td>INSURER F: National Union Fire Ins Co</td><td>19445</td></tr></table>	INSURER A: United States Fire Insurance Co	NAIC # 21113	INSURER B: Travelers Property Casualty Co of America	25674	INSURER C: New Hampshire Insurance Co.	23841	INSURER D: Continental Casualty Company	20443	INSURER E: Pacific Insurance Company, Ltd	10046	INSURER F: National Union Fire Ins Co	19445
INSURER A: United States Fire Insurance Co	NAIC # 21113												
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INSURER D: Continental Casualty Company	20443												
INSURER E: Pacific Insurance Company, Ltd	10046												
INSURER F: National Union Fire Ins Co	19445												

COVERAGES**CERTIFICATE NUMBER:** 795191333**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
F	COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Cont liab inc GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	GL3506747	9/1/2022	9/1/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	133-752483-9	9/1/2022	9/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Com/Coll Deductible \$ 1,000
B D	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ None	Y	Y	CUP-4S793003 6081786082	9/1/2022 9/1/2022	9/1/2023 9/1/2023	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	WC025893807	9/1/2022	9/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	Contractors Pollution Liability Contractors Professional Liabilit	Y	Y	13 CPI GB4573	9/1/2022	9/1/2023	Per claim/loss \$5,000,000 Aggregate \$5,000,000 Professional Per clai \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: Middleton Municipal Complex

The Town of Middleton, Context Architecture and PCA 360, LLC are included as Additional Insured for Automobile Liability, General Liability and Excess (Umbrella) Liability as required by a signed written contract or agreement with the Named Insured.

The Additional Insured coverage for Automobile, General Liability and Excess liability detailed above applies on a primary, non-contributory basis where required by a signed written contract or agreement with the Named Insured.

See Attached...

CERTIFICATE HOLDER**CANCELLATION** 30 days, except 10 days non-paymentTown of Middleton
48 S. Main Street
Middleton MA 01949**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

AUTHORIZED REPRESENTATIVE

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**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY The Driscoll Agency		NAMED INSURED W.T. Rich Company, Inc. 1075 Worcester Street, Suite 310 Natick MA 01760
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

The General Liability, Excess (Umbrella) Liability, Automobile Liability, and Workers Compensation / Employers Liability Policies include a Waiver of Subrogation in favor of the additional insureds on whose behalf the Named Insured is required to obtain this Waiver under a written contract or agreement executed prior to a loss.

30 day notice of cancellation applies except for 10 days for nonpayment.

General Liability policy includes coverage for "X, C, U" (hazards, collapse of building, blasting and damage to underground property). Completed Operations, and Contractual Liability

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION WHOM YOU BECOME OBLIGATED TO INCLUDE AS AN ADDITIONAL INSURED AS A RESULT OF ANY CONTRACT OR AGREEMENT YOU HAVE ENTERED INTO.	PER THE CONTRACT OR AGREEMENT.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than

that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE**

Designation Of Premises (Part Leased To You):
ANY PREMISES OR PART THEREOF LEASED TO YOU.

Name Of Person(s) Or Organization(s) (Additional Insured):
ANY PERSON OR ORGANIZATION FROM WHOM YOU LEASE PREMISES OR WHO
MANAGES PREMISES YOU OWN AND TO WHOM YOU BECOME OBLIGATED TO
INCLUDE AS AN ADDITIONAL INSURED UNDER THIS POLICY AS A RESULT OF ANY
LEASE OR MANAGEMENT AGREEMENT YOU ENTER INTO WITH SUCH PARTIES.

Additional Premium: \$ INCLUDED

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the

Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.

2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

- B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**MIDDLETON MUNICIPAL COMPLEX
TOWN OF MIDDLETON, Massachusetts**

**CONSTRUCTION CONTRACT FOR CONSTRUCTION
MANAGER AT RISK SERVICES**

OWNER - CONSTRUCTION MANAGER AGREEMENT

Exhibit B

Executed Request for Proposal Forms

Form A – Request for Proposal Response Form

WT Rich Company - DCAMM Certificate of Contractor Eligibility

WT Rich Company - DCAMM Update Statement, dated March 1, 2023

Attachment K.2 – Non-Collusion Affidavit

Attachment K.3 – Informational Sheet

Attachment K.4 – Affidavit of Compliance

Attachment K.5 – Affidavit of Prevailing Wage Compliance

Attachment K.6 – Affidavit of Certification of Tax Compliance

Surety Commitment Letter, dated February 23, 2023

FORM A
REQUEST FOR PROPOSAL RESPONSE FORM
MIDDLETON MUNICIPAL COMPLEX – MIDDLETON, MA

To The Town of Middleton:

The undersigned proposes to furnish all Construction Management Services required by the Town of Middleton for the **Middleton Municipal Complex Project, Middleton, MA** in accordance with the Request for Proposal, all documents contained in the Request for Proposal or referred to therein, addenda or clarifications issued in regard to that RFP, namely addenda numbered 1, 2 and 3 for the price stated in a separate form, submitted in a separate envelope.

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

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

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

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

Firm

Name: W.T. Rich Company

By: 

(Signature of Authorized Representative)

Title: Chief Executive Officer

Date: February 28, 2023





The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Division of Capital Asset Management and Maintenance
One Ashburton Place
Boston, Massachusetts 02108

Tel: (857) 204-1305

Fax: (617) 727-8284

CHARLES D. BAKER
GOVERNOR

Email: Certification.DCAMM@mass.gov

MICHAEL J. HEFFERNAN
SECRETARY
ADMINISTRATION & FINANCE
CAROL W. GLADSTONE
COMMISSIONER

KARYN E. POLITO
LIEUTENANT GOVERNOR

Prime
Certificate of Contractor Eligibility
CONTRACTOR IDENTIFICATION NUMBER: 0189

This Certificate Shall be Used for Submitting Prime Bids Only.

- 1. CERTIFICATION PERIOD:** This Certificate is valid from May 4, 2022 to May 3, 2023*
- 2. CONTRACTOR'S NAME:** W.T. Rich Company, Inc.
- 3. CONTRACTOR'S ADDRESS:** 1075 Worcester Street
Suite 310
Natick, MA 01760
- 4. WORK CATEGORIES:** This Contractor is certified to file bids under Massachusetts General Laws Chapter 149, Chapter 149A and Chapter 25A in the following Categories of Work:

General Building Construction

- 5. EVALUATIONS:**
- | | |
|------------------------------------|----|
| Number of Projects Evaluated: | 12 |
| Average Project Evaluation Rating: | 92 |
| Number of Projects Below Passing: | 0 |
- 6. PROJECT LIMITS:**
- | | |
|--------------------------------------|---------------|
| Single Project Limit (SPL): | \$169,109,000 |
| Aggregate Work Limit (AWL): | \$270,686,000 |
| General Building Construction Limit: | \$169,109,000 |

- 7. SUPPLIER DIVERSITY OFFICE CERTIFICATION:** N/A

Carol W. Gladstone, Commissioner

03/29/2022

Approval Date

*** NOTICE TO CONTRACTORS:** *If this contractor becomes uncertified for any reason this Certificate will immediately become void. Complete Applications for Renewal of Contractor Eligibility are due no later than three months PRIOR to the Expiration Date of the Certification Period shown above.*

Reviewer's Initials: KO

Attachment K.2

NON-COLLUSION AFFIDAVIT

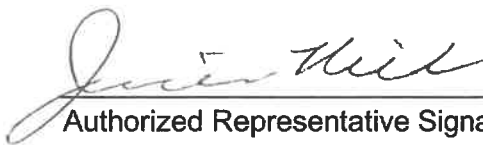
The undersigned hereby declares under the penalties of perjury that they have carefully examined the Request for Proposals, Sample Contract and general conditions, schematic design outline specifications and plans referred to, and also the site upon which the proposed work is to be performed.

The undersigned also hereby certifies under the penalties of perjury that the Offeror is the only entity interested in this proposal; that it is made without any connection with any other person making any bid for the same work, that no person acting for, or employed by, the Commonwealth of Massachusetts is directly or indirectly interested in this proposal, or in any contract which be made under it, or in expected profits to arise therefrom; and without directly or indirectly influencing or attempting to influence any other person or corporation to bid or to refrain from bidding or to influence the amount of the bid of any other person or corporation; and that this proposal is made in good faith without collusion or connection with any other person bidding for the same work; and that this proposal is made with distinct reference and relation to the plans and specifications prepared for this contract and herein mentioned. The undersigned further declares that in regard to the conditions affecting the work to be done and the labor and materials needed, this proposal is based solely on Offeror's own investigation and research and not in reliance upon any representation of any employee officer or agent of the Commonwealth.

No oral, written or telegraphic amendments to this bid will be accepted. An Offeror wishing to amend this proposal after transmittal to Owner may do so only by written notice received by Owner in the office designated in the request for proposal prior to the time and date set for the opening of proposals.

Name of Offeror: W.T. Rich Company

Company or Joint Venture Name



Authorized Representative Signature

Jonathan Rich, Chief Executive Officer

Print Name and Title

Attachment K.3
INFORMATIONAL SHEET

A. If a Corporation:

Incorporated in what State: Massachusetts

President: Jonathan Rich, CEO / Brian Santos, President

Treasurer: Michael Young

Secretary: Michael Michaud

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

Yes _____ No _____

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

C. If a partnership, name all partners on attached sheet.

D. If an individual:

Name: _____

Residence: _____

E. If an individual doing business under a firm name:

Name of Firm: _____

Business Address: _____

Name of Individual: _____

Attachment K.4
AFFIDAVIT OF COMPLIANCE

 X Massachusetts Business Corp. Foreign Corp. Non-Profit Corp.

I, ~~President~~ Jonathan Rich, ~~Clerk~~ Chief Executive Officer of

W.T. Rich Company , principal office is located at 1075 Worcester Street, Suite 310,

Natick, MA 01760

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

SIGNED UNDER THE PENALTIES OF PERJURY this 28th day of February,
2023.



Signature of Duly Authorized Corporate Officer

Attachment K.5
AFFIDAVIT OF
PREVAILING WAGE COMPLIANCE (C. 149, S. 26 AND 27)

I, Jonathan Rich, Chief Executive Officer, of the
Name Title

W.T. Rich Company, with a principal office is located at 1075 Worcester Street, Suite 310,
Offeror's Company Name

Natick, MA 01760

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

SIGNED UNDER THE PENALTIES OF PERJURY this 28th day of February,
2023.



Signature of Duly Authorized Corporate Officer

Attachment K.6
CERTIFICATION OF TAX COMPLIANCE

TOWN OF MIDDLETON, MA

Pursuant to M.G.L. Ch. 62c. sec. 49a.

I, Jonathan Rich, Chief Executive Officer,

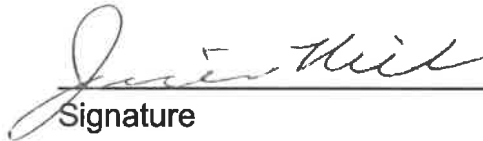
~~President,~~ _____, ~~Clerk,~~ _____, ~~Partner,~~ of

W.T. Rich Company _____, hereby certify

under penalties of perjury that W.T. Rich Company has, to my best knowledge and belief, filed all state tax returns and paid all state taxes required under law.

04-2434699
Federal Identification Number
or Social Security Number

W.T. Rich Company
Company Name


Signature

Jonathan Rich
Name of Duly Authorized (type/print)

Chief Executive Officer
Title/Company Position



February 23, 2023

Town of Middleton
48 South Main Street
Middleton, MA 01949

RE: W.T. Rich Company - Surety Bonding
Middleton Municipal Complex, Middleton, MA
Estimated Construction Cost: \$48,000,000
Construction Management at Risk

To Whom It May Concern,

Please be advised, The Driscoll Agency represents the W.T. Rich Company for their surety bonding. We have a formal bonding program in place for W.T. Rich Company with Arch Insurance Company. Arch Insurance Company is licensed in all States, is an "A+" rated insurance company and is an approved surety on the US Government Treasury List.

In regards to surety capacity, the captioned project falls well within W.T. Rich Company bonding program. We are prepared to issue Performance and Payment Bonds in an amount equal to or greater than 110% of the estimated construction cost at the request of W.T. Rich Company, subject to normal underwriting considerations which include review of our principles current backlog and financial condition.

Sincerely,

Arch Insurance Company

A handwritten signature in blue ink that reads 'Claire A. Cavanaugh'. The signature is written in a cursive, flowing style.

Claire Cavanaugh

141 Longwater Drive, Suite 203
Norwell, MA 02061
Tel: (781) 681-6656
Fax: (781) 681-6686

www.driscollagency.com

TDA, Inc. dba The Driscoll Agency is legally organized as a Maine business corporation and is separately and locally managed and operated as a wholly owned subsidiary of Cross Financial Corp., Bangor ME

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.

POWER OF ATTORNEY

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Claire A. Cavanaugh, Dennis W. Driscoll, George G. Powers, George N. Powers, John C. Driscoll, Martin L. Donovan and Timothy P. Lyons of Norwell, MA (EACH)

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (90,000,000.00).

This authority does not permit the same obligation to be split into two or more bonds In order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"**VOTED**, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. **In Testimony Whereof**, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 26th day of May, 2020

Attested and Certified

Patrick K. Nails

Patrick K. Nails, Secretary



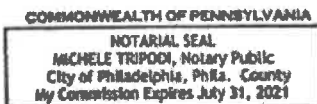
Arch Insurance Company

David M. Finkelstein

David M. Finkelstein, Executive Vice President

STATE OF PENNSYLVANIA SS
COUNTY OF PHILADELPHIA SS

I, **Michele Tripodi**, a Notary Public, do hereby certify that Patrick K. Nails and David M. Finkelstein personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



Michele Tripodi

Michele Tripodi, Notary Public
My commission expires 07/31/2021

CERTIFICATION

I, **Patrick K. Nails**, Secretary of the Arch Insurance Company, do hereby certify that the attached **Power of Attorney dated May 26, 2020** on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said David M. Finkelstein, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 23rd day of February, 2023.

Patrick K. Nails

Patrick K. Nails, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:

Arch Insurance – Surety Division
3 Parkway, Suite 1500
Philadelphia, PA 19102



**To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at SuretyAuthentic@archinsurance.com
Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.**

**MIDDLETON MUNICIPAL COMPLEX
TOWN OF MIDDLETON, Massachusetts**

**CONSTRUCTION CONTRACT FOR CONSTRUCTION
MANAGER AT RISK SERVICES**

OWNER - CONSTRUCTION MANAGER AGREEMENT

<p>Exhibit C Prevailing Wage Rates</p>
--

Will be provided at time of bidding.

TOWN OF MIDDLETON, Massachusetts

**CONSTRUCTION CONTRACT FOR CONSTRUCTION
MANAGER AT RISK SERVICES**

OWNER - CONSTRUCTION MANAGER AGREEMENT

<p>Exhibit D</p> <p>General Conditions to the Construction Contract</p>

MIDDLETON MUNICIPAL COMPLEX PROJECT
CONSTRUCTION MANAGER AT RISK CONTRACT

GENERAL CONDITIONS OF THE CONTRACT

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ARTICLE I - DEFINITION OF TERMS

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

Advertisement: The Advertisement or Notice Inviting Bids or Proposals for the Work.

Approval (or Approved): An approval in writing signed by the authorized signatory of Owner.

Architect: The architect identified as the Designer in preliminary statement Section C of the Owner-CM Agreement.

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

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

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

Change Order: (1) A written order not requiring the consent of the CM, signed by the Project Manager and designated as a Change Order, directing the CM to make changes in the Work within the general scope of the Contract, or (2) any written order from the Project Manager that causes any change in the Work Provided that the CM has given Owner written notice stating the date, circumstances, and source of the order and that the CM regards the order as a Change Order.

Construction Manager, Contractor, CM and General Contractor: The person, corporation or other entity with which Owner has executed the CM Agreement.

Construction Manager's Key Personnel: The personnel listed in the Construction Manager's Proposal and Sections B.1, C.1, and C.2 of Exhibit GC of the Owner-CM Agreement, all of whom shall be dedicated to the Project on a full time basis, and which personnel shall include at a minimum the Project Executive, the Project Manager, the Superintendent (who shall be a properly licensed construction supervisor), and the Project Scheduler. Unless otherwise designated by the CM, the Project Executive shall have complete authority to act for the CM.

Contract: The Contract formed by the Contract Documents.

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

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

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

Designer: The architect or engineer identified as the Designer in the Preliminary Statement of the Owner- CM Agreement, subject to the provisions of Article 111, Section 1 of these General Conditions of the Contract.

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

Engineer: The Designer, except that the term "Resident Engineer" shall have the meaning otherwise specified herein.

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

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

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

Neutral: An impartial third party not having an interest in the Owner, the Designer, the Program Manager, the CM or the Project.

Notice to Proceed (NTP): The written notice provided by Owner to the CM which authorizes the CM to commence the Work as of a date specified therein, from which date the times specified in Article 4 of the Owner-CM Agreement is measured. Owner may issue more than one NTP, including but not limited to separate NTPs for Preconstruction and Construction Services, in which case the date from which the time for completion of construction is measured shall be as stated in the appropriate NTP.

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

Owner: The Town of Middleton, Middleton Building Committee, Town of Middleton Selectboard. This term may be used interchangeably with the term the "Awarding Authority".

Plan(s):

Drawing(s):

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

Progress Schedule: The progress schedule submitted by the CM Approved by Owner in accordance with the Contract Documents.

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

Project Manager or Owners Project Manager: Owner's representative assigned to the Project as identified in the preliminary statement of the Owner/CM Agreement.

Punch List: A list of items determined by Owner to be minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Work for its intended purpose.

Resident Engineer: The On-Site representative of Owner.

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

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

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

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

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

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

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

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

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

User Agency: The board, agency or other instrumentality of the Owner which operates or which will operate the facility at which the Work is undertaken or which comprises the completed Work.

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

Working Hours: The hours during which construction work may be performed on the Project, 7:00 a.m. to 5:00 p.m., Monday through Friday, unless otherwise specified by applicable Laws and subject to Article X, 2.F. of these General Conditions.

All terms that this Contract defines may be used with or without initial capital letters. Other terms, abbreviations and references are defined as they appear herein. Words and abbreviations that are not defined in the Contract Documents but which have recognized technical or trade meanings are used in accordance with those meanings. For additional definitions of terms, abbreviations and references refer to the General Requirements, or Specifications.

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

1. Execution

The execution of the Owner - CM Agreement by the CM is a representation that the CM has visited the Site, has become familiar with local conditions under which the Work is to be performed and has correlated observations at the Site with requirements of the Contract Documents.

2. Scope of Work

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

3. Interpretation

- A. The Plans and Specifications and other Contract Documents are to be considered

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

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

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

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

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

- | | |
|-------------------|---|
| First Priority: | Contract Modifications and Change Orders Owner-CM Agreement as amended |
| Second Priority: | General and Supplementary Conditions of the Contract as amended |
| Third Priority: | Drawings as amended -- Schedules take precedence over enlarged detail Drawings, and enlarged Detail |
| Fourth Priority: | Drawings take precedence over reduced scale Drawings; figured dimensions shall prevail over scale. |
| Fifth Priority: | Specifications as amended |
| Sixth Priority: | Request for Proposals as amended |
| Seventh Priority: | CM's Proposal as amended |

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

4. Distribution of Work

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

5. Subcontracts

Procedures for the award of contracts by the CM for the furnishing of labor, materials and equipment in the performance of the Work ("Subcontracts") shall be as specified in the procedures attached hereto as Appendix "D". The CM shall make no substitution for any Subcontractor previously selected without the prior written approval of Owner. The term Subcontractor also means Trade Contractor except when otherwise specified. The CM shall maintain and periodically update and distribute to Owner, the Program Manager and the Designer a Project Directory listing the names, addresses and telephone numbers of the principal members of the staff of each Subcontractor. The principal contact and a back-up for each Subcontractor and each of their home telephone numbers, mobile telephone numbers and pager numbers, if available, shall be indicated in the Project Directory so that such persons can be reached in emergency situations occurring beyond regular business hours.

All work shall be performed pursuant to written subcontracts. The CM shall use the Subcontract forms attached hereto in Appendix "E", for all Subcontractors. One form of Subcontract is to be used for all Trade Contractors selected for the trades listed in section I.A.1 of the above referenced Procedures, and the other form is to be used for all Other Subcontractors. All subcontracts shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM by the terms of the Contract Documents, and to assume toward the CM all the obligations and responsibilities which the CM, by the Contract Documents, assumes toward Owner. Each Subcontract shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The CM shall require each Subcontractor to enter into similar agreements with its Subcontractors. The CM shall provide to each proposed Subcontractor, prior to the execution of a Subcontract with such Subcontractor, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph. Each Subcontractor shall provide copies of such Contract Documents to its Subcontractors.

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

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

6. Contract Price

The Contract Price constitutes full compensation to the CM for everything to be performed and

furnished in connection with the Work and for all damages arising out of the performance of the Work for which Owner is responsible, and constitutes the maximum compensation regardless of any difficulty incurred by the CM in connection with the Work or in consequence of any suspension or discontinuance of the Work.

ARTICLE III - CONTROL OF WORK/ADMINISTRATION OF THE CONTRACT

1. Designer

Notwithstanding anything to the contrary expressed or implied in this Contract, any of the powers, rights, and duties of the Designer may be exercised by Owner, provided that Owner shall be under no obligation to do so. Owner may rely on the Designer for the performance and exercise of its rights and obligations hereunder and shall be presumed to so rely on the Designer in the absence of an explicit written assumption by Owner of any such rights and obligations, except that any Approval required to be obtained from Owner hereunder shall not be valid without the signature of Owner. The Owner may explicitly overrule in writing any action, determination or decision of the Designer should Owner choose to do so, except to the extent that the same would violate applicable law. Subject to the foregoing, the Designer shall be responsible for the general administration of the Contract and shall perform the duties and exercise the rights herein conferred on the Designer. Except as otherwise specifically provided herein, the Designer shall decide all questions which may arise as to the conduct, quantity, quality, equality, acceptability, fitness, and rate of progress of the several kinds of work and materials to be performed and furnished under this Contract, and shall decide all questions which may arise as to the interpretation of the Plans and Specifications and as to the fulfillment of this Contract on the part of the CM. In the case of the death, resignation, inability or refusal of the Designer to act, or the termination of his or her or its employment, Owner may appoint another person to act as Designer for the purposes of this Contract. Owner shall give written notice to the CM of any such appointment.

2. Right of Access to Work

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

3. Inspection No Waiver

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

ARTICLE IV - GENERAL PERFORMANCE OBLIGATIONS OF THE CM

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

1. Review of Contract Documents and Field Conditions

- A. Before commencing the Work, the CM shall carefully study the Contract Documents and

carefully compare all Specifications, Plans, Drawings, figures, dimensions, lines, marks, scales, directions of the Designer, and any other information provided by Owner and shall at once report to the Designer any questions, errors, inconsistencies, or omissions.

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

2. Supervision and Construction Procedures: Coordination: Cutting and Patching

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

B. The CM shall be responsible for the proper fitting of all Work and the coordination of the operations of all trades, Subcontractors, and material men engaged upon the Work. The CM shall guarantee to each of its Subcontractors all dimensions which they may require for the fitting of their work to all surrounding work.

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

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

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

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

G. Unless otherwise required by the Contract Documents, or directed in writing by the Designer or Owner, Work shall be performed during regular Working Hours which, unless prescribed otherwise by applicable law, shall be 7:00 a.m. to 5:00 p.m. However, if the CM desires to carry on the Work outside of regular working hours or on Saturdays, Sundays, or Massachusetts or federal holidays then the CM shall provide 48 hours notice to allow satisfactory arrangements to be made for inspecting Work in progress and shall bear the costs of such inspection. Owner shall bill the CM directly for such costs.

H. Work performed outside of regular Working Hours without the consent or knowledge of the Designer and/or Owner shall be subject to additional inspection and testing as directed by the Designer. The cost of this inspection and testing shall be borne by the CM whether the Work is found to be acceptable or not. Owner at its election shall be entitled either to issue a credit Change Order to cover such cost or to withhold such cost from any further payments due the CM and/or to receive a payment from the CM of the amount of such cost.

3. Key Personnel

The CM shall employ the Key Personnel as defined in Article I of the General Conditions unless otherwise agreed to by Owner. The Project Executive shall be the CM's senior person on Site and shall have full authority to accept communications to, make decisions for, and otherwise fully represent the CM in connection with all matters relevant to the Project. The CM's Project Manager(s) shall be responsible for one or more portions of the Work as assigned by the Project Executive. A Project Manager may be the designee of the Project Executive to exercise the Project Executive's responsibilities in the CM's Project Executive's absence. The Superintendent shall be properly licensed in accordance with the Building Code.

4. Labor

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

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

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

5. Notices and Permits

A. The CM at its sole cost shall take out and pay for all approvals, permits, user fees, certificates and licenses required by Laws, pay all charges and fees, and pay for (or cause the appropriate Subcontractor to pay for) all utilities required for the proper execution of the Work.

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

C. Except as otherwise specified in this Contract, it is not the CM's responsibility to ascertain that the Contract Documents are in accordance with applicable Laws. However, if the CM observes that portions of the Contract Documents are at variance with the requirements of Laws, the CM shall promptly notify the Designer and Owner in writing, and necessary changes shall be accomplished by an appropriate Contract Modification.

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

6. Lines, Marks, etc.

The CM shall furnish batter boards and stakes and shall cause to be placed and maintained thereon so as to be easily read, such lines, marks and directions relating to the Work as the Designer shall from time to time direct. The Designer shall establish base lines and benchmarks on the Drawings for the locations of the Work but all other lines and grades shall be determined by the CM.

7. Excavation

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

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

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

9. Intentionally Omitted

10. Sanitary Facilities

The CM shall provide and maintain sanitary facilities for all persons employed on the Work, beginning with the first worker at the Site. Said facilities shall meet the following requirements unless otherwise specified in the Supplementary Contract Documents.

- A. There shall be no fewer facilities than the number required by applicable Laws.
- B. Facilities shall be kept in a clean sanitary condition at all times and shall be adequately screened to be inaccessible to flies.

11. Temporary Offices

A. Except as otherwise specified in the Contract Documents, the CM shall erect the following temporary offices near the Site as directed by the Designer and adequately furnish and maintain them in a clean, orderly condition and, with respect to supplies, shall replenish them as necessary:

- 1. A CM's field office at which CM's authorized representative shall be present at all times while work is in progress. Instructions, notices, and other communications delivered there by the Designer or Owner shall be deemed delivered to the CM. The CM shall provide a separate conference room space with a conference table and chairs sufficient to accommodate 12 persons at one time.
- 2. Office Trailer for the Architect and Owner's Project Manager. Such trailer shall be in close proximity to the CM's field office and be a completely enclosed weather- tight structure. The trailer shall be at least 720 square feet in area, and shall have two offices, one private toilet facility with running water, and a separate conference space. The trailer

shall be equipped with a reasonable amount of natural light and adjustable natural ventilation, electric lights, heat, air conditioning, telephone and high speed internet connections and service in all spaces, window screens, and two exterior doors with secure locking devices. The office trailer shall be equipped with at least the following furniture and equipment in good condition: 2-30"x60" lockable double pedestal desks, 2 upholstered adjustable swivel type desk chairs with arms, three spring mounted desk lights, 4-30"x72" conference tables and sixteen metal folding chairs with cushioned seats, two stools/drafting chairs, 6- 12 stick capacity portable metal plan rack units, plan table at least 42"x 72", 7-4 drawer legal size metal filing cabinets with locks, 20 lineal feet of 12" deep shelving, 2-36"x72" whiteboards with mark tray and markers, 3 office size waste baskets, 1-30 gal. waste basket, 1 coat rack/hat shelf, 2 new high performance laptop computers and accessories (with most current Microsoft Windows, Microsoft Office, anti-viral software, CM's preferred Project Management software, and Adobe Acrobat software), 3 desk type telephones, 1 smart phone cell phone with service contract, 1 telephone/answering machine, 1 digital camera (1152x872 min. resolution with zoom, flash, and video function), 1 full function dry copier (35 cpm, auto feeder, auto sorter, stapler, reduction/enlargement, letter/legal/11x17 trays), 1 fax machine with dedicated telephone line, 1 multifunction laser printer (print, scan, fax, copy, black and white and color), 1 digital recorder with voice to print software, 1 exterior high quality mercury digital recording thermometer, one electric drinking water dispenser with disposable cups and hot/cold water, 8 hard hats, 1 automatic coffee machine, 1 first aid kit, 1 fire extinguisher, and consumable office supplies (toner, paper, toilet room supplies, office supplies, drinking water, cups, lamps). All furniture and office equipment provided under this section shall become the property of the CM at the conclusion of the Work.

- B. The CM shall relocate the Architect and Owner's Project Manager trailer, as well as all services connected with said trailer, at no additional cost to the Owner if the need for relocation arises as determined by the Designer.

12. Contract Documents and Samples at the Site

A reasonable number of sets of Contract Documents will be furnished to the CM by Owner immediately after signing of the Contract, one of which shall be maintained at the Site for reference by authorized representatives of Owner. The CM shall maintain at the Site for the use and information of Owner one record copy of the Drawings, Specifications, Addenda, Change Orders, Approved Shop Drawings, Product Data, Samples, updated Progress Schedule, and all other submittals, all in good order and marked currently to record changes and selections made during construction. These shall be available to the Designer and Owner and shall be delivered to the Designer for submittal to Owner upon completion of the Work. The Drawings, Specifications and other documents prepared by the Designer, and copies thereof furnished to the CM, are for use solely with respect to this Project. The CM shall not permit their release to other parties except as may be necessary in dealing with governmental authorities in the ordinary course of permitting and constructing the Project. Further, they are not to be used by the CM or any Subcontractor or Supplier on other projects without the specific written consent of Owner and the Designer.

13. Telephones

The CM shall provide and maintain separate individual telephone service and pay for all calls relating to the Work. Service and equipment shall meet the requirements, if any, of the Contract Documents and shall include provisions for incoming and outgoing calls: (1) in the CM's field office for the use of its authorized agents and (2) in the Office Trailer for the use of the Architect and authorized agents of Owner.

14. Health, Safety, and Accident Prevention

- A. In performing the Work, the Contractor shall:
 - (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor by regulation and all other applicable Laws;
 - (2) Protect the lives, health, and safety of other persons; and
 - (3) Prevent damage to property, materials, supplies, and equipment.
- B. For these purposes, the Contractor shall:
 - (1) Comply with 84 Stat. 1590, the "Occupational Safety and Health Act of 1970" (OSHA) and with regulations and standards issued by the U.S. Secretary of Labor at 29 CFR Part 1926 and all other applicable Laws; and
 - (2) Include the terms of this Section 14 in every subcontract so that such terms will be binding on each Subcontractor.
 - (3) Designate by written notice to the Awarding Authority a responsible member of its organization at the Site whose duties shall include ensuring safety, implementation of Contractor's Safety Plan referenced below and preventing accidents.
- C. The Contractor shall maintain an accurate record of exposure data on all accidents incident to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904. Without limiting the foregoing, the Contractor shall submit to the Awarding Authority without delay verbal and written reports of all accidents involving bodily injury or property damage arising in connection with the Work.
- D. In any emergency affecting the safety of persons or property, the Contractor shall immediately act in the exercise of reasonable judgment to prevent threatened damage, injury, or loss. The Contractor shall immediately notify the Awarding Authority of such emergency.
- E. The Contractor shall be responsible for its Subcontractors' compliance with the provisions of this Section 14.
- F. Before commencing any portion of the Work, the Contractor shall submit a written Project-specific plan for implementing its safety plan (the "Contractor Safety Plan"). The plan shall include an analysis of the significant hazards to life, limb and property inherent in the performance of the Work and a plan for controlling these hazards.
- G. Without limiting the foregoing provisions of this Section 14, the Contractor shall comply with all health and safety Laws applicable to the Work. Without limitation,
 - (1) If the Contractor uses, stores or encounters toxic or hazardous substances it shall comply with M.G.L. c. 111F, s. 2, the "Right to Know" law and regulations promulgated by

the Department of Public Health, 105 CMR 670, the Department of Environmental Protection, 310 CMR 33, and the Department of Labor and Workforce Development, 441 CMR 21; and shall post a Workplace Notice obtainable from the Department of Labor and Workforce Development.

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

(3) The Contractor shall be responsible for the location of all utilities in connection with the Work. Without limiting the foregoing, the Contractor shall comply with Dig-Safe Laws. Dig-Safe is the Utility Underground Plant Damage Prevention System, 331 Montvale Road, Woburn, MA, 01801, 1-888-344-7233. The Contractor shall notify Dig-Safe of contemplated excavation, demolition, or explosive work in public or private ways, and in any utility company right of way or easement, by certified mail, with a copy to Department of Environmental Protection (DEP). This notice shall be given at least 72 hours prior to the work, but not more than sixty days before the work is to be done. Such notice shall state the name of the street or the route number of the way and shall include an accurate description of the location and nature of the proposed work. Dig-Safe is required to respond to the notice within 72 hours of receipt by designating the location of pipes, mains, wires or conduits at the Site. The Contractor shall not commence work until Dig-Safe has responded. The work shall be performed in such manner and with reasonable precautions taken to avoid damage to utilities under the surface at the work location. The Contractor shall provide the Superintendent with current Dig-Safe regulations, and a copy of M.G.L. c. 82, s. 40. Any costs related to the services performed by Dig-Safe shall be borne by the Contractor.

(4) The Contractor shall comply with M.G.L. c. 149, s. 129A and any regulations thereunder, relative to shoring, covering and bracing of trenches.

H. Without limiting the Contractor's responsibilities described above, the Contractor shall take all reasonable precautions for the safety of, and the prevention of injury or damage to (1) all agents and employees and contractors on the Work and all other persons who may be affected thereby including the general public, (2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care custody or control of the Contractor or any of its Subcontractors or any contractors directly or indirectly contracting through any of them, and (3) other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work. The Contractor shall promptly remedy all damage or loss to any such property caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly contracted or employed by any of them or by anyone for whose acts any of them may be liable. Without limiting the foregoing, the Contractor shall:

- (1) post and maintain adequate danger signs and other warnings against hazards;
 - (2) promulgate safety regulations and give appropriate notices to the Awarding Authority and users of adjacent utilities and property;
 - (3) insure the adequate strength and safety of all scaffolding, staging and hoisting equipment, temporary shoring, bracing and tying;
 - (4) protect adjoining private or public property;
 - (5) provide barricades, temporary fences, and covered walkways required by prudent construction practices, Laws and/or the Contract Documents;
 - (6) furnish approved hard hats and other personal protective equipment, furnish approved first aid supplies, furnish the name of the first aid attendant, and maintain a posted list of emergency facilities;
 - (7) provide proper means of access to and egress from property where the existing access/egress is cut off by the Contractor;
 - (8) maintain from the beginning of any darkness or twilight through the whole of every night sufficient lights on or near any obstruction so as to guard and protect travelers from injury from such obstruction;
 - (9) maintain adequate security at the Site so as not to expose the Work and surrounding property to theft, vandalism or malicious mischief;
 - (10) provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumbers' torches and other flame and spark producing apparatus;
 - (11) take prompt action to correct any dangerous or hazardous conditions.
- I. The Contractor shall not use or store explosives in the performance of the Work unless the Contractor first obtains the Awarding Authority's prior written specific Approval. If the Awarding Authority Approves the use or storage of explosives during the performance of the Work, the Contractor shall first comply with all Laws and obtain all permits, approvals, and certificates required in connection with the same and shall exercise best efforts, including but not limited to, the employment and supervision of properly qualified personnel, to prevent damage, injuries, and accidents involving said explosives.
- J. The Contractor shall not permit cutting or welding in or immediately adjacent to existing property of the Awarding Authority or of anyone else without the Awarding Authority's prior Approval in each instance.

15. Debris and Chemical Waste

- A. The CM shall not permit the accumulation of interior or exterior debris. The CM shall keep the Work area clean at all times. Without limitation, garbage shall be removed daily.
- B. The CM shall properly classify and remove debris and waste from the Site and transport and dispose of it, all in accordance with Laws, employing a qualified and properly licensed transporter, at any landfill, disposal or recycling facility licensed under applicable Laws, including without limitation, hazardous materials laws. The CM shall make all arrangements and give and obtain all notices, communications, documentation, permits, certificates, and approvals necessary for said disposal from the Owner or officials in charge of such landfills, disposal or recycling facilities. The CM shall bear all fees and costs in connection with such classification,

removal, transportation, disposal and storage. The CM shall not permit any storage of debris or waste except in accordance with Laws.

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

D. Chemical Waste: Chemical waste shall be stored in corrosion resistant containers, removed from the Site, and disposed of not less frequently than monthly unless more frequently required by Laws, including without limitation hazardous materials laws, or by the Contract Documents. Disposal of chemical waste shall be performed in accordance with requirements of the U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (DEP). Disposal of chemical waste should also be coordinated with Division 1 - requirements. Fueling and lubricating of vehicles and equipment shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants shall be disposed of in accordance with procedures meeting all applicable Laws. The CM shall immediately notify the Designer and Owner of any hazardous materials release large enough to require reporting under applicable Laws. The CM shall be responsible for immediately cleaning up in accordance with Laws any oil or hazardous materials releases resulting from its operations. Any costs or fees incurred, directly or indirectly, in cleaning up any such releases shall be borne by the CM.

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

The CM shall provide "weather protection," which means temporary protection of that Work adversely affected by moisture, wind and cold. Weather protection shall be achieved by covering, enclosing and/or heating working areas such that a minimum temperature of 40 degrees Fahrenheit is maintained at the working surface during the months of November through March in order to permit construction to be carried on during such period in accordance with the Progress Schedule. After the building or portion thereof is completely enclosed by either permanent construction or substantial temporary materials having a resistance comparable to the specified permanent construction, the CM shall provide heat therein of not less than 55 degrees F. or more than 75 degrees F. The foregoing provisions do not supersede any specific requirements for methods of construction, curing of materials and the like. Such weather protection shall be consistent with the Progress Schedule, shall permit the continuous progress of the Work necessary to maintain an orderly and efficient sequence of construction operations, shall include one thermometer for every 2,000 square feet of floor space or fraction thereof, shall be subject to the Approval of Owner, shall meet requirements as will be outlined within Division 1, and shall meet such additional requirements as may be specified by Owner and by the Contract Documents.

17. Furnishings and Equipment

When, in the opinion of the Designer, any portion of the Work is in a reasonable condition to receive fittings, furniture, or other property of the Owner not covered by this Contract, the CM shall allow Owner to bring such fittings, furniture, and/or other property into such portions of the Work and shall provide all reasonable facilities and protection thereof. No such occupancy shall be construed as interfering with the provisions relating to time of completion, as constituting an acceptance of the whole or any part of the Work or as evidencing, by itself, Substantial Completion. Any furniture or fittings so installed shall be placed in the Work at the risk of Owner except that the CM shall be liable for damages or losses to such furniture or fittings to the extent such damages or losses arise in whole or in part from the negligence or intentional misconduct of CM, Subcontractors, their agents and/or employees, or anyone for whose acts CM is responsible.

18. Intentionally Omitted

19. Sales Tax Exemption and Other Taxes

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

20. Final Cleaning

At the completion of the Work, the CM shall remove all waste materials, rubbish, tools, equipment, machinery and surplus materials, and professionally clean all sight-exposed surfaces so that the Work is clean and ready for occupancy. This final cleaning shall be completed in adherence with requirements that will be outlined in Division 1. Subsequent to installation of User Agency furniture, telephones, and equipment, the CM shall provide such additional cleaning as may be necessary to remove any soil resulting from installation of such furniture, telephones and equipment.

21. Maintenance Data

Subject to such additional requirements as may be provided in the Contract Documents, the CM shall compile four complete and identical binders of operating and maintenance data for the entire Work, all of which shall be delivered to the Owner upon Substantial Completion. The maintenance data shall be coordinated with requirements that will be outlined within Division 1. The CM shall submit record maintenance data to the Designer for approval, shall submit approved maintenance data to Owner, and shall instruct and train the User Agency's personnel in proper inspection and maintenance procedures.

22. Closeout Procedures

The CM shall take all actions and submit all items required for the issuance of the Certificate of Substantial Completion and Final Acceptance that will be specified in Division 1 and the Contract Documents.

23. Risk of Loss

The CM shall bear all risk of loss to the Work during the term of the Contract except for any portion of the Work as to which the Certificate of Agency Use and Occupancy has been issued pursuant to Article VI of these General Conditions of the Contract. Nothing herein shall limit the CM's responsibilities under Article IX or XV of these General Conditions of the Contract.

ARTICLE V - MATERIALS AND EQUIPMENT

1. Materials Generally

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

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

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

The CM shall furnish to Owner, not less often than once per month, a current inventory of all materials or equipment being stored at any off-site location. The CM shall mark each sealed carton or other item with the name of the Project and Owner, and all materials or equipment stored off-site shall be segregated to the extent required by Owner or the Designer. Payment for materials or equipment stored off-site shall be at the reasonable discretion of Owner, taking into account the schedule requirements of the Work. Under no circumstances shall the CM request or receive payment for materials stored outside of the United States. Unless absolutely necessary to expedite construction progress the CM shall not request or receive payment for materials stored off site, and when necessary shall do so only by prior agreement with the owner and if so the materials shall be stored in a location approved by the owner and subject to inspection and verification by the owner. Title to materials or equipment stored off-site shall be transferred at the time at which Owner pays for them, free of any lien or other interest of the Supplier or any other lien or encumbrance. Notwithstanding such transfer of title, the CM shall retain sole care, custody and control of, and shall have complete responsibility for the security and protection of, all materials or equipment included in any Application for Payment which are stored at locations other than the site, and the CM assumes all risk of loss or damage to such materials or equipment, and the CM shall hold harmless Owner from and against all liabilities arising out of or resulting from loss or damage, from any cause, to such materials or equipment for which payment is requested, including liens, security interests or other claims of any kind by Suppliers or other third parties relating to such materials or equipment.

B. Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices. The CM shall inform itself as to, and shall comply with, the provisions of M.G.L. c. 7, s. 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Work, including the provisions of

M.G.L. c.7, s. 22, paragraph 17 which provides that there be "a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and, second, of supplies and materials manufactured and sold elsewhere within the United States. "

2. Shop Drawings, Product Data, and Samples

A. The CM shall furnish to the Designer all samples of the materials to be used in the execution of the Work as required by the Contract Documents. The CM shall furnish to the Designer in a timely manner all coordination Drawings, shop details, Shop Drawings, and setting diagrams which may be necessary for acquiring and installing materials. These shall be reviewed as required by the Designer. A minimum of four (4) copies shall be submitted for final approval, one of which shall be returned to the CM, one to the Resident Engineer, one to Owner and one filed with the Designer. The inspection and approval by the Designer of Shop Drawings, etc. shall be general and shall in no way relieve the CM from responsibility for proper fitting, coordinating, construction, and construction sequencing. The CM shall furnish to Owner and the Designer such information and vouchers relative to the Work, the materials therefor, and the persons employed thereon, as the Designer shall from time to time request.

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

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

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

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

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

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

Drawings, Product Data, Samples, or similar submittals by the Designer's or Owner's actions.

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

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

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

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

3. Tests

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

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

4. "Or Equal" Submissions

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

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

C. Whenever the CM submits a material for approval as a substitute for a material named or described in the Contract Documents, such submission shall be made at least one hundred

twenty (120) days prior to the date the materials will be used in the Work. In no event shall the CM maintain a claim for delays based upon the Designer's review of such substituted materials if the CM has failed to comply with the one hundred twenty (120) day submission requirement.

5. Delivery and Storage of Materials; Inspection

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

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

C. Expenses for inspection of material by the Designer and/or Owner personnel including travel, quarters, and subsistence shall be borne by the contractor requesting the inspection of material stored outside the Commonwealth of Massachusetts as part of the Contract Price. The policy of Owner precludes the payment for material stored outside the boundaries of Massachusetts except in extremely limited circumstances with the express written consent of Owner. If the CM requests an inspection of material stored outside the Commonwealth of Massachusetts, Owner will initially pay for all expenses of inspecting the material incurred by the Designer and/or Owner's personnel including travel, quarters, and subsistence. Owner will then give CM an invoice for those costs and the CM shall submit a credit Change Order for the amount of those expenses.

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

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

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

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

The Designer may reject materials if the Designer reasonably determines that such materials do not conform to the Contract Documents in any manner, including but not limited to materials that have become damaged or deteriorated from improper storage whether or not such materials have previously been accepted. The CM, at its own expense, shall remove rejected materials from the Work. No rejected material, the defects of which have been subsequently corrected, shall be used except with the written permission of the Designer. Should the CM fail to remove rejected material within a reasonable time, Owner may, in addition to any other available remedies, remove and/or replace the rejected material, and deduct the cost of such removal and/or replacement from any moneys due or to become due the CM. No extra time shall be allowed for completion of Work by reason of such rejection. The inspection

of the Work shall not relieve the CM of any of its obligations herein prescribed, and any defective Work shall be corrected. Work not conforming to the Contract Documents may be rejected notwithstanding that such Work and materials have been previously overlooked or misjudged by the Designer and accepted for payment. If the Work or any part thereof shall be found defective at any time before Final Acceptance of the whole Work, the CM shall forthwith make good such defect in a manner satisfactory to the Designer. Nothing in the Contract shall be construed as vesting in the CM any property rights in the materials used after they have been attached or affixed to the Work or the Site; but all such materials shall upon being so attached or affixed become a property of the Owner.

ARTICLE VI - PROSECUTION AND PROGRESS

1. Beginning, Progress Schedule, and Completion of Work

- A. The Contract time shall commence upon the date specified and in accordance with any conditions in the Notice to Proceed.
- B. Prior to the submission of the first progress payment, CM shall submit and Owner shall approve a Progress Schedule which complies with the requirements of specification section 013100. Upon Approval by Owner, said schedule shall constitute the Progress Schedule. The CM shall comply with all requirements of said section 013100.
- C. Time is of the essence of this Contract. The Work shall be completed within the time specified in the Owner-CM Agreement. Should the CM require additional time to complete the Work, the CM shall document the reasons therefore and submit a written request for an extension of time within 20 days of the occurrence of the event alleged to be the cause of the delay, as provided in this Article and in Article VII of these General Conditions of the Contract. Failure to submit said written request within the time required by the preceding sentence shall preclude the CM from subsequently claiming any time extension due to said delay.
- D. If, in the opinion of the Designer or Owner, the CM fails to comply with the Progress Schedule, Owner may give the CM a written notice to that effect, whereupon: (1) the CM shall, if the notice requires, discontinue all or any portion of the Work (which discontinuance shall neither terminate the Contract nor give the CM any claim for an increase in the Contract Price, damages, or an extension of any completion deadlines); or (2) at CM's sole cost, increase the work force, equipment and plant, or any of them, employed on the whole or any part of the Work, to the extent required by such notice, and employ the same from day to day until the completion of the Work or such part thereof, or until the failure regarding the rate of progress, in the opinion of the Designer or Owner, shall have been sufficiently corrected.
- E. If, in the opinion of Owner, the CM fails to comply with the Progress Schedule, and whether or not Owner shall have given the CM a notice described in D above, Owner may (but shall not be required to) give the CM written notice of such failure and five (5) days to cure the same. Unless the CM shall within that five days take all necessary steps to do so (including, if Owner requires, increasing its forces, equipment and plant) and continue to do so until in the opinion of Owner the failure is corrected, Owner may at the CM's expense and without terminating this Contract take exclusive or joint possession of all or a portion of the Site and employ and direct the labors of existing or such additional forces, equipment and plant as may in the Designer's or Owner's opinion be necessary to insure the completion of the Work or such part thereof within the time specified in the Contract Documents or at the earliest possible date

thereafter. Owner may exercise its rights under this Article at any time and from time to time without waiving any of its rights under this Contract, at law or in equity, including, without limitation, the right to deem this Contract terminated or to order the CM to discontinue the Work at any time thereafter. The CM shall continue to perform the remaining Work under this Contract even if Owner elects to have another contractor perform a portion of the Work under this Article.

F. Owner shall deduct the cost of any actions Owner takes under this Article from any amount then due or which might have become due to the CM under this Contract had the CM performed as required. On demand, the CM shall pay Owner any amount by which the cost of completing all or any portion of the Work exceeds the amount attributable to that Work under the Contract Documents. Owner's sole goal will be to complete the Work that it elects to complete within the time limits stated in the Contract or at the earliest possible date thereafter. Consequently, Owner shall have no obligation to obtain competitive bids or the lowest cost for completing the Work or any part thereof, except when it is required by law. Owner's election to complete all or part of the Work shall not release the CM from any liability for failure to complete the Work as the Contract Documents require, and shall not entitle the CM to a claim for an increase in the Contract Price or an extension of the time for completing the Work. If the cost that Owner incurs in completing all or any portion of the Work is less than the amount that the Contract Documents attribute to that Work, Owner will pay or credit the difference to the CM, less any other costs and expenses that Owner incurs, including the cost of supervision, and the Designer's and attorneys' fees and costs.

2. Failure to Complete Work on Time - Liquidated Damages

A. As specified in Section 4.4 of the Owner - CM Agreement, Owner has determined that its damages as a result of CM's failure to complete the Work to the point at which it qualifies for the issuance of a Certificate of Use and Occupancy formally issued by the Building Inspector will be difficult or impracticable to ascertain. Accordingly, if the Work is not completed to such point by the date specified in this Contract, the CM shall pay to Owner the sum designated as liquidated damages in the Contract for each and every calendar day that the CM is in default in completing the Work to such point. Such moneys shall be paid as liquidated damages, not as a penalty, to cover losses and expenses to Owner and/or the User Agency resulting solely from the fact that the Work is not completed on time.

B. Similarly, if the Contract states that by a specified date a designated portion of the Work shall be prosecuted to the point at which it qualifies for the issuance of a Certificate of Use and Occupancy formally issued by the Building Inspector, and if such portion has not been prosecuted to such point by said date, the CM shall pay to Owner the sum designated in the Contract for each calendar day that the CM is in default in completing such portion of the Work to such point. Such moneys shall also be paid as liquidated damages not as a penalty, to cover losses and expenses to the Owner resulting solely from the fact that the Work is not completed on time.

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

D. Permitting the CM to continue and finish the Work or any portion of it after the time

fixed in the Contract for its completion shall not be deemed as a waiver of any of the Owner's rights hereunder, at law or in equity.

E. Liquidated damages or a portion thereof may be waived by Owner if the CM submits evidence satisfactory to Owner that the delay was caused solely by conditions beyond the control of the CM and that Owner has not suffered any damages as a result of said delay.

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

3. Delays: Statutory Provisions (M.G.L. c. 30, s. 390)

A. Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by law as set forth in paragraph B below, the CM shall not be entitled to increase the Contract Price or to receive damages on account of any hindrances or delays, avoidable or unavoidable; but if any delay is caused in the opinion of Owner, by Owner, the CM shall be entitled to an extension of time. The length of the extension shall be sufficient in the opinion of Owner for the CM to complete the Work. Although no delay shall increase the Contract Price, Owner may require that any change in the date by which the CM must complete all or any part of the Work be processed on a standard Change Order form.

B. If a suspension, delay, interruption or failure to act of Owner increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the CM with respect to such increase as the CM shall have against Owner by virtue of (a) and (b) of M.G.L. c. 30, s. 390 set forth below, but nothing in provisions

(a) and (b) shall alter any other rights which the CM or the Subcontractor may have against each other. As used in the statutory language of (a) and (b) below, "contract" means this Contract, "general contractor" means the CM and "Awarding Authority" means Owner:

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

(b) The general contractor must submit the amount of a claim under provision

(a) to the Awarding Authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later

than the date of final payment under this contract and except for costs due to a suspension order, the Awarding Authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the Awarding Authority in writing of the act or failure to act involved in the claim."

4. Use and Occupancy Prior to Final Acceptance

- A. The CM agrees to the use and occupancy of the Project or any portion thereof before Final Acceptance of the Work by Owner.
- B. Owner and the User Agency will cooperate with the CM with respect to the completion of the Work by taking such reasonable steps as may be possible to avoid interference with the CM's Work provided that they do not interfere with the proper functioning of the facility.
- C. The CM shall not be responsible for wear and tear or damage resulting solely from temporary occupancy.
- D. Use and occupancy of any part of the Work prior to Final Acceptance by Owner shall not relieve the CM from maintaining the required payment and performance bonds and insurance (to the extent that insurance is required to be maintained after Substantial Completion) required by this Contract.

5. Certificate of Substantial Completion

- A. When the Work, or portion thereof which Owner agrees to accept separately has reached the state of Substantial Completion as shown on an Approved payment request, the CM shall develop, with the participation of the Designer and Owner, the Punch List identifying those items of unfinished or unacceptable Work that remain to be performed or corrected under the Contract.
- B. Before the Work shall be deemed completed to the point where it is ready for the issuance of a Certificate of Substantial Completion, the CM shall:
 - 1. Provide CM's proposed Punch List containing a statement of the reason for each item listed thereon;
 - 2. Advise Owner of proposed changes in insurance in accordance with the provisions of this Contract, and provide to Owner evidence of CM's Completed Operations insurance coverage to the extent required by the Contract Documents;
 - 3. Execute and submit a notarized warranty on a form provided by Owner meeting the requirements of Article IX of these General Conditions of the Contract, to commence upon the date of the issuance of the Certificate of Substantial Completion for the Work or the designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion;
 - 4. Submit signed special warranties and warranties of longer than one year as required by the Contract Documents;
 - 5. Submit signed maintenance agreements for all portions of the Work specified to receive maintenance after the issuance of the Certificate of Substantial Completion formally issued by the Architect;
 - 6. Submit all preliminary record Drawings and documents and required data in the format required by the Contract Documents;
 - 7. Complete all items required to be completed by the Inspection Services

Department and obtain a Certificate of Occupancy from the Inspection Services Department and similar releases which permit the User Agency and Owner full and unrestricted use of the areas claimed to be ready for occupancy;

8. Deliver specified maintenance stocks of materials, required spare parts, and all special tools furnished by manufacturers to persons designated by Owner and obtain written receipts for same;
9. Make final changes of lock cylinders or cores and advise Owner of the change of project security responsibility;
10. Complete start-up of systems and instruct User personnel on proper operation and routine maintenance of all systems and equipment; notify Owner that start-up and instruction have been completed;
11. Remove all remaining temporary facilities that are no longer needed, surplus materials, and debris; (the CM shall not remove construction offices and trailers without the prior Approval of Owner);
12. Submit final utility meter readings and similar information and advise the User Agency and Owner of the change of responsibility for utility charges and payments upon the issuance of the Certificate of Use and Occupancy, formally issued by the Building Inspector;
13. Complete final clean-up of all Work, restoration of damaged finishes, and replacement of all damaged and broken glass not listed on the CM's Punch List.
14. Complete such other items as may be called for in the Contract Documents, if any, or in the Specifications.

C. After completing the items specified in subsection B above, the CM shall make a written request for the Designer's inspection for a Certificate of Substantial Completion in accordance with the Contract Documents. The Designer shall review the submittals and the Work and shall either 1) sign a Certificate of Substantial Completion or 2) notify the CM of incomplete and/or incorrect Work that must be completed and corrected prior to the issuance of the Certificate of Substantial Completion. The Designer shall notify the CM of any additions to the Punch List. In connection with the execution of the Certificate of Substantial Completion the Designer shall assign dollar values to each item on the Punch List. Failure to include any incomplete or defective item on the Punch List shall not relieve the CM of the obligation to complete all Work in accordance with the Contract Documents.

6. Final Acceptance of the Work

A. Prerequisites for Final Acceptance. After the issuance of a Certificate of Use and Occupancy, formally issued by the Building Inspector, for the entire Work, and after the CM has completed all of the Work required by this Contract, including Change Orders and Punch List Items, the CM shall submit the following completed items to Owner together with such additional items as may be specified in the Contract Documents:

1. A completed Final Application for Payment showing a final accounting of all changes in the Work, on the form provided by Owner.
2. Certification and satisfactory evidence that all taxes, fees, and similar obligations have been paid.

3. Consent of the Surety to Final Payment executed by applicable bonding companies.
4. Certified copy of the Punch List stating that the CM has completed or corrected every item listed.
5. Evidence of CM's continuing Completed Operations Insurance coverage to the extent required by the Contract Documents.
6. All final record Drawings and documents in the forms specified by the Contract Documents.
7. A notarized certification that all purchases made under the tax exemption certificate were legitimate and entitled to exemption.
8. Written certifications from the Inspection Services Department and the Designer to the effect that: a) the Work has been inspected for compliance with the Contract Documents and has satisfied the Inspection Services Department; b) all equipment and systems included in the Work have been tested in the presence of the Designer and are operational and satisfactory; c) the Work is completed and ready for final inspection.
9. Such other items as may be required by the Contract Documents.

B. **Re-inspection; Final Acceptance.** After notification from the CM that all remaining contract exceptions, omissions and incomplections have been completed (with the exception of CM's continuing warranty, insurance, indemnification, and such other obligations as are intended by the terms of the Contract Documents to extend beyond the date of Final Acceptance), Owner and the Designer shall inspect the Work to verify the completion of the same. If the Work is satisfactory, Owner shall prepare a Certificate of Final Acceptance or shall notify CM of items which remain to be completed prior to Final Acceptance.

7. One-Year Warranty Repair List and Inspection

Approximately 30 days prior to the expiration of the comprehensive one-year warranty period, the CM shall schedule an appointment with Owner for a re inspection of the Work with Owner, and shall thereafter inspect the work at the time scheduled. Based on this inspection and on prior inspections, Owner shall issue a "Warranty Repair List" of items to be corrected by the CM. The CM shall make the repairs and/or replacements listed within 30 days of the issuance of the Warranty Repair List unless otherwise agreed by Owner in writing. If the CM fails to schedule such re-inspection, the one-year warranty period will be extended until the date that is 30 days after such re-inspection actually occurs. The one-year warranty period commences from date of final Acceptance of the completion of the entire Project.

The CM shall also provide the Owner with a list of items that have extended warranties (beyond a one-year warranty period).

ARTICLE VII - CHANGES IN THE WORK

1. Change Orders Generally

- A. No changes in the Work, the Contract Price, the Substantial and Final Completion dates, or any other provision of an Approval by Owner of the Contract Documents shall be made in absence of a Change Order as defined in Article I of these General Conditions of the Contract, directing the CM to perform such changes. Any request for a change in the provisions of this

Contract submitted by the CM must be made in writing and in accordance with the provisions of this Contract, including the procedures of Owner.

B. A request for a change in the provisions of this Contract may be submitted to Owner by the CM, Designer, Resident Engineer or User Agency. The request must be made in writing and in accordance with the provisions of this Contract, Laws, and the procedures of Owner. When the CM believes that an event or circumstance gives rise to an adjustment in the Contract Price and/or the Contract Time it shall submit a request for a change order in accordance with the forms and procedures required by Owner.

C. A written directive (sometimes called a Notice to Proceed or a Notice of Intent may be issued by Owner instructing the CM to make changes in the Work within the scope of the Contract, including but not limited to, changes in:

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

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

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

F. Owner and the CM shall negotiate in good faith an agreement on an equitable adjustment in the Contract Price, and/or time if appropriate, before commencement of the pertinent work or as soon thereafter as is possible. In the absence of an agreement for an equitable adjustment, Owner shall unilaterally determine the costs attributable to the change and provide the CM with a written notice to that effect. The CM may appeal the decision of Owner within thirty (30) days of receipt of said notice, to the Owner or its designee, and the CM shall have the right to such further appeal as is provided in M.G.L. c.30, s. 39Q.

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

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

I. Notwithstanding any provisions in the Contract Documents to the contrary, no

additional General Conditions Cost shall be due for any Change Order or portion of a Change Order resulting from or attributable to:

- 1) Substitutions of equipment or materials which are functionally similar to equipment or materials specified in the Contract Documents; or
- 2) Sales and use taxes.
- 3) No extension of time to the project schedule

2. Methods of Computing Equitable Adjustments

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

- 1) fixed price basis,
- 2) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all costs related to such equitable adjustment;
- 3) time and materials basis to be subsequently adjusted on the basis of actual costs (but subject to a predetermined "not to exceed limit") calculated as follows:
 - a. the direct cost (or credit) for labor at the minimum wage rates established for this Contract pursuant to M.G.L. c. 149, s 26-27H, and the direct cost for material and use of equipment;
 - b. plus (or minus) the cost of Workmen's Compensation Insurance, Liability Insurance, Federal Social Security and Massachusetts Unemployment Compensation, or as an alternative the CM may elect to use a flat 30% of the total labor rate (if the 30% rate is not used verifiable documentation of the rates proposed must be provided);
 - c. plus (or minus) an allowance for General Conditions, overhead, superintendence, fee, and profit which shall not exceed the following:
 - For the CM, for Work performed by the Contractor's own forces, 10% of the direct cost of the CM's work;
 - For the CM, for work performed by a Subcontractor, 5% of the direct cost for that Subcontractor's work;
 - For each Subcontractor involved, for Work performed by that Subcontractor's own forces, 10% of the direct cost for that Subcontractor's work;
 - For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractor, 5% of the direct cost of that Sub-subcontractor work;
 - For each Sub-subcontractor, for Work performed by the Sub-subcontractor's own forces, 5% of the direct cost of that Sub-subcontractor's work;
 - In no case shall the aggregate of all allowances for General Conditions, overhead, superintendence, fee, and profit exceed 15% of the direct cost of the work involved;
 - In the case of a credit to the Contract Sum, an allowance for General

Conditions, General Requirements, fee, and profit will be added to the credit change order in an amount equal to 15% of the direct cost of the work of the credit amount.

- The percentage allowance described in this section represents and includes full compensation to the CM, Subcontractors and Sub-subcontractors, respectively, for the Contractor's supervisory personnel and all administrative, accounting or expediting costs, other indirect or overhead costs, so-called general conditions costs, and profit or fee.

d. plus (or minus) the actual direct additional premium costs and expenses incurred as a result of collective bargaining agreements or other agreements between organized labor and employers, and

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

B. All proposed changes in the Contract Price shall include the CM's overhead, superintendence and profit. For any change that does not include labor performed or materials installed in the Project, there will be no markup for the CM's or Subcontractor's overhead, superintendence, and profit, even though there may be a net increase in the Contract Price. Charges for small tools known as "tools of the trade" are not to be computed in the amount of any change in the Contract Price. Any change that does not result in an extension of contract time shall not have CM's overhead only fee.

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

3. Work Performed under Protest

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

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

2) On or before the second working day after the commencement of such work or the sustaining of such damage, and daily thereafter, the CM shall file to the extent possible with the Owners Project Manager, the Designer, and Owner, itemized statements of the details and costs of such work performed or damage sustained. The CM shall submit to the Owner's Project Manager a Daily Time and Materials Report Form to record all labor and material used. If the CM shall fail to provide and submit such statements to the extent possible, then the CM shall not be entitled to additional

compensation for any such work or damages.

4. False Claims, Statutory Provisions Regarding Changes

A. Criminal Penalties: The CM's attention is directed to M.G.L. c. 30, s. 391 which provides criminal penalties for unauthorized deviations from the Plans and Specifications, and to M.G.L. c. 30, s. 39J and M.G.L. c. 7, s. 42E-42I. The CM's attention is also directed to M.G.L. 266, s. 678 which provides criminal penalties for false claims by Contractor under this Contract:

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

B. Differing Site Conditions (M.G.L. c. 30, s. 39N):

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

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

ARTICLE VIII - PAYMENT PROVISIONS

1. Schedule of Values

Before submission of the first request for payment under this Contract, the CM shall submit to Owner a

schedule of values for its Approval, which shall include all preconstruction activities as well as all construction activities and shall be in sufficient detail to reflect the various preconstruction activities and the major components of each construction trade (with relevant Subcontractors as well as MBE/WBEs noted), including quantities when requested, aggregating the GMP with detail for the CM Contingency and divided so as to facilitate payments for work under each section of the Specifications. The schedule shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. When approved by the Owner, it shall constitute the Schedule of Values and shall be used only as a basis for the CM's requests for payments and credits, the first of which payments shall not be made until such Schedule of Values is approved by Owner.

2. Payment Liabilities of CM

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

B. If the Work (or a portion thereof) is not completed to Substantial Completion and the CM has not satisfied the requirements for the issuance of a Certificate of Use and Occupancy by the Building Inspector in accordance with Article VI, Section 5 of these General Conditions, by the date specified in the Owner-CM Agreement, the CM shall pay to the Owner liquidated damages as provided in Article VI, Section 2 of these General Conditions of the Contract.

3. Retention of Moneys by Owner

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

B. The CM shall each week examine all claims so filed, and if the same are in any respect incorrect or do not correctly show the amount due from the CM to the claimant for such labor and materials, the CM shall forthwith file with Owner a separate written statement of all inaccuracies in each claim and of the correct amount due from the CM to each claimant therefor, and shall immediately file a statement of all payments thereafter made to such claimants. Each such statement shall be sworn to and contain a detailed breakdown required by M.G.L. c. 30 s. 39F(d) and (e). Unless such statements are so filed by the CM the amount shown by the claims filed shall at the option of Owner be conclusively deemed to be the accurate amount due from the CM therefor in all accounting with Owner. If the moneys retained under this Contract are insufficient to pay the sums found by Owner to be due under the claims for labor and materials filed as aforesaid, Owner may, at its discretion, pay the same, and the CM shall repay to Owner all sums paid out. Owner may also at its discretion use any moneys

retained, due or to become due under this Contract, for the purpose of paying for both labor and materials used or employed in the Work for which claims have not been filed with Owner.

C. No moneys retained under the provisions of this Article shall be held to be statutory security for the payment of claims filed in accordance with the provisions of M.G.L. c. 149, s. 29, as amended, for which security is provided by bond.

4. Applications for Payment

A. The CM shall, once in each month on the day of the month corresponding to the day of the month specified in the Notice to Proceed referenced in Article 2 of the Owner - CM Agreement, on forms provided and in the manner prescribed by the Awarding Authority, submit to the Awarding Authority a statement showing the total amount of Work done to the time of such estimate and the value thereof as approved by the Resident Engineer and the Designer. It shall be the sole responsibility of the CM to deliver or cause to be delivered to the Owners Project Manager (the "designee" as provided by M.G.L. c. 30, s. 39K), said periodic estimate in proper form, approved as provided above and arithmetically correct. All periodic estimates shall contain such certifications and other evidence supporting the CM's right to payment as the Awarding Authority may require, including without limitation, lien waivers and other evidence, on such forms as the Awarding Authority may require, establishing that title to the equipment or materials is unencumbered and has been transferred to the Owner. The CM shall include in such periodic estimate only such materials as are incorporated in the Work, except as provided in paragraph C below. The Awarding Authority shall retain five percent of such estimated value as part security for the completion of the Work and shall pay to the CM while carrying on the Work the balance not retained as aforesaid, subject to the Approval of the Awarding Authority after deducting there from all previous payments and all sums to be kept under the provisions of this Contract.

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

C. The CM may not include in periodic estimates or Applications for Payment the cost of any materials stored outside of the Massachusetts. The CM may include in a periodic estimate or Application for Payment the value of materials or equipment delivered at the Site (or delivered to a location other than the factory or warehouse of the manufacturer or supplier and agreed to in writing in advance), and only upon delivery to the Awarding Authority of all of the following: (1) an acceptable transfer of title on the form provided by the Awarding Authority; (2) written certification by the CM (or applicable subcontractor) on the form provided by the

Awarding Authority that the CM (or the Subcontractor which executed the transfer of title) is the lawful owner and that the materials or equipment are free from all encumbrances, accompanied by receipted invoices or other acceptable proof of prior payment for such materials; and (3) a stored materials insurance binder that covers the materials for which payment is requested, and that names the Owner as an insured party should the stored materials be subjected to any casualty, loss, or theft prior to their inclusion in the Work. The material(s) or equipment must, in the judgment of the Designer (1) meet the requirements of the Contract, including prior shop drawing, product data, and sample Approval, (2) be ready for use, and (3) be properly stored by the CM and be adequately protected until incorporated into the Work. See also Article V.5.C of these General Conditions of the Contract concerning the cost of inspections.

D. The Awarding Authority may make changes in any periodic estimate submitted by the CM in accordance with M.G.L. c.30, s. 39K (see below) and the payment due shall be computed in accordance with the changes so made. The provisions of said section 39K shall govern payments on which the Awarding Authority has made changes.

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

F. The CM and all Subcontractors furnishing labor on this Contract agree to furnish certified payroll reports if requested to do so, at no additional expense to the Awarding Authority. The Awarding Authority may at all reasonable times audit such reports.

5. Periodic Payments (M.G.L. c. 30, s. 39K)

The Awarding Authority shall make payment to the CM in accordance with M.G.L. c. 30, s. 39K

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

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

7. Final Payment: Release of Claims by CM

Upon Final Acceptance of the Work the CM shall be entitled to payment of the balance of the Contract Price. Final payment shall be as provided in this Article above and in accordance with any process set forth in the Contract Documents. The CM agrees to execute a Certificate of Final Inspection, Release (with CM's own exceptions listed thereon) and Acceptance as a condition precedent to Final Payment. The acceptance by the CM of the Final Payment made as aforesaid, or the execution of the Certificate of Final Acceptance by the CM, shall constitute a release of the Owner, the Designer, and every member and agent of either of them, from all claims of and liability to the CM for anything done or furnished for or relating to the Work, or for any act or neglect of the Owner, the Designer, or of any person relating to or affecting the Work, except the claim against the Owner or the Designer for the remainder, if any there be, of the amounts set forth by the CM in the Certificate of Final Inspection, Release and Acceptance. Final Acceptance shall not relieve CM of the requirements of Articles IX, XIV, and XV of these General Conditions of the Contract, or of other provisions of this Contract, to the extent that the same are intended to survive Final Acceptance.

ARTICLE IX - GUARANTEES AND WARRANTIES

1. General Warranty

If at any time during the period of one (1) year from the date of the issuance of Final Acceptance of the entire project, any part of the Work shall in the reasonable opinion of Owner be defective or require replacing or repairing, or damage to other property of the Owner is caused by any defect in the Work, Owner shall notify the CM in writing to make the required repairs or replacements and repair such damage. If the CM shall neglect to commence such repairs or replacements to the satisfaction to Owner within ten (10) days from the date of the giving of such notice, then Owner may employ other persons to make the same. The CM agrees, upon demand, to pay to Owner all amounts which it expends for such repairs, replacements, and/or damages. During this one-year guarantee period, any corrective work shall be performed under all the applicable terms of this Contract, and if Change Orders are issued in accordance with the terms of this Contract, the CM shall be entitled to compensation for special insurance, as required. This one-year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract.

2. Special Guarantees and Warranties

- A. The CM's obligation to correct Work as set forth in paragraph 1 above is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various sections of the Specifications.
- B. Guarantees and warranties required in the various sections of the Specifications must be delivered to the Designer before final payment to the CM may be made, or in the case of guarantees and warranties which originate with a Subcontractor's section of the Work, before final payment for the amount of that subtrade or for the phase of Work to which the guarantee or warranty relates.
- C. The failure to deliver a required guarantee or warranty shall constitute a failure to fully complete the Work in accordance with the Contract Documents.
- D. Special guarantees and warranties shall extend to (1) year from the date of the issuance of Final Acceptance of the entire Project.

ARTICLE X - MISCELLANEOUS LEGAL REQUIREMENTS

1. CM to be Informed

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

2. Compliance with all Laws

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

- A. **Corporate Disclosures.** The CM, if a foreign corporation, shall comply with M.G.L. c. 181, s.3 and s. 5, and M.G.L. c. 30, s.39L.
- B. **Employment Eligibility Verification.** The Contractor shall comply with Federal Department of Homeland Security Requirements in hiring any and all "Employees" to be employed in the Project who are required to be listed in the certified payroll reports for the Project. Such compliance shall include, but not be limited to the faithful completion of the Federal

Department of Homeland Security Form 1-9 process by the Contractor for each of its Employees. The Contractor shall execute a Certificate of Compliance with Employment Eligibility Verification Requirements (1-9 Certificate) with the execution of its Contract. The Contractor shall require each of its Subcontractors and Sub-subcontractors to execute and provide to Contractor an 1-9 Certificate with the execution of each subcontract, and Contractor shall immediately provide a copy to Owner. Contractor acknowledges that the weekly workforce report form contained in the contract documents, which must be submitted by the Contractor on a weekly basis, contains a statement that the Form 1-9 process was faithfully completed for all employees listed on the weekly certified payroll report. By the signature of the Contractor's Authorized Signatory on the 1-9 Certificate, the Contractor certifies under the pains and penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of this Contract; that pursuant to federal requirements, the Contractor shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and that the Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Contractor understands and agrees that breach of any of these terms during the period of a contract may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

- C. **Veterans Preference.** In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the performance of Work in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined M.G.L. c.4, s.7 (34), and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.
- D. **Prevailing Wages.** The CM shall comply with M.G.L. c. 149, s. 26-27H. The prevailing wage schedule is found in Exhibit C to the Owner-CM Agreement, listing the prevailing minimum wage rates that must be paid to all workers employed in the Work. Owner is not responsible for any errors, omissions, or misprints in the said schedule. Such schedule shall continue to be the minimum rate wages payable to workers employed in the Work throughout the term of this Contract, subject to the exceptions provided in M.G.L c.149, s. 26-27H. The CM shall not have any claim for extra compensation from the Owner if the actual wages paid to workers employed in the Work exceeds the rates listed on the schedule or as otherwise provided by law. The CM shall cause a copy of said schedule to be kept in a conspicuous place at the Site during the term of the Contract. If reserve police officers are employed by the CM, they shall be paid the prevailing wage of regular police officers. (See M.G.L c.149, s.34B).
- E. **Payroll Records and Statement of Compliance.** The CM shall comply and shall cause its Subcontractors to comply with Massachusetts General Law c. 149, s. 27B, which requires that a true and accurate record be kept of all persons employed on a project for which the prevailing wage rates have been provided. The CM and all Subcontractors shall keep these

records and preserve them for a period of three years from the date of completion of the Contract. Such records shall be open to inspection by any authorized representative of the Owner at any reasonable time, and as often as may be necessary. The CM shall, and shall cause its Subcontractors to, submit weekly copies of their weekly payroll records to Owner. In addition, the CM and each Subcontractor shall furnish to the Executive Department of Labor within fifteen days after completion of its portion of the Work a signed statement in the form required by Owner.

- F. **Vehicle operators.** If the Director of the Department of Labor and Workforce Development has established a schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for the Work, the CM shall be obligated to pay such operators at least the minimum wage rate contained on such schedule. (See M.G.L. c.149, s.26-27H).
- G. **Eight-Hour Day.** The CM shall comply with M.G.L. c. 149, s. 30, 34 and 34A which provide that no laborer, workman, mechanic, foreman or inspector working within the Commonwealth in the employ of the CM, Subcontractor or other person doing or contracting to do the whole or part of the Work shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in cases of extraordinary emergency.
- H. **Timely Payment of Wages.** The CM shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, s. 148 which requires the weekly or biweekly payment of employees within six days of the end of the pay period during which wages were earned if employed for five or six days of a calendar week, and within other periods of time under certain circumstances as set forth therein.
- I. **Lodging, etc.** The CM shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, s. 25 which provides that every employee under this Contract shall lodge, board and trade where and with whom he elects, and neither the CM nor his agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.
- J. **Truck Rates.** The use by the CM of trucks or other motor vehicles hired from either common or contract motor carriers in the course of performance of this Contract is subject to such minimum rates and charges, and rules and regulations as may from time to time be promulgated by the Department of Public Utilities of the Commonwealth of Massachusetts or other agency of the State or Federal government which may be authorized by law to set rates for or otherwise regulate the use of such vehicles. The CM expressly assumes the risk of any additional expense that may arise by reason of any change in such minimum rates and charges, and rules and regulations, and shall be entitled to no additional compensation or reimbursement by reason thereof.
- K. **Anti-Boycott Covenant** (Executive Order #130). The CM warrants, represents and agrees that during the time this Contract is in effect, neither it or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b) (3) and (4) of the Internal Revenue Code of 1986, as amended, or engages in conduct declared to be unlawful by M.G.L. c. 151E, s. 2. If there shall be a breach in the warranty, representation or agreement contained in this paragraph, then without limiting such other rights as it may have the Awarding Authority shall be entitled to rescind this

Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the CM or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the Ownership interests of the CM; or which directly or indirectly owns at least 51% of the Ownership interests of the CM.

- L. **CM's Agreements with Suppliers--Anti-Boycott Provisions.** (1)The CM shall not purchase or rent any materials, equipment, machinery, vehicles, or supplies for or in connection with the Work from any person or entity who does not sign, under pains and penalties of perjury, a certificate that recites: "The undersigned warrants, represents and agrees that during the time its agreement with {insert CM's name} is in effect for materials, supplies or equipment to be used in connection with the {insert the name of the Awarding Authority} Project No. {insert project number}, neither the undersigned or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1986, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the undersigned or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the undersigned; or which directly or indirectly owns at least 51% of the ownership interests of the undersigned."

The Awarding Authority shall not be obligated to pay the CM for the cost of any materials, supplies, or equipment purchased or rented from any individual or entity from whom the CM has not previously obtained and delivered to the Awarding Authority the certificate that the previous paragraph requires. The CM will immediately terminate its contract with any supplier who breaches the warranty, representation and agreement contained in the previous paragraph.

The CM shall include in the CM's agreement with any person or entity from whom the CM intends to purchase or rent any materials, equipment, machinery, vehicles or supplies for or in connection with the Work, (a) a notice that this Contract obligates the CM to terminate the supply contract upon discovery of such breach of the sworn certificate delivered under subparagraph (1) and such termination shall be without liability to the CM or the Awarding Authority and (b) a provision which states: "The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of the undersigned vendor which pertain to the performance and requirements of this agreement to provide materials of any nature to the undersigned Contractor [CM] in connection with State Project No. (insert project number)."

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

1. Definitions

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

Contractor means the CM.

Independent Certified Public Accountant means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her

residence or principal office and who is in fact independent. In determining whether an accountant is independent with aspect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with Owner.

Records means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

Audit, when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons, or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

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

2. Record Keeping

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

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

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

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

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

3. Statement of Management Controls

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

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

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

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

4. Annual Financial Statement

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

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

5. Bid Pricing Materials

The Contractor shall save the written calculations, pricing information, and other data that the Contractor used to calculate the bid that induced Owner to enter into this Contract (the "Bid Pricing Materials") for at least six years after Owner makes final payment under this Contract.

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

To be determined.

ARTICLE XIII - GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (EXECUTIVE ORDERS 390& 478)

This Contract includes all provisions of Owner's program relating to Goals for Participation by Minority Business Enterprises and Women Business Enterprises attached appearing in Appendix B to these

General Conditions of the Contract attached hereto and incorporated herein by reference.

ARTICLE XIV - INSURANCE REQUIREMENTS

1. Insurance Generally

A. The CM shall take out and maintain the insurance coverage listed in this Article or in EXHIBIT A to the Owner-Construction Manager Agreement (whichever is greater) with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the CM's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

B. All policies shall be written on an occurrence basis and be issued by companies authorized to write that type of insurance under the laws of the Commonwealth and rated in Best's Insurance Guide (or any successor thereto or replacement thereof) as having a general policy holder rating of "A" or better and a financial rating of at least "9" or otherwise acceptable to Owner.

C. CM shall submit three originals of each certificate of insurance, acceptable to Owner, simultaneously with the execution of this Contract. Certificates shall show the Owner as an additional insured as to all policies of liability insurance and shall state that CM has paid all premiums and that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to Owner. Contractor shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that Owner shall at all times possess certificates indicating current coverage. Certificates shall indicate that the contractual liability coverage, and Contractor's Protective Liability coverage is in force. Certificates shall include specific acknowledgment that the following coverages are included in the policies:

- Contractual liability
- Contractor's protective
- Owner as additional insured by form CG2010 (11/85 ed.) to the general liability
- Owner as additional insured to automobile liability, umbrella liability, and pollution liability
- General Liability is endorsed with CG2404, Waiver of Subrogation, in favor of the Owner
- Builder's Risk or Installation Floater includes Owner, CM and Subcontractors of any tier as named insureds. Builder's Risk or Installation Floater is on an All Risk basis including earthquake and flood.

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

E. Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof

is given to Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice

2. CM's Commercial General Liability

A. The CM shall provide the following minimum general liability coverage with respect to the operations performed by CM and any employee, subcontractor, or supplier, unless a higher coverage is specified in Exhibit A to the Owner-CM Agreement, in which case the CM shall provide the additional coverage:

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$2,000,000 general aggregate, per project
Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$10,000

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

C. This policy shall include contractual liability coverage.

D. The completed operations coverage shall be maintained for a period of three (3) years after Substantial Completion.

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

F. This policy shall include endorsement CG2010 (10/85 edition), Owner as Additional Insured

and CG2404 (11/85 edition) Waiver of Subrogation in Favor of Owner.

3. Vehicle Liability

A. The CM shall provide the following minimum coverage with respect to the operations of any employee, including coverage for owned, non-owned, and hired vehicles, unless a higher coverage is specified in Exhibit A to the Owner-CM Agreement, in which case the CM shall provide the additional coverage:

Combined Single Limit \$1,000,000

B. The policy shall include a CA9948 Pollution Endorsement and shall name the Owner as an Additional Insured.

4. Pollution Liability

The CM shall provide coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. Owner and the Owner shall be named as an additional insured and coverage must be on an occurrence basis. The amount of coverage shall be \$1,000,000 per occurrence and \$3,000,000 in the aggregate unless a higher amount is specified in Exhibit A to the Owner-CM Agreement, in which case the CM shall provide the additional coverage.

5. Worker's Compensation

A. The CM shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended, unless a higher coverage is specified in Exhibit B to the Owner-CM

Agreement, in which case the CM shall provide the higher coverage:

Worker's Compensation

Part One: Provide Statutory Minimum

Employer's Liability-\$ 500,000 each accident

Part Two: \$ 500,000 disease per employee

\$500,000 disease policy aggregate

B. If specified in Exhibit A to the Owner-CM Agreement the policy must be endorsed to cover United States Longshoremen & Harbor Workers Act (USLHW), Maritime Liability for \$1,000,000/\$1,000,000, or Federal Employer's Liability Act liability.

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

A. The Owners election the CM shall provide coverage against loss or damage on all Work included in this Contract in an amount equal to the GMP. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood zone), windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and CM's services and expenses required as a result of such insured loss. This policy and/or installation floater shall indicate if stored materials coverage is provided as required below.

B. When Work will be completed on existing buildings owned by the Owner, the CM shall provide an installation floater, in the full amount of the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood zone), windstorm, false work, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's, Program Manager's and CM's services and expenses required as a result of such insured loss. This policy and/or installation floater shall indicate if stored materials coverage is provided as required below.

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

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

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

F. Coverage shall include temporary occupancy and waiver of subrogation.

7. Umbrella Coverage

The CM shall provide Umbrella Coverage in form at least as broad as primary coverages required by Sections 2, 3 and 5 of this Article in the following amount unless a higher amount is specified in Exhibit A to the Owner-CM Agreement, in which case the CM shall provide the higher amount:

<u>Umbrella Coverage</u>	<u>GMP Amount</u>
Under \$1,000,000	\$ 2,000,000
\$1,000,000 -- \$5,000,000	\$ 5,000,000
\$5,000,001-- \$10,000,000	\$ 10,000,000
\$10,000,001 and over	\$ 25,000,000

8. Additional types of Insurance and Deductibles

The CM shall provide such other types of insurance as may be required by Exhibit A to the Owner-CM Agreement. If the policies required herein contain deductible amounts, the CM shall be responsible for such deductible amounts, unless Owner specifically provides a written waiver to the CM.

ARTICLE XV - INDEMNIFICATION

1. Generally

To the fullest extent permitted by law, the CM shall indemnify, defend (with counsel subject to the supervision of the Owner and hold harmless Owner and their officers, agents, divisions, agencies, employees, representatives, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to court costs and attorneys' fees, arising out of or resulting from the performance of the Work, including but not limited to those arising or resulting from: labor performed or furnished and/or materials used or employed in the performance of the Work; violations by CM, any Subcontractor, or by any person directly or indirectly employed or used by any of them in the performance of the Work or anyone for whose acts any of them may be liable (CM, Subcontractor and all such persons herein collectively called "CM's Personnel") of any Laws; violations of any provision of this Contract by CM or its Subcontractors, suppliers or any other person or firm providing labor and/or materials for the Work; injuries to any persons or damage to any property in connection with the Work; or any act, omission, or neglect of CM's Personnel.

The CM shall be obligated as provided above, regardless of whether or not such claims, damages, losses and/or expenses are caused in whole or in part by the actions or inactions of a party indemnified hereunder. In any and all claims by CM's Personnel against parties indemnified hereunder, the CM's indemnification obligation set forth above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CM or any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article XV.

2. Designer's Actions

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

3. Survival

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

ARTICLE XVI - PERFORMANCE AND PAYMENT BONDS

1. CM Bonds

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

B. If at any time prior to final payment to the CM, the Surety: is adjudged bankrupt or has made a general assignment for the benefit of its creditors; has liquidated all assets; is placed in receivership; otherwise petitions a state or federal court for protection from its creditors; or allows its license to do business in Massachusetts to lapse or be revoked; then the CM shall, within 21 days of any such action listed above, provide Owner with new performance and payment bonds as described in Paragraph A above. Such bonds shall be provided solely at the CM's expense.

2. Subcontractor Bonds

A. If the CM provided in its Guaranteed Maximum Price or other proposal that any or all Subcontractors shall provide the CM with payment and performance bonds for the full amount of their respective Subcontracts, then the costs for said bonds shall be the responsibility of the CM. Irrespective of whether the CM requests payment and performance bonds from its respective Subcontractors, the CM understands that if the Subcontractor defaults or is terminated, the CM shall have full responsibility for all costs and expenses related to said default or termination.

B. If the CM provided in its proposal that Subcontractors shall provide bonds, and subsequently waives the requirement, the CM shall give Owner a written certification that the CM understands that if the Subcontractor defaults or is terminated, the CM shall have full responsibility for all costs and expenses related to said default or termination.

ARTICLE XVII - TERMINATION OF CONTRACT

1. Termination for Cause

A. Owner may without prejudice to any other right or remedy deem this Contract terminated for cause if any one of the following defaults shall occur and not be cured within three (3) days after the giving of written notice thereof by Owner to the CM and any surety that has given bonds in connection with this Contract:

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

creditors;

- (2) The CM refuses or fails, except in cases for which extension of time is provided under this Contract's express terms, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or Owner has determined that the rate of progress required for the timely completion of the Work is not being met;
- (3) The CM fails to make prompt payment to Subcontractors or for materials, equipment, or labor;
- (4) All or a part of the Work has been abandoned;
- (5) The CM has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the Owner, except as expressly permitted in this Contract;
- (6) The CM has failed to comply with Laws;
- (7) The CM fails to maintain, or provide to Owner evidence of, the insurance or bonds required by this Contract; or
- (8) The CM has failed to perform the Work or any portion thereof as required by this Contract or has otherwise breached any material provision of this Contract.

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

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

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

subject to a lien for the storage charges.

C. Damages and expenses incurred under paragraph B above shall include, but not be limited to, costs for the Designer's extra services required, in the opinion of Owner, to successfully inspect and administer the construction contract through final completion of the Work.

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

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

2. Termination for Convenience

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

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

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

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

3. CM's Duties upon Termination for Convenience

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

ARTICLE XVIII - MISCELLANEOUS PROVISIONS

1. No Assignment by CM

The CM shall not assign by power of attorney or otherwise, or sublet or subcontract, the Work or any part thereof, without the previous written consent of Owner and shall not, either legally or equitably, assign any of the moneys payable under this Contract, or CM's claims hereunder, unless with the like consent of Owner, whether said assignment is made before, at the time of, or after the execution of the Contract. The CM shall remain responsible for satisfactory performance of all Work sublet or assigned complying with all applicable requirements of the Contract. Consent of Owner shall not be deemed to constitute a representation or waiver of any right hereunder by Owner as to the qualifications or the responsibility of the CM or Subcontractor(s).

2. Non-Appropriation

The Owner certifies that at the time of the execution of this Contract, sufficient appropriations exist and shall be encumbered to fund the Contract Price. Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The Owner may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract. Such termination shall be deemed a termination for convenience subject to the provisions of paragraph 2 of Article XVII of this Contract.

3. Claims by Others Not Valid

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

4. No Personal Liability of Public Officials

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

5. Severability

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

6. Choice of Laws

This Contract shall be governed by the laws of the Commonwealth of Massachusetts for all purposes, without regard to its laws on choice of law. All proceedings under this Contract or related to the Project shall be brought in the courts of the Commonwealth of Massachusetts.

7. Standard Forms

Unless directed otherwise in writing by Owner, CM shall use the standard forms appearing in Appendix E to these General Conditions of the Contract.

8. No Waiver of Subsequent Breach

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

9. Remedies Cumulative

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

10. Notices

Notices to the CM shall be deemed given when hand delivered to the CM's temporary field office at or near the Site, or when deposited in the U.S. mail addressed to the CM at the CM's address specified in the Owner-CM Agreement, or when delivered by courier to either location. Unless otherwise specified in writing by Owner, notices and deliveries to Owner shall be effective only when delivered to Owner at the address specified in the Owner-CM Agreement and date-stamped at the reception desk or for which

a receipt has been signed by the agent or employee designated by Owner to receive official notice.

**MIDDLETON MUNICIPAL COMPLEX
TOWN OF MIDDLETON, Massachusetts**

**CONSTRUCTION CONTRACT FOR CONSTRUCTION
MANAGER AT RISK SERVICES**

OWNER - CONSTRUCTION MANAGER AGREEMENT

<p>Exhibit GC Price Proposal Forms</p>
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Exhibit GC Price Proposal Forms

Form B - Construction Manager Service Fee Proposal Form

Form C – Schedule of Construction Management Costs Pre-Construction Phase

Form D - Schedule of Construction Management Costs Construction Phase

FORM B
CONSTRUCTION MANAGER SERVICES FEE PROPOSAL FORM
Middleton Municipal Complex, Middleton, MA

A. PRE-CONSTRUCTION PHASE *(from Form C):*

Total Pre-Construction Services Fee for DD phase:	<u>\$25,000.00</u>	
Total Pre-Construction Services Fee for CD/BID phase:	<u>\$99,910.00</u>	
Anticipated Total Pre-Construction Services Cost of:	<u>\$124,910.00</u>	(Line 1)

B. CONSTRUCTION PHASE *(from Form D):*

Fee / Profit (Insert Total Amount)	<u>\$ 912,000.00</u>	(Line 2)
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Fee / Profit (Insert % Amount)	<u>1.90%</u>	
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General Conditions (estimated)	<u>\$3,709,665.00</u>	(Line 3)
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General Conditions (monthly rate)	<u>\$150,000.00</u>	/ MO.
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(Provide schedule of values)

TOTAL COST OF CONSTRUCTION MANAGEMENT (Total of lines 1-3)	<u>\$4,746,575.00</u>
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Firm Name: W.T. Rich Company, Inc.

By: 
Signature of Authorized Representative)

Name of Signatory:
(type/print) Jonathan Rich

Title: CEO

Date: March 1, 2023

FORM C (1 of 2)
SCHEDULE OF CONSTRUCTION MANAGEMENT COSTS
PRE-CONSTRUCTION PHASE (Design Development Phase)

	Hourly Rate	Hours Per Month*	Monthly Total*
List of Staff with Titles			
Jonathan Rich, Principal-in-Charge	\$160.00	17.50	Included in Fee
Steve Taylor, Project Executive	\$126.00	26.25	\$3,308
Tom Hood, Senior Project Manager	\$109.00	52.50	\$5,723
John McGonagle, Project Manager	\$97.00	26.25	\$2,546
Sunny Mak, Chief Estimator	\$126.00	8.75	\$1,103
Tim Farrell, Senior Estimator	\$103.00	35.00	\$3,605
Anthony Zanelli, Lead Superintendent	\$114.00	8.75	\$998
Nick Goudas, Scheduling Director	\$97.00	8.75	Included in Fee
Jason Ferrari, MEP/BIM/VDC Manager	\$86.00	8.75	\$753
Aaron Calkins, Senior Safety Manager	\$91.00	8.75	Included in Fee
Michael Michaud, Quality Control Director	\$91.00	8.75	Included in Fee
Bridgette Petillo, Contracts and Project Admin	\$54.00	8.75	Included in Fee
Michael Young, Accounting	\$91.00	8.75	Included in Fee
Paula Guity, DEI Manager	\$69.00	8.75	Included in Fee
Total Staff Cost/Month*			\$18,034

List of Pre-Construction Consultant Costs			
Richard Marks, (Logan Co.), HVAC Estimator	\$103.00	35.00	\$3,605
Paul French, (Logan Co.), Electrical Estimator	\$103.00	35.00	\$3,605
Total Costs/Month*			\$7,210

List of "other" Pre-Construction Costs			
Printing and Administrative Costs			\$500
Preconstruction Discount			(\$7,887)
Total Costs/Month*			(\$7,387)

TOTAL PRE-CONSTRUCTION COSTS PER MONTH	\$17,857
*All hours and values are estimates. Total fee to be as indicated on Form B	

	No. of Months	Cost per Month	Total
TOTAL PRE-CONSTRUCTION for DD PHASE	1.4	\$17,857	\$25,000

FORM C (2 of 2)
SCHEDULE OF CONSTRUCTION MANAGEMENT COSTS
PRE-CONSTRUCTION PHASE (CD and Bid Phase)

	Hourly Rate	Hours Per Month*	Monthly Total*
List of Staff with Titles			
Jonathan Rich, Principal-in-Charge	\$160.00	17.50	Included in Fee
Steve Taylor, Project Executive	\$126.00	26.25	\$3,308
Tom Hood, Senior Project Manager	\$109.00	52.50	\$5,723
John McGonagle, Project Manager	\$97.00	26.25	\$2,546
Sunny Mak, Chief Estimator	\$126.00	8.75	\$1,103
Tim Farrell, Senior Estimator	\$103.00	26.25	\$2,704
John Rich, General Superintendent	\$143.00	8.75	\$1,251
Anthony Zanelli, Lead Superintendent	\$114.00	17.50	\$1,995
Nick Goudas, Scheduling Director	\$97.00	8.75	\$849
Jason Ferrari, MEP/BIM/VDC Manager	\$86.00	17.50	\$1,505
Aaron Calkins, Senior Safety Manager	\$91.00	8.75	\$796
Michael Michaud, Quality Control Director	\$91.00	8.75	Included in Fee
Bridgette Petillo, Contracts and Project Admin	\$54.00	8.75	Included in Fee
Michael Young, Accounting	\$91.00	8.75	Included in Fee
Paula Guity, DEI Manager	\$69.00	8.75	\$604
Total Staff Cost/Month*			\$22,383

List of Pre-Construction Consultant Costs			
Richard Marks, (Logan Co.), HVAC Estimator	\$103.00	26.25	\$2,704
Paul French, (Logan Co.), Electrical Estimator	\$103.00	26.25	\$2,704
Total Costs/Month*			\$5,408

List of "other" Pre-Construction Costs			
Printing and Administrative Costs			\$500
Preconstruction Discount			(\$10,450)
Total Costs/Month*			(\$9,950)

TOTAL PRE-CONSTRUCTION COSTS PER MONTH (CD/Bid)	\$17,841
*All hours and values are estimates. Total fee to be as indicated on Form B	

	No. of Months	Cost per Month	Total
TOTAL PRE-CONSTRUCTION for CD/BID PHASE	5.6	\$17,841	\$99,910

FORM D
SCHEDULE OF CONSTRUCTION MANAGEMENT COSTS
CONSTRUCTION PHASE

A. List of Project Management Staff with Titles	Duration in Months	% Allocated Time	Monthly Rate	Schedule of Values
Jonathan Rich, Principal-in-Charge	24.00	10%	\$28,000	Included in Fee
Steve Taylor, Project Executive	21.00	20%	\$22,000	\$92,400.00
Tom Hood, Senior Project Manager	21.00	50%	\$19,000	\$199,500.00
John McGonagle, Project Manager	24.00	100%	\$17,000	\$408,000.00
Justice Reardon, Assistant Project Manager	24.00	100%	\$12,000	\$288,000.00
Nick Goudas, Scheduling Director	21.00	15%	\$17,000	\$53,550.00
Subtotal A: PM Staff				\$1,041,450.00

B. List of Field Staff with Titles	Duration in Months	% Allocated Time	Monthly Rate	Schedule of Values
John Rich, General Superintendent	19.00	20%	\$25,000	\$95,000.00
Anthony Zanelli, Lead Superintendent	20.00	100%	\$20,000	\$400,000.00
Matthew Jay, Assistant Superintendent/On-Site Safety	22.00	100%	\$17,000	\$374,000.00
Jason Ferrari, MEP/BIM/VDC Manager	24.00	40%	\$15,000	\$144,000.00
Brett Giordano, Project Engineer/On-Site QC	20.00	100%	\$12,000	\$240,000.00
Aaron Calkins, Senior Safety Manager	19.00	15%	\$16,000	\$45,600.00
Michael Michaud, Quality Control Director	19.00	15%	\$16,000	\$45,600.00
Subtotal B: Field Staff				\$1,344,200.00

FORM D (CONTINUED)
SCHEDULE OF CONSTRUCTION MANAGEMENT COSTS
CONSTRUCTION PHASE

C. List of Clerical Staff with Titles	Duration in Months	% Allocated Time	Monthly Rate	Schedule of Values
Bridgette Petillo, Contracts and Project Admin	21.00	15%	\$9,500	\$29,925.00
Michael Young, Accounting	21.00	10%	\$16,000	\$33,600.00
Paula Guity, DEI Manager	21.00	10%	\$12,000	\$25,200.00
Subtotal C: Clerical Staff				\$88,725.00

D. Estimated Insurance Costs and CM Bond Costs (Please Itemize)	Rate*/ \$1,000	Project Estimate*	Schedule of Values
Performance and Payment Bond	\$7.50	\$48,000,000	\$360,000.00
General Liability	\$5.00	\$48,000,000	\$240,000.00
Builder's Risk	\$2.20	\$48,000,000	\$105,600.00
Vehicle Liability	\$0.60	\$48,000,000	\$28,800.00
Pollution Liability	\$0.70	\$48,000,000	\$33,600.00
Workers Compensation	--		Incl'd w/ A to C
Umbrella Coverage	--		Incl'd w/ GL
Professional Liability	\$0.70	\$48,000,000	\$33,600.00
Subtotal D: Insurance Costs			\$801,600.00

***Estimated values are for comparison purposes only. Actual costs will be paid to the CM based on receipts for insurance and bonding companies. (Refer to W.T. Rich Pricing Notes.)**

FORM D (CONTINUED)
SCHEDULE OF CONSTRUCTION MANAGEMENT COSTS:
CONSTRUCTION PHASE

Fill in amounts for all items even if the work is to be subcontracted unless included in Sections A, B, C or D above

E. Additional General Conditions Categories Schedule of Values	Monthly Rate	Schedule of Values
Construction Manager Field Office Trailers	\$1,221.00	\$23,200.00
CM Telephone, Internet and Site Communications	\$413.00	\$7,850.00
CM Field Office Supplies, Equipment & Furniture	\$658.00	\$12,500.00
Owners Field Office Trailers	\$1,221.00	\$23,200.00
Owners Telephone, Internet and Site Communications	\$403.00	\$7,650.00
Owners Field Office Supplies, Equipment & Furniture	\$1,032.00	\$19,600.00
Cleaning of CM and Owners Field Office Trailers	\$863.00	\$16,400.00
Postage, Shipping and Courier Services	\$300.00	\$5,700.00
Reprographics	\$382.00	\$7,250.00
Management of Plans & Specifications	n/a	Included w/A&B
Computer IT Time/Software (field office)	\$379.00	\$7,200.00
Project Vehicles/Maintenance	\$1,000.00	\$19,000.00
Travel Expenses	\$500.00	\$9,500.00
Rental Costs of Machinery and Equipment	\$800.00	\$15,200.00
Storage Trailers and Containers	\$300.00	\$5,700.00
Job Site Safety & Protection	n/a	Included w/B
Safety Manager & Labor	n/a	Included w/B
Safety Materials	\$300.00	\$5,700.00
Project and Site Traffic Signage	\$526.00	\$10,000.00
Debris Removal and Dumpsters	\$2,989.00	\$56,790.00
Rodent and Pest Control	\$226.00	\$4,300.00
Building Layout Control and Engineering	n/a	\$54,000.00
Record Drawings	\$263.00	\$5,000.00
Project Photos	n/a	Included w/B
Interim Air Quality Management & Readings	\$203.00	\$3,850.00
Interim and Final Cleaning for Site and Building	\$2,500.00	\$91,670.00
Contaminated Soil Removal Supervision of Work	n/a	Included w/A&B
ACM & Hazardous Material Abatement Supervision	n/a	Included w/A&B
Temporary Toilet Rental and Services	\$1,208.00	\$22,960.00
Other - list if any (Discount/Rounding)	n/a	(\$530.00)
Subtotal E: Additional GC's:	\$17,687.00	\$433,690.00

TOTAL GENERAL CONDITIONS (SUM A thru E) =	\$3,709,665.00
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FORM D Continued
SCHEDULE OF CONSTRUCTION MANAGEMENT COSTS:
CONSTRUCTION PHASE

*If a CM proposes to use laborers or carpenters (their own forces) on site, the CM is to provide a breakdown of the actual cost of the laborer and carpenter and any mark-ups in the following format (Include on separate sheet, a detailed breakdown of mark-ups and burden):

Laborer (non-Union)

Wages	\$62.90
Benefits	\$13.50
Insurance, Taxes and Burden	\$17.50
Total Proposed Rate	<u>\$93.90</u>
<i>Add \$3.00 for Labor Foreman</i>	

Carpenter (Union)

Wages	\$54.62
Benefits	\$34.35
Insurance, Taxes and Burden	\$24.25
Total Proposed Rate	<u>\$113.22</u>
<i>Add \$5.00 for Carpenter Foreman</i>	

All rates are as of March 2023. Rates do not include any applicable overhead and profit.

FORM D (Continued)
SCHEDULE OF CONSTRUCTION MANAGEMENT COSTS:
CONSTRUCTION PHASE

Please note: The following cost items are not to be included in the CM's cost for General Conditions above for the purpose of determining the CM's price proposal. The Costs for these items shall be included as a "Cost of Work" at the time the GMP is negotiated with the selected CM. Provide an estimate of each of the categories. (Note: these are not being considered in evaluating the CM's price proposal, they are to be used by the Owner for budgeting purposes.)

	Estimated Value	Remarks
Cost of Work Categories		
Permitting	\$3,500	Permits waived. Admin costs only
Temporary Water Service and Distribution	\$7,800	WTR Estimate
Temporary Water Consumed	\$9,500	\$500 / month
Temporary Electric Power Service	\$30,000	Range \$15K to \$50K
Temporary Electric Consumed <i>(added by WT Rich)</i>	\$56,790	\$0.90 per GSF
Temporary Heating System	\$35,000	1 Season
Temporary Heating Fuel Consumed	\$47,325	\$.75/GSF (1 season)
Emergency Diesel Generator Fuel Consumed	\$2,000	WTR Estimate
Temporary Barriers	\$25,200	WTR Estimate
Site Enclosure Fences and Gates	\$48,000	4,000 LF @ \$12 / LF
Temporary Walkways	\$5,000	Non-occupied, fully contained site
Temporary Paving	\$5,000	Non-occupied, fully contained site
Security Enclosures	\$27,000	Sub trailers/Storage
Police Details	\$15,000	200 hours @ \$75 each
Fire Watch Details	\$30,000	400 hours @ \$75 each
Temporary Lighting	\$44,170	\$0.70 / GSF
Temporary Fire Protection	\$5,400	WTR Estimate
Watchman and Site Security	\$18,200	Sec. Cameras, Detectors, Lighting
Staging and Hoisting	\$24,000	Misc. only. Subs carry their own
Temporary Stairs	\$40,000	Two separate stair towers (2 stories)
Dust Control	\$10,000	Subs carry their own
Winter Conditions	\$40,000	Non-Winter install for Fdns, Slabs, Masonry
Weather Protection	\$37,860	\$0.60 per GSF
Interim Air Quality Management & Readings	\$0	Duplicate. Carried in E above
Permanent Utility Costs	\$40,000	Highly var. Range \$20K to \$80K
Sub-Contractor Insurance and Bonds	\$576,000	Carried by subs. ~1.5% of COW
Dewatering Including Contamination Treatment	\$20,000	Estimate is for onsite re-charge. Add \$50K to 90K for Contamination Treat.
Sub-Contractors (Material, Equipment and Labor)	All Direct Costs	
Snow removal	\$14,400	1+ Seasons, large site

Price Proposal Notes and Clarifications

W.T. Rich Company wishes to highlight the following information and assumptions regarding our price proposal:

- **Preconstruction Start Date** – As defined in the RFP, we have assumed a start date for preconstruction services in June 2023. W.T. Rich is willing to start working on preconstruction services prior to June 2023 – at no additional cost to the Owner and at our own risk – if doing so is in the Owner’s best interests.
- **Cost of Work Assumptions** – The following items were assumed to be Cost of Work and are not carried as part of our General Conditions cost proposal. The work will be assigned to appropriate subcontractor(s) as part of their contractual scope of work:
 - All items listed as “Cost of Work Categories” in Price Proposal Form D.
 - Contractor Daily Cleanup of their own work (W.T. Rich will be responsible for general cleanup and debris control, but each individual contractor is expected to clean up their own work to a CM-provided central disposal location on a daily basis).
 - Staging and hoisting (subs carry for their own work).
 - General labor and general carpentry. To the extent these are required, they will be covered as Cost of Work items (i.e., General Requirements).
- **Preconstruction Discount** – W.T. Rich has included a discount in our preconstruction service fees for both the DD phase and CD/Bid phase. W.T. Rich is committed to staffing the preconstruction phase fully and properly. We believe proper diligence during preconstruction is critical to overall project success. **The discount will in no way reduce our commitment or resourcing of this critical stage of the project.**
- **Exploratory Work** – Exploratory work during design will play an important role in understanding existing site conditions related to the project scope. We have included planning, management, and supervision of exploratory work within our preconstruction service fees at no additional cost to the Owner. Direct costs and third-party services for exploratory work would be treated as Cost of Work items.
- **Bond and Insurance Costs:**
 - Bond and insurance costs are calculated as a percentage of the anticipated ECC. These rates will be applied to the actual, final Guaranteed Maximum Price. The rates themselves are fixed and are inclusive of all premium, program management, self-retention, deductible and administrative costs.
 - Builder’s Risk insurance for the project is included in our insurance costs.
- **Project Photos** – The field staff presented in our price proposal will take, catalog and store weekly 3D capture of the entire buildings using OpenSpace. This will be performed at no additional cost to the Owner. In addition, field staff will take and upload to Procore selective photo images of key construction progress conditions. The services of a professional photographer for progress construction photos are not included.

DRAFT SPECIAL LEGISLATION

**AN ACT FURTHER AMENDING THE CHARTER OF THE TOWN OF
MIDDLETON.**

Be it enacted by the Senate and the House of Representatives in the General Court
assembled, and by the authority of the same, as follows:

SECTION 1. The town of Middleton charter, which is on file in the office of the
archivist of the commonwealth as provided in section 12 of chapter 43B of the
General Laws, is hereby amended by replacing all of the specific gender references
and pronouns and inserting in place thereof the following:

“Board of Selectmen” changes to “Select Board”

“Selectman” changes to “Select Board member” or “member of the Select Board”

“Chairman” changes to “Chair” or “Chairperson”

“Vice-Chairman” changes to “Vice Chair” or “Vice Chairperson”

“He/She” changes to “they”

“His/Hers” changes to “their”

“Him/Her” changes to “them”

SECTION 2. Further, the town of Middleton charter will be amended by the deletion of the
following sections:

2-3-4, 6-5-5, 6-8-4, 7-5-2, 10-6-2, 11-2-1, 11-2-2, 11-2-3, 11-2-4;

and renumbering the remaining provisions as may be necessary.

SECTION 3. This act shall take effect upon its passage.

8.

Exhibit A - Article 22

Charter References from Article 22

2-3-4 The Town Meeting may investigate the affairs of any Town division, department, board, commission, committee, office or function.

6-5-5 Said power should not apply to the Zoning Board of Appeals, nor to any other body which the Town Counsel has determined to be quasi-judicial.

6-8-4 The Moderator, or if he is unable to be present, such person as he shall designate, shall preside at such hearing.

7-5-2 The Capital Planning Committee shall be composed of the Town Administrator and the Town Accountant, ex-officio, one member of the Finance Committee appointed by and from it, one member of the Planning Board appointed by and from it and three additional members to be appointed by the Moderator. The members from the Finance Committee and Planning Board shall be appointed for one-year terms. The other members shall be appointed for three-year terms, such that one will expire each year. Vacancies shall be filled for the unexpired terms and in the manner of the original appointments.

10-6-2 Executive sessions may be held only for the purpose of discussing or voting on matters which cannot be made public by reason of law or federal grant-in-aid requirements, or which might adversely affect the public security, the financial interest of the Town (including matters relating to collective bargaining) and the reputation of any person (including normal personnel actions).

11-2-1 Appointed or elected Town officials holding office on the effective date of this Charter shall continue to serve until their successors have been qualified, unless the office and/or duties have been transferred, consolidated, or abolished.

11-2-2 Notwithstanding any conflicting provisions, the adoption of this Charter shall serve to grant tenure until age of seventy years to Allan G. Marshall and Ernest R. Gould, so long as they are willing and able to perform the duties of their respective offices as presently defined.

11-2-3 Notwithstanding any provisions to the contrary, the adoption of this Charter shall serve to grant tenure until age seventy to Patricia Jordan and Harold Tyler, so long as they are both willing and able to perform the duties of their respective offices as presently defined. In the event either shall become

unwilling or unable to perform, the office of Treasurer-Collector shall be offered to the remaining officer under the provisions of Section 6-1-1.

11-2-4 The incumbent Board of three selectmen shall cause a Special Election to be held on the second Monday of September, 1974 for the purpose of electing two additional members to the Board, one to serve until the next regular election in 1976 and one until the regular election in 1977. After the qualification of the two new members, the five-man Board shall proceed to appoint the Town Administrator and take whatever other action is deemed necessary to implement the office.

Jackie Bresnahan

From: Ashley Garber
Sent: Friday, May 5, 2023 9:23 AM
To: Jackie Bresnahan
Cc: Paul Goodwin
Subject: RE: 2-Grave Lot Donation

9.

Hi Jackie,

The current cost for a 2-grave lot is: \$1,200.00. If you should need any other information, please let me know.

Thanks! 😊

Ashley E. Garber

DPW/Multi-Department Clerk

195 North Main Street
Middleton, MA 01949
DPW P: (978) 777-0407
Fax: (978) 774-0718
E: Ashley.Garber@MiddletonMA.gov

From: Jackie Bresnahan <Jackie.Bresnahan@middletonma.gov>
Sent: Friday, May 5, 2023 9:16 AM
To: Ashley Garber <ashley.garber@middletonma.gov>
Cc: Paul Goodwin <paul.goodwin@middletonma.gov>
Subject: RE: 2-Grave Lot Donation

Hi Ashley,

Could you please provide the current value of the lot so I can include this acceptance at an upcoming Select Board meeting?

Thanks,

Jackie

Jackie Bresnahan
Interim Town Administrator
Town of Middleton
48 South Main Street
Middleton, MA 01949
Phone: 978-777-3617
Email: jackie.bresnahan@middletonma.gov

Please be advised the Office of the Secretary of State for the Commonwealth of Massachusetts has determined that E-mail could be considered a public record.

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. This message may contain confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: Ashley Garber <ashley.garber@middletonma.gov>
Sent: Friday, May 5, 2023 7:40 AM
To: Jackie Bresnahan <Jackie.Bresnahan@middletonma.gov>
Cc: Paul Goodwin <paul.goodwin@middletonma.gov>
Subject: 2-Grave Lot Donation

Good afternoon, Jackie,

At the end of January, I received a call from Pat Gregor regarding her late father's (Michael Lomelis') lot down Oakdale, as he winded up being buried at another cemetery and she wanted to inquire about potentially selling his lot back to the Town. When I discussed the process, she was reluctant about filling out a W-9 and then asked about gifting/donating the lot back to the Town; I further discussed with Paul and relayed the information to her via voicemail that we'd need a notarized letter from her and all of her siblings for the Town to be able to consider the donation. Attached to this email are the letters that we received, along with the Deed.

If you have any questions or need anything further regarding this, please let me know.

Thank you

Ashley E. Garber

DPW/Multi-Department Clerk

195 North Main Street
Middleton, MA 01949
DPW P: (978) 777-0407
Fax: (978) 774-0718
E: Ashley.Garber@MiddletonMA.gov

March 28, 2023


Oakdale Cemetery
Middleton, Massachusetts 01949

To Whom It May Concern:

Our father, Michael Lomelis now deceased, purchased a burial plot in the Oakdale Cemetery in Middleton, MA in 1992. We are his daughters and wish to donate the deed to right of burial to the town of Middleton. Please accept this donation on our behalf.

Thank you for your attention to this matter.

Sincerely,


Patricia Gregoire

Judith Daniels

Jeanne Lomelis

Linda Higson


Notary

MICHELLE DYMENT
Notary Public - New Hampshire
My Commission Expires Apr 8, 2025

February 24, 2023

Oakdale Cemetery
Middleton, Massachusetts 01949

To Whom It May Concern:

Our father, Michael Lomelis now deceased, purchased a burial plot in the Oakdale Cemetery in Middleton, MA in 1992. We are his daughters and wish to donate the deed to right of burial to the town of Middleton. Please accept this donation on our behalf.

Sincerely,

Patricia Gregoire

Judith Daniels


Jeanne Lomelis



Linda Higson



by means of
☒ physical presence or
☐ online notarization

STATE OF FLORIDA
COUNTY OF
SWORN TO AND SUBSCRIBED BEFORE ME THIS
18 DAY OF April 2023
PERSONALLY KNOWN TO ME OR
PRODUCED IDENTIFICATION FL DL
TYPE OF IDENTIFICATION


SIGNATURE OF NOTARY PUBLIC-STATE OF FLORIDA

March 28, 2023

Oakdale Cemetery
Middleton, Massachusetts 01949

To Whom It May Concern:

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Thank you for your attention to this matter.

Sincerely,

Patricia Gregoire

Judith Daniels

Jeane Lomelis
Jeane Lomelis

Linda Higson

Donna Kaplan
Notary



DONNA KAPLAN
Commission # HH 207636
Expires March 1, 2027

March 20, 2023

Oakdale Cemetery
Middleton, Massachusetts 01949

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Sincerely,

Patricia Gregoire

Judith Daniels

Judith Daniels

Yolanda Samuel 3/20/23
only for Judith

Jeanne Lomelis

Linda Higson

February 24, 2023

Oakdale Cemetery
Middleton, Massachusetts 01949

To Whom It May Concern:

Our father, Michael Lomelis now deceased, purchased a burial plot in the Oakdale Cemetery in Middleton, MA in 1992. We are his daughters and wish to donate the deed to right of burial to the town of Middleton. Please accept this donation on our behalf.

Sincerely,


Patricia Gregoire


Judith Daniels


Jeanne Lomelis


Linda Higson



No. 1290

OAKDALE CEMETERY

MIDDLETON, MASSACHUSETTS

Deed to Right of Burial

Received of Michael J. Connelley

\$ 500.00 For lot No. 1117 in OAKDALE CEMETERY; said lot shall be

occupied and held subject to the rules and regulations which said Town shall lawfully adopt.

ENDOWMENT \$ 150.00

SIZE OF LOT 9 - 3' x 10'

Board of
Cemetery
Commissioners

Middleton, Mass. October 26, 1909

Supintendent:

**EMPLOYMENT AGREEMENT BETWEEN
THE TOWN OF MIDDLETON, MASSACHUSETTS and
JACKIE BRESNAHAN, THE INTERIM TOWN ADMINISTRATOR**

This Agreement made and entered into this 10th Day of January, 2023, by and between the Town of Middleton, Commonwealth of Massachusetts, a municipal corporation, acting by its Select Board, hereafter referred to as the "Board" and Jacqueline R. Bresnahan, hereinafter referred to as the "Interim Town Administrator" or "Ms. Bresnahan."

In consideration of the promises herein contained, the parties mutually agree as follows:

WHEREAS, the Town desires to employ the services of said Jacqueline R. (Jackie) Bresnahan as Interim Town Administrator; and

WHEREAS, it is the desire of the Board to provide certain benefits, establish the conditions of employment, and set the salary of said Interim Town Administrator; and

WHEREAS, it is the desire of the Board to appoint the Interim Town Administrator and to provide inducement for her to remain in such employment until a permanent replacement is found; and

WHEREAS, the parties intend that this Employment Agreement shall be for a term beginning February 1, 2023 through June 30, 2023, unless sooner terminated pursuant to Section II below; and

WHEREAS, Ms. Bresnahan currently holds the position of Assistant Town Administrator/HR Director and will resume said position after her term as Interim Town Administrator;

NOW, THEREFORE, in consideration of the covenants contained herein, the parties agree as follows:

SECTION I: FUNCTIONS & DUTIES

The Town agrees to employ said Jackie Bresnahan as Interim Town Administrator. The Interim Town Administrator shall perform the functions and duties of the chief administrative officer of the Town of Middleton as described by the Middleton Town Charter, and such other duties and functions as the Board shall, from time to time, legally assign to her.

SECTION II: TERM

- A. This Agreement shall have a term beginning February 1, 2023 and expiring June 30, 2023, unless earlier terminated.

- B. The Board, in its sole discretion, may terminate Ms. Bresnahan's service as Interim Town Administrator by written notice no less than seven (7) days prior to the effective date of such termination. Upon such termination, Ms. Bresnahan shall be immediately reinstated to her position as Assistant Town Administrator/HR Director.
- C. Ms. Bresnahan may terminate her service as Interim Town Administrator by written notice no less than seven (7) days prior to the effective date of such termination. Upon such termination, Ms. Bresnahan shall be immediately reinstated to her position as Assistant Town Administrator/HR Director.
- D. This Agreement shall automatically terminate upon the engagement, appointment, and commencement of a permanent Town Administrator.
- E. This Agreement may be extended through a written amendment by mutual agreement of the Parties.

SECTION III: COMPENSATION

A. **Base Salary:**

The Town Administrator shall be paid an annualized base salary of **\$165,000**, effective February 1, 2023 and continuing through the end date of this agreement.

The salary for the Interim Town Administrator shall be payable in bi-weekly installments at the same time as other Town department Administrators.

- B. For the purposes of the Fair Labor Standards Act, the Interim Town Administrator shall be an "exempt employee."
- C. All compensation paid by the Town shall be conditional upon the Interim Town Administrator performing the services required of said Interim Town Administrator.

SECTION IV: BENEFITS

- A. **Vacation Leave:** The Interim Town Administrator shall be entitled to earn the same days of earned vacation leave each fiscal year as she would have as the Assistant Town Administrator/HR Director, on a fiscal year basis. Unused vacation leave may be carried over by the Interim Town Administrator at the end of fiscal year FY 23 into FY 24 subject to a maximum accrual carry-over of ten (10) days, given the additional time she may need to devote to Town operations during the interim period.

- B. **All Other Benefits:** In addition, the Interim Town Administrator shall be entitled to such other benefits generally provided to Town department managers, subject to this Agreement.
- C. All benefits and obligations of the Town shall be conditional upon the Interim Town Administrator performing the services required of said Interim Town Administrator.

SECTION V: EXPENSES

Expenses: The Interim Town Administrator shall be reimbursed for any reasonable expenses incurred in the performance of her duties, or as an official representative of the Town. If the Interim Town Administrator leaves the employment of the Town and serves as a witness in depositions, trials, or administrative proceedings, she shall be paid for each day of preparation and attendance at the trial on a per diem basis based on her salary at the time of her separation from employment from the Town. This section shall survive the termination of this Agreement.

SECTION VI: OUTSIDE ACTIVITIES

The Interim Town Administrator may accept speaking, writing, lecturing, teaching, or other paid engagements of a professional nature as her sees fit, provided they do not interfere with the performance and discharge of her duties and responsibilities as Interim Town Administrator. Any such engagements, activities, or work must be approved in advance by the Board, whose approval will not be unreasonably delayed or denied, and shall not be in violation of the Massachusetts Conflict of Interest Law, M.G.L. c. 268A.

SECTION VII: HOURS OF WORK

The Interim Town Administrator shall normally work at least forty (40) hour work weeks. The Interim Town Administrator recognizes that her job duties may require her to work beyond forty (40) hours per week in order to fulfill her obligations as a professional employee, including attendance at evening meetings.

It is recognized that the Interim Town Administrator must devote a great deal of time outside of normal office hours to the business of the Town and to that end the Interim Town Administrator will be allowed to take reasonable compensatory time off as she shall deem appropriate during said normal office hours.

The Interim Town Administrator will devote full time and attention to the business of the Town and will not engage in any other business, except with the prior approval of the Board as described above in Section IX.

SECTION VIII: BONDING & INDEMNIFICATION

- A. The Town shall defend, save harmless, and indemnify the Interim Town Administrator against any tort, professional liability, claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of her duties as Interim Town Administrator, even if said claim has been made following her termination from employment, provided that the Interim Town Administrator acted with the scope of her duties. The Town shall pay the amount of any settlement or judgment rendered thereon. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the Interim Town Administrator.
- B. The Town shall reimburse the Interim Town Administrator for any attorney's fees and costs incurred by the Interim Town Administrator in connection with such claims or suits involving the Town Administrator in his professional capacity.
- C. This indemnification shall also apply to the Town Administrator after she leaves the employment of the Town.
- D. The Town shall bear the full cost of any fidelity or other bonds required of the Interim Town Administrator.
- E. This section shall survive the termination of this Agreement.

SECTION IX: SEVERABILITY

If any provision or any portion thereof of this Agreement is found to be unconstitutional, invalid or unenforceable, it shall not affect the remainder of said Agreement but said remainder shall be binding and remain in full force and effect.

SECTION X: COUNTERPARTS

This Agreement shall be executed in two counterparts, each of which shall be deemed to be an original, and both of which, taken together, shall be deemed one and the same instrument.

SECTION XI: GOVERNING LAW

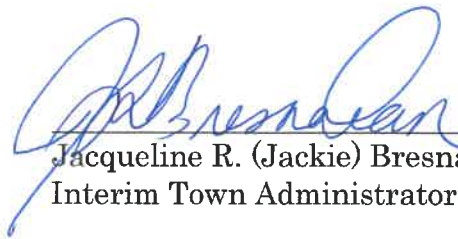
This Agreement shall be governed by and constructed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.

SECTION XII: NOTICES

Any and all notices required or permitted to be given under this Agreement will be sufficient if furnished in writing, sent by certified mail to her last known residence, in

the case of the Interim Town Administrator, or the Chairperson of the Select Board in the case of the Town.

IN WITNESS THEREOF, the parties have hereunto signed and sealed this Agreement and a duplicate thereof the 10th day of January in the year 2023, such Agreement to be effective as of February 1, 2023 until June 30, 2023, subject to the provision of Section II above.



Jacqueline R. (Jackie) Bresnahan
Interim Town Administrator


TOWN OF MIDDLETON
by its Select Board


Kosta Prentakis, Chair


Jeffrey Garber, Clerk


Brian M. Cresta, Member


Debbie Carbone, Member


Richard Kassiotis, Member

Date: 1/10/23

Correspondence and informational materials

Public Presentation

Town of Middleton Building Committee

**Wednesday,
May 17th**



**JOIN THE BUILDING
COMMITTEE FOR A PUBLIC
PRESENTATION INCLUDING**

- SITE PLAN**
- EXTERIOR RENDERINGS**
- BUDGET STATUS**
- TIMELINE**

**Fuller
Meadow
Cafe at 7 pm**



Town of Middleton

MEMORIAL DAY

May 29th, 2023

Parade and Ceremony

Parade steps off at 9:00 am from
Howe-Manning Elementary School, 26 Central St.
Parade will proceed to Memorial Stones on Flint
Library Lawn for a short ceremony, then continue
down Maple St. to Oakdale Cemetery

Guest Speaker:
Kevin Welch, USMC

Hosted by
Augustus P. Gardner
American Legion Post 227,
Middleton Patriotic Observances
Committee and the Town of Middleton

Questions: Contact VSO Kevin Welch at 978-880-0361