

**TOWN OF GLASTONBURY
PROFESSIONAL SERVICES PROCUREMENT NOTICE
REQUEST FOR QUALIFICATIONS
CONSTRUCTION MANAGEMENT SERVICES**

**GLASTONBURY RIVERFRONT PARK – PHASE 2
RPGL # 2013-12**

The Town of Glastonbury will be accepting proposals to provide construction management advisor services for the pre-construction, construction, and post-occupancy/warranty phases of the Glastonbury Riverfront Park – Phase 2 project to be located at 252 Welles Street, Glastonbury. Interested individuals and firms can download the Instructions for Qualification Statement and Project Details from the Town's website at www.glastonbury-ct.gov or request them from the Purchasing Agent, 2155 Main Street, Glastonbury, CT 06033.

There will be a **MANDATORY PRE-PROPOSAL MEETING HELD AT THE PROPOSED PROJECT SITE, 252 WELLES STREET, GLASTONBURY, CT 06033 on October 19, 2012 at 10:00 AM. Attendance is mandatory.**

Proposals must be submitted to the Purchasing Agent no later than 11:00 AM on October 26, 2012. **LATE PROPOSALS WILL NOT BE ACCEPTED.**

Mary F. Visone
Purchasing Agent

**TOWN OF GLASTONBURY
PROFESSIONAL SERVICES PROCUREMENT NOTICE
REQUEST FOR QUALIFICATIONS
CONSTRUCTION MANAGEMENT SERVICES**

GLASTONBURY RIVERFRONT PARK – PHASE 2

RPGL # 2013-12



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RPGL # 2013-12

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Section 1 – General Information

A. Introduction

The Town of Glastonbury will be accepting proposals to provide construction manager (CM) adviser services for the pre-construction, construction, and post-occupancy/warranty phases of the Glastonbury Riverfront Park – Phase 2 to be located at 252 Welles Street, Glastonbury, CT.

B. Background

Considerable design effort has already been completed as evidenced by the Permit Drawings for Phase Two Improvements, Glastonbury Riverfront Park; dated July 1, 2011, Rev. December 19, 2011 and June 4, 2012. A set of drawings can be purchased (non-refundable) directly from ARC, 220 Farmington Avenue, Farmington, CT, at www.crest-graphics.com or (860) 677-8817.

All required local, State (DEEP) and Federal (U.S. ACOE) permits have been secured. Completion of final design drawings and bid specifications by the architect and design team will continue and construction manager involvement in that process is included as part of this contract.

C. Evaluation Criteria

Firms interested in being considered for this project shall clearly demonstrate that they meet the minimum criteria of:

- Licensed as a major contractor in Connecticut
- Served as the primary CM for a minimum of **three** projects each of which meets the follow minimum characteristics:
 - Public building project (at least one must include significant site work)
 - Located in the State of Connecticut
 - Included grant funding from the State of Connecticut
 - Project budget of not less than \$15 million
 - Received certificate of occupancy within the last 10 years

Additional evaluation criteria beyond the minimum qualifications include:

- Recent experience managing work of similar size and scope
- Organizational and team structure including qualifications of individuals to be assigned to this project
- Past performance data including, but not limited to:
 - adherence to project schedules
 - adherence to project budgets
 - number and cost of change orders and value as a percent of original bid price
- Approach to the work

- Experience managing all (design and pre-construction, solicitation and award, construction, and post-occupancy and warranty) phases, of:
 - Public buildings
 - Public parks and recreation facilities (identify experience with boat launches and/or water based facilities)

D. Term of Service

The selected firm will be expected to commence services within 15 days of contract execution. For planning and pricing purposes, the following milestone schedule for the project shall apply.

- | | |
|--|--------------|
| • Design and Pre-construction Services | 4 months |
| • Solicitation and Award Services | 2 months |
| • Construction Services | 12-15 months |
| • Post-occupancy/Warranty Services | 12 months |

Construction documents are expected to be complete and ready for bidding within 4 months of contract execution. The Town of Glastonbury reserves the right to cancel this proposal process at any time should any of the following conditions exist:

- Funds are not appropriated to allow continuance of this contract.
- The Town, through changes in its requirements or method of operation, no longer has a need for this service.
- The Town is not satisfied with the level of services provided under the contract or the contractor fails to comply with any of the terms and conditions outlined in the contract.
- Any other reason determined to be in the best interest of the Town

Section 2 – Scope of Services

A. Scope of Work

The purpose of this project is to design, construct, and equip a public park, boat launch, boat house and related facilities at 252 Welles Street, Glastonbury, CT. It is anticipated that construction will be structured in one phase. The project budget is \$12,050,000.

Site and building construction. Estimated cost: approximately \$11,000,000.

The balance of the project budget is comprised of owner’s costs, professional fees; survey, testing, inspection, administrative and financing costs; and contingencies.

The construction manager selected will be expected to manage the final design and pre-construction, solicitation and award, construction, and post-occupancy/warranty phases described above, including any contractors or vendors hired directly by the Town, and to coordinate with the Owner and architect/consultants.

The work will include, as a minimum:

Work Phases

- 1) **Design and Pre-Construction Phase Services** - Site specific and general logistics plans development, “constructability” reviews, safety, quality assurance, and schedule (phasing, relocation, temporary structures, etc.) development, budget and cash flow analyses, Value Engineering services, budget reconciliation and control sessions, attendance at all design review and other special meetings through the final Design Development, and Construction Document Phases, and continuous document review to ensure documents are clear and concise in order to minimize change orders.
- 2) **Solicitation and Award Phase Services** – Development of all solicitation packages (Bid Packages) and adhere to the State of Connecticut requirements, development of a construction document estimate prior to bidding, update to construction (CPM) schedule including completion dates for issuance with bid packages and milestones for long-lead items, etc., scheduling and conducting pre-bid conferences, monitor, review, analyze and recommend awards, and monitor bidder activity to maximize bidder participation.
- 3) **Construction Phase Services** - Maintain consistent on-site staff, establish and maintain all required reporting and other control procedures, maintain and update logistics plan on a periodic basis, develop and maintain final construction schedule (CPM) after awards including delivery milestones, approvals, inspections, testing, construction, commissioning, and occupancy, conduct and record all job site and other required coordination meetings, ensure compliance with all approved regulatory Conditions of Approval from CT DEEP, the U.S. Army Corps of Engineers, Town Plan & Zoning Commission and Town Inland Wetlands & Watercourses Agency including all required inspections documentation and reports, prepare and submit change order documentation for approval by the Architect and Owner, develop and maintain shop drawings review/approval management system, develop all monthly reports and presentations to Owner, maintain quality control and ensure conformity to the “highest” intent of the construction documents, manage all trade contractors to ensure effective and timely adherence to schedule, provide cost control according to approved schedule and contract amounts and terms, coordinate all Owner activities and post-completion activities, including assembly of guarantees, manuals and commissioning requirements, closeout documents, and Owner’s final acceptance.
- 4) **Post-Occupancy and Warranty Phase** - Coordinate and monitor resolution of “punch list” items, coordinate, monitor, and resolve all warranty issues during the one-year general warranty period and beyond, where applicable, ensure delivery and receipt of all O & M manuals and any preventative maintenance data required, provide on-site staff to address commissioning issues, provide or coordinate all formal owner training of all systems, and schedule and conduct a “pre-end of warranty” walk-through.

The CM shall be expected to be present for some or all of the meetings which may need

to be conducted with user groups, either at Town offices, on site, or elsewhere, for any and all phases listed above.

B. Frequently Asked Questions

Question 1: Can you provide more details as to the contract to be used for the Construction Manager?

Answer 1: A draft sample contract is provided as Attachment 5 (AIA-C132-2009) Standard Form of Agreement Between Owner and Construction Manager as Advisor. The final terms and conditions are still being reviewed by the Town's attorney but it is anticipated that changes will be relatively minor. The Town reserves the right to propose further changes to these documents. Interested firms are encouraged to carefully review the contract. Any firms selected to submit a fee proposal will be required to submit any proposed exceptions to the Standard Form of Agreement Between Owner and Construction Manager as Advisor (AIA C132-2009) at the same time.

Question 2: Who will be awarding or will "hold" the contracts for construction?

Answer 2: Under the construction manager as adviser model outlined in the RFQ and the model contracts provided, the Town will be awarding and will "hold" the contracts for construction.

Question 3: Who will be responsible for the cost of printing Plans and Specifications?

Answer 3: The Town will bear the expense of printing plans and specifications for bidding. That cost does not need to be carried as either a "Basic Services Fee" or a "Reimbursable Cost" in the proposal.

Question 4: Will there be specific requirements for bid solicitations, postings and advertising?

Answer 4: The only requirements for advertising are those necessary to satisfy the requirements of the State of Connecticut in order to qualify for grant reimbursement. The Town will bear the expense of advertising. That cost does not need to be carried as either a "Basic Services Fee" or a "Reimbursable Cost" in the proposal.

C. Insurance

The Consultant shall, at its own expense and cost, obtain and keep in force during the entire duration of the Project or Work the following insurance coverage covering the Consultant and all of its agents, employees, sub-contractors and other providers of services and shall name the Town, its employees and agents as an Additional Insured on a primary and non-contributory basis to the Consultant's Commercial General Liability and Automobile Liability policies. **These requirements shall be clearly stated in the remarks section on the Consultant's Certificate of Insurance.** Insurance shall be written with

Carriers approved in the State of Connecticut and with a minimum Best's Rating of A-. In addition, all Carriers are subject to approval by the Town. Minimum limits and requirements are stated below:

1) Worker's Compensation Insurance:

- Statutory Coverage
- Employer's Liability
- \$100,000 each accident/\$500,000 disease-policy limit/\$100,000 disease each employee

2) Commercial General Liability:

- Including Premises & Operations, Products and Completed Operations, Personal and Advertising Injury, Contractual Liability and Independent Contractors.
- Limits of Liability for Bodily Injury and Building Damage
Each Occurrence \$1,000,000
Aggregate \$2,000,000 (The Aggregate Limit shall apply separately to each job.)
- A Waiver of Subrogation shall be provided

3) Automobile Insurance:

- Including all owned, hired, borrowed and non-owned vehicles
- Limit of Liability for Bodily Injury and Building Damage:
Per Accident \$1,000,000

4) Errors and Omissions Liability or Professional Services Liability Policy

Provide Errors and Omissions Liability or Professional Services Liability Policy for a minimum Limit of Liability \$5,000,000 each occurrence or per claim.

- The Consultant agrees to maintain continuous professional liability coverage for the entire duration of this Project, and shall provide for an Extended Reporting Period in which to report claims for five (5) years following the conclusion of the Project.

The Consultant shall direct its Insurer to provide a Certificate of Insurance to the Town before any work is performed. The Certificate shall evidence all required coverage including the Additional Insured and Waiver of Subrogation. The Consultant shall provide the Town copies of any such Policies upon request.

Indemnification

To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Town and their respective consultants, agents, and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the Consultant's work, provided that such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission by the Consultant, or breach of its obligations herein or by any person or organization directly or indirectly employed or engaged by the Consultant to perform or furnish either of the services, or anyone for whose acts the Consultant may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

As to any and all claims against the Town or any of its consultants, agents or employees by any employee of Consultant, by any person or organization directly or indirectly employed by Consultant to perform or furnish any of the work, or by anyone for whose acts Consultant may be liable, the indemnification obligation under this Article V shall not be limited in any way by any limitation on the amount of type of damages, compensation or benefits payable by or for Consultant under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.

The above insurance requirements are the Town's general requirements. Insurance requirements with the awarded respondent are subject to final negotiations.

Section 3– Submission Requirements & Administrative

A. Proposal Instructions

By submitting a proposal, you represent that you have thoroughly examined and become familiar with the scope of services outlined in this RFQ and you are capable of performing the work to achieve the Town's objectives.

There will be a mandatory pre-proposal meeting held at the proposed project site, 252 Welles Street, Glastonbury, CT 06033 on October 19, 2012 at 10:00 AM. Attendance is mandatory.

All firms are required to submit a **clearly marked** original and six (6) copies of:

1. Statement of Qualifications in the format outlined in paragraph B-1 of this section.

The Statement of Qualifications shall be submitted to Mary F. Visone, Purchasing Agent, 2155 Main Street, Glastonbury, CT 06033 not later than 11:00 AM on October 26, 2012. Qualifications submissions will be opened and recorded as received. Proposers may be present at the opening however, there will be no public reading. Submissions received later than the time and date specified will not be considered.

**SEALED REQUEST FOR QUALIFICATIONS
 CONSTRUCTION MANAGEMENT SERVICES
 TOWN OF GLASTONBURY
 GLASTONBURY RIVERFRONT PARK – PHASE 2
 RPGL # 2013-12
 DATE: October 26, 2012
 TIME: 11:00 AM**

B. Submission Requirements

All respondents are required to submit:

A. Statement of Qualifications in the format outlined in subparagraph 1 of this section.

1. The Statement of Qualifications shall provide the information and be formatted as detailed below. Responses shall be organized and presented in the order listed below to assist the Town in reviewing and rating the proposals. Each section must be addressed and shall not exceed the maximum number of pages given. The Town reserves the right to reject responses which do not follow the format given, which shall be deemed non-responsive.

▪ Table of Contents	Table of contents to include clear identification of the material provided by section and number (1 page).
▪ Letter of Transmittal	A letter of transmittal indicating the firm's interest in providing the service and any other information that would assist the Town in making a selection. This letter must be signed by a person legally authorized to bind the firm to a contract and must also affirm that the firm or their representative has made themselves knowledgeable of those matters and conditions in the Town which would influence this Proposal. (1 page)
▪ Executive Summary	Briefly describe the respondent, the approach to the project, staffing available and envisioned for the project, and respondent's capability to execute to the schedule while providing the services required. (2 pages)
▪ Synopsis of the Respondent	Describe the respondent's organization. Specify the personnel (including years of experience in their current position, municipalities served and their roles providing these services) and equipment to be assigned to the project and explain their roles in the specific projects cited on the Attachment 1 form. Supply resumes of principal personnel and document the chain of command for these individuals as an appendix. Indicate contact person for the proposal, including telephone and fax

numbers and e-mail address. (Synopsis: 2 pages, Appendix: as required)

Information provided in this section shall address the respondent's ability to meet the following specific criterion from Section 1, Paragraph C., "Evaluation Criteria."

- ***Organizational and team structure including qualifications of individuals to be assigned to this project***

- Qualifications

Provide a copy of the firm's contractor license. Complete the Attachment 1 form list, as line items 1 through 3, the three public building projects satisfying the minimum qualifications criteria listed in Section 1, Paragraph C.

Provide, on Attachment 1, information for additional projects that demonstrate the respondent's ability to satisfy the additional criteria listed in Section 1, Paragraph C. List those projects as line items 4 – 10 on Attachment 1.

Provide, as an appendix, documentation to expand on how the projects listed on Attachment 1 support the criteria listed. Highlight significant accomplishments and awards as well as alliances or partnerships with other contractors, professionals, and owners.

The Town reserves the right to contact the project owner organizations regarding the services performed by the firm. (License and Attachment 1: 2 pages, Appendix: as required)

Information provided in this section shall address the respondent's ability to meet the following specific criteria from Section 1, Paragraph C., "Evaluation Criteria."

Minimum Qualifications:

- ***Licensed as a major contractor in Connecticut***
- ***Served as the primary CM for a minimum of three projects, each of which meets the follow minimum characteristics:***
 - ***Public building project (at least one must include significant site work)***

-
- **Located in the State of Connecticut**
 - **Included grant funding from the State of Connecticut**
 - **Project budget of not less than \$15 million**
 - **Received certificate of occupancy within the last 10 years**

(Complete and provide the Attachment 1 form)

Additional criteria:

- **Recent experience managing work of similar size and scope**
- **Past performance data including, but not limited to:**
 - **adherence to project schedules**
 - **adherence to project budgets**
 - **number and cost of change orders**
- **Experience managing all (design and pre-construction, solicitation and award, construction, and post-occupancy and warranty) phases, of:**
 - **Public buildings (identify any experience with parks)**
 - **Public parks and recreation facilities (identify any experience with boat launches and/or water based facilities)**
- **Experience managing all (design and pre-construction, solicitation and award, construction, and post-occupancy and warranty phases).**

-
- **Approach to the Project** Describe the respondent's approach to the project commencing with award of consultant's contract and concluding with punch-list and final documentation completion. Detail any specific data your firm would require from the Town to implement this work. Describe the anticipated role that the Town will play in this project.(3 pages)

Information provided in this section shall address the respondent's ability to meet the following specific criteria from Section 1, Paragraph C., "Evaluation Criteria."

- **Approach to the work**

-
- **Project Site Management Structure** Provide a description of the project site management structure including personnel and other management
-

	resources. Include anticipated site staffing, equipment, communication requirements, vehicles, (2 pages)
<ul style="list-style-type: none"> ▪ Code of Ethics 	<p>Respondent is required to review the Town of Glastonbury Code of Ethics adopted July 8th, 2003 and effective August 1, 2003. Respondent shall acknowledge that they have reviewed the document in the area provided on the proposal response page (BP). The selected Respondent will also be required to complete and sign an Acknowledgement Form prior to award. The Code of Ethics and the Consultant Acknowledgement Form can be accessed at the Town of Glastonbury website at www.glastonbury-ct.gov. Upon entering the website click on Bids & RFPs, which will bring you to the links for the <u>Code of Ethics</u> and the <u>Consultant Acknowledgement Form</u>. If the Respondent does not have access to the internet a copy of these documents can be obtained through the Purchasing Department at the address listed within this proposal.</p>
<ul style="list-style-type: none"> ▪ Non Resident Contractor 	<p>The Town is required to report names of nonresident (out of state) Contractors to the State of Connecticut, Department of Revenue Services (DRS) to ensure that Employment Taxes and other applicable taxes are being paid by Contractors. Upon award, all nonresident contractors must furnish a five percent (5%) sales tax guarantee bond (state form AU-766), or a cash bond for 5% of the total contract price (state form AU-72) to DRS even though this project is exempt from most sales and use taxes.</p> <p>See State Notice to Nonresident Contractors SN 2005(12). If the above bond is not provided the Town is required to withhold 5% from Contractor's payments and forward it to the State DRS.</p> <p>Contractor must promptly furnish to the Town a copy of the <u>Certificate of Compliance</u> issued by the State DRS.</p>
<ul style="list-style-type: none"> ▪ Proposal Response Form 	Attachment 2
<ul style="list-style-type: none"> ▪ Signed Non-Collusion Statement 	Attachment 3

C. Contacts

For administrative RFQ and other procurement related questions please contact:

Name: Mary F. Visone
Title: Purchasing Agent
Phone: (860) 652-7588
Fax: (860) 652-7590
Email: mary.visone@glastonbury-ct.gov

For technical questions please contact:

Name: Raymond E. Purtell
Title: Director of Parks & Recreation
Phone: (860) 652-7687
Fax: (860) 652-7691
Email: ray.purtell@glastonbury-ct.gov

Specific contract questions shall be made in writing (email acceptable). All questions, answers, and/or addenda, as applicable, will be posted on the Town's website at www.glastonbury-ct.gov (Upon entering the website click on Bids & RFPs). It is the respondent's responsibility to check the website for addenda prior to submission of any proposal.

Note: Responses to requests for more specific contract information than is contained in the RFQ shall be limited to information that is available to all Offerors and that is necessary to complete this process. The request must be received at least five (5) business days prior to the advertised response deadline.

D. Access to Facilities

A tour of the site for the proposed park will be held at the time of the mandatory pre-proposal meeting. Upon award, access to the site and the existing structure will be made available with advance notice.

E. Response Due Date

Statements of Qualifications must be submitted by October 26, 2012 at 11:00 AM. See Section 3, "Submission Requirements and Administrative," for details.

LATE PROPOSALS WILL NOT BE ACCEPTED.

F. Schedule of RFQ Events (tentative)

Publicize RFQ	October 12, 2012
Mandatory Pre-proposal Meeting	October 19, 2012
RFQ Response Due Date	October 26, 2012
Review of Proposals	October 26 – November 1, 2012
Interviews with Top Respondents	November 5 – 9, 2012
Selection of Consultant/Fee Proposals	November 15, 2012
Contract Effective Date	November 20, 2012

Time is of the essence. Interested firms should be prepared to attend an interview meeting in person on short notice. If selected to submit a fee proposal, firm(s) must be prepared to submit a detailed fee proposal, along with any proposed exceptions to AIA-C132-2009, in writing, within a matter of days. It is the Town's intention to fully execute an agreement with the selected firm no later than November 20, 2012.

Section 4 - Selection Process

A. Selection Process

- Interested consultants shall submit Statements of Qualifications to best communicate the respondent's ability to meet or exceed the requirements of the RFQ. The Statement of Qualifications shall be in the format outlined in Section 3. A clearly marked original plus six (6) copies of the Statement of Qualifications shall be provided.
- Statements of Qualifications shall undergo an administrative review to determine if the minimum qualifications have been met.
- For those submissions that meet the minimum qualifications, an evaluation committee will review the Statements of Qualifications, taking into account the factors necessary for faithful performance of the work based on the criteria and scope of work included in the RFQ. The committee shall develop a short list of respondents for interview.
- The committee shall interview the short list of firms and recommend a pool of the most responsible qualified proposers to the Town Manager.
- The Town Manager may interview some or all of the proposers and will make a final determination of award from the pool recommended. The Town Manager will request written fee proposals from top rated proposers and conduct negotiations, as required.

This request for proposal does not commit the Town of Glastonbury to award a contract or to pay any costs incurred in the preparation of a proposal to this request. All proposals submitted in response to this request for proposal become the property of the Town of Glastonbury. The Town of Glastonbury reserves the right to accept or reject any or all proposals received as a result of this request, to clarify terms and conditions with the selected respondents, the right to extend the contract for an additional period, or to cancel in part or in its entirety the request for proposal, if it is in the best interests of the Town to do so.

END OF REQUEST FOR PROPOSAL TEXT

List of Qualifying Projects

Consultant Name _____

Note: Projects used to satisfy the minimum criteria of the RFQ per Section 1.c shall be listed as line items 1 through 3. Projects used to satisfy the additional evaluation criteria also specified in Section 1.c shall be listed as line items 4-10 and below.

Line No.	Project Title	State of CT Project # (if applicable)	Owner	Owner Point of Contact Name/Phone #	Project Budget	Month/Year Of Occupancy
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

Attachment 2



TOWN OF GLASTONBURY

BID / PROPOSAL

RPGL #

2013-12

DATE ADVERTISED

October 12, 2012

DATE/ TIME DUE

**October 26, 2012 by 11:00
AM**

NAME OF PROJECT

**TOWN OF GLASTONBURY
RIVERFRONT PARK – PHASE 2
CONSTRUCTION MANAGEMENT SERVICES**

Insert this completed form in respondent's proposal

CODE OF ETHICS:

I / We have reviewed a copy of the Town of Glastonbury's Code of Ethics and agree to submit a Consultant Acknowledgement Form if I / We are selected. Yes _____ No _____ *

***Bidder is advised that effective August 1, 2003, the Town of Glastonbury cannot consider any bid or proposal where the bidder has not agreed to the above statement.**

The Respondent acknowledges receipt of the following Addendums:

Addendum #1 _____ Date: _____

Addendum #2 _____ Date: _____

Addendum #3 _____ Date: _____

Type or Print Name of Individual

Doing Business as (Trade Name)

Signature of Individual

Street Address

Title

City, State, Zip Code

Date

Telephone Number / Fax Number

E:mail Address

SS # or TIN#

Attachment 3

**TOWN OF GLASTONBURY
GLASTONBURY RIVERFRONT PARK – PHASE 2
CONSTRUCTION MANAGEMENT SERVICES
RPGL # 2013-12**

NON-COLLUSION STATEMENT

The company submitting this proposal certifies that it is being submitted without any collusion, communication or agreement as to any matter relating to it with any other respondent or competitor. We understand that this proposal must be signed by an authorized agent of our company to constitute a valid proposal.

Date: _____

Name of Company: _____

Name and Title of Agent: _____

By (SIGNATURE): _____

Address: _____

Telephone Number: _____

Attachment 4

QUESTION NO. 1

“SHALL THE TOWN OF GLASTONBURY APPROPRIATE \$12,050,000 FOR THE RIVERFRONT PARK-PHASE 2 IMPROVEMENT PROJECT AND AUTHORIZE THE ISSUE OF BONDS AND NOTES IN THE SAME AMOUNT TO FINANCE SAID APPROPRIATION?”

BACKGROUND

By action at its Tuesday, August 7, 2012 meeting, the Town Council voted to present the proposed Riverfront Park-Phase 2 Improvement project at referendum on Tuesday, November 6, 2012. The following summarizes the proposed project.

In 1997, the Town purchased approximately 45 acres of land south of Welles Street with frontage on the Connecticut River. At the time of Town acquisition, the land was identified as a future riverfront park. Since the initial purchase in 1997, the Town has acquired an additional 6 parcels located between Naubuc Avenue and immediately south of Town Hall. The most recent purchase involved the 2009 acquisition of the former Hallmark Tire site located off Welles Street. In all, the Town owns approximately 126 contiguous acres along the Connecticut River extending southerly from Naubuc Avenue.

Master planning for a proposed Riverfront Park began shortly after acquisition of the 45 acre parcel in 1997 and has continued to date. The planning process involved input from groups and individuals including the Town Council, Town Plan and Zoning Commission, Recreation Commission, Board of Finance, Town professional staff, State and Federal regulatory authorities, Chamber of Commerce, youth sports groups, citizens at large and the project architect/site planner.

Phase 1 improvements were approved at referendum in May of 2006 and completed in 2007.

The Town Council unanimously supported the conceptual master plan for Phase 2 in 2009. Based on this action, the design and permitting process was initiated. All Federal, State, and local permits have been received. Permits include: U.S. Army Corps of Engineers CT General Permit; CT Department of Energy & Environmental Protection Stream Channel Encroachment Permit, Flood Management Certification, and Structures, Dredging and Fill Permit; Glastonbury Inland Wetlands Watercourses Agency Wetlands Permit, and Glastonbury Town Plan and Zoning Commission Special Permit and Flood Zone Permit.

Based on the process described above and a series of public hearings, the Town Council voted to present the proposed Riverfront Park-Phase 2 project at public referendum on Tuesday, November 6, 2012.

PROJECT SCOPE

The Phase 2 park improvements are proposed to be built on approximately 10 acres of Town owned land located on the south side of Welles Street. The proposed project is shown on the following pages and is generally described below.

As currently proposed, the park includes:

- A public boat launch.
- A dock for the Fire Department's rescue boat.
- A canoe/kayak launch area for public use.
- A launch area for rowing shells for public use.

- A two story, handicap accessible boathouse for use by the general public, emergency responders and the Glastonbury Crew Club to include:
 - Storage of crew shells for both the Glastonbury Crew Club and members of the public.
 - Facilities for Glastonbury's Emergency First Responders (Police and Fire).
 - Public restrooms with direct access from the building's exterior.
 - Multi-purpose room with various support facilities including a covered observation deck.
- Access drive with parking for 48 cars and 24 cars with boat trailers.
- Multi-use trails and walkways through the park that connect to sidewalks on Welles Street, the Riverfront Community Center and the existing Riverfront Park area.
- Scenic overlooks with interpretive signs.
- A lighted basketball court.
- A handicapped accessible children's playground.
- A covered picnic pavilion.
- Utilities including water, electricity and sewer.
- Space for informal outdoor recreation.
- Landscaping, planting, fencing, signs and miscellaneous park amenities.

Park facilities have been designed to be handicapped accessible.

ADDITIONAL INFORMATION

- The proposed plan is consistent with the Town Plan of Conservation and Development and the Plan of Development for Parks & Recreation.
- The boathouse is set above the 100 year flood elevation.
- The project adds approximately 4,000 cubic yards of flood storage capacity to the flood plain of the Connecticut River.
- The project includes native plantings for wildlife habitat, aesthetics and stabilization.
- The proposed access drive and parking area can be used to support public access to adjacent Town owned lands not subject to this specific proposal.

PROJECT BUDGET

The project budget was developed in consultation with a professional cost estimator.

RESOLUTION APPROPRIATING \$12,050,000 FOR THE RIVERFRONT PARK-PHASE 2 IMPROVEMENT PROJECT AND AUTHORIZING THE ISSUE OF \$12,050,000 BONDS AND NOTES TO FINANCE SAID APPROPRIATION
RESOLVED,

(a) That the Town of Glastonbury appropriate TWELVE MILLION FIFTY THOUSAND DOLLARS (\$12,050,000) for the Riverfront Park-Phase 2 Improvement Project. The Project shall include design and construction of: a public boat launch, emergency boat dock, and kayak/canoe launch; crew club dock and launch; kayak/canoe storage for general public; an approximately 18,500 square foot boathouse with facilities for crew club, public rowing shells, public restrooms, a multi-purpose room, kitchen, storage space, and related facilities; multi-use trails and scenic overlook plaza; children's playground; picnic pavilion and picnic area; lighted basketball court; outdoor ice skating area; access drives and parking, site utilities, landscaping, plantings, signs and site amenities, significantly as described in the site plan prepared by Richter & Cegan, Inc. titled "Glastonbury Riverfront Park-Phase 2 Improvements," dated May 15, 2012, on file in the Town Manager's Office and the Parks and Recreation Office. The appropriation may be spent for design and construction costs, demolition and relocation expenses, equipment, furnishings, materials, land and easement acquisition, site improvements, architects' fees, engineering fees, legal fees, net interest on borrowings and other financing costs, and other expenses related to the project and its financing. The Town Council is authorized to determine the scope and particulars of the project. The Town Council may reduce or modify the scope of the project, and the entire appropriation may be spent on the project as so reduced or modified.

(b) That the Town issue bonds or notes in an amount not to exceed TWELVE MILLION FIFTY THOUSAND DOLLARS (\$12,050,000) to finance the appropriation for the project. The amount of bonds or notes authorized to be issued shall be reduced by the amount of grants received by the Town for the project, unless the Town approves an additional appropriation to spend such grants. The bonds or notes shall be issued pursuant to Section 7-369 of the General Statutes of Connecticut, Revision of 1958, as amended, and any other enabling acts. The bonds or notes shall be general obligations of the Town secured by the irrevocable pledge of the full faith and credit of the Town.

(c) That the Town issue and renew temporary notes from time to time in anticipation of the receipt of the proceeds from the sale of the bonds or notes for the project. The amount of the notes outstanding at any time shall not exceed TWELVE MILLION FIFTY THOUSAND DOLLARS (\$12,050,000). The notes shall be issued pursuant to Section 7-378 of the General Statutes of Connecticut, Revision of 1958, as amended. The notes shall be general obligations of the Town and shall be secured by the irrevocable pledge of the full faith and credit of the Town. The Town shall comply with the provisions of Section 7-378a of the General Statutes if the notes do not mature within the time permitted by said Section 7-378.

(d) That the Town Manager and the Treasurer of the Town shall sign any bonds or notes by their manual or facsimile signatures. The Town Manager and the Treasurer are authorized to determine the amounts, dates, interest rates, maturities, redemption provisions, form and other details of the bonds or notes; to designate one or more banks or trust companies to be certifying bank, registrar, transfer agent and paying agent for the bonds or notes; to provide for the keeping of a record of the bonds or notes; to designate a financial advisor to the Town in connection with the sale of the bonds or notes; to sell the bonds or notes at public or private sale; to deliver the bonds or notes; and to perform all other acts which are necessary or appropriate to issue the bonds or notes.

(e) That the Town hereby declares its official intent under Federal Income Tax Regulation Section 1.150-2 that project costs may be paid from temporary advances of available funds and that (except to the extent reimbursed from grant moneys) the Town reasonably expects to reimburse any such advances from the proceeds of borrowings in an aggregate principal amount not in excess of the amount of borrowing authorized above for the project. The Town Manager and the Treasurer are authorized to amend such declaration of official intent as they deem necessary or advisable and to bind the Town pursuant to such representations and covenants as they deem necessary or advisable in order to maintain the continued exemption from federal income taxation of interest on the bonds or notes authorized by this resolution, if issued on a tax-exempt basis, including covenants to pay rebates of investment earnings to the United States in future years.

(f) That the Town Manager and the Treasurer are authorized to make representations and enter into written agreements for the benefit of holders of the bonds or notes to provide secondary market disclosure information, which agreements may include such terms as they deem advisable or appropriate in order to comply with applicable laws or rules pertaining to the sale or purchase of such bonds or notes.

(g) That the Town Manager, on behalf of the Town, is authorized to apply for and accept federal and state grants to help finance the appropriation for the project, and to enter into any grant agreement necessary to obtain such grants. Any grant proceeds may be used to pay project costs or principal and interest on bonds, notes or temporary notes.

(h) That the Town Manager or his designee shall administer and supervise the project. The Town Manager, the Treasurer and other proper officers of the Town are authorized to take all other action which is necessary or desirable to complete the project and to issue bonds, notes or other obligations to finance the aforesaid appropriation.

(i) That this resolution shall not become effective until approved at referendum pursuant to Section 312 of the Town Charter. The wording of the question for the referendum ballot shall be:

"SHALL THE TOWN OF GLASTONBURY APPROPRIATE \$12,050,000 FOR THE RIVERFRONT PARK-PHASE 2 IMPROVEMENT PROJECT AND AUTHORIZE THE ISSUE OF BONDS AND NOTES IN THE SAME AMOUNT TO FINANCE SAID APPROPRIATION?"



GLASTONBURY RIVERFRONT PARK
Phase Two Improvements

PREPARED BY: [Faint text]
DATE: [Faint text]
SCALE: [Faint text]



DRAFT AIA® Document C132™ - 2009

Standard Form of Agreement Between Owner and Construction Manager as Adviser

AGREEMENT made as of the «[] » day of «[] » in the year «2012 » (In words, indicate day, month and year.)

BETWEEN the Owner: (Name, legal status, address and other information)

« Town of Glastonbury » «2155 Main Street » «Glastonbury, CT 06033 »« »

and the Construction Manager: (Name, legal status, address and other information)

« »« » « » « » « »

for the following Project: (Name, location and detailed description)« *»Glastonbury Riverfront Park – Phase 2 « » 252 Welles Street « »Glastonbury, CT 06033

The Glastonbury Riverfront Park – Phase 2 park improvements are to be built on approximately 10 acres of Town owned land located on the south side of Welles Street. The proposed project is generally described below.

The park includes a public boat launch; a dock for the Fire Department’s rescue boat; a canoe/kayak launch area for public use; a launch area for rowing shells; a two story, handicap accessible boathouse for use by the general public, emergency responders and the Glastonbury Crew Club; an access drive with parking for 48 cars and 24 cars with boat trailers; scenic overlooks with interpretive signs; a lighted basketball court; a handicapped accessible children’s playground; a covered picnic pavilion; utilities including water, electricity and sewer; space for informal outdoor recreation; and, landscaping, planting, fencing, signs and miscellaneous park amenities.

The boat house includes storage of crew shells for both the Glastonbury Crew Club and members of the public; facilities for Glastonbury’s Emergency First Responders (Police and Fire); public restrooms with direct access from the building’s exterior; and, a multi-purpose room with various support facilities including a covered observation deck.

Park facilities have been designed to be handicapped accessible.

The Architect: (Name, legal status, address and other information)

Richter & Cegan, Inc.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A132™-2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition.

AIA Document A232™-2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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P.O. Box 567
Avon, CT 06001
(860) 678-0669

The Owner and Construction Manager agree as follows.

DRAFT

TABLE OF ARTICLES

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- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
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- 11 COMPENSATION
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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

« »As specified in RPGL 2013-12 Request for Qualifications/Request for Proposal Glastonbury Riverfront Park – Phase 2

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« »As specified in Permit Drawings, Phase Two Improvements, Glastonbury Riverfront Park, dated July 1, 2011 Rev. December 19, 2011 and June 4, 2012.

Site work and Park Improvements	\$11,000.00
Architect, Engineering & Inspection Services	\$ 700,000
Town costs including temporary interest, legal, and bank advisory	\$ 350,000
	\$12,050,000

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

»

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

»Final design complete February 28, 2013

.2 Commencement of construction: May 1, 2013

«[»

.3 Substantial Completion date or milestone dates:

« »August 1, 2014

.4 Other:

« »

§ 1.1.5 The Owner intends the following procurement method for the Project:

(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

« »Competitive bids of multiple prime contracts

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

«[As specified in the RFP] »

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

Permit approval letters from CT DEEP, OLISP, CT DEEP IWRD, U.S. Army Corps of Engineers and TP&Z Commission. Reference plan sheets PAL 1 through PAL 3 (dated 6/4/12) and PAL 4 (dated 9/24/12).

«[As specified in the RFP] »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:

(List name, address and other information.)

»

« »Raymond E. Purtell

« »Director of Parks & Recreation

« »2155 Main Street

« »Glastonbury, CT 06033

« »(860) 652-7687

ray.purtell@glastonbury-ct.gov

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other information.)

» Richter & Cegan, Inc.

P.O. Box 567

Avon, CT 06001

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the following consultants and contractors:

(List name, legal status, address and other information.)

.1 Land Surveyor:

« [» « »
« » Town of Glastonbury
« » 2155 Main Street
« » Glastonbury, CT 06033
« » (860) 652-7735

.2 Geotechnical Engineer:

» « »
« » Clarence Welti Associates, Inc.
« » 227 Williams Street East
« » Glastonbury, CT 06033
« » (860) 633-4623

.3 Civil Engineer:

» « »
« » Megson & Heagle Engineers
« » 81 Rankin Road
« » Glastonbury, CT 06033
« » (860) 659-0587

.4 Other:

(List any other consultants retained by the Owner, such as a Project or Program Manager, or construction contractor.)

» Waterfront Engineer
Bourne Consulting Engineering
3 Bent Street
Franklin, MA 02038
(508) 533-6666

Environmental Planner
Environmental Planning Services
89 Belknap Road
West Hartford, CT 06117
(860) 236-1578

Environmental Consulting
Weston and Sampson
273 Dividend Road
Rocky Hill, CT 06067
(860) 513-1473

Architect
Northeast Collaborative Architects
500 Plaza Middlesex
Middletown, CT 06457
(860) 344-9332

Electrical Engineer
Bernis Associates, LLC
101 Fenn Road
Newington, CT 06111
(860) 667-3233

Structural Engineers
Macchi Engineers, LLC
44 Gillett Street
Hartford, CT 06105
(860) 549-6190

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:
(List name, address and other information.)

«[TBD] »
« »
« »
« »
« »
« »

§ 1.1.12 The Construction Manager's staffing plan as required under Section 3.3.2 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

«[As specified in the RFP] »

§ 1.1.13 The Construction Manager's consultants retained under Basic Services, if any:

- .1 Cost Estimator:
(List name, legal status, address and other information.)

«[TBD] » « »
« »
« »
« »
« »

- .2 Other consultants:

«[TBD] »

§ 1.1.14 The Construction Manager's consultants retained under Additional Services:

«[TBD] »

§ 1.1.15 Other Initial Information on which the Agreement is based:

«[As specified in the RFP] »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the schedules, the Construction Manager's services and the Construction Manager's compensation.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 Deleted

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect as described in AIA Document B132™-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment with respect to this Project.

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage. A Waiver of Subrogation shall be provided.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Construction Manager with policy limits of not less than [\$1,000,000 per accident, combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Construction Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than \$100,000 each accident/\$500,000 disease – policy limit/\$100,000 each employee. » (\$ « »).

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than \$5,000,000 each occurrence or per claim and in the aggregate.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner and its employees and agents as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies on a primary and non-contributory basis. These requirements shall be clearly stated in the remarks section on the Construction Manager's Certificate of Insurance.

§ 2.6.6.1 The Construction Manager shall cause its Consultants to carry the types of insurance required of the Construction Manager hereunder, in the same amounts, unless agreed to otherwise by the Owner in writing, required of the Construction Manager hereunder.

§ 2.6.6.2 Coverages shall be written on an occurrence basis, except as otherwise provided herein, and shall be maintained without interruption from date of commencement of operations under this Agreement until _____ years after Substantial Completion.

§ 2.6.6.3 Insurance required hereunder shall be written with Carriers approved in the State of Connecticut and with a minimum Best's Rating of A-. In addition, all Carriers are subject to approval by the Owner.

§ 2.6.6.4 Before commencing the Construction Manager's services, the Construction Manager shall file with the Owner certificates of insurance for the required insurance and shall update such certificates throughout the duration

of this Agreement and during any additional period specified in this Agreement. Certificates of professional liability insurance shall bear the endorsement 'Not to be canceled without thirty days' prior written notice to Owner.

§ 2.6.7 Relationship of Parties

§ 2.6.7.1 The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish to the Owner a degree of skill and judgment consistent with the Construction Manager's Standard of Care, and to cooperate with the Architect in furthering the interests of the Owner.

§ 2.6.7.2 The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 2.6.7.3 The Construction Manager shall perform the Services, as defined hereinafter, as an independent contractor and in a good and workmanlike manner (i) consistent with the Contract Documents; (ii) consistent with the instructions, guidance and direction of the Owner; (iii) consistent with the with the highest prevailing applicable professional or industry standards; (iv) consistent with sound practices; (v) as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and with the Contract Documents and the instructions, guidance and direction of the Owner; and (vi) in a manner that will not exceed the Construction Cost and the Project Schedule (the standards of this Section 1.3 shall be referred to herein as the "Construction Manager's Standard of Care").

§ 2.6.7.4 The Construction Manager shall exercise Construction Manager's Standard of Care in performing all aspects of the Services. All references in the Contract Documents to the knowledge, inference, reliance, awareness, determination, belief, observation, recognition or discovery of the Construction Manager or reference to any similar term shall include the constructive knowledge, inference, reliance, awareness, determination, belief, observation, recognition attributed to the Construction Manager ("constructive knowledge"). Such constructive knowledge shall include the knowledge, inference, reliance, awareness, determination, belief, observation and recognition the Construction Manager would have obtained upon the exercise of the Construction Manager's Standard of Care.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition and Initial Services

§ 3.1.1 The Construction Manager's Basic Services consist of those described in Sections 3.1, 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Contractors.

§ 3.1.2 Compliance with Law

§ 3.1.2.1 The Services includes advising the Owner regarding the performance of the Project in compliance with all applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local government bodies, agencies, authorities and courts having jurisdiction and with the Conditions as defined in Section 3.1.2.2.

§ 3.1.2.2 The "Conditions" are all statutory and regulatory requirements and all guidelines, standards and conditions of funding imposed on the Project by the Agencies, as defined hereinafter.

§ 3.1.2.3 The "Agencies" are all governmental authorities having regulatory or administrative jurisdiction over the Project and all representatives or designees of such governmental authorities. The term "Agencies" shall also include any individuals or entities designated by such governmental authorities or by the Owner to monitor or oversee compliance of the Project's energy and environmental design.

§ 3.1.2.4 The Construction Manager understands that performance of the Services will require communication with the Agencies and with individuals designated by the Agencies, and the Construction Manager will, at no additional cost to the Owner, so communicate and take all steps necessary to advise the Owner as to compliance with the conditions imposed on the Project by the Agencies.

§ 3.1.3 Meetings

The Construction Manager shall schedule and attend regular meetings with the Owner and, as required or requested by the Agencies, with the Agencies or with any individual designated by the Agencies. The Construction Manager

shall coordinate the attendance of the Architect at those meetings for which the Architect's participation is necessary or as requested by the Owner.

§ 3.1.4 Compliance of Architect

The Construction Manager shall determine, and advise the Owner as to: (1) the compliance of each stage of design documents with the requirements for such design documents under the agreement between the Owner and the Architect and (2) any failure of the Architect, of which the Construction Manager has knowledge, to fulfill the Architect's responsibilities to the Owner.

§ 3.1.5 Project Schedule

The Construction Manager shall develop and update the Project schedule as described in Section 3.2.3, 3.2.6, 3.2.12, 3.2.17, and 3.3.5. At such time prior to the commencement of the Construction Phase as is requested by the Owner, the Construction Manager shall develop the Construction schedule into a Critical Path Method Project Construction Schedule, which shall become the Project schedule.

§ 3.1.6 Estimates of Cost of the Work

The Construction Manager shall develop and update estimates of the Cost of the Work as described in Sections 3.2.4, 3.2.7, 3.2.17, and 5.2. The Cost of the Work is described in Article 6.

§ 3.1.7 Pre-Approval Phase

§ 3.1.7.1 The Construction Manager shall conduct any Service described in this Section 3.1.7 during the Pre-Approval Phase, to the extent requested by the Owner.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect. The Construction Manager and the Architect shall collaborate to put such mutual understanding in writing for the approval of the Owner.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 The Construction Manager shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) recommendations for Project delivery method, and (5) Contractors' scopes of Work, if multiple Contractors or fast-track construction will be used. The Construction Manager shall periodically update the Construction Management Plan over the course of the Project. The Construction Management Plan shall also contain recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work (if such phased construction is approved by the Agencies) to the extent necessary and appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities. The Construction Management Plan and any modifications thereto shall be subject to the Owner's approval.

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

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall prepare and periodically (biweekly, unless otherwise requested by the Owner) update the Project schedule included in the Construction Management Plan for the Architect's review and the Owner's approval and acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.6.1 In planning the Project schedule, the Construction Manager shall anticipate the amount of adverse weather conditions historical for the site of the Work for the season or seasons of the year involved. Only those weather delays attributable to substantially more adverse than normal weather conditions will be considered by the Owner in assessing a request for a change to the Project schedule.

§ 3.2.6.2 As information becomes available, as conditions require and at intervals requested by the Owner, the Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information and approvals required by the Agencies, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. The Construction Manager shall advise the Owner and Architect if it appears that previously submitted schedules may not be met, and make recommendations for corrective action.

§ 3.2.7 As the Architect progresses with the preparation of the, Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, biweekly or otherwise at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the, Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, compliance with the Conditions, cost or schedules. Without limitation, the Construction Manager shall also perform the duties described in Section 3.1.4.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the procurement documents described in Section 3.2.18 (including a listing of the "General Conditions" costs for bidder's reference pursuant to Section 3.2.18.1.2) and proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction in order to produce cost savings or in order to maintain the Project schedule, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 The Construction Manager shall assist the Owner in obtaining information regarding applicable requirements for equal employment opportunity programs, and other programs as may be required by governmental and for quasi governmental authorities for inclusion in the Contract Documents.

§ 3.2.17 Following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

§ 3.2.18 Procurement

§ 3.2.18.1 Generally

§ 3.2.18.1.1 The Construction Manager shall submit the list of prospective contractors for the Architect's review and the Owner's approval.

§ 3.2.18.1.2 Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.2.18.1.3 The Construction Manager understands the special considerations which attach to the design and letting of bids or requesting of proposals on a public project. The Construction Manager is responsible for ensuring that procurements is conducted in a manner consistent with the Conditions.

§ 3.2.18.1.4 The Construction Manager shall assist the Architect in considering requests for substitutions, if the Proposal Documents permit substitutions, and shall, upon the Owner's approval, prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.2.18.2 Preparation of Procurement Documents

§ 3.2.18.2.1 The Construction Manager will provide to the Owner prior to bidding/proposals a complete and final set of Bidding/Proposal Documents fully suitable for both the bidding/proposal and construction phases of the Project work. The Construction Manager will ensure that no Bidding/Proposal Documents are preliminary, defective or incomplete in any material way.

§ 3.2.18.2.2 The Construction Manager shall prepare Supplemental Instructions to Bidders/Proposers and Supplementary General Conditions and an allocation of costs and responsibilities, including "General Conditions" costs, on which bidders/proposers will base their bids/proposals.

§ 3.2.18.2.3 The Construction Manager will reproduce the Drawings and other documents provided by the Architect for inclusion in the Bidding/Proposal Documents.

§ 3.2.18.2.4 The Construction Manager shall, at the request of the Owner, prepare digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients.

§ 3.2.18.3 Competitive Bidding

§ 3.2.18.3.1 Bidding Documents shall consist of bidding requirements and, if requested by the Owner, proposed Contract Documents. The Bidding Documents shall not be released until the Owner so directs in writing.

§ 3.2.18.3.2 The Construction Manager shall assist the Owner in bidding the Project by:

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;

- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 assisting the Architect to prepare timely responses to questions from prospective bidders and providing timely clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda;
- .5 organizing and conducting the opening of the bids, and summarizing the bids as described in Section § 2.2.6.2.3; and
- .6 documenting and distributing the bidding results, as directed by the Owner.

§ 3.2.18.3.3 The Construction Manager shall summarize the bids received for each component of the Work in a spreadsheet format, including all analysis and adjustments necessary to permit a meaningful comparison among bidders. The Construction Manager shall also provide, as appropriate, comments concerning the subcontractors and suppliers under consideration, including financial strength, past performance, and current workload, and shall make recommendations to the Owner for the Owner's award of Contracts or rejection of bids.

§ 3.2.18.4 NEGOTIATED PROPOSALS

§ 3.2.18.4.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.2.18.4.2 The Construction Manager shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Construction Manager shall assist the Architect in considering requests for substitutions, if the Proposal Documents permit substitutions, and shall, upon the Owner's approval, prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.2.19 Deleted

§ 3.2.20 Deleted

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Multiple Prime Contractors.

§ 3.2.22 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall verify that the Owner has paid applicable fees and assessments. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.23 The Construction Manager shall obtain the certificates of insurance from each Contractor and any Subcontractors prior to such Contractor's or Subcontractor's commencement of Work and shall confirm that such certificates of insurance comply with the requirements of the Contractor's contract with the Owner.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3, the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment. Notwithstanding the foregoing, the Construction Manager shall provide the services described in Section 3.3.29 following the issuance of the final Certificate for Payment as provided in such Section.

§ 3.3.2 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed.

§ 3.3.3 The Construction Manager shall provide on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement or otherwise agree in writing to such modifications.

§ 3.3.4 The Construction Manager shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Multiple Prime Contractors with each other and with those of the Construction Manager, the Owner and the Architect. The Construction Manager shall coordinate the activities of the Multiple Prime Contractors in accordance with the latest approved Project schedule and the Contract Documents.

§ 3.3.5 Utilizing the construction schedules provided by the Multiple Prime Contractors, the Construction Manager shall update the Project schedule, incorporating the activities of the Owner, Architect, and Multiple Prime Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

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

§ 3.3.7 Utilizing information from the Multiple Prime Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each of the Multiple Prime Contractors. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.9.1 The Construction Manager shall visit the site at intervals appropriate to the stage of construction, including regularly scheduled site meetings and visits, to become familiar with the progress and quality of the portion of the Work completed, to guard the Owner against defects and deficiencies in the Work that become known to the Construction Manager, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. On the basis of the site visits, the Construction Manager shall keep the Owner reasonably informed about the progress and quality of the Work and inform the Owner in writing of those defects and deficiencies in the Work and deviations from the Contract Documents and from the most recent construction schedule approved by the Owner.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. If the Contractor is required to submit a Control Estimate, the Construction Manager shall meet with the Owner and Contractor to review the Control Estimate. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall develop cash flow reports and forecasts for the Project.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Multiple Prime Contractors for progress and final payments. Such procedures shall be included in the Construction Management Plan and subject to the approval of the Owner pursuant to Section 3.2.3.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that the Construction Manager has reviewed the Application for Payment and evaluated the Work as required and has correlated the Application for Payment to the Work performed and that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to further evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager to the Owner, in writing, at the time of certification. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.12.4.1 Prior to certifying an Application for Payment, the Construction Manager shall visit the site as provided in Section 3.3.9.1 to confirm the accuracy of the information contained in such Application for Payment.

§ 3.3.12.4.2 Certification of an Application for Payment by the Construction Manager is a recommendations only; payment to the Contractor of amounts applied for, certified by the Construction Manager, and certified in a Certificate for Payment are subject to the Owner's approval, which approval may be withheld as provided in Section 10.10.

§ 3.3.13 The Construction Manager shall review the safety programs developed by each of the Multiple Prime Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Multiple Prime Contractors,

Subcontractors, agents or employees of the Contractors or Multiple Prime Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. Upon written authorization from the Owner, the Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or Multiple Prime Contractors, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.15.1 Notwithstanding Section 3.3.15, the Construction Manager shall be responsible to the extent Work is performed in a manner inconsistent with the Contract Documents as a result of the negligent act of omission of the Construction Manager or the failure of the Construction Manager to otherwise meet its obligations under this Agreement.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 Changes in the Work

§ 2.3.17.1 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents. The foregoing shall be performed in a manner consistent with this Section 3.3.17.

§ 2.3.17.2 The Construction Manager will be responsible for the review, evaluation and documentation of any and all Change Orders and Construction Change Directives that may be required. No Change Order or Construction Change Directive, however, will be effective against the Owner unless it has been signed and approved by the Owner. The Construction Manager will submit to the Owner a cost breakdown, as prepared by the Contractor, for any additional or changed work that is to be performed pursuant to the Change Order. This cost breakdown will include a comparison of the proposed prices and quantities of the Change Order with the original prices and quantities as bid, and an evaluation by the Architect and the Construction Manager of the reasonableness of such Change Order in writing in a complete and expeditious manner for review with the Owner.

§ 2.3.17.3 The Construction Manager will not present to the Owner for approval any Change Order that does not include the following provision prominently displayed on the face of the Change Order and previously agreed to by the Contractor involved:

'THE CONTRACTOR AGREES THAT THIS CHANGE ORDER ADJUSTS THE CONTRACT PRICE AND TIME TO REFLECT FAIRLY ALL OVERHEAD, PROFIT, CHARGES, COSTS, EXPENSES, DELAYS, DAMAGES AND OTHER PAYMENTS THAT MAY BE CLAIMED DUE AND OWING TO

THE CONTRACTOR AS OF THE ABOVE STATED DATE, AND AGREES THAT THE ACCEPTANCE OF THIS CHANGE ORDER BY THE OWNER WILL CONSTITUTE A COMPLETE AND FINAL ACCORD AND SETTLEMENT OF CONTRACTOR'S CLAIMS AGAINST THE OWNER ON ACCOUNT OF THIS OR ANY PRIOR CHANGE IN THE WORK."

§ 2.3.17.4 The Construction Manager will ensure that all Change Orders submitted to the Owner will be in the format of AIA, Document G701 Change Order, as revised, and will ensure that all such forms are fully and accurately completed for review by the Owner.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Multiple Prime Contractors for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor, other Multiple Prime Contractors, the Owner, or the Architect.

§ 3.3.20 The Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.20.1 Deleted

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§ 3.3.20.1.1 The Construction Manager shall submit written reports detailing, at a minimum, (1) the current status of the Project as it relates to the last approved Project schedule, (2) a look-ahead at the work to be progressed in the forth-coming month, (3) actions to be taken where the work of contractors is failing to meet the approved Project schedule, (4) the impact, if any, of change(s) issued during the previous month and actions needed to maintain the agreed to end date, (5) a listing of the requests for interpretations outstanding and the period they have been outstanding, (6) bids to be issued during the forth-coming month, (7) bids received and being analyzed, including their current status, (8) Contract status on Contracts issued or where the Owner has approved the award of the Work, (9) a cost report indicating the current anticipated completion cost, (10) major reasons for movement of cost during the previous month, (11) items of change awaiting Owner decision, (12) contractual claim status log, (13) Change Order status log, (14) Contracts closed out, (15) Value of construction, and related work, paid for by the Owner as it relates to the approved cash flow forecast and the movement during the previous month. Such reports are to be submitted to the Owner at a minimum of monthly, or as otherwise requested, in writing, by the Owner. The actual format and the manner of providing the progress report(s) shall be subject to the acceptance of the Owner

§ 3.3.20.2 In addition, for Projects constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and
- .4 Any other items as the Owner may require;

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§ 3.3.21 Utilizing the documents provided by the Contractor, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and

marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's or Multiple Prime Contractors' final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.24 Determination of Substantial Completion

§ 3.3.24.1 Substantial Completion shall be deemed to have been achieved when all of the following have occurred: (i) the Project Architect has issued a Certificate of Substantial Completion; (ii) the Project or, in the case of a phased project, specific units in a particular phase are capable of being beneficially occupied for this intended use; and (iii) in the case of Substantial Completion of a structure, an unconditional Certificate of Occupancy has been issued by the appropriate governmental entity for such structure.

§ 3.3.24.2 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

§ 3.3.24.3 The Construction Manager shall assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion. The inspections of the Construction Manager shall be conducted to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. The Construction Manager shall prepare for the Owner a written list of observable items, materials, or systems that are defective, or that require additional Work or replacement by the Contractor.

§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor or Multiple Prime Contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor or Multiple Prime Contractors: (1) certificates of insurance received from the Contractor or Multiple Prime Contractors; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens, and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, and Architect. Consent shall not be unreasonably withheld.

§ 3.3.29 Responsibilities Following Final Completion

§ 3.3.29.1 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 3.3.29.2 Upon request of the Owner, the Construction Manager will, at no cost to the Owner, cooperate, and secure the cooperation of its Consultants, and assist the Owner during any audit of the Project conducted by the Owner at any time after Substantial Completion.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Construction Manager shall provide the listed Additional Services only if specifically designated in the table below as the Construction Manager's responsibility, and the Owner shall compensate the Construction Manager as provided in Section 11.2.

(Designate the Additional Services the Construction Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Services	Responsibility (Construction Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Measured drawings		
§ 4.1.2 Architectural interior design (B252™-2007)		
§ 4.1.3 Tenant-related services		
§ 4.1.4 Commissioning (B211™-2007)		
§ 4.1.5 LEED® certification (B214™-2007)		
§ 4.1.6 Furniture, furnishings, and equipment design (B253™-2007)		
§ 4.1.7 [Other Additional Services, if any, specified in the RFP]	[If provided in the RFP]	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1, if not further described in an exhibit attached to this document.

«[If provided in the RFP] »

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Construction Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Construction Manager shall not proceed to provide the following services until the Construction Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality,

- complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
 - .3 Deleted
 - .4 Preparation for, and attendance at, a public presentation, meeting or hearing, to the extent not reasonably foreseeable on the date of execution of this Agreement;
 - .5 Preparation for, and attendance at a formal mediation, arbitration, or legal proceeding, except where the Construction Manager is party thereto; or
 - .6 Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;
 - .7 Deleted
 - .8 Deleted .

§ 4.3.2 To avoid delay in the Construction Phase, the Construction Manager shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Construction Manager, and the Owner shall have no further obligation to compensate the Construction Manager for those services:

- .1 Services in evaluating an extensive number of Claims submitted by a Contractor or others in connection with the Work when the Architect is serving as the Initial Decision Maker. Whether the number of Claims is extensive will depend on the scope of the Claims in question. In any event, fewer than [TBD] Claims shall not be considered extensive.
- .2 To the extent the Construction Manager's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier. Services described in this Agreement that are explicitly required to be provided after such 60 day period shall not be considered Additional Services.
- .3 Services required in an emergency to coordinate the activities of a Contractor or Multiple Prime Contractors in the event of risk of personal injury or serious property damage, consistent with Section 3.3.13.

§ 4.3.3 If the services covered by this Agreement have not been completed within «[TBD] » (« ») months of the date of this Agreement, through no fault of the Construction Manager, extension of the Construction Manager's services beyond that time shall be compensated as Additional Services.

§ 4.3.4 The Construction Manager shall perform all services requested by the Owner. Services requested by the Owner or recognized to be necessary after execution of this Agreement are presumed to be included within Basic Services unless clearly shown to not be so included. If the Construction Manager believes a service requested by the Owner or recognized to be necessary after execution of this Agreement is an Additional Service, prior to such performance, the Owner and the Construction Manager, solely after notice from the Construction Manager, given within five (5) days of the Owner's request, shall meet to determine if such services are within the Basic Services or Additional Services. If the Construction Manager fails to submit such notice, the Construction Manager shall be deemed to have waived any right to additional compensation for such services and the same shall be deemed part of the Basic Services.

§ 4.3.5 Notwithstanding anything to the contrary, (1) the Construction Manager shall provide any service requested by the Owner and at no additional cost to the Owner, to the extent such designated service is included in the Basic Services and (2) any services made necessary by the act or omission of the Construction Manager, its consultants or subcontractors shall be provided by the Construction Manager as Basic Services, at no additional cost to the Owner.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B132-2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition. The Owner shall provide the Construction Manager a copy (redacted at the Owner's discretion) of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 Unless provided by the Construction Manager, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 Unless provided by the Construction Manager, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall, in its sole discretion, furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities

under this Agreement. When performing construction or operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Construction Manager of any direct communications that may affect the Construction Manager's services.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager access to the Work wherever it is in preparation or progress.

§ 5.16 Nothing in this Article 5 limits the responsibilities of the Construction Manager under the Agreement; provided, however, that in the event the Owner fails to fulfill the requirements of this Article 5, the Construction Manager shall have the rights specified in Section 9.8.2.

§ 5.17 The Construction Manager shall review the services, information and reports provided by the Owner under this Article 5 and shall inform the Owner of any error or omission in such services, information and reports of which the Construction Manager has knowledge.

§ 5.18 Notwithstanding anything to the contrary in this Agreement, the Owner's review and approval of any and all documents, including but not limited to, the Construction Documents, bidding documents and the construction contracts or other matters required herein shall be for the purpose of providing the Construction Manager with information as to the Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of such documents and shall in no way create any liability on the part of the Owner for errors, inconsistencies or omissions in any approved documents.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit, compensation of the Construction Manager and Construction Manager's Consultants including compensation for reimbursable expenses at the job site, if any, compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager; provided, however, that the Construction Manager shall be responsible for any overrun of the Cost of the Work caused by the negligent act or omission of the Construction Manager or its consultants or failure of the Construction Manager to meet its obligations under this Agreement, or caused by factors of which the Construction Manager was aware but failed to consider in providing estimates to the Owner.

§ 6.3 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 Deleted

§ 6.5 Deleted

§ 6.6 Fixed Limit of Cost of the Work

§ 6.6.1 The Fixed Limit of the Cost of the Work for this Project is [TBD] Dollars (\$). The Fixed Limit includes all matters included in the Cost of the Work and, notwithstanding anything in this Agreement to the contrary, shall not be adjusted under any circumstances. This amount is hereby accepted by the Owner and Construction Manager as the Fixed Limit. The actual costs of the Project shall not exceed the Fixed Limit.

§ 6.6.2 The Construction Manager shall not be liable to the Owner for any amount the actual Cost of the Work exceed the Fixed Limit; provided, however, that the Construction Manager shall be responsible for any overrun of the Cost of the Work caused by the negligent act or omission of the Construction Manager or its consultants or failure of the Construction Manager to meet its obligations under this Agreement.

§ 6.7 Deviation from Fixed Limit or Estimates

§ 6.7.1 If an estimate of the Cost of the Work exceeds the Fixed Limit, the Owner shall, without limiting its other remedies, be entitled to terminate this Agreement within fourteen (14) days of receipt of such estimate. Such termination shall be termination for cause.

§ 6.7.2 If at any time during the term of this Agreement actual costs of the Project exceeds the estimate of the Construction Cost most recently approved by the Owner, the Owner may, without limiting the other remedies of the Owner, terminate this Agreement within fourteen (14) days of the Construction Manager so informing the Owner in writing. Such termination shall be termination for cause.

§ 6.7.3 In the event of an excess described in Sections 6.7.1 or 6.7.2, the Owner may, in addition to exercising its right to terminate pursuant to such Sections, do each of the following in whole or in part:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and the Construction Manager, revise the Project program, scope, or quality as required to reduce the Construction Cost; or
- .3 implement any other collectively acceptable alternative.

§ 6.7.4 If the estimate of the Cost of the Work approved by the Owner at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid proposals/bids, the Owner may, in addition to the options described in Sections 6.7.1, 6.7.2, and 6.7.3, authorize rebidding or renegotiating of the Project within a reasonable time and, in such event, the Construction Manager shall provide rebid services without additional compensation. The scope of such rebid services shall be the same as the scope of the bidding phase services the Construction Manager is required to provide under this Agreement.

§ 6.7.5 To the extent the Owner chooses to proceed under Section 6.7.3.2, the Construction Manager shall, as part of its Basic Services:

- .1 Upon the Owner's request, cooperate with the Architect to provide the Owner a written explanation of the excess and propose changes, in writing, that would bring the Project within the Fixed Limit and most recently approved estimate of the Cost of the Work. The Owner may terminate this Agreement if such proposed changes are not received by the Owner within fourteen (14) days of the Owner's request and for fourteen (14) days following receipt of such proposed changes. Such termination shall be termination for cause.
- .2 Upon approval by the Owner of proposed changes, work with the Architect to modify the Construction Documents as necessary to effect such proposed changes.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 Deleted

§ 8.1.2 Deleted

§ 8.1.3 Deleted

§ 8.1.4 Deleted

§ 8.2 Mediation

§ 8.2.1 Deleted

§ 8.2.2 Deleted

§ 8.2.3 Deleted

§ 8.2.4 Deleted

§ 8.3 Arbitration

§ 8.3.1 Deleted

§ 8.3.1.1 Deleted

§ 8.3.2 Deleted

§ 8.3.3 Deleted

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Deleted

§ 8.3.4.2 Deleted

§ 8.3.4.3 Deleted

§ 8.4 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Article [TBD] of AIA Document C-232, with references therein to the "Contractor" including the Construction Manager, except that, during the Preconstruction Phase, a decision by the Initial Decision Maker shall not be a condition precedent to mediation and binding dispute resolution.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 Deleted

§ 9.2 Deleted

§ 9.3 Deleted

§ 9.4 Deleted

§ 9.5 Deleted

§ 9.6 Deleted

§ 9.7 Deleted

§ 9.7.1 Deleted

§ 9.7.2 Deleted

§ 9.8 Termination by Contractor

§ 9.8.1 If the Owner suspends the Project for 90 consecutive days or more than 120 cumulative days for reasons unrelated to a fault of the Construction Manager, the Construction Manager shall be compensated for services fully and satisfactorily performed by the Construction Manager prior to notice of such suspension. Upon such suspension by the Owner, the Construction Manager may terminate this Agreement by giving not less than 30 days' written notice to the Owner and upon the Owner's failure to resume the Project within such 30 day period. If the Agreement is not so terminated, when the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services.

§ 9.8.2 The Construction Manager may, upon 30 days notice to the Owner, terminate or suspend this Agreement upon the Owner's failure, without cause, to make a payment to the Construction Manager required under this Agreement or to otherwise fulfill an obligation Owner under this Agreement that is material to the Construction Manager's performance of the Services. The notice of termination or suspension must state with specificity the means by which the Owner may cure its nonperformance, and, the Construction Manager may not terminate or suspend this Agreement if, within 30 days of the notice, the Owner substantially takes such curative measures.

§ 9.8.3 Compensation upon termination by Contractor [TBD, based on method of compensation proposed]

§ 9.9 Termination by Owner

§ 9.9.1 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Construction Manager for cause as provided in this Agreement and upon the Construction Manager's material failure to perform in accordance with the terms of this Agreement.

§ 9.9.2 The Owner may, on seven day's notice, terminate the Contract for the Owner's convenience and without cause.

§ 9.4.1 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall:

1. cease operations as directed by the Owner in the notice; and
2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work.

§ 9.4.2 Compensation upon termination by Owner [TBD, based on method of compensation proposed]

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, as revised by the Owner (subject to the Construction Manager's approval to the extent provided in Section 3.3.3), except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager. If anything in any document incorporated into this Agreement, including the AIA Document A232-2009, directly conflicts with this Agreement regarding the rights and responsibilities of the Construction Manager, this Agreement shall govern.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.

§ 10.8 If the Construction Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ 10.9 The Construction Manager shall promptly advise the Owner of any claim or demand by a Contractor claiming that any amount is due to such Contractor or claiming any default by the Construction Manager or the Owner in any of their obligations to such Contractor.

§ 10.10 Any provision herein to the contrary notwithstanding, the Owner shall not be obligated to make any payment to the Construction Manager hereunder if Construction Manager is in default of any of its material obligations hereunder or otherwise is in default under any of the Contract Documents. The Owner may withhold such amount necessary to protect it from loss on account of such Construction Manager default.

§ 10.11 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect and their respective consultants, agents, representatives, officials and employees from and against claims, suits and/or legal actions of any type by third-parties, including without limitation claims for loss of or damage to property, personal or bodily injury, including death, and claims for losses of any type; from all judgments or decrees recovered therefore; and from all expenses for defending such claims, suits or legal actions, including without limitation court costs and attorneys' fees, which result or arise from the negligent acts or omissions, breaches, errors, torts or other improper unauthorized and/or unlawful acts of the Construction Manager and/or the Construction Manager's failure to comply with the provisions of this Agreement, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 10.11.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager’s Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

«[TBD] »Design Preconstruction
Bid Solicitation and Award

§ 11.1.2 For Construction Phase Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

« [TBD] »Construction Services
Post Occupancy and Warranty

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«[TBD] »At the Personnel Billing Rates Set Forth in 11.5

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation.)

«[TBD] »At the Personnel Billing Rates Set Forth in 11.5

§ 11.4 Compensation for Additional Services of the Construction Manager’s consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Construction Manager plus «zero » percent (« 0 » %), or as otherwise stated below:

«[TBD] »

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager’s and Construction Manager’s consultants’ normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«[TBD] »

Employee or Category	Rate (\$0.00)
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§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence, if authorized in advance by the Owner, and excluding regular commuting expenses;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

- .7 Professional photography, and presentation materials requested by the Owner;
- .8 Deleted
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures, subject to Section 11.6.3.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Construction Manager and the Construction Manager's consultants plus zero] » percent («0.0 » %) of the expenses incurred.

§ 11.6.3 The following costs of the Construction Manager shall not be reimbursed by the Owner:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's offices other than the site office.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office unless directly incurred in the course of managing or expediting this Project.
- .3 Corporate Office Overhead and general expenses
- .4 Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Services.
- .5 Costs due to the negligence or failure to fulfill a specific responsibility of the Construction Manager or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 11.6.4 Notwithstanding anything to the contrary, the Owner shall not be responsible for Reimbursable Expenses in excess of [\$TBD].

§ 11.7 Payments to the Construction Manager

§ 11.7.1 An initial payment of zero dollars» (\$ «0.00 ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «forty five » («45 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

« 0.001 » % «per annum »

§ 11.7.3 Deleted

§ 11.7.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times or at any time such records are lawfully requested by a government authority. The Construction Manager shall maintain such records for the longer of six years after final payment and any period required by law.

§ 11.8 The compensation due to the Construction Manager under Sections 11.1 through 11.5 shall be subject to a retainage of [zero percent] (0.00____%), due and payable to the Construction Manager upon Substantial Completion, except as provided hereinafter. If the event of the negligent act or omission of the Construction Manager or its consultants or the failure of the Construction Manager to fulfill its obligations under this Agreement, the Owner may, without limiting its other remedies, apply such retainage to offset any costs the Owner incurs due to the same.

§ 11.8.1 Retainage withheld from compensation for Preapproval and Preconstruction Services shall be due and payable within seven (7) days of the commencement of the Construction Phase.

§ 11.8.2 In the event the last approved estimate of the Cost of the Work or the Project Schedule is exceeded due to the fault of the Construction Manager, the Owner may, without limiting its other remedies, apply such retainage to offset any costs the Owner incurs due to the same.

§ 11.9 Partial payments to any party, a Certificate for Payment, a progress payment or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents due to an act or omission of the Contract Manager nor an admission by the Owner that the Construction Manager has performed the Services in a manner consistent with this Agreement.

§ 11.10 If any portion of the Construction Manager's compensation is based upon a percentage of the Cost of the Work, then Cost of the Work, for the purpose of determining such compensation, shall not include (1) the compensation of the Construction Manager or Construction Manager's consultants, (2) price increases for construction materials over the prices estimated in the version of the estimate of the Cost of the Work provided in Section 3.2.17 (unless the parties explicitly agree in writing to use an earlier or later estimate for the purposes of this Section 11.10), and (3) increases in the Cost of the Work resulting from the Owner choosing to proceed under Section 6.7.3.1.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

« »

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C132™-2009, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .3 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- .4 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

« »RPGL-2013-12 Request for Qualifications/Request for Proposal
Construction Management Services, Glastonbury Riverfront Park – Phase 2

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

OWNER *(Signature)*

« »« »Richard J. Johnson
Town Manager

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)