

**REQUEST FOR PROPOSAL (RFP)**  
**RFP #COX004208**  
**INDEPENDENT COMMISSIONING SERVICES**  
**FOR**  
**REPLACEMENT OF BASSICK HIGH SCHOOL**  
**Bridgeport, CT**

(4) Sealed bids to provide Independent Commissioning Services for the Replacement of Bassick High School project located in Bridgeport, Connecticut, will be received by the Department of Public Purchasing, 999 Broad St, Bridgeport, Connecticut 06604. All Proposals are due **August 7, 2019 @ 2:00 PM**, and then, at said office, be publicly opened by the Purchasing Agent and read aloud.

The Request for Proposal package and all other contract documents may be examined at the following:

School Construction Program 999 Broad Street Bridgeport, CT 06604	Dept. of Public Purchases 999 Broad Street Bridgeport, CT 06604
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This bid will be available on [www.bidsync.com](http://www.bidsync.com) and bidder should periodically check the site for addenda. Late bids or bids received at any other location will not be accepted.

**Please mark your bid envelopes as follows:**

**City of Bridgeport**  
**Department of Public Purchases**  
**999 Broad Street**  
**Bridgeport, CT 06604**  
**RFP #COX004208**  
**Independent Commissioning Services**  
**Replacement of Bassick High School**

Should your envelope not be marked accordingly, the City will not assume responsibility..

For further information on the specific project requirements or to obtain a copy the RFP please contact Larry Schilling, Program Manager, Bridgeport School Construction Program at [larry.schilling@bridgeportct.gov](mailto:larry.schilling@bridgeportct.gov) or at (203)330-4231.

Bernd Tardy,  
Purchasing Agent

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Acct: 227209

PO: COX004208

Please run this ad on Sunday July 12,2019 and send a copy to us. Please fax @ 576-3959 with cost of ad, problems or questions, or you can call @576-3960.

City of Bridgeport, Connecticut

Request for Proposal  
Independent Commissioning Services

RFP #COX004208

REPLACEMENT OF BASSICK HIGH SCHOOL

JULY 1, 2019

**REQUEST FOR PROPOSAL 00010**

**RFP #COX004208**

**INDEPENDENT COMMISSIONING SERVICES**

**FOR**

**REPLACEMENT OF BASSICK HIGH SCHOOL  
Bridgeport, CT**

1. Sealed bids to provide Independent Commissioning Services for Black Rock, Harding and Central High School projects located in Bridgeport, Connecticut, will be received by the Department of Public Purchasing, 999 Broad St, Bridgeport, Connecticut 06604. All Proposals are due August 7, 2019 @ 2:00 PM, and then, at said office, be publicly opened by the Purchasing Agent and read aloud.
2. Each bid must be submitted with Four (4) copies
3. Late bids or bids received at any other location will not be accepted.

The City of Bridgeport reserves the right to award based upon the evaluation of the proposals deemed to be in the best interest of the City. The City of Bridgeport reserves the right to waive any formalities, irregularities, or technical defects in the proposals and award based upon the evaluation of the package in the best interest of the City.

**Pre Bid Conference**

1. None Scheduled.

The Request for Proposal package and all other contract documents may be examined at the following:

School Construction Program 999 Broad Street Bridgeport, CT 06604	Dept. of Public Purchases 999 Broad Street Bridgeport, CT 06604
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Addenda will be issued only to firms that have requested the RFP package from the Department of Public Purchasing.

All firms shall examine the "Instructions to Bidders" and comply and conform strictly to the conditions and instructions contained therein.

Firms are advised to be familiar with the requirements of the RFP, including but not limited to, insurance and contract compliance issues.

**Proposers shall submit four copies** and shall be considered valid and stand available for acceptance for a period of Ninety (90) days from the date the proposals are received. No bidder may withdraw their bid during this period.

**Please mark you bid envelopes as follows:**

City of Bridgeport  
Department of Public Purchases  
999 Broad Street  
Bridgeport, CT 06604

RFP #COX004208  
Independent Commissioning Services  
REPLACEMENT of BASSICK HIGH SCHOOL

Should your envelope not be marked accordingly, the City will not assume responsibility. Proposers shall submit along with their Bid Proposal, the following forms, properly executed with all answers and statements complete and signed by an authorized representative of the Bidder:

**(A) Firms shall submit with their bid, the following forms, properly executed with all answers and statements complete and signed by an authorized representative of the Firm:**

1. 00300 Form of Proposal
2. 00320 Non-Collusion Affidavit
3. 00360 EEO Form
4. Bidder Qualification supporting documentation (If Needed)

The City of Bridgeport reserves the right to reject any and all proposals in whole or in part or to waive any informality in bidding if it is determined to be in the best interest of the City of Bridgeport.

Firms are hereby instructed to not include in your Bid Proposal sales taxes, *for which the city is not liable*, as **tax exemption** certificates will be furnished upon request. The bidder is to include any Federal, State or City taxes that do not fall under the above said tax exempt certificates.

The bidder must not discriminate, nor permit discrimination against any person on the grounds of race, national origin, religion, sex, handicap, sexual orientation, or veteran status, in their employment practices, in any of their contractual arrangements, in all services and accommodations they offer the public or in this or their business operations.

**NOTES:**

**All applicable laws, ordinances, rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout.**

**Late submissions or any submissions received at any other locations, other than the Department of Public Purchasing, 999 Broad St. Bridgeport, CT 06604 will not be accepted. Four (4) copies of your Proposal and supporting required documents must be submitted in a sealed envelope.**

The successful firm shall be required to sign the City of Bridgeport "Contract Agreement" contained within the documents with no exceptions.

**END OF SECTION**

FORM OF PROPOSAL 00300

FOR  
COX004208  
INDEPENDENT COMMISSIONING SERVICES

REPLACEMENT OF BASSICK HIGH SCHOOL  
Bridgeport, CT

Date \_\_\_\_\_

City of Bridgeport  
Department of Public Purchasing  
Morton Government Center  
999 Broad St.  
Bridgeport, CT 06604

Gentlemen:

1. Pursuant to and in compliance with your Request for Proposal relating thereto, the under-  
signed,

\_\_\_\_\_  
(Company Name)

having carefully examined the Contract Documents consisting of RFP #COB369132 hereby  
offers and agrees as follows:

To provide all materials, all labor and all else whatsoever necessary to properly finish all  
work in connection with the RFP #COX004208, to the satisfaction of the City, Program  
Manager, Architect and Construction Manager for the lump sum as follows:

Project	LUMP SUM PRICE (WRITTEN)	LUMP SUM PRICE (NUMBERS)
BASSICK HIGH SCHOOL		

**UNIT PRICES**

None Required

**UNIT LABOR RATES**

The following are hourly wage rates for all personnel associated with this scope of service for performing extra work on a time and material basis. These rates should reflect the salary inclusive of all taxes, supervision, over-head and profit, home office support, travel for the work being performed.

- Principal - rate per hour \$ \_\_\_\_\_
- Project Manager – rate per hour \$ \_\_\_\_\_
- Engineer – rate per hour \$ \_\_\_\_\_
- Commissioning Specialist – rate per hour \$ \_\_\_\_\_
- Field Representative – rate per hour \$ \_\_\_\_\_
- Technical Support \$ \_\_\_\_\_
- CAD Operator \$ \_\_\_\_\_
- Support \$ \_\_\_\_\_
- Other \$ \_\_\_\_\_

For additional work performed by this firm the cost to the Owner may include an Allowance for overhead and profit not to exceed fifteen (15) percent on the contractors own labor (included in the rates above), equipment and supplies and ten (10) percent on materials, supplies, rental equipment and sub-contracted work.

If the net value of a change results in a credit from the contractor, the credit shall be the net cost without overhead or profit.

**MANDATORY ALTERNATES**

None Required.

**ADDENDA**

Acknowledgment is hereby made of the following addenda supplements to the Drawings and Specifications:

Addendum No. _____ Dated _____	Addendum No. _____ Dated _____
Addendum No. _____ Dated _____	Addendum No. _____ Dated _____
Addendum No. _____ Dated _____	Addendum No. _____ Dated _____

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this proposal each bidder and each person signing on behalf of any firm, certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the opening, directly or indirectly, to any other bidder or to any competitor; and
3. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition. The foregoing statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury and is made pursuant to the applicable section of the General Laws of the State of Connecticut as most recently amended.

**FIRM QUALIFICATIONS**

1. The undersigned company has been in business under it's present name for \_\_\_\_ years.
2. The undersigned company has had \_\_\_\_ years experience in construction work similar to that described in the bid documents for this project.
3. List below the construction projects the undersigned company currently has under contract as of this date:

Contract Sum	Class of Work	% Complete	Name & Address of Owner

4. List below a minimum of three (3) projects the undersigned company has performed in the past five (5) years which are representative of this project and would qualify you for this work:
5. If applicable complete the follow; **if not applicable state N/A:**
  - a. Has the undersigned company ever failed to complete awarded work. (If the answer is yes, please provide location(s), date(s) and reason(s) below)
  - b. Has any officer or partner of the undersigned company, while performing in the capacity of an officer, partner, or individual owner of another organization, ever failed to complete a construction contract. (If yes, please state below the following information: name of individual(s), name(s) of organization and reason(s))
6. List the number of all litigation or arbitration proceedings, including out-of-court settlements ini-



tiated by or against you within the past three (3) years, including all pending cases.

7. Has your Company or a subcontractor to and through you within the past 5 years been subject of a claim file formally or informally by an Owner, Construction Manager, or General Contractor for failure to meet a deadline, a milestone, a schedule, or the completion of a project? Please **circle** the appropriate response. YES NO  
If yes, state the project, location, Owner, subcontractor (if applicable) and by whom the claim was filed.

8. Has your Company or a subcontractor to and through you within the past 5 years paid liquidated damages or a penalty for failing to meet a deadline, a milestone, a schedule, or the completion of the project? Please **circle** the appropriate response. YES NO

9. Has your Company or a subcontractor to and through you ever filed within the past 5 years a formal or informal claim to an Owner, Construction manager or General Contractor for acceleration, delay, and/or other types of recovery costs? Please **circle** the appropriate response: YES NO  
If yes, state the project, location, and to whom the claim was filed and the dollar amount.

10. In accordance with Public Act 03-215 (an act concerning State construction contracts), complete the following items if your bid is in excess of \$500,000:

a. Do you have a DAS Pre-Qualification Certificate: YES \_\_\_\_\_ No \_\_\_\_\_

b. List classifications that you are pre-qualified for:

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11. The bid must list and contain the following:

(a) the name, title and place of business of the person or persons making the same as stated below (List Below):

(b) the names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated below:

(c) By submitting this proposal, this bidder states and testifies that he or she has made no connection with any other person making a bid for the same purpose and that it is in all respects fair and without collusion or fraud.

(d) By submitting this proposal, this bidder states and testifies that no Council member or

other officer or employee or person whose salary is payable in whole or part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof.

- (e) By submitting this proposal, this bidder states and testifies that he or she is not in arrears to the City or to any agency upon a debt or contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City to any agency thereof, except as set forth in the bid.

12. Proposed Subcontractor Listing

This below must be filled out by each bidder. Attach additional sheets if necessary.

Subcontractor Name	Address	Trade
1. _____		
2. _____		

13. OTHER REQUIREMENTS

It is understood that the Owner reserves the right to accept or reject any and all bids that the Owner deems to be in his best interest.

Upon notification of acceptance of this proposal, the undersigned agrees to execute a contract in the form as stated within these contract documents for the amount stated.

Prices quoted shall be guaranteed for Ninety (90) days after date of proposal. If written notice of award is received within ninety (90) calendar days after the opening of bids, the undersigned agrees to execute said contract and furnish to the Owner within ten (10) days after receipt of said notice of award, the executed Contract and Insurance Certificates required herein.

The undersigned hereby certifies that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

By submission of this proposal, the undersigned acknowledges that they have reviewed all documents and have included in the proposal a sum to cover the costs of all items in the required scope of services.

By submission of this proposal, the undersigned acknowledges that they have read the job narrative and schedule requirements and agrees to provide sufficient staff and organization and to select subcontractors and suppliers to comply with the requirements for submittals, delivery dates, work periods, and completion dates as specified.

Respectfully submitted,

By: \_\_\_\_\_

Title: \_\_\_\_\_

Business Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number/Fax Number: \_\_\_\_\_

Attest: \_\_\_\_\_

**SEAL IF REQUIRED**

EQUAL EMPLOYMENT OPPORTUNITY 00815

INDEPENDENT COMMISSIONING SERVICES

REPLACEMENT OF BASSICK HIGH SCHOOL

**PART 1 – GENERAL**

**1.01 EQUAL EMPLOYMENT OPPORTUNITY**

- A. The Contractor agrees and warrants that during the performance of this contract he will not Discriminate or permit discrimination against any person or group of persons because of race, color, religion, sex, age or national origin in any manner prohibited by the laws of the United States or of the state of Connecticut, and further agrees to take affirmative action that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Office of Contract Compliance of the City of Bridgeport setting forth the provisions of this section.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age or national origin.
- C. The Contractor will send to each labor union or other representative with which he has a collective bargaining agreement or other contract or understanding, and to each vendor with which he has a contract or understanding, a notice to be provided advising the labor union or worker's representative of the Contractor's commitments under this division, and shall post copies of such notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of this Section and with all the rules and regulations or orders issued by the Office of Contract Compliance pursuant thereto.
- E. The Contractor will provide the Office of Contract Compliance with such information requested by said office concerning the employment pattern, practices and procedures of the Contractor as relate to the provisions of subsections A through C of this Section and rules and regulations and/or orders issued pursuant thereto.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any rule, regulation or order issued under this Section, the Contract may be canceled, terminated or suspended, in whole or in part and such other sanctions may be imposed and remedies invoked as are provided under the provisions of Section 3.12.100(D) of the City of Bridgeport Ordinances and rules, regulations or orders issued pursuant thereto, or as provided by federal and state laws.
- G. The Contractor will include the provisions of subsection A of this Section, in every subcontract or purchase order unless exempted by rules, regulations or orders of the Office of Contract Compliance issued pursuant to Section 3.12.060 of the City of Bridgeport Ordinances, so that such provision will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Office of Contract Compliance may direct as a means of enforcing this Section, including sanctions for non-compliance in accordance with the provisions of Section 3.12.100 of the City of Bridgeport Ordinances.

**PART 2 – PRODUCTS** [NOT USED]

**PART 3 – EXECUTION** [NOT USED]

**END OF SECTION**

EEO  
In



6. (a) Identify all officers, directors, managing or general partners, or managing members.

<u>Name</u>	<u>Address</u>	<u>Title</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) Identify owners of 5% or more interest in the Business:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. Identify any parent, affiliate or subsidiary organization of the Business.

(a) Company's name \_\_\_\_\_, a

- |  |  |
|--|--|
| <input type="checkbox"/> a corporation                   | <input type="checkbox"/> a general partnership |
| <input type="checkbox"/> a limited liability company     | <input type="checkbox"/> a sole proprietorship |
| <input type="checkbox"/> a limited liability partnership | <input type="checkbox"/> other _____           |

State of Incorporation or organization: \_\_\_\_\_

Relationship to your company: \_\_\_\_\_

(b) Company's name \_\_\_\_\_, a

- |  |  |
|--|--|
| <input type="checkbox"/> a corporation                   | <input type="checkbox"/> a general partnership |
| <input type="checkbox"/> a limited liability company     | <input type="checkbox"/> a sole proprietorship |
| <input type="checkbox"/> a limited liability partnership | <input type="checkbox"/> other _____           |

State of Incorporation or organization: \_\_\_\_\_

Relationship to your company: \_\_\_\_\_

8. Has the Business, any parent, affiliate or subsidiary company, or any of their respective officers, directors, owners, general partners, managing members, within the past three (3) years been convicted of, entered a plea of guilty, entered a plea of *nolo contendere*, concluded or served a sentence imposed for, or otherwise admitted to:

	<u>Yes</u>	<u>No</u>
a) the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract?	<input type="checkbox"/>	<input type="checkbox"/>
b) the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records; receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a municipal contractor?	<input type="checkbox"/>	<input type="checkbox"/>
c) the violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals to a public or private contract or subcontract?	<input type="checkbox"/>	<input type="checkbox"/>
d) fraudulent, criminal or other seriously improper conduct while participating in a joint venture or similar arrangement.	<input type="checkbox"/>	<input type="checkbox"/>
e) willfully failing to perform in accordance with the terms of one or more public contracts, agreements or transactions?	<input type="checkbox"/>	<input type="checkbox"/>
f) having a history of failure to perform or a history of unsatisfactory performance of one or more public contracts, agreements or transactions?	<input type="checkbox"/>	<input type="checkbox"/>
g) willfully violating a statutory or regulatory provision or requirement applicable to a public contract, agreement or transaction?	<input type="checkbox"/>	<input type="checkbox"/>

**IF YOU ANSWER YES TO ANY PART OF PARAGRAPH 7, EXPLAIN ON AN ATTACHED SHEET.**

9. Initial as appropriate below:

None of the persons listed herein is related by blood or marriage to any City of Bridgeport government official or employee. \_\_\_\_\_ (*Initial*)

OR

One or more of the persons listed herein is related by blood or marriage to a City of Bridgeport government official or employee. (*Explain in detail below or attach additional sheet if necessary*). \_\_\_\_\_ (*Initial*)

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10. Does the Business, any parent, affiliate or subsidiary company, or any of their respective officers, directors, owners, general partners, managing members, employees, or agents have any business or familial relationship, through ownership, directorship, contractual arrangement, control, or other arrangement with any of the subcontractors to be used on the work involved in the bid for which this form is being submitted?

**IF YOU ANSWER YES TO ANY PART OF PARAGRAPH 9, EXPLAIN ON AN ATTACHED SHEET.**

11. Read and initial at the end of the following paragraph:

BY INITIALING BELOW, THE UNDERSIGNED REPRESENTS THAT THERE EXISTS NO KNOWN OR SUSPECTED CONFLICTS OF INTEREST BETWEEN THE BUSINESS, ITS PARENT, AFFILIATES OR SUBSIDIARIES AND THE CITY OF BRIDGEPORT. \_\_\_\_\_ (Initial)

12. Read and initial at the end of the following paragraph:

BY INITIALING BELOW, THE UNDERSIGNED UNDERSTANDS THAT THE DUTY TO PROVIDE THE INFORMATION REQUESTED IN THIS FORM IS A CONTINUING OBLIGATION AND THAT THE INFORMATION REQUIRED BY THIS FORM MUST AND WILL BE PROMPTLY UPDATED UPON ANY CHANGE. \_\_\_\_\_ (Initial)

**WARNING: Falsifying information on this form, or failing to promptly notify the City of changes to the information contained in it during the course of the Business' performance of the work will constitute a default under any contract or purchase order awarded to the Business, and will permit the City to terminate its contract with the Business and pursue its legal rights and remedies as to such Business or persons associated therewith.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:  
duly-authorized





SCOPE OF SERVICES 00600  
INDEPENDENT COMMISSIONING SERVICES  
REPLACEMENT OF BASSICK HIGH SCHOOL

**LIST OF PROJECTS:**

- Bassick High School

**SECTION 1 – GENERAL PROVISIONS**

1.1 GENERAL DESCRIPTION OF SERVICES

- A. Customary Commissioning Services: The Commissioning Services shall consist of the Services described herein.
- B. Scope of Commissioning Services: The scope of the Commissioning Services are described generally in this Agreement and shall also include those services that are reasonable, consistent with and necessary to complete Commissioning.
- C. Cooperation with Other Parties and Participants: The Commissioning Firm shall cooperate fully with and confer with any architect, engineer, consultant, construction manager or other professional identified by the Owner in connection with the Project.

1.2 PROJECT SCHEDULES

- A Bassick High School
  - Design Phases: Now to September 2020
  - Demolition and Construction July 2020 to August 2022
  - Occupancy Phase August 2022 to August 2023

1.3 PROPOSAL & COMPENSATION

- A. The Commissioning Firm shall submit a lump sum fee for the project's Commissioning. Refer to the Form of Proposal, Attachment A. Award will be based upon the the lowest qualified responsible bidder's fee for the project The fee shall be a stipulated sum for all services noted in this proposal. Refer to the Cost Worksheets in the Form of Proposal, Attachment A. The cost of Commissioning shall include, but not be limited to, the furnishing of all materials, equipment, labor, and any required insurance.
- B. The Proposal shall identify any subcontractors and/or sub consultants anticipated to be used. The Proposal shall also identify and specify a time and

material price for any other cost or service which is not otherwise addressed in this ITB.

- C. Hourly rates inclusive of all overhead and expenses shall be provided on all proposed personnel.
- D. List the key individuals who will make up the Commissioning Authority team for this contract. Describe their relevant qualifications and experience. This information is required in addition to any detailed resumes the proposer submits. The contract will require that this individual be committed to the projects for their duration.
- E. Provide project and professional references and experience for a minimum of three commissioning projects of similar size and scope for each of the school projects for which the proposer was the principal Commissioning Authority in the last three years. Include a description of the projects, identify when the proposer came into the projects, and describe the involvement of each individual on the proposer's team in the projects. For each project, attach a sheet that includes the name and telephone number of the owner's project manager, construction manager, facility administrator of the building, the design professionals, and the contractors.

#### 1.4 NOT USED

#### 1.5 USE OF COMMISSIONING REPORTS

- A. It is understood that the Owner, or the Architect and the Construction Manager on the Owner's behalf, may reproduce the Commissioning Firm's reports without modifications and distribute the reports in connection with the use or disposition of the property without incurring obligation for additional compensation to the Commissioning Firm. The original report shall remain the property of the Commissioning Firm.

#### 1.6 QUALIFICATIONS

- A. Knowledge of Federal and State laws and regulations governing the services outlined in the scope of services.
- B. Bidders shall represent a firm, company or team, possessing experience and expertise in Commissioning and the professional standards thereof, to undertake and successfully complete the Scope of Work as outlined in this Invitation to Bid..
- C. The staff designated by the Commissioning Firm shall satisfy the following requirements:
  - 1. Has acted as the principal Commissioning Firm for at least three projects (LEED for Schools or equivalent) of relative size and complexity to this project over the past three (3) years.

2. Recent extensive experience with sustainable design and construction projects, specifically LEED projects.
  3. Extensive knowledge in building operation and maintenance training.
  4. Extensive experience with operation and trouble shooting of HVAC systems and energy management systems.
  5. Knowledge in testing and balancing of various media systems.
  6. Experience with high performance system design and HVAC control strategy optimization.
  7. Excellent verbal and written communication skills. Highly organized; and able to work with both management and trade contractors.
  8. Experience in writing commissioning specifications.
  9. Staff licensed as Professional Engineers in mechanical or electrical engineering is required. Trade and contracting licensure is also desirable.
- D. The Commissioning Firm staff should be certified in building commissioning by a nationally recognized organization such as ASHRAE, the Building Commissioning Association, the Associated Air Balance Council Commissioning Group, the Association of Energy Engineers, or the National Environmental Balancing Bureau.

## SECTION 2 – PROJECT INFORMATION

- 2.1 **Bassick High School** is located at 1181 Fairfield Avenue Bridgeport, CT 06605. The existing buildings will be demolished and a new building constructed on the site containing 183,000 SF. The student population is projected to be 1,006. The construction budget is \$ 63,000,000. The design team is headed by Perkins Eastman with the construction managers being Bismark Construction Company.
- 2.2 The project is State funded and are authorized and governed by the State of Connecticut Regulations Sections 16a – 38 k – 1 through 9: The Establishment of High Performance Building Construction Standards. The compliance requirements are defined in the Connecticut Building Standard Guidelines Compliance Manual for High Performance Buildings developed by the Connecticut Office of Policy and Management (OPM). The compliance with these regulations will produce buildings that consume less energy, conserve natural resources, will be more comfortable, healthier and are easier and less costly to maintain.

## SECTION 3 – COMMISSIONING SCOPE OF SERVICES

### 3.1 GENERAL

- A. The City has adopted the Commissioning Process as its quality process to plan, design, construct, and operate this facility. This process will be based on and follow the requirements ASHRAE Guideline 0-2005. As with any quality process, the Commissioning Process provides tools to enable everyone involved in the construction of the facility to verify that the final facility meets the Owner's Project Requirements.

- B. A summary of the Commissioning Process that the City intends to implement on this project follows. The proposer is free to suggest changes and improvements to this process with the submission of a Proposal.

### 3.2 COMMISSIONING PROCESS DURING DESIGN

- A. The Commissioning Process activities completed by the Commissioning Authority during the Design Phase include:
- Works with the Commissioning Team to document the Owner's Project Requirements for the facility.
  - Works with the design professionals in documenting the Basis of Design.
  - Verifies the Basis of Design with regard to the Owner's Project Requirements.
  - Develops a Commissioning Plan encompassing the Design, Construction, Occupancy and Operation Phases.
  - Determines the commissioning requirements and activities to include in the Construction Documents, with review by the design team, for integration into the project's construction specification.
  - Review the in-depth design documentation developed by the design professionals.
  - Performs statistically based quality design review at 35%, 50%, 95%, and 100% completion of the drawings and specifications.

### 3.3 COMMISSIONING PROCESS DURING CONSTRUCTION

- A. The Commissioning Process activities accomplished by the Commissioning Authority during the Construction Phase include:
- Organizes the Commissioning Process components and conducts a pre-bid and pre-construction meeting where the Commissioning Process requirements are reviewed with the Commissioning Team.
  - Organizes and conducts periodic Commissioning Team meetings necessary to plan, develop the scope of, coordinate, and schedule activities and resolve problems.
  - Reviews submittals concurrent with the design professional's review.
  - Works with Contractors in completing Construction Checklists and tracking of Checklist completion.
  - Statistically samples completion of Construction Checklists on a periodic basis to verify that Contractor's quality process is achieving the Owner's Project Requirements.
  - Develops specific test procedures. The Contractors review the procedures.
  - Directs the execution of the tests by the Contractors.
  - Documents the results of the tests.
  - Documents the correction and retesting of noncompliance items by the Contractor.
  - Reviews the Systems Manual for achieving the Owner's Project Requirements.
  - Reviews, pre-approves, and verifies the training provided by the Contractors.
  - Verifies delivery of the Systems Manual.

### 3.4 COMMISSIONING PROCESS DURING OCCUPANCY AND OPERATIONS

- A. The Commissioning Process activities accomplished by the Commissioning Authority during the Occupancy and Operations Phase include:
- Schedules and verifies deferred and seasonal testing by the Contractor.
  - Verifies continuing training.
  - Accomplished a review of warranties with the operations and maintenance staff two months prior to expiration of warranty.
  - Schedules, organizes, and attends a lesson-learned workshop. The workshop is facilitated by an independent member of the Commissioning Authority's firm.
  - Completes the Final Commissioning Process Report.

### 3.5 LIMIT OF RESPONSIBILITIES

- A. The Commissioning Authority is not responsible for design concept, design criteria, compliance with codes, design or general construction scheduling, cost estimating, or construction management. The Commissioning Authority may assist with problem-solving or resolving nonconformance or deficiencies, but ultimately that responsibility resides with the general contractor and design professionals.

### 3.6 SYSTEMS TO BE COMMISSIONED (all systems required by LEED v. 2.2 NC)

- A. The following systems and assemblies will be commissioned: (where they are present in the design)
1. Central building automation system
  2. All equipment of the heating, ventilating and air conditioning systems
  3. Scheduled or occupancy sensor lighting controls
  4. Daylight dimming controls
  5. Refrigeration systems
  6. Emergency power generators and automatic transfer switching
  7. Life safety systems (fire alarm, egress pressurization, fire protection)
  8. Laboratory, hoods and pressurization
  9. Electrical including Security Systems
  10. Domestic and process water pumping and mixing systems
  11. Plumbing including domestic hot water and water using systems
  12. Kitchen Ventilation & associated Fire Suppression System
  13. Building envelope systems
  14. Renewable energy systems

## SECTION 4 – COMMISSIONING SCHEDULE

4.1 The project is currently in design and the pre construction commissioning activities will be commencing immediately.

END OF SECTION

**FORM OF AGREEMENT 00710**

**BETWEEN**

**CITY OF BRIDGEPORT**

**AND**

---

**For  
Independent Commissioning Services  
For  
REPLACEMENT OF BASSICK HIGH SCHOOL**

**PROFESSIONAL SERVICES AGREEMENT**

REPLACEMENT OF BASSICK HIGH SCHOOL

FORM OF AGREEMENT

00710 Page 1 of 28



THIS AGREEMENT IS MADE AND ENTERED INTO as of the XXXXXX, by and between the **CITY OF BRIDGEPORT**, a municipal corporation, located in Bridgeport, Connecticut, acting through the Bridgeport Schools Building Committee (hereinafter referred to as "**Owner**") and **XXXXXX**., having an address at XXXXX (hereinafter referred to as "**Consultant**").

WHEREAS, the Owner distributed Requests for Proposals on July 12, 2019 for Independent Commissioning Services for Replacement of Bassick High School project (see **Exhibit A** attached);

WHEREAS, the Consultant submitted its proposal, dated (see **Exhibit A** attached);

WHEREAS, the Owner selected the Consultant based upon its qualifications and price proposal and further based upon the Consultant's statements and representations made therein for purposes of entering into negotiation of a contract for professional consulting services for the Project;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

## **DEFINITIONS**

The following definitions will be used throughout this Agreement, unless the context requires otherwise:

**"Approval"** or **"Approved"** means, with respect to the administration and performance of this Agreement, that the Owner, in combination with the Owner's Representative, the Program Manager, and/or the Construction Manager, as the context requires, has or have given its or their respective written approval(s) to the Consultant when required, including but not limited to, the approval of budgets, Task Orders, directions, changes or deviations from or with respect to Task Orders, additional expenses, substitutions, time delays, schedule changes, etc.

**Construction Manager**" means the construction manager engaged by the Owner for the Project specified in a Task Order.

**"Consultant"** means \_\_\_\_\_, the Consultant's Representative, and its Approved consultants and subcontractors designated in writing from time to time during the term of this Agreement.

**"Consultant's Representative"** means a specific individual or individuals designated in writing by the Consultant to the Owner from time to time as its representative or representatives with respect to the Project pursuant to Paragraph 1.6

of this Agreement. At the inception of this Agreement, the Consultant's Representative shall be \_\_\_\_\_.

**"Owner"** means the City of Bridgeport, a municipal corporation, acting through its City Council or the Owner's Representative who shall be designated in writing from time to time during the term of this Agreement.

**"Owner's Representative"** means a specific individual or individuals designated in writing by the Owner to the Consultant from time to time during the term of this Agreement as its representative or representatives with respect to the Project. At the inception of this Agreement, the Owner's Representative shall be John Ricci, **Director Department of Public Facilities**, or his designee set forth in writing to the Consultant.

**"Program Manager"** means ., acting through a specific individual or individuals designated in writing from time to time during the term of this Agreement to the Owner and the Consultant as its representative or representatives with respect to the Project specified in a Task Order. At the inception of this Agreement, the designee of the Program Manager shall be Larry Schilling, or his designee set forth in writing to the Owner and the Consultant.

**"Project"** means construction of schools and other improvements as set forth in the Task Orders assigned to the Consultant.

**"Task Schedule"** means the schedule of milestones and other time requirements established in each Task Order.

**"Services"** means the commissioning of building systems and other necessary professional services required by a Task Order for the completion of the work described therein.

**"Task"** or **"Task Order"** is a description of the Services requested from the Consultant, the format of which is described generally in Paragraph 1.1.D and Exhibit B of this Agreement, and the description of the particular Services requested from the Consultant in a Task Order issued to the Consultant from time to time during the term of this Agreement.

**"Term"** means the duration of this Agreement, commencing upon the date of issuance by the Owner of a Notice to Proceed on Task Order No. 1 and ending either on (a) the completion of the final Task Order then outstanding or (b) the earlier termination of this Agreement as provided herein, or (c) December 31, 2016, whichever event shall first occur. The Owner reserves the right to extend the term of this Agreement, in writing, for one additional year, at its sole discretion, on terms and conditions mutually agreed to between the parties.

## **ARTICLE I BASIC AGREEMENT**

## 1.1 Structure of the Agreement

A. **Consultant's Qualifications.** The Consultant represents that it is duly-licensed in the State of Connecticut and is qualified and experienced in the field of special inspections and material testing services related to the construction of public facilities and other public improvements in accordance with the requirements of the Owner as set forth in one or more Task Orders. The parties are entering into this Agreement with the understanding that the Consultant will provide multi-disciplinary Services through its own forces, including but not limited to testing, sampling, inspections, field reporting, and related services necessary for the completion of each Task Order. The licenses of the Consultant shall be submitted to the Owner prior to the execution of this Agreement or promptly in advance of engaging any sub-contractor and sub-consultant not identified to the Owner at the time of the execution of this Agreement. The Consultant will conduct, prepare and present to the Owner for review and acceptance all required field reports which shall be prepared in cooperation with the Owner's Representative, the Program Manager and the Construction Manager as determined by the Owner, as necessary to accomplish the Tasks in the manner more specifically set forth in this Agreement and in accordance with the Task Orders issued by the Owner. The Services shall include, without being limited to, special inspections and material testing and preparation of field reports to avoid or mitigate delays, and other services that may be required or desired.

B. **Use of Task Orders.** The Consulting Services required by this Agreement will be assigned by Task Order to allow for the sequential or partial completion of work related to school improvements in response to the City's proposed Project requirements. The Consulting Services shall be authorized by one or more Task Orders. The content, schedule and Compensation for each Task Order shall be negotiated prior to commencing Services under such Task Order.

C. **Assignment of Tasks.** At the inception of this Agreement, the Consultant shall perform the Services within the scope of work specifically identified as "**Task Order No. 1**" attached hereto. The Owner shall identify and inform the Consultant of additional Tasks that it wishes the Consultant to perform, each such Task to be set forth in a written Task Order upon mutual agreement of the terms and conditions thereof between the Owner and the Consultant. Each additional Task Order will be considered an amendment to this Agreement, shall be incorporated by reference into this Agreement and shall become a part hereof as if fully set forth herein. Each Task Order shall be commenced by the Consultant within five (5) business days of receipt of a written notice to proceed (each, a "**Notice to Proceed**").

D. **Task Order Format.** A format for a Task Order is attached as **Exhibit B**. Its inclusion as part of this Agreement illustrates the general framework to be used in authorizing each and every Task Order requiring the Consultant's Services for the duration of this Agreement. The Consultant will be required to prepare a proposal of unit prices to be utilized through the Consultant's forces or through each subcontractor employed or to be employed to perform each Task Order for the duration of the Task

Order. After negotiations with the Owner, the proposal shall be attached to the Task Order.

F. **Authority to Request Additional Tasks or Services.** It is understood and agreed by the parties that, upon the Approval of this Agreement, only the Owner's Representative, designated by the Owner in writing from time to time to the Consultant, shall have the authority to add Tasks or Services to this Agreement.

1.2 **Compensation.** The Owner shall compensate the Consultant for the authorized Services to be performed pursuant to this Agreement as follows:

A. **Basis.** The Consultant shall be compensated for each Task Order on a not-to-exceed price based upon itemized number of tasks agreed to by the parties multiplied by the rates set forth on **Exhibit C or a Lump Sum not to Exceed Price** (hereinafter "**Compensation**"). If required by the Owner, the Consultant shall submit projections for each month during the projected duration of such Task Order of the amounts of Compensation to be requested including its best estimate of Reimbursable Expenses (defined below) in order for the Owner to appropriately allocate funds for such Compensation.

B. **Established Rates Per Job Category.** Compensation to the Consultant, whether for its own forces or those of its subcontractors and consultants, shall be computed on the basis of rates ("**Billing Rates**"). A hourly rate schedule for Services to be performed by the Consultant, its subcontractors and consultants is attached hereto as **Exhibit C** and incorporated herein by reference, which rate schedule will apply through the duration of the project. Requisitions for payment shall be charged against each hourly rate or individual line item identified on each Task Order.

1.3 **Payment.** Payment of the Compensation set forth herein shall be made to the Consultant as follows:

A. **Progress Payments.** Payment of the Compensation set forth in this Agreement shall be made monthly for the Services completed during the prior month. The accumulated total Compensation at the completion of each Task Order, excluding Compensation for additional services requested in writing by the Owner in connection with each such Task Order, if any, shall not exceed the agreed-to Compensation payable for Services to be performed under each Task Order.

B. **Submission of Invoices.** All invoices for Compensation shall be submitted monthly for the prior month's Services rendered on each Task Order then being performed. Each invoice shall be on a form approved by the Owner and shall contain sufficient supporting data acceptable to Owner.

C. **Timing of Submission; Payment; Interest.** Invoices shall be submitted by the fifth (5th) day of the month for Services rendered and Reimbursable Expenses incurred during the previous month. The Owner shall have thirty (30) days to review

each complete invoice, and payment of all undisputed amounts for Compensation and Reimbursable Expenses, less Retainage, shall be made within forty-five (45) days after receipt thereof. Notwithstanding anything herein to the contrary, Compensation shall not be paid on disputed invoices or portions thereof and no interest shall be payable to the Consultant on amounts withheld by the Owner based upon a good faith dispute with the Consultant.

D. **Responsibility for Certain Payments.** The Consultant shall remain responsible, and shall indemnify and hold harmless the Owner, from and against all liability for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to the Consultant, its subcontractors and consultants and their respective employees.

E. **Unauthorized Charges.** The Consultant expressly understands and agrees that the Owner shall not be liable for the payment of any Services or other work performed by the Consultant, its subcontractors and consultants based upon unauthorized representations of or directions from officers, agents or employees of the Owner other than the Owner's Representative which exceed the Budget for this Project ("**Unauthorized Charges**") unless the Consultant submits in writing to the Owner within thirty (30) days of rendering Services or other work that is not authorized or that may exceed the Budget a request for approval of such Unauthorized Charges. Unauthorized Charges that are not brought to the Owner's attention within such 30-day period will not be honored and payment therefor will be deemed waived by the Consultant, its subcontractors and consultants.

1.4 **Use of Consultants and Subcontractors.** The Consultant has retained or will retain as subcontractors or consultants, at its sole cost and expense, full-service, licensed (where required) professionals to render the categories of service to complete each Task Order. The names and qualifications of such subcontractors and consultants will be disclosed to the Owner in writing for review and consideration prior to entering into any Task Order. The Consultant shall inform the Owner in writing in advance of engaging any other subcontractors and consultants not identified at the time of execution of a Task Order. The Owner shall have the right, in the exercise of its reasonable business judgment, to reject any such additional or substitute sub-consultant or contractor and to request the Consultant to submit alternative proposals. The retention of such consultants and subcontractors shall not diminish or reduce the overall responsibility of the Consultant under this Agreement for the successful completion of the Task Order work.

#### 1.5 **Project Responsibility and Staffing.**

A. **Consultant's Staffing.** An authorized principal of the Consultant will represent the Consultant in all matters of communication, coordination, decision and policy pertaining to Consultant's Work under this Agreement, which person may be

removed or replaced as set forth herein in writing from time to time (the “**Consultant’s Representative**”) in the manner set forth below. It is agreed that the Consultant’s Representative shall not be removed by the Consultant without the prior written approval of the Owner unless such individual has ceased his or her employment with the Consultant. However, the Consultant’s Representative shall be removed and replaced, without cost or expense to the Owner, at the written request of Owner. If the Owner requests that the Consultant’s Representative be replaced, the Owner shall be permitted to terminate this Agreement in the event a replacement, satisfactory to the Owner in the Owner’s sole discretion, is not provided promptly.

B. **Consultants and Subcontractors.** The Project staff for each Task Order will consist of, at a minimum, the staff identified by the Consultant in the professional categories approved by the Owner at the time of execution of a Task Order. The Consultant represents that all consultants and subcontractors employed by it in connection with this Agreement possess the requisite licensing (where required) education, training and experience to perform their job descriptions and functions in a competent and professional manner with respect to this Project. No subcontractor or consultant shall be replaced without the prior written approval of Owner. The Owner may, without incurring cost or expense, require the replacement of any consultant or subcontractor identified in a Task Order in the sole discretion of the Owner upon written notice to the Consultant.

1.6 **Time.** The Consultant shall complete each Task Order required by this Agreement in a timely fashion in accordance with a schedule for each Task Order (each, a “**Schedule**”). Once the parties hereto have agreed to the Schedule for a Task Order, all dates set forth in the Schedule, as the same may be amended from time to time in accordance with this Agreement, shall be **TIME OF THE ESSENCE**.

A. **Timely Performance an Essential Condition.** It is hereby understood and agreed by the Consultant and the Owner that the date of commencement, the dates of required intermediate milestones, and the time for completion, as specified in this Agreement and in the accepted Schedule for the Services to be completed by the Consultant with respect to each Task Order issued by the Owner, are **ESSENTIAL CONDITIONS** of this Agreement.

B. **Commencement of Services.** It is mutually understood and agreed that the Services of the Consultant hereunder for each Task Order shall be commenced within five (5) days after the issuance of a Notice to Proceed by the Owner.

1.7 **Representations and Warranties.** The Consultant represents and warrants, as of the date hereof and throughout the Term of this Agreement, as follows:

A. **Use of Qualified Personnel, Subcontractors and Consultants.** The Consultant represents that it is a corporation comprised or duly-licensed Consultants engaged in the performance of asbestos consultant services pursuant to the provisions of Section 20-306a of the Connecticut General Statutes, has the requisite experience to

undertake and complete the Services pursuant to the requirements of this Agreement, has in its employ, or will engage at its sole cost and expense, licensed (where required), experienced, qualified and trained personnel, subcontractors and consultants, and will use, or require those in its employ to use, quality equipment accurately calibrated to competently perform the Services required by each Task Order.

**B. Ownership Disclosure and No Conflicts.** The Consultant has either completed, or will complete contemporaneously with the execution of this Agreement, the City's Ownership Disclosure and No Conflicts Form. The statements made in such form are true, accurate and complete, and will continue to be true, accurate and complete during the Term of this Agreement. To the extent that any of such statements cease to be true, accurate and complete, the Consultant shall promptly notify the City in writing of any such change. If the Consultant fails to promptly notify the City of such a change, and/or if such change indicates facts and circumstances indicating that a conflict of interest exists, the City shall have the right to require a modification of the Agreement, including the right to terminate for cause or convenience, or to allow the Consultant to continue to perform under the Agreement on terms and conditions acceptable to the City in its sole and absolute discretion. This provision shall supercede and govern over any other term or provision of the Agreement to the contrary. Under no circumstances shall the Consultant be entitled to termination expenses, additional compensation, or other costs or damages as a result of the City's election to continue the Agreement under the City's terms or to terminate the Agreement for cause or convenience. The Consultant shall be entitled to any compensation or expenses due and payable to the Consultant for work completed in accordance with this Agreement or expenses properly incurred through the date of any termination.

**C. Consultant Possesses Adequate Resources and Personnel.** The Consultant represents that it is financially stable and has adequate resources and personnel to complete the Services in a timely fashion.

**D. No Conflicts.** The Consultant has disclosed, or shall disclose, in writing prior to the execution of any Task Order, all conflicts or potential conflicts of interest that may or are likely to have an adverse affect on its ability to independently protect the Owner's interests in connection with the Project, including but not limited to, the nature and specifics of its relationship with any other participants in the Project, for example the Construction Manager, other consultants and subcontractors, and the like. The Consultant represents that its performance of the Services described herein, and its representation of the Owner, will not result in a conflict of interest, will not violate any laws or contractual obligations with third parties, and is an enforceable obligation of the Consultant.

**E. Prior Approval of All Subcontractors and Consultants.** The Consultant will not engage any consultant or subcontractor for any of the Services for any Task Order without prior written notice to and written approval by the Owner and receipt of the Owner's written consent, except for those subcontractors and consultants specifically identified in this Agreement.

F. **No Violation of Law.** The Consultant represents that neither it, nor any of its officers, directors, owners, employees or, to the best of its knowledge any of its approved subcontractors and consultants, have committed a criminal violation of federal or state laws arising directly or indirectly from its business operations that resulted in the imposition of a monetary fine, injunction, criminal conviction or other sanction, and further represents that the Consultant shall take all reasonable steps to ensure that its officers, directors, owners, employees, agents, subcontractors and consultants shall comply with the requirements of all laws, rules and regulations applicable to this Agreement or to the conduct of its or their businesses in the performance of the Services under this Agreement.

G. **Standard of Care; Quality and Performance of Services.** The Consultant represents that it will perform the Services in a good and workmanlike manner consistent with the level of skill and care ordinarily exercised by members of the profession currently practicing in the State of Connecticut under similar conditions and will diligently pursue the completion of such Services in accordance with the terms of this Agreement.

H. **Licenses and Permits.** The Consultant represents that it possesses, and will ensure that its subcontractors and consultants possess, all professional licenses and other licenses and permits in the State of Connecticut that may be required to perform the Services required by this Agreement.

I. **Observance of Proprietary Rights.** The Consultant represents and warrants that it will take reasonable steps to ensure that the performance of the Services will not infringe upon or misappropriate any United States copyright, trademark, patent, or the trade secret or other proprietary material of any third persons. Upon being notified of such a claim, the Consultant shall, at the request of the Owner and in the Owner's sole discretion, (i) defend through litigation or obtain through negotiation the right of the Owner to continue using the Services of the Consultant while such claim of infringement is contested; (ii) modify the Services to be rendered at no cost, expense or damage to the Owner so as to make such Services non-infringing while preserving the original functionality, and/or (iii) replace the Services or the infringing or potentially infringing portion thereof with the functional equivalent. If the Owner determines that none of the foregoing alternatives provide an adequate remedy or resolution of the claim of infringement, the Owner may terminate all or any part of the Services and, in addition to other relief, shall be entitled to recover the amounts previously paid to the Consultant hereunder related to such claim of infringement.

J. (Not Used)

K. **Communications and Coordination.** The Program Manager shall receive, control and coordinate all documents and arrange all meetings with the Consultant and third parties on behalf of the Owner. The Owner's Representative shall



be informed of the nature and content of all direct communications with the State of Connecticut and U.S. Government representatives in connection with the Project.

L. **Owner Shall Not Be Billed for Taxes.** The Owner is not obligated to pay sales, use, gross receipts taxes, ad valorem or other taxes with respect to the Services rendered by the Consultant, its consultants and subcontractors, and the Consultant agrees not to invoice the Owner therefor. The Owner reserves the right to withhold pursuant to Section 12-430(7) of the Connecticut General Statutes, in addition to Retainage, a percentage of the monies owed to any party that is a non-resident of the State of Connecticut but has not received an appropriate certificate from the Commissioner of Revenue pursuant to the aforesaid statute on account of sales taxes that may be owed by such non-resident to the State of Connecticut. Upon request of the Consultant, its sub consultants or contractors, the Owner's Purchasing Department will issue tax-exempt certificates to any party purchasing materials or rendering services to the Project for which a tax exemption is available.

M. **Recordkeeping and Audits.** The Consultant shall keep daily, weekly and monthly logs and other records detailing the Services rendered which shall contain sufficient detail as to type of activity performed by each employee, consultant and subcontractor working on the Project under the supervision of the Consultant, the job category of each such employee, the number of hours worked, etc. Such records shall be kept at the Consultant's principal place of business in the State of Connecticut. The Owner, its agent(s), or the representatives of any funding source shall have the right to inspect such records from time to time, with or without prior notice, during normal business hours of the Consultant.

1.9 **Term.** The duration of this Agreement shall commence upon the date of issuance by the Owner of a Notice to Proceed on Task Order No. 1 and shall end either on (a) the date of completion of the final Task Order then outstanding, (b) the earlier termination of this Agreement as provided herein, or (c) December 31, 2016, whichever event shall first occur.

## ARTICLE II CONSULTANT'S RESPONSIBILITIES

### 2.1 General Description of Services

A. **Customary Consulting Services.** The Consultant's Services shall consist of the Services described in a Task Order, the Consulting and other services described in Article I hereof and any other services normally performed by an Consultant to complete a Project of this nature.

B. **Scope of Consultant's Services.** The scope of the Consultant's Services are described generally in this Agreement, and more specifically in each Task Order, and also include those services that are reasonable, consistent with and

necessary to complete each Task Order, including but not limited to preparing and submitting written reports, keeping and distributing daily, weekly and monthly work logs demonstrating the Consultant's progress with respect to the Services and to each Task Order, and the like. All Consultant's Services and documents shall fully comply with the restrictions and requirements of all laws, rules and regulations of federal, state and local governmental and quasi-governmental agencies, authorities and funding sources having jurisdiction over or otherwise related to the Project, utility companies, fire underwriters, and other parties disclosed by the Owner and otherwise known to the Consultant as of the date of this Agreement, the date of any Task Order, or which, in the exercise of the best professional judgment of an independent Consultant retained by the Owner, should have been known to Consultant.

C. **Notice of Meetings.** The Consultant shall give timely notice to Owner of any meetings that the Consultant feels necessary in connection with a Task Order with city, state or other regulatory agencies. Scheduling of such meetings is to be done by the Consultant, after consultation with the Owner as to time and date of such meetings. The Consultant's Basic Services shall include attendance at meetings related to obtaining any necessary approval for the Project.

D. **Cooperation with Other Professionals.** The Consultant shall cooperate fully with any consultant employed by the Owner in connection with the Project and other Consultants or professionals employed by the Owner for work related to the Project.

2.2. **Distribution of Project Information.** The Consultant shall promptly furnish to the Owner's Representative and the Program Manager copies of all, reports, test results, correspondence, studies, meeting minutes and other verbal record, on any media, created by the Consultant or which comes into the possession of the Consultant and required, desired or necessary to keep the Owner informed of the progress of the Consultant's Services, the progress of the Project, or as otherwise may be requested by the Owner pursuant to this Agreement and to a Task Order

### ARTICLE III INFORMATION AND COMMUNICATION

3.1 **Information to be Supplied.** The Owner shall provide information regarding its requirements in the form of Task Orders. The Owner shall furnish to the Consultant such information with reasonable promptness to avoid delay in the performance and delivery of the Services. The Consultant shall be entitled to rely upon the completeness and accuracy of any Owner-supplied information unless, in the exercise of its best professional judgment, it knows or should know that such reliance would be unreasonable in which case the Consultant shall inform the Owner's Representative in writing through the Program Manager of the unreliability or unreasonableness of the information supplied.

3.2 **Owner's Representative.** The Owner's Representative at the inception of this Agreement is John Ricci **Director Department of Public Facilities** or his

designee set forth in writing ("**Owner's Representative**"). Each such person or entity functioning in the capacity as the designated Owner's Representative shall act on behalf of the Owner with respect to this Agreement and all Task Orders and shall have authority to make decisions on which the Consultant can rely. The Owner's Representative shall not perform any design services or other services performed by a Consultant. The Owner's Representative shall examine documents, at each phase of the Services performed or to be performed by the Consultant, which are submitted by the Consultant from time to time, and shall render evaluations and decisions pertaining thereto promptly in order to avoid unreasonable delay in the performance and delivery of the Consultant's services. Any Approval or Approvals given by the Owner shall not relieve the Consultant of any of its obligations hereunder.

**3.3 Program Manager; Authority to Direct Consultant.** The Program Manager at the inception of this Agreement is O&G Industries, Inc., acting through its Project Director, Scott Baillie or his designee set forth in writing ("**Program Manager**"). The Program Manager shall act in the interests of the Owner with respect to this Agreement and its Task Orders and shall have the authority to examine and review any and all of the Consultant's work products and/or the Services it provides, make recommendations to the Owner regarding such work and its quality, completeness and timeliness, and carry out and execute the decisions of the Owner's Representative with respect to the Consultant, its Services and work. With respect to the hierarchy of authority to act on behalf of the Owner, the Owner's Representative has primary authority to make decisions for the Owner and to direct the Consultant in connection with this Agreement. If authorized in writing by the Owner's Representative, the Program Manager may make decisions on behalf of the Owner and give limited direction the Consultant concerning the Services and any Task Order. Any Approval or Approvals given by the Program Manager on behalf of the Owner shall not relieve the Consultant of any of its obligations hereunder.

**3.4 Clarification of Authority.** Should the Consultant have any question or doubt concerning the role or authority of either the Program Manager or the Owner's Representative, real or perceived, direct or indirect, the Consultant is responsible for seeking clarification, confirmation or decision from the Owner's Representative before proceeding. The Consultant may rely on the oral clarification, confirmation or decision of the Owner's Representative, but must promptly seek to reduce the same to writing.

**3.5 Independent Legal and Accounting Services.** The Owner shall furnish its own legal, accounting, auditing and insurance counseling services, however, the fact that the Owner possesses such support services will not relieve the Consultant of its responsibilities pursuant to this Agreement. The Consultant shall furnish, at its own overhead expense, its own legal, accounting, auditing and insurance counseling services.

**3.6 Confidential Information.** Each party hereby acknowledges that it may be exposed to confidential information which may not be available to the public or discoverable under the Freedom of Information Act ("**FOIA**") and other proprietary

information belonging to the other party or relating to its business and affairs, including, without limitation, source code and design materials for work product and other materials expressly designated or marked as confidential ("**Confidential Information**"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the party; (iii) information received by a party from a third party who was free to disclose it; or (iv) information properly disclosable under FOIA.

(b) **Covenant Not to Disclose.** Each party hereby agrees that during the term of this Agreement and at all times thereafter it shall not use, commercialize or disclose the other party's Confidential Information to any person or entity, except to its own employees who have a "need to know," to such other recipients as the party claiming confidentiality may approve in writing in advance of disclosure, or as otherwise required by court order, statute or regulation. The Consultant will notify the Owner of spills or other discharges of hazardous environmental contaminants, hazardous waste, regulated chemicals and other conditions that may be detrimental to public health, safety and welfare which are regulated under Connecticut law ("**Reportable Environmental Event**"). In cases where the Owner is not the property owner, the Consultant shall notify the Owner of any Reportable Environmental Event and the Owner will notify the property owner of the requirement to address such occurrence in compliance with applicable law. Each party shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a party use less than due diligence and care. Neither party shall alter or remove from any software, documentation or other Confidential Information of the other party (or any third party) any proprietary, copyright, trademark or trade secret legend.

3.6 **Existing Environmental Reports.** The Owner shall furnish to the Consultant for its use any chemical, air and water pollution tests, tests for hazardous materials and other laboratory and environmental tests in the Owner's possession related to the Work of a Task Order.

## **ARTICLE IV            REMEDIES**

4.1 **Default by Consultant.** It shall be a material default under this Agreement in the event that any of the following occur (each an "**Consultant's Default**"): (i) The Consultant fails to expeditiously perform the Services required to be performed under each Task Order through no fault of the Owner thereby delaying the commencement, progress, or delivery of the Project, or (ii) the Consultant is slow to pay or fails to pay any subcontractor, consultant or agent of the Consultant, or (iii) the Consultant is declared to be bankrupt or insolvent, an assignment for the benefit of creditors is made by the Consultant, the Consultant shall file a voluntary petition in bankruptcy or insolvency, or a receiver shall be appointed for the Consultant and such appointment or bankruptcy or insolvency proceeding, petition, declaration or assignment is not set aside within thirty (30) days of filing, or (iv) any representation or certification made by the Consultant to the Owner shall prove to be false or misleading on the date

said representation or certification is made, or (v) default shall be made in the observance or performance of any material covenant, agreement or condition contained in this Agreement required to be kept, performed or observed by Consultant, or (vi) there has been a material adverse change in the financial condition of the Consultant, or (vii) the Consultant, or any principal or officer of the Consultant shall be convicted of the commission of a crime punishable as a felony, or (viii) the Consultant violates a material provision of any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder, or (ix) the Consultant, or any employee, subcontractor, consultant or agent of the Consultant shall file or record a lien against the Project site or any property of the Owner. If such an Consultant's Default has occurred and has not been cured within thirty (30) days, with or without written notice from the Owner to the Consultant, the Owner may declare the Consultant to be in default hereunder and exercise any remedies available to it, including the termination of this Agreement and any Task Order(s) then outstanding. In the event that the Owner terminates the Consultant for an Event of Default that is not cured after notice and such termination becomes the subject of arbitration, if the Owner's termination of the Consultant is deemed to have been wrongful or inappropriate, such termination will be deemed converted to a termination for convenience by the Owner and the Consultant's remedies shall be limited to those set forth herein with regard to termination for convenience.

**4.2 Default by Owner.** In the event the Owner shall fail to perform any of its material obligations pursuant to this Agreement ("**Owner's Default**"), the Consultant shall give written notice within fourteen (14) days to the Owner. In the event that the Owner fails to cure a payment default within fourteen (14) days after receipt of such notice or fails to cure a non-payment default within sixty (60) days after receipt of such notice, the Consultant may declare the Owner to be in default hereunder and exercise any remedies available to it.

**4.3 Termination by Owner Due to Consultant's Default.** If the Consultant fails to supply enough properly-skilled professionals, employees or proper materials, or if the Consultant commits a material violation of any laws, ordinances, rules, regulations or orders of any public agency or authority having jurisdiction, or otherwise commits an Consultant's Default under this Agreement, the Owner shall give written notice within fourteen (14) days to the Consultant. In the event that the Consultant fails to cure such default within seven (7) days after receipt of such notice, the Owner may declare the Consultant to be in default hereunder and exercise any remedies available to it. The Owner may, without prejudice to any right or remedy, terminate the employment of the Consultant and take possession of all plans, specifications, drawings and other data prepared by the Consultant, whether complete or not, with respect to the Task Order or Task Orders by whatever method the Owner may deem expedient. Additionally, the Owner may pursue any legal action available to it to obtain relief for actual damages suffered by reason of Consultant's Default hereunder. In such event, the Consultant shall be liable to compensate and reimburse the Owner for all of its loss, cost and expense, including but not limited to attorney's fees and consultant's fees, which are caused by the Consultant's Default.

**4.4 Termination by Consultant.** Should the Owner commit an Owner's Default that continues beyond notice and passage of the cure period provided herein, the Consultant may, as its sole and exclusive remedy, terminate this Agreement. Upon such a termination, the Consultant shall be entitled to recover from the Owner all Compensation due for Services performed in accordance with the requirements of this Agreement to the date of such termination, and Reimbursable Expenses. The Consultant may not recover any other damages, costs or expenses from the Owner other than payment for Services performed up to the date of termination and Reimbursable Expenses.

**4.5 Termination by Owner Without Fault of the Consultant.** Upon fifteen (15) days' prior written notice, the Owner shall have the right to cancel and terminate this Agreement at any time whether or not an Consultant's Default exists hereunder, and the Owner shall incur no liability to Consultant or any other person by reason of such cancellation, except that, if the cancellation is for no fault of Consultant, the Owner shall pay to the Consultant all sums then due to the Consultant hereunder for Services rendered in accordance with this Agreement performed up to the date of termination.

**4.6 Transfers on Termination.** In the event of any termination of this Agreement by the Owner, the Consultant shall, upon written request of the Owner, return to the Owner within seven (7) days all papers, materials and other items on any form of media prepared by, in the possession of, or available to the Consultant relating to the Project whether created by or at the request of the Consultant or created by others. In addition, each party will assist the other party in an orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible.

**4.7 Resolution of Disputes and Choice of Law.** The parties agree that all disputes between them arising under this Agreement or involving its interpretation, if they cannot be first resolved by mutual agreement, are subject to the following dispute resolution procedure:

**A. Initiation of Dispute Resolution Process.** In the event that a dispute is not resolved after good faith effort to arrive at a mutual agreement, either party may send written notice to the other, in the delivery manner specified in this agreement, that a dispute continues to exist. The party giving such notice shall also forward a copy to the Director, Department of Public Facilities ("**Director**"), 999 Broad Street, Bridgeport, Connecticut 06604. The notice shall set forth the nature of the dispute, the notifying party's position statement, and copies of documents supporting its position regarding the dispute. Within seven (7) calendar days after the date such notice is given, the other party shall file its position statement and supporting documents to the Director. Within five (5) working days after receipt of such reply, the Director shall review the matter, issue a written determination ("**Determination**"), and mail a copy thereof to the parties. The Director may reach a Determination with or without a face-to-face meeting with the parties and with or without testimony of witnesses, in his/her sole and absolute discretion.

B. **Mediation.** If either party objects to the Determination, such party shall commence non-binding mediation before the American Arbitration Association (“AAA”), or similar mediation organization selected by the City in the City’s sole discretion. The City shall determine whether such mediation will be conducted in accordance with AAA mediation rules then in effect or such other entity’s mediation rules. Such mediation will be held in Bridgeport, Connecticut. Each party shall bear the cost of its respective counsel and one-half of the administrative costs of such mediation, including but not limited to the mediator’s fees and expenses. Failure by either party to file for mediation within thirty (30) days after issuance of the Determination shall be deemed a waiver by both parties of their respective right to appeal such Determination, in which event such Determination shall be final and enforceable in any court having jurisdiction over the parties.

C. **Arbitration, or Litigation at City’s Option.** If mediation is pursued in the manner specified herein but such dispute is still not resolved, either party may submit such dispute to the AAA, or similar alternate dispute resolution entity in the City’s sole discretion. The City shall determine whether such arbitration will be conducted pursuant to the AAA construction rules of arbitration then in effect or by the rules of such other entity. Notwithstanding the parties’ respective rights to seek arbitration of the dispute, the City shall have the independent right, exercisable within sixty (60) days after the mediation is concluded, in its sole and absolute discretion, to seek resolution of the dispute in a court of law having jurisdiction over the parties, in which event, resolution of the dispute by arbitration shall be deemed waived by the parties and the decision of the court shall be final and binding upon the parties. If the City either (a) initiates arbitration or (b) does not move to stay an arbitration initiated by the other party within such 60-day period, the dispute shall be resolved by arbitration. Such arbitration shall be held before one or more arbitrators who shall be residents of, or permanently employed in, the State of Connecticut. All arbitrators must have a minimum of fifteen (15) years’ experience in their current profession or occupation with demonstrated experience commensurate with the nature and magnitude of the dispute. The arbitration shall be held in the City of Bridgeport and any award rendered shall be final and binding upon the parties and enforceable in a court of competent jurisdiction. Upon the request of either party, the dispute may be determined by any expedited procedure of the AAA then in effect or expedited procedure of such other alternate dispute resolution entity then in effect, if the nature and amount of such dispute warrants resolution by an expedited procedure under the AAA’s or such entity’s rules. The award shall be limited to the remedies set forth in this Agreement. The arbitrator shall have authority, at the arbitrator’s sole discretion, to award reasonable attorneys’ fees and costs to the prevailing party. If the award does not contain an award of attorneys’ fees and/or costs, each party shall bear the cost of its respective counsel, and one-half of the administrative costs of such arbitration, including but not limited to the arbitrator’s fees and expenses (except filing fees for demands and counterclaims, which shall be borne by the party initiating such demand or counterclaim). THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF CONNECTICUT. ANY AWARD THAT IS NOT RENDERED IN COMPLIANCE

WITH PREVAILING CONNECTICUT LAW AT THE TIME THE AWARD IS RENDERED SHALL BE DEEMED VIOLATIVE OF PUBLIC POLICY AND MAY BE APPEALED TO A COURT OF COMPETENT JURISDICTION OVER THE PARTIES AS AN INDEPENDENT GROUND OF APPEAL.

D. **Joinder in Other Proceedings.** The City reserves the right to require the participation of the other party to this agreement in any other arbitration or litigation involving a claim by a third party that relates to the subject matter set forth in this agreement and, reserves the additional right, if necessary or desirable in the City's sole determination, to join or implead the other party to this Agreement into such arbitration or litigation when doing so is deemed to be in the best interests of the City.

4.8 **Claims For Additional Compensation and Time.** In an event occurs or other circumstances arise during the performance of the work that establish or may tend to establish a claim by the Consultant for additional Compensation and/or additional time to perform, the Consultant shall promptly make such claim to the Owner in writing within fourteen (14) days of the occurrence of such event or circumstances setting forth the facts giving rise to such claim under this Agreement and the additional Compensation or contract time requested by the Consultant. The Consultant shall not undertake to perform additional work without the prior written approval of the Owner. All claims for additional Compensation or additional contract time that are not asserted within such 14-day period are deemed waived by the Consultant.

## ARTICLE V INDEMNIFICATION AND INSURANCE

5.1 **Indemnification.** The Consultant represents and warrants that it will employ its best professional judgment in the performance of the Services hereunder to ensure that design products are consistent with the exercise of the standard of care set forth in Paragraph 1.8G hereof. To the fullest extent permitted by law, the Consultant, on behalf of itself and its subcontractors, consultants and agents (the "**Indemnitor**"), agrees to indemnify, save and hold Owner, its elected officials, department heads, employees, subcontractors, and consultants (the "**Indemnatee**") harmless from and against any and all liability, damage, loss, claim, demand, action and expenses of any nature whatsoever, including, but not limited to costs, expenses, consulting fees and reasonable attorneys' fees which arise out of or are connected with: (i) any negligent act, error or omission by the Indemnitor in the performance of this Agreement; (ii) the negligent failure of the Indemnitor to comply with the laws, statutes, ordinances or regulations of any governmental or quasi-governmental agency or authority having jurisdiction over the Project; or (iii) the breach of any material term or condition of this Agreement by the Indemnitor. The provisions of this indemnification article shall not be construed as an indemnification of the Indemnatee for any loss or damage attributable to the sole act or omission of the Indemnatee. The indemnity set forth above shall survive the expiration or any earlier termination of this Agreement.

### 5.2 **Environmental Indemnification.**



A. **Indemnification.** [The Capitalized terms used herein are defined in Paragraph 5.2.B hereof.] The Consultant, for itself and its subcontractors and consultants, agrees to indemnify, hold harmless and pay to defend the Owner from and against all liability, damage, loss, claim, demand, action and expense of any kind whatsoever, including, but not limited to, costs, expenses, consulting fees and reasonable attorneys' fees which may be claimed, suffered or incurred by the Owner or a third party to the extent that such harm was caused by the Consultant's or its subcontractor's or consultant's negligent acts or omissions which result in a Release onto the Project site, into the environment or onto property of others of any Hazardous Substances.

The indemnification protects against the following events, including without limitation:

- (i) the removal, encapsulation, containment or other treatment, transport or disposal of Hazardous Substances on the Project site or emanating there from;
- (ii) the imposition of a lien against the Project site, including liability resulting from the Consultant's failure to take prompt steps to remove, and to remove, such lien by payment of the amount owed or by the furnishing of a bond, cash deposit or security in an amount necessary to secure the discharge of such lien or the claim out of which the lien arises;
- (iii) any inquiry, claim or demand, by any person including without limitation, any costs incurred in connection with responding to or complying with such inquiry, claim or demand;
- (iv) any failure of the Consultant to use the Project site in compliance with all applicable Environmental Laws, and the defense of any litigation, proceeding or governmental investigation relating to such failure to comply with Environmental Laws;
- (v) any personal injury concerning or relating to the presence of Hazardous Substances on or emanating from the Project site, or as a result of activities conducted on or with respect to the Project site in connection with the remediation of Hazardous Materials thereon or emanating there from.

The provisions of this indemnification shall govern and control over any inconsistent provision of any other document executed or delivered by the Consultant in connection with this Agreement. This paragraph shall survive the expiration of the Agreement or the earlier termination thereof and shall be a continuing obligation of the Consultant and shall be binding upon the Consultant, its successors and assigns, and shall inure to the benefit of the Owner, its successors and assigns.

B. **Definitions.**

"Consultant" means the Consultant, its subcontractors and consultants.

"Environment" means any water or water vapor, any land including the land surface and subsurface, air, aquatic life, wildlife, biota and all other natural resources and features.

"Environmental Laws" means, without limitation, all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the Environment and/or governing the use, storage, production, treatment, generation, transportation, processing, handling or disposal of Hazardous Substances, and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives, whether formal or informal, of federal, state and local governmental agencies and authorities with respect thereto, as they may be amended, renumbered, substituted or supplemented from time to time, and those Environmental Laws that may come into being or into effect in the future.

"Environmental Permits" means, without limitation, all permits, licenses, approvals, authorizations, filings, consents or registrations required by any applicable Environmental Law in connection with (a) the ownership, use and/or operation of the Project site for the use, storage, production, treatment, generation, transportation, processing, handling or disposal of Hazardous Substances, or (b) the sale, transfer, encumbrance or conveyance of all, or any portion of the Project site.

"Hazardous Substances" means, without limitation, any flammable, explosive, corrosive or ignitable material, characteristic waste, listed waste, radon, radioactive material, asbestos, urea-formaldehyde foam insulation, polychlorinated biphenyl's, petroleum and petroleum-based wastes, methane gas, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, mixtures or derivatives having the same or similar characteristics and effects, as defined in, listed under, or regulated by various federal, State or local environmental laws, rules or regulations, including, without being limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Emergency Planning and Community Right to Know Act, as amended (42 U.S.C. 11001 et seq.), the Resource, Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Section 7401 et seq.), the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. 300, et seq.), or as such substances are defined under any similar state laws or regulations, including, without being limited to, the release of substances constituting a "spill" as defined In Connecticut General Statutes Section 22a Sect. 452(c).

"Improvements" means the buildings, structures and other physical improvements previously existing, presently located on, or to be constructed on the Project site.

"Project site" means the real property described herein and its appurtenances.

"Release" or "spill" shall have the same meaning given to those terms under the Environmental Laws whether they are historic or sudden, and without regard to quantity.

**5.3 Insurance.** The following insurance coverage is required of the Consultant and it is understood that the Consultant will require other coverage from every consultant and subcontractor in any tier according to the work being performed and shall ensure that all insurance coverage is issued and in force in accordance with the terms hereof at all times in the performance of the Services.

**A. Coverage Required.** The Consultant shall procure, present to the Owner in advance of any Services being performed, and maintain in effect for the Term of this Agreement without interruption the insurance coverage identified below with insurers licensed to conduct business in the State of Connecticut and having a minimum Best's A + 15 financial rating, or otherwise acceptable to the City.

Errors and Omissions Insurance (claims made form) will be provided by all architects and Consultants involved in the Project with minimum limits of \$1,000,000, per claim and in the annual aggregate, or as otherwise required by the Owner.

Commercial General Liability (occurrence form) insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this Agreement. Coverage shall be broad enough to include premises and operations, contingent liability, contractual liability, completed operations (24 months), broad form property damage, care, custody and control, with limitations of a minimum \$1,000,000 per occurrence and \$2,000,000 combined primary and excess coverage for each occurrence/aggregate and \$300,000 property damage. Under no circumstances may this insurance coverage be an aggregate type for all locations and/or all operations of the Consultant, its subcontractors or consultants, nor may the face amount of any such coverage be reduced by other claims against the Consultant, defense costs or any other setoff. Such insurance coverage must be provided for this Project or this Agreement only.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to include contractual liability, with limitations of \$1,000,000 combined primary and excess coverage for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment. Liability for employee suits shall not be less than \$500,000 per claim.

Property Damage insuring against direct damage loss to buildings, structures or improvements to any permanent buildings, structures or improvements, covering the interest of the City, the Contractor, its contractors and subcontractors and parties having an interest therein. Waivers of subrogation will be provided for all interested parties named herein. The Owner shall be named as loss payee as its interests may appear. The Consultant, its consultants and subcontractors will be responsible for insuring their respective equipment, tools and materials brought to the job site but which are not intended to become part of any temporary construction requirements or part of any permanent structures, buildings or improvements.

**Under no circumstance may insurance coverage of any kind, except professional errors and omissions coverage, be an aggregate type for all locations and/or all operations of the Consultant, its subcontractors or consultants, nor may the face amount of any such coverage be reduced by other claims against the Consultant, defense costs or any other setoff. All insurance coverage must be provided for this Project and this Agreement only. The Consultant, its subcontractors and consultants may not enter the Project site or commence work unless and until all such insurance coverage are provided to, reviewed, and approved by the Owner.**

**B. General Requirements.** All policies shall include the following provisions:

Cancellation notice—The Owner shall be entitled to receive from the insurance carriers not less than 30 days' written notice of cancellation, non-renewal or reduction in coverage, such cancellation notices to be given to the Owner at: Purchasing Agent, City of Bridgeport, City Hall, 999 Broad St , Bridgeport, Connecticut 06604.

Certificates of Insurance—All policies will be evidenced by an original certificate of insurance on an ACORD-25 form delivered to the Owner and authorized and executed by the insurer or a properly-authorized agent or representative reflecting all coverage and terms required, such certificate required to be delivered to the Owner prior to any work or other activity commencing under this Agreement.

Additional insured—The Consultant, its consultants and subcontractors will arrange with their respective insurance agents or brokers to name the Owner, its elected officials, officers, department heads, employees and agents on all policies of primary and excess insurance coverage as additional insured parties except for errors and omissions insurance and workers' compensation coverage, and as loss payee with respect to any damage to property of the Owner, as its interest may appear. The undersigned shall submit to the Owner upon commencement of this Agreement and periodically thereafter, but in no event less than once during each year of this Agreement, evidence of the existence of such insurance coverage in the form of original Certificates of Insurance issued by reputable insurance companies licensed to do business in the State of Connecticut and having minimum Best's A + 15 financial rating

or rating otherwise acceptable to the Owner. Such certificates shall designate the Owner in the following form and manner:

“The City of Bridgeport  
Attention: Purchasing Agent  
999 Broad St.  
Bridgeport, Connecticut 06604”

## ARTICLE VI MISCELLANEOUS

6.1 **Singular, Plural, Gender, etc.** Wherever in this Agreement the context so requires, the singular number shall include the plural number and vice versa, and any gender herein used shall be deemed to include the feminine, masculine or neuter gender.

6.2 **Professional Services Contract.** This Agreement is entered into solely to provide for the work of various Task Orders related to the Project and to define the rights and obligations, risks and liabilities of the parties hereto. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any other or different relationship between the Consultant and the Owner other than as expressly provided herein. The Consultant acknowledges that the Owner is not a partner or joint venture with the Consultant and that the Consultant is not an employee or agent of the Owner.

6.3 **Prohibition Against Assignment.** The Consultant may not transfer, hypothecate or in any way alienate or assign its interest in this Agreement or delegate any duties to be performed by it hereunder without the prior written consent of Owner. The Owner may assign its interest in this Agreement at any time to any person or entity that assumes the Owner's obligations from the date of the assignment hereunder; provided, however, that absent express consent in writing by the Consultant, such assignment shall not release the Owner from its obligations to the Consultant hereunder for payment of all amounts due the Consultant pursuant to this Agreement.

6.4 **Time of the Essence.** All dates set forth in this Agreement, and/or in any accepted Task Order Schedule, as may be amended from time to time, is agreed to be critical to the completion of the Project and shall be considered of the essence to this Agreement.

6.5 **Notices.** All notices, requests, demands or changes of address required or desired by either party shall be in writing and shall be either personally delivered, delivered by messenger or overnight delivery service, or be delivered by registered or certified mail, return receipt requested, postage prepaid, and addressed to the other party at the address heretofore set forth (each a “**Notice**”). All Notices shall be deemed received, in the case of personal or overnight delivery service, upon receipt, or in the case of mailing, on the date of receipt thereof by the party to whom it is addressed or, if

receipt is refused, upon the expiration of forty-eight (48) hours from the time of deposit of such mailed notice in an office of the United States Postal Service. A change of address of a party shall be set forth in the same manner as other required notices.

6.6 **No Waiver.** No waiver of any party's default hereunder by the other party hereto at any one time shall be construed as a waiver by such party of any subsequent breach of the same or another term of this Agreement by the other party.

6.7 **Ownership of Documents.** All drawings, specifications, surveys, test results, models, plans, computer programs, databases and other work product prepared by the Consultant or anyone employed by the Consultant in any form or media upon creation are and shall be the sole and exclusive property of the Owner, including without limitation all copyrights, rights of reproduction and reuse, and other interests relating thereto. The Owner and any entity affiliated with the Owner may reuse all such documents and data for future work in connection with the construction of the bulkhead Project or for future Projects, provided that the Owner shall not alter any drawings or specifications signed and sealed by the Consultant without its prior written consent. The Consultant shall have an irrevocable, non-exclusive license to copy and use such documents and data and may retain copies of such documents and data for re-use in the conduct of its professional practice.

6.8 **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the Owner and the Consultant and their respective successors, assigns and legal representatives.

6.9 **Captions.** The captions and headings contained herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

6.10 **Governing Law; Venue.** This Agreement shall be construed in accordance with the laws of the State of Connecticut. Any mediation or arbitration shall be commenced and resolved in Bridgeport, Connecticut. In the event that any party affirmatively waives its right to arbitrate disputes that arise under this Agreement, any legal action brought to enforce any provision of obtain any interpretation of this Agreement or for other relief shall be brought in a State or Federal court of competent jurisdiction over the parties in Bridgeport, Connecticut.

6.11 **Entire Agreement.** Each party acknowledges that there are no prior or contemporaneous oral promises, undertakings or agreements in connection with this Agreement that are not contained herein. This Agreement may be modified only by a written agreement signed by all parties hereto. All previous negotiations and agreements between the parties hereto, with respect to the transactions set forth herein, are merged into this instrument, the documents or other materials referenced herein, the Task Orders, and amendments hereto mutually agreed to in writing by the parties, which together fully and completely express the parties' rights and obligations.

6.12 **Partial Invalidity.** If any term or provision of this Agreement is believed to be illegal, unenforceable or in violation of the laws, statutes, ordinances or regulations or any public agency or authority having jurisdiction over the parties or the Project, then, such matter shall be submitted to arbitration in accordance with this Agreement to determine whether such term or provision is severable or if this Agreement is deemed to be a whole by a fair construction of its terms and provisions under Connecticut law. If such term or provision is found to be severable, this Agreement shall remain in full force and effect, such term shall be deemed stricken therefrom and this Agreement shall be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision. If such term is not found to be severable, this Agreement may be terminated by either party upon the giving of prompt written notice within ten (10) days after such determination, whereupon the rights and obligations of the parties shall be determined in accordance with the provisions of this Agreement as if a mutual, voluntary termination had occurred.

6.13 **Survival.** The terms, provisions, representations, warranties and certifications contained in this Agreement, or inferable therefrom, shall survive the completion of the Project, or the earlier termination of this Agreement as to the Services completed to the date of such termination, subject to all applicable statutes of limitation and repose.

6.14 **Waiver of Liens.** The Consultant hereby waives any right it may have to file or assert a mechanic's or material men's lien against the Project site or against the Project, including but not limited to, any rights granted to the Consultant by the laws of the State of Connecticut.

6.15 **Excusable Delay.** The parties hereto, respectively, shall not be in default of this Agreement if either is unable to fulfill, or is delayed in fulfilling, any of its obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its employment of best efforts and due diligence, as a result of extreme and unseasonable weather conditions, natural disasters, catastrophic events, mass casualties to persons or significant destruction of property, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which prevent any party's ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the party claiming hindrance or delay. If a party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect upon such party's performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay then has or may have in the future on such party's performance. Notwithstanding notification of a claim of hindrance or delay by one party, such request shall not affect, impair or excuse the other party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive, or cannot effectively be accomplished without the cooperation of the party claiming delay or hindrance, The occurrence of

such a hindrance or delay may constitute a change in the scope of Services, and may result in the need to adjust the Compensation in accordance with the terms of this Agreement.

6.16 **Non-Discrimination.** The requirements for minority hiring and participation by disadvantaged businesses are set forth in Chapter 3.12 of the Municipal Code of Ordinances of the City of Bridgeport, which Chapter is attached here to as **Exhibit D.**

6.17 **Precedence of Documents.** In the event that there exists any ambiguity or conflict between this Agreement and any attachment, exhibit or Task Order, the terms of this Agreement shall govern as to all matters of interpretation.

6.18 **Building Committee Approval of Agreement Required.** This Agreement shall not become effective until the School Building Committee of the City of Bridgeport approves the same, the Co-chair executes the Agreement, and a fully executed original thereof complete with all Schedules, Exhibits and any Task Order is delivered to the Consultant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF BRIDGEPORT**  
Acting through the School Building Committee

By: \_\_\_\_\_

Name:

Co- chair, duly-authorized

Date: \_\_\_\_\_

Commissioning Agent

By: \_\_\_\_\_

Name:



Title:

Duly-authorized

Date: \_\_\_\_\_

Task Order Format

This Task Order No. \_\_\_ is made as of this \_\_\_ day of \_\_\_\_\_, [year] under the terms and conditions established in the Professional Consulting Services Agreement between the Owner and the Consultant dated \_\_\_\_\_, and shall constitute an amendment to such Agreement. This Task Order is issued for the following purpose, consistent with the Project defined in the Agreement:

[Brief description of the Project elements to which this Task Order applies.]

Section A—Scope of Services

A.1. The Consultant shall perform the following Services:

A.2. The following Services are not included in this Task Order, but shall be provided as additional Services if approved in writing by the Owner.

A.3. In conjunction with the performance of the foregoing Services, the Consultant shall provide the following submittals/deliverables (“**Deliverables**”) to the Owner:

Section B—Task Schedule

The Consultant shall perform the Services and deliver the related documents, if any, according to the following Task Schedule:

Section C—Compensation

C.1. In return for the performance of the Services under this Task Order, the Owner shall pay the Consultant Compensation in the amount of [dollars], payable according to the following terms:

C.2. Compensation for any additional Services requested under this Task Order, if any, shall be paid by the Owner to the Consultant according to the following terms:

Section D—Owner’s Responsibilities

The Owner shall perform and/or provide the following in a timely manner so as not to delay the performance or completion of the Services by the Consultant. Unless

otherwise provided in this Task Order, the Owner shall bear all costs incident to compliance with the following:

Section E—Other Provisions

The parties agree to the following additional provisions with respect to this Task Order:

Except to the extent modified herein, all terms and conditions of the Agreement shall continue in full force and effect.

Owner

By: \_\_\_\_\_  
Name:  
Title:

Consultant

By: \_\_\_\_\_  
Name:  
Title: