

**B.M.C. DURFEE HIGH SCHOOL
CM at RISK REQUEST FOR PROPOSALS**

ADDENDUM No. 1

May 12, 2018

***Proposals Due: Friday, May 18, 2018, 11:00 AM
One Government Center, Room 234, Fall River, MA 02720***

TO: All Prospective Respondents

Notice to Respondents:

This Addendum is being issued by email and is posted on the website, <http://www.fallriverschools.org/newdurfeehs.cfm>. It forms a part of the CM at Risk Request for Proposals (RFP) and supplements the RFP, dated May 2, 2018, as noted below. **Addendum No. 1 has been issued to all Respondents who received the RFP.** Please acknowledge receipt of this addendum in the Acknowledgement of Addenda Form that is to accompany your proposal.

Addendum No. 1 consists of 3 pages and the following 5 Attachments:

Site Utility Plans (Existing and Proposed)	(2 Sheets)
Electrical Site Plans (Existing and Proposed)	(6 Sheets)
Preliminary Project Schedule	(2 Pages)
Ai3 Digital File Release Form	(1 Page)
Construction Contract for CM-R Owner – CM-R Agreement	(22 Pages)

A link for download of the Project's Revit model is provided below:

<https://ai3architects-my.sharepoint.com/:u:/p/heney/ESHNNFCLW4RLnqA8Ksx9964BXPT5wBCzoQXUUsMj3SFgfA?e=jnS4dp>

Questions & Responses:

Q1. Is there a schematic site/utility drawing available for what the design team knows to date that could be provided? Existing conditions of what may be in the footprint of the new building?

R1: The Schematic Site Utility Plans have been provided with this addendum.

Q2. Is there a Revit model that can be made available via a release form from Ai3?

R2: A link to the Revit model has been provided above under the contents of Addendum No. 1.

Q3. Can the documents provided at the walkthrough be sent electronically?

R3: All documents provided at the walkthrough are contained in the Schematic Design Submission found on the website, <http://www.fallriverschools.org/newdurfeehs.cfm>. The Preliminary Project Schedule has been attached to this Addendum since there have been some slight modifications since the Schematic Design Submission.

Q4. Can the CM use its own subcontract form for non-filed subcontractors (appendices)?

R4: Yes, the CM use its own subcontract form.

Q5. Can you confirm whether the Pre-construction Fee and General Conditions are not-to-exceed values or lump sum values?

R5: The Pre-construction Fee and General Conditions should be considered not-to-exceed values.

Q6. Can the CM use Subcontractor Default Insurance in lieu of bonds for non-filed subcontractors?

R6: Potentially, the City would need to fully understand the implications.

Q7. Can you confirm that the reference to federal "Davis-Bacon" compliance is a typo (in section 10.9 of the CM@R agreement)?

R7: This is not a typo. MSAB requires that it be added in the remote case that bonding is received from a federal source requiring "Davis-Bacon" compliance. It is the City's intent to comply with the MA Prevailing Wage Rates. We will make any necessary adjustments should Davis-Bacon compliance be required.

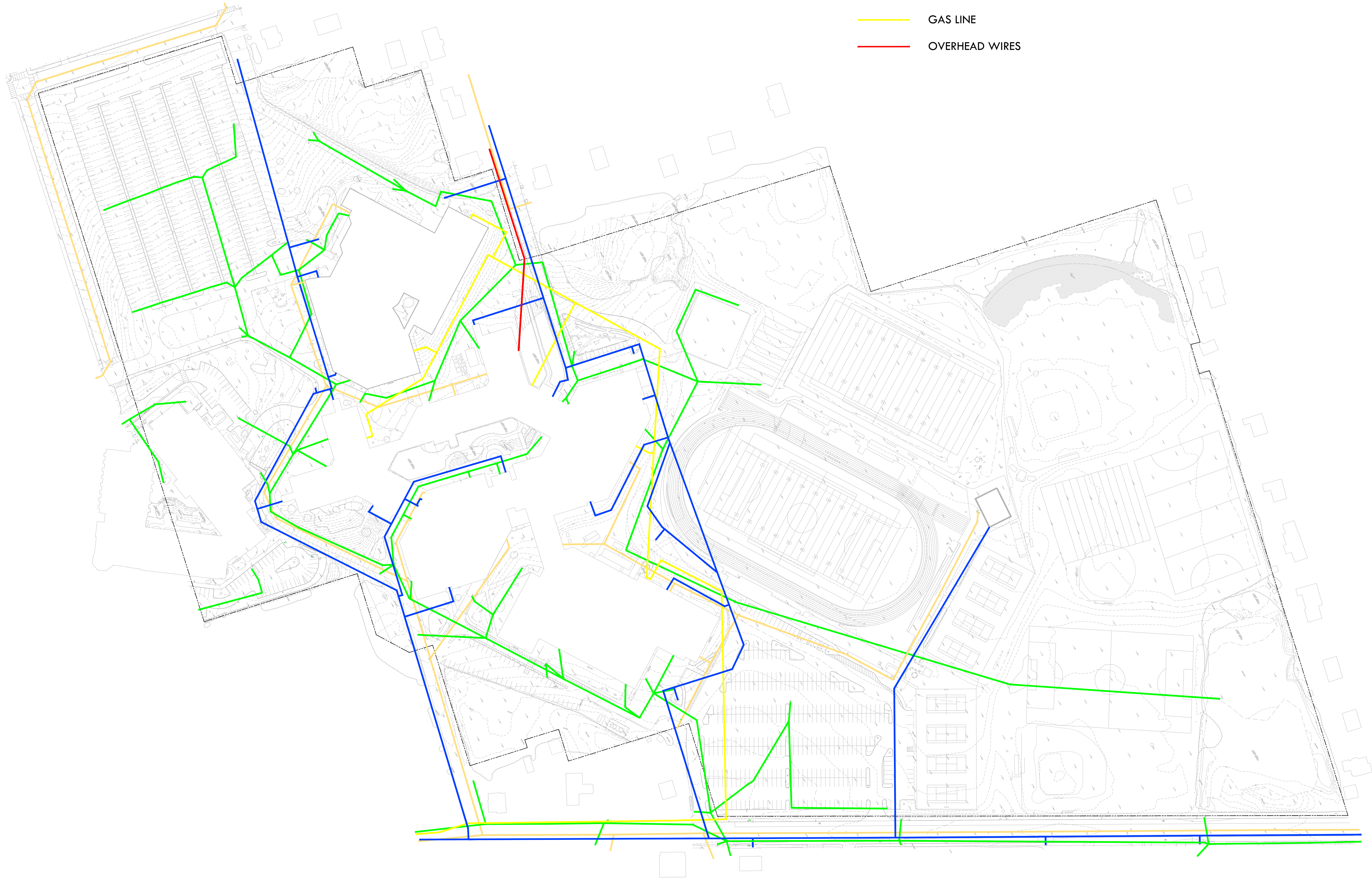
Q8. Can the full-time Quality Assurance/Quality Manager position (stated in section 5.3.2 of the CM@R agreement) hold any other role/responsibilities, or this is anticipated to be a full-time role with no other responsibilities?

R8: How the Respondent chooses to staff the project in terms of roles and responsibilities should be explained in the management and staffing plan response to the RFP.

- Q9. Section 4.2 of the CM@R regarding substantial and final completion references dates out of applicable range – Please update to reflect teams understanding of contractual requirements.
- R9: The Construction Contract for CM-R Owner-CM Agreement has been revised to reflect the month and year for the BMC Durfee High School Substantial Completion and Final Completion date and has been attached to this Addendum.

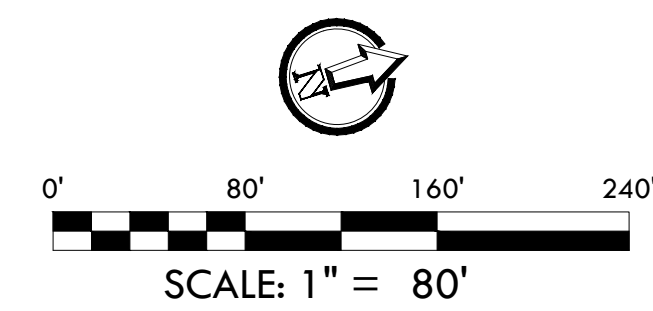
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Copyright © 2018 The Vertenx Companies, Inc.



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- SEWER LINE
- DRAIN LINE
- GAS LINE
- OVERHEAD WIRES



SITE INDEX

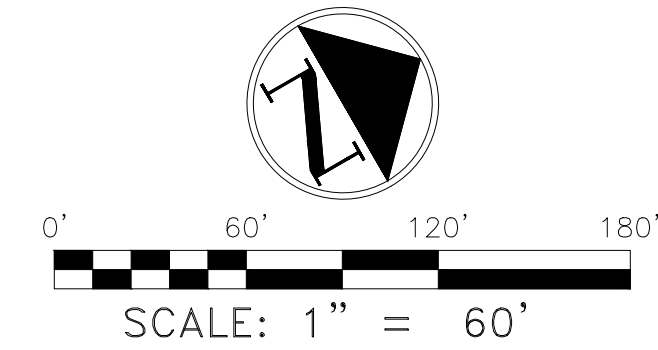
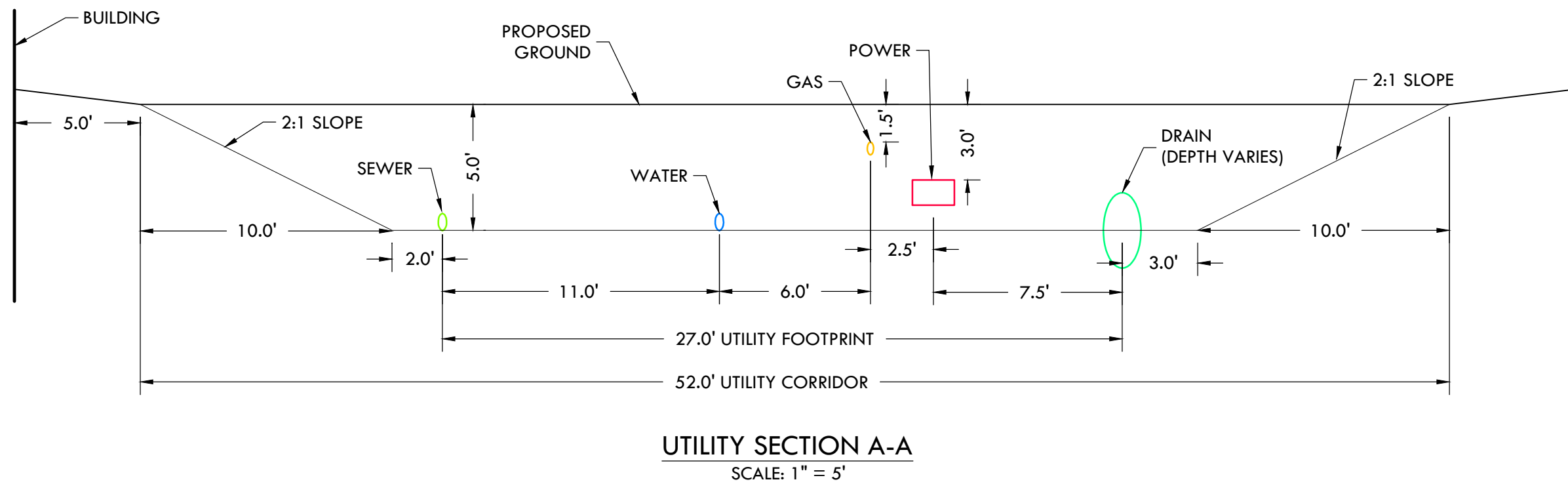
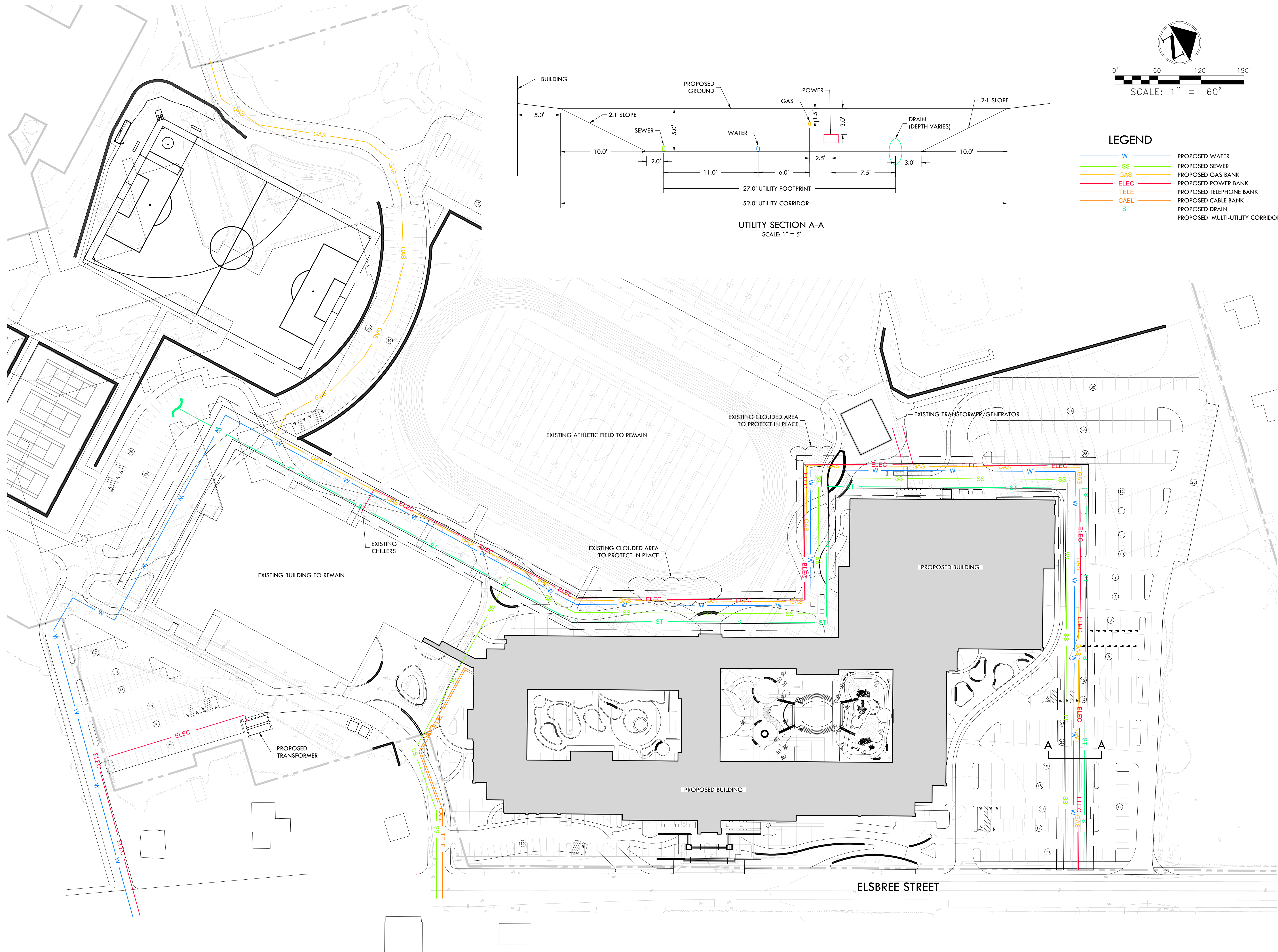
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FALL RIVER, MA

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2) Shared Proprietary and Bid Proprietary 2018 Proprietary P.0481.118 Fall River - Durfee High School - MA DWGS (dwg) Utility Corridor Exhibit.dwg
Thursday, May 03, 2018 2:16:20 PM
Copyright © 2018 Vertex McGlamery, Inc.



LEGEND

- W PROPOSED WATER
- SS PROPOSED SEWER
- GAS PROPOSED GAS BANK
- ELEC PROPOSED POWER BANK
- TELE PROPOSED TELEPHONE BANK
- CABL PROPOSED CABLE BANK
- ST PROPOSED DRAIN
- PROPOSED MULTI-UTILITY CORRIDOR

PRELIMINARY UTILITY CORRIDOR EXHIBIT

SITE: 360 ELSBREE STREET
FALL RIVER, MA 02720

FOR: DURFEE HIGH SCHOOL
360 ELSBREE STREET
FALL RIVER, MA 02720

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DURFEE

KEYNOTE LEGEND:

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KEYPLAN

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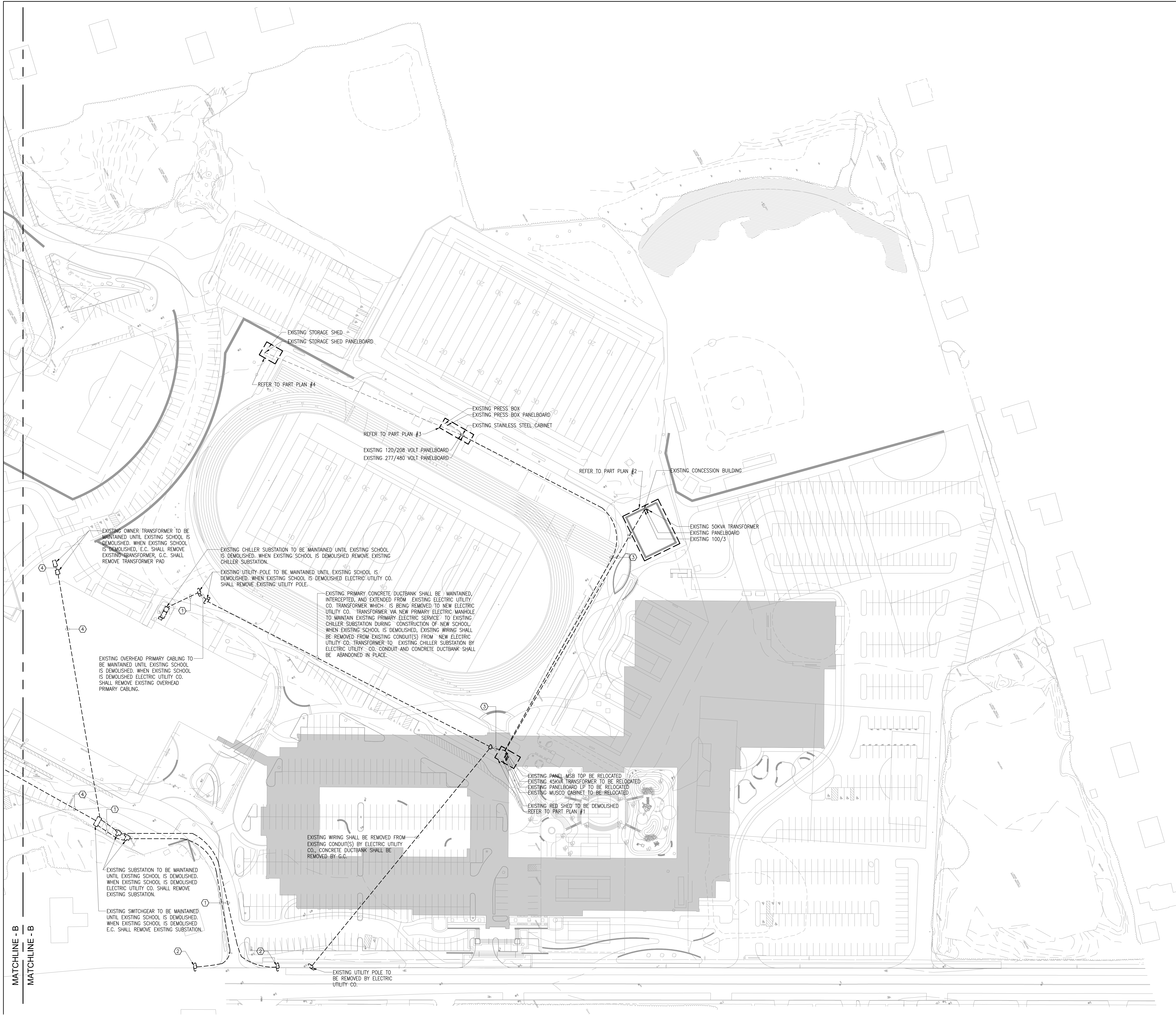
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DATE: MAY 4, 2018

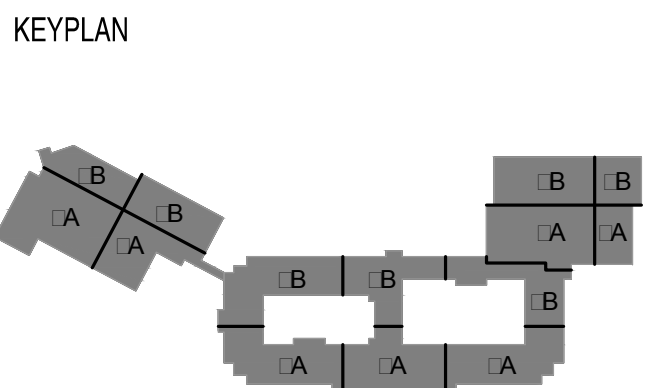
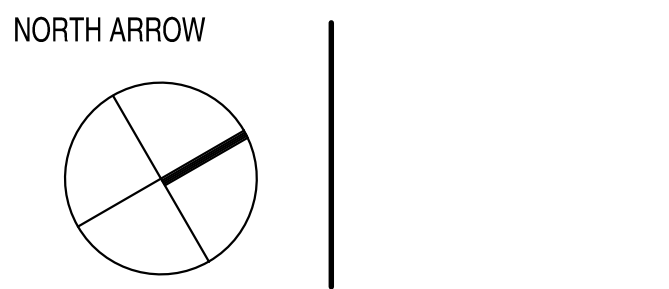
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DURFEE

- KEYNOTE LEGEND:
- EXISTING PRIMARY CONCRETE DUCTBANK SHALL BE MAINTAINED UNTIL EXISTING SCHOOL IS DEMOLISHED. AFTER EXISTING SCHOOL IS DEMOLISHED, EXISTING WIRING SHALL BE REMOVED FROM EXISTING CONDUIT(S) BY ELECTRIC UTILITY CO. CONCRETE DUCTBANK SHALL BE REMOVED BY G.C.
 - EXISTING UTILITY POLE SHALL BE MAINTAINED UNTIL EXISTING SCHOOL IS DEMOLISHED. AFTER EXISTING SCHOOL IS DEMOLISHED, EXISTING UTILITY POLE SHALL BE REMOVED BY ELECTRIC UTILITY CO.
 - EXISTING WIRING SHALL BE REMOVED FROM EXISTING CONDUIT(S) BY E.C. CONCRETE DUCTBANK SHALL BE REMOVED BY G.C.
 - EXISTING OWNER PRIMARY CONCRETE DUCTBANK LOOP CONNECTING ALL EXISTING OWNER TRANSFORMERS SHALL BE MAINTAINED UNTIL EXISTING SCHOOL IS DEMOLISHED. AFTER EXISTING SCHOOL IS DEMOLISHED, EXISTING WIRING SHALL BE REMOVED FROM EXISTING CONDUIT(S) BY E.C. CONCRETE DUCTBANK SHALL BE REMOVED BY G.C.



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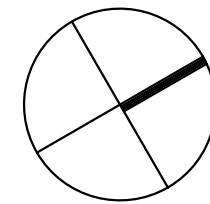
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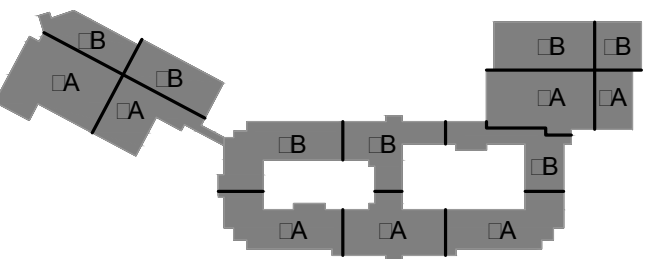
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- EXISTING CIRCUIT (4#6-#100-1" C.) TO BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING PANELBOARD "MSB" LOCATION TO RELOCATED EXISTING PANELBOARD "MSB" LOCATION, VIA RELOCATED EXISTING MUSCO CABINET.
- EXISTING CIRCUIT (2#12-#120-1" C.) TO BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING PANELBOARD "MSB" LOCATION TO RELOCATED EXISTING PANELBOARD "MSB" LOCATION.
- EXISTING WIRING/CONDUIT TO BE REMOVED.
- EXISTING CIRCUIT (2#12-#120-1" C.) TO BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING PANELBOARD "LP" LOCATION TO RELOCATED EXISTING PANELBOARD "LP" LOCATION.
- EXISTING WIRING SHALL BE REMOVED FROM EXISTING CONDUIT(S) BY E.C. CONCRETE DUCTBANK SHALL BE REMOVED BY G.C.
- EXISTING WIRING SHALL BE REMOVED FROM EXISTING CONDUIT(S) FROM EXISTING UTILITY POLE TO EXISTING ELECTRIC UTILITY CO. TRANSFORMER BY ELECTRIC UTILITY CO. CONCRETE DUCTBANK AND CONDUIT FROM EXISTING UTILITY POLE TO EXISTING ELECTRIC UTILITY CO. TRANSFORMER SHALL BE REMOVED BY G.C.
- EXISTING PRIMARY CONCRETE DUCTBANK SHALL BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING ELECTRIC UTILITY CO. TRANSFORMER WHICH IS BEING REMOVED TO NEW ELECTRIC UTILITY CO. TRANSFORMER VIA NEW PRIMARY ELECTRIC MANHOLE TO MAINTAIN EXISTING PRIMARY ELECTRIC SERVICE TO EXISTING CHILLER SUBSTATION DURING CONSTRUCTION OF NEW SCHOOL. WHEN EXISTING SCHOOL IS DEMOLISHED, EXISTING WIRING SHALL BE REMOVED FROM EXISTING CONDUIT(S) FROM NEW ELECTRIC UTILITY CO. TRANSFORMER TO EXISTING CHILLER SUBSTATION BY ELECTRIC UTILITY CO. CONDUIT AND CONCRETE DUCTBANK SHALL BE ABANDONED IN PLACE.

NORTH ARROW



KEYPLAN



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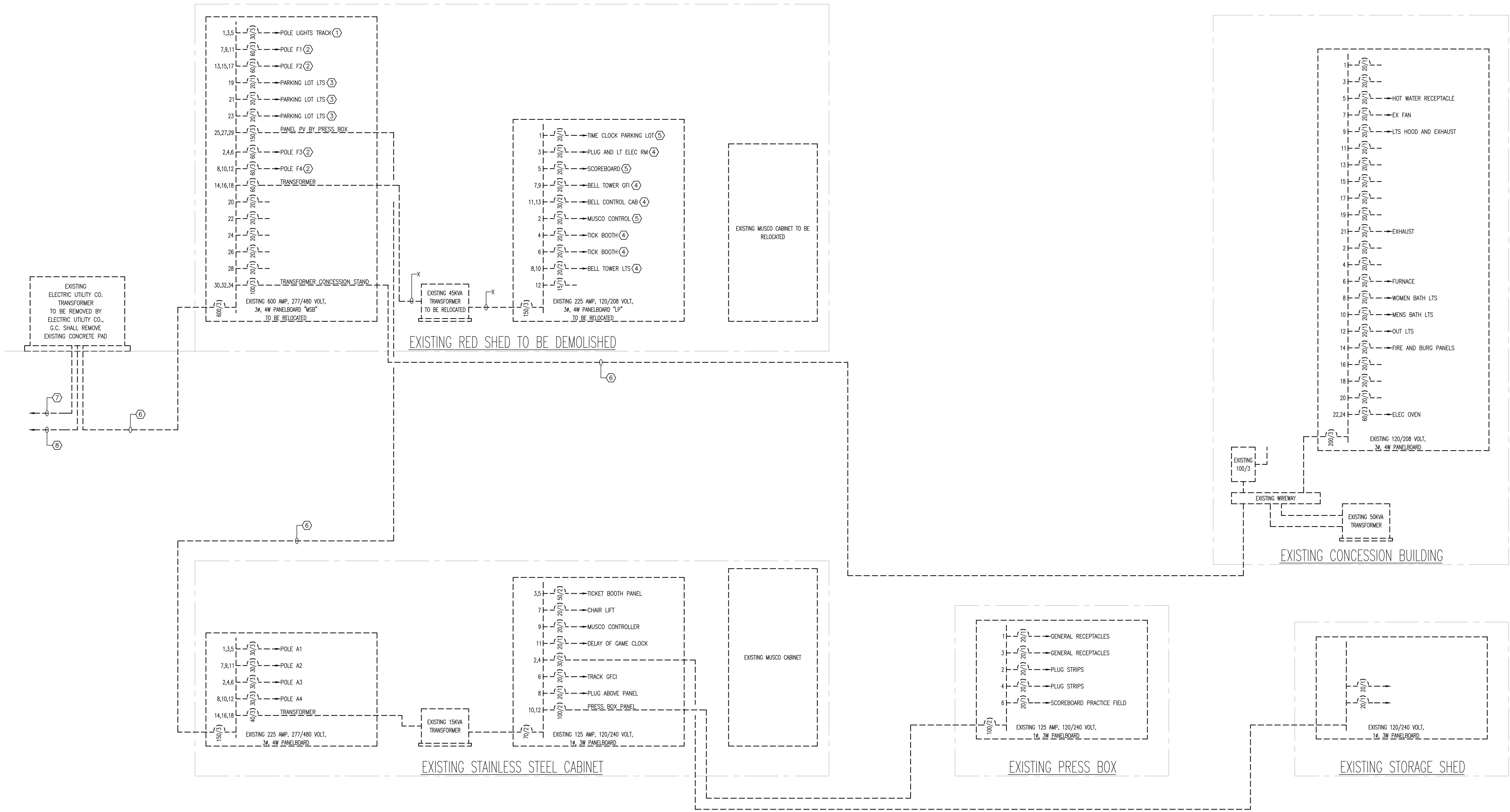
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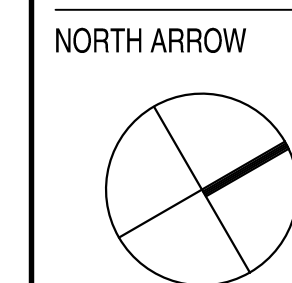
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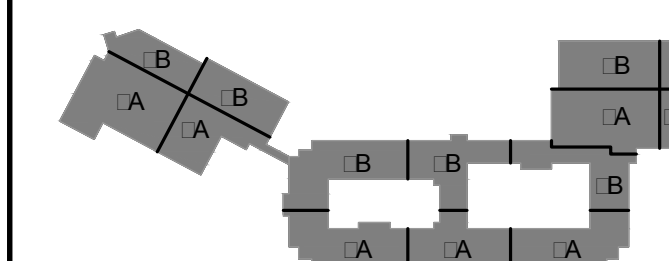
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- ① EXISTING CURB (#410+110C-1" C.) TO BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING PANELBOARD "MSB" LOCATION TO RELOCATED EXISTING PANELBOARD "MSB" LOCATION, VIA RELOCATED EXISTING MUGO CABINET.
- ② EXISTING CURB (#46+110C-1" C.) TO BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING PANELBOARD "MSB" LOCATION TO RELOCATED EXISTING PANELBOARD "MSB" LOCATION, VIA RELOCATED EXISTING MUGO CABINET.
- ③ EXISTING CURB (#211+112C-1" C.) TO BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING PANELBOARD "MSB" LOCATION TO RELOCATED EXISTING PANELBOARD "MSB" LOCATION.
- ④ NOT USED.
- ⑤ EXISTING CURB (#211+112C-1" C.) TO BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING PANELBOARD "LP" LOCATION TO RELOCATED EXISTING PANELBOARD "LP" LOCATION.
- ⑥ EXISTING PRIMARY CONCRETE DUCTBANK SHALL BE MAINTAINED, INTERCEPTED, AND EXTENDED FROM EXISTING ELECTRIC UTILITY CO. TRANSFORMER WHICH IS BEING REMOVED TO NEW ELECTRIC UTILITY CO. TRANSFORMER VIA NEW ELECTRIC UTILITY CO. MANHOLE TO MAINTAIN EXISTING PRIMARY ELECTRIC SERVICE TO EXISTING CHILLER SUBSTATION DURING DEMOLITION OF EXISTING SCHOOL. WHEN EXISTING SCHOOL IS DEMOLISHED, EXISTING WIRING SHALL BE REMOVED FROM EXISTING CONDUITS(S) FROM NEW ELECTRIC UTILITY CO. TRANSFORMER TO EXISTING CHILLER SUBSTATION BY ELECTRIC UTILITY CO. CONDUIT AND CONCRETE DUCTBANK SHALL BE REMOVED IN PLACE.



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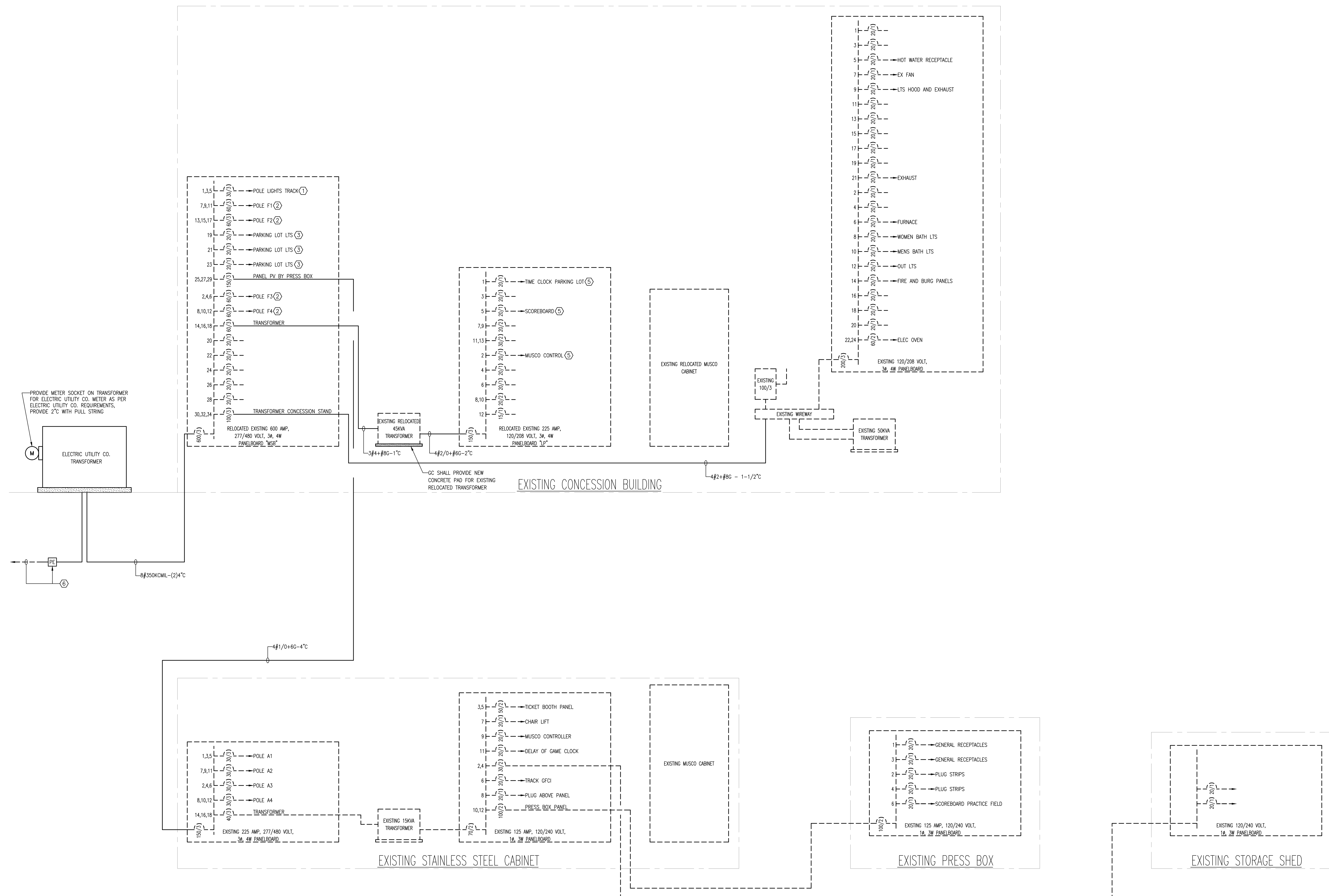
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DURFEE

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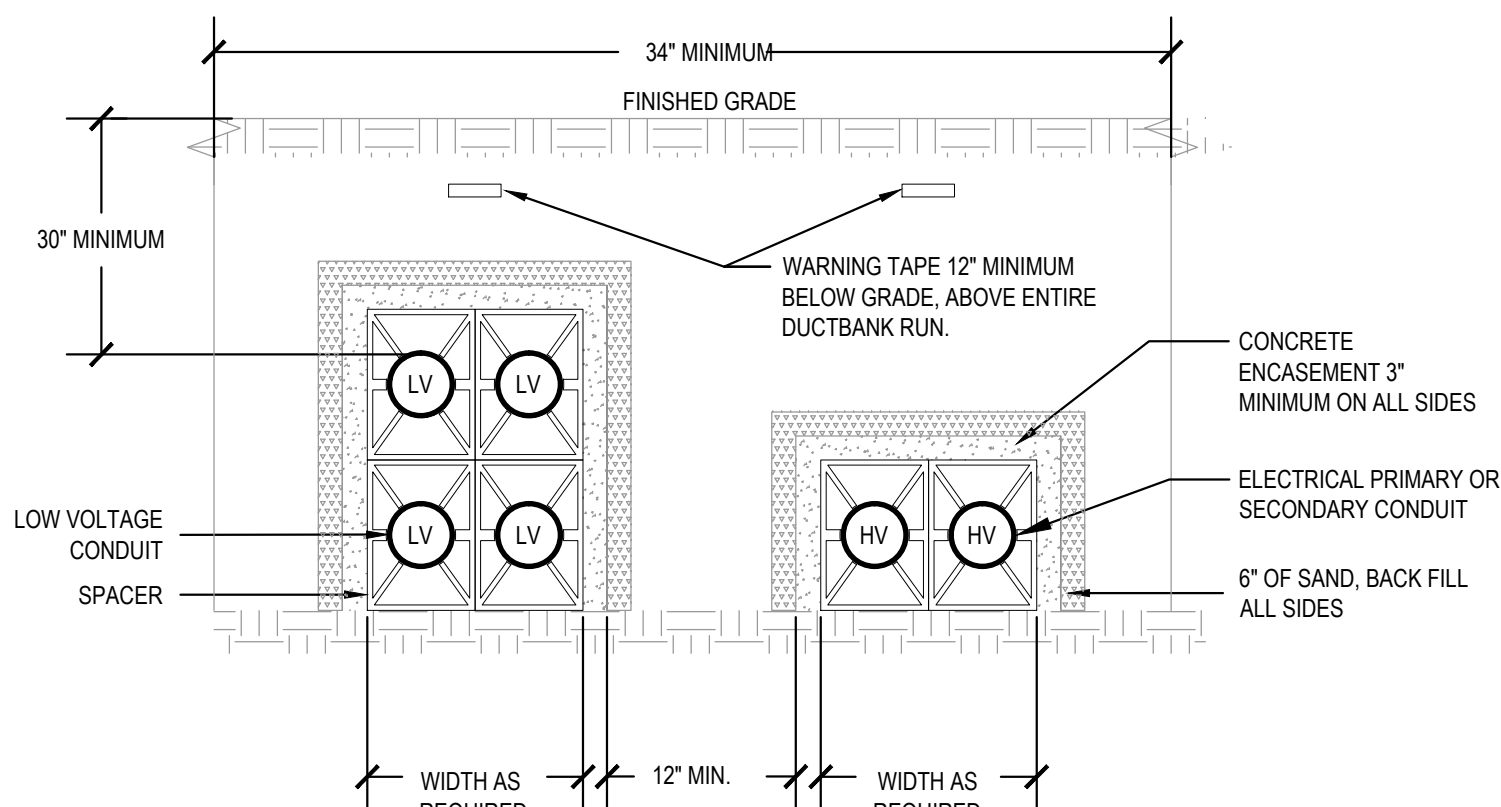
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DATE: MAY 4, 2018

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- DUCTBANK CONSTRUCTION NOTES:**
1. ALL CONDUITS ARE PVC. SIZE PER DUCTBANK DETAILS.
 2. ALL DIMENSIONS ARE MINIMUM.
 3. ALL DESCRIPTIONS ARE TYPICAL FOR THIS DIAGRAM.
 4. ALL BASE AND INTERMEDIATE SPACERS TO BE INTERLOCKING TYPE.
 5. ALL SPACERS TO BE CONSTRUCTED OF HIGH IMPACT PVC.
 6. ALL SPACERS TO BE INSTALLED AT 5'-0" CENTERS ALONG THE ENTIRE RUN.
 7. CONDUIT DUCTBANK CROSS SECTION IS SUBJECT TO APPROVAL BY UTILITY COMPANY, PRIOR TO CONSTRUCTION.
 8. DUCTBANK TRENCH MUST BE INSPECTED, APPROVED AND COORDINATED WITH THE UTILITY COMPANY REQUIREMENTS, PRIOR TO INSTALLATION AND PRIOR TO BACKFILL.
 9. ALL TRENCHING, CONCRETE WORK, BACKFILLING, GRADING, AND RESURFACING SHALL PROVIDED BY THE GENERAL CONTRACTOR. REFER TO SPECIFICATIONS FOR ADDITIONAL INFORMATION.

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NOTES:

1. REFER TO TYPICAL DUCTBANK CONSTRUCTION DETAIL FOR ADDITIONAL INFORMATION.
2. REFER TO ELECTRICAL SITE PLAN FOR ALTERNATES AS IT RELATES TO DUCTBANKS.

- | | |
|--|---|
| FA 4" CONDUIT FOR FIRE ALARM | FB 4" CONDUIT FOR FIBER |
| C 4" CONDUIT FOR CATV SERVICE | 1' CONDUIT FOR FIRE PUMP ATS CONTROL CIRCUIT |
| E 4" CONDUIT FOR PRIMARY ELECTRICAL SERVICE | S 4" CONDUIT FOR SECONDARY ELECTRICAL SERVICE |
| EM 4" CONDUIT FOR EMERGENCY GENERATOR TO ATS FEEDER | SP SPARE 4" CONDUIT |
| FP 4" CONDUIT FOR FIRE PUMP ELECTRIC SERVICE FEEDER | T 4" CONDUIT FOR TELEPHONE SERVICE |
| CONDUIT FOR REMOTE ANNUNCIATOR WIRING, ATS CONTROL CIRCUITS, BLOCK HEATER, ANNUNCIATION OF GENERATOR FAILURE, AND BATTERY CHARGER CIRCUITS. SIZE SHALL BE 1" EXCEPT FOR GENERATOR ANNUNCIATOR WHICH SHALL BE 2". | |

CTBAN C N G ETALS
N.T.T. SCALE

CTBAN ETALS

SCALE:
N.T.S.


NEW UTILITY POLE BY LOW VOLTAGE SERVICE PROVIDER, REFER TO LOW VOLTAGE RISER POLE INSTALLATION DETAIL:
(1) 4" CATV SERVICE
(1) 4" TELEPHONE SERVICE
(2) 4" SPARE

DUCTBANK C-C
DUCTBANK B-B
DUCTBANK A-A
NEW UTILITY POLE TO BE PROVIDED BY ELECTRIC UTILITY CO., REFER TO NATIONAL GRID POWER RISER POLE INSTALLATION DETAIL:
(1) 4" PRIMARY
(1) 4" SPARE

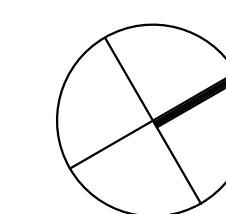
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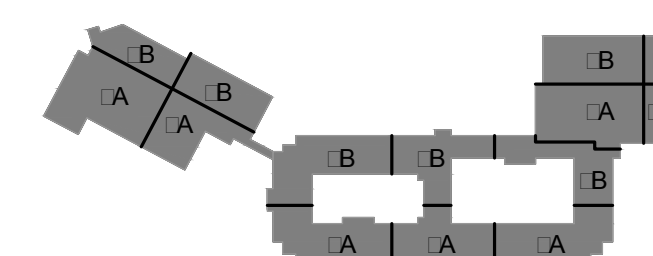
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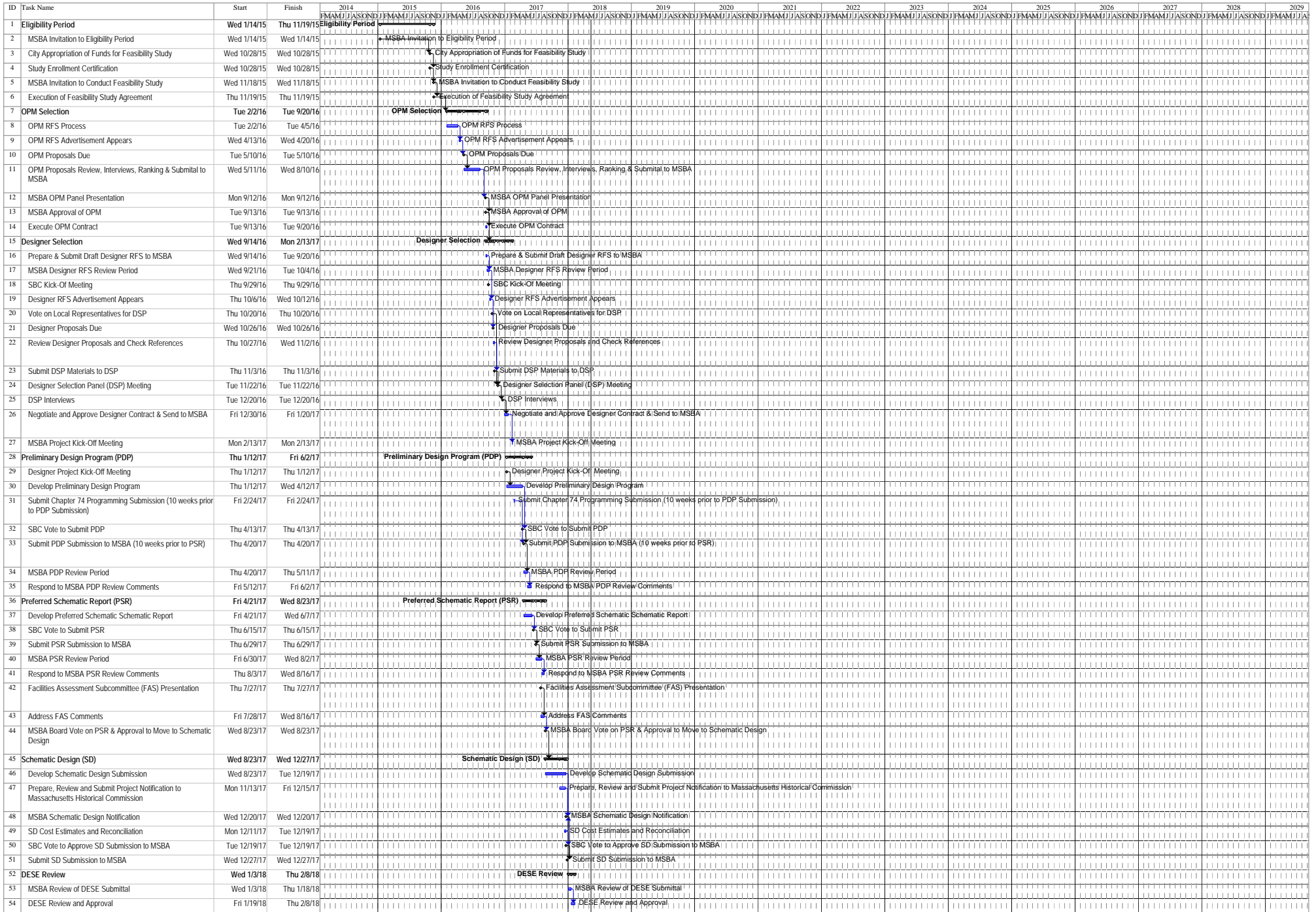
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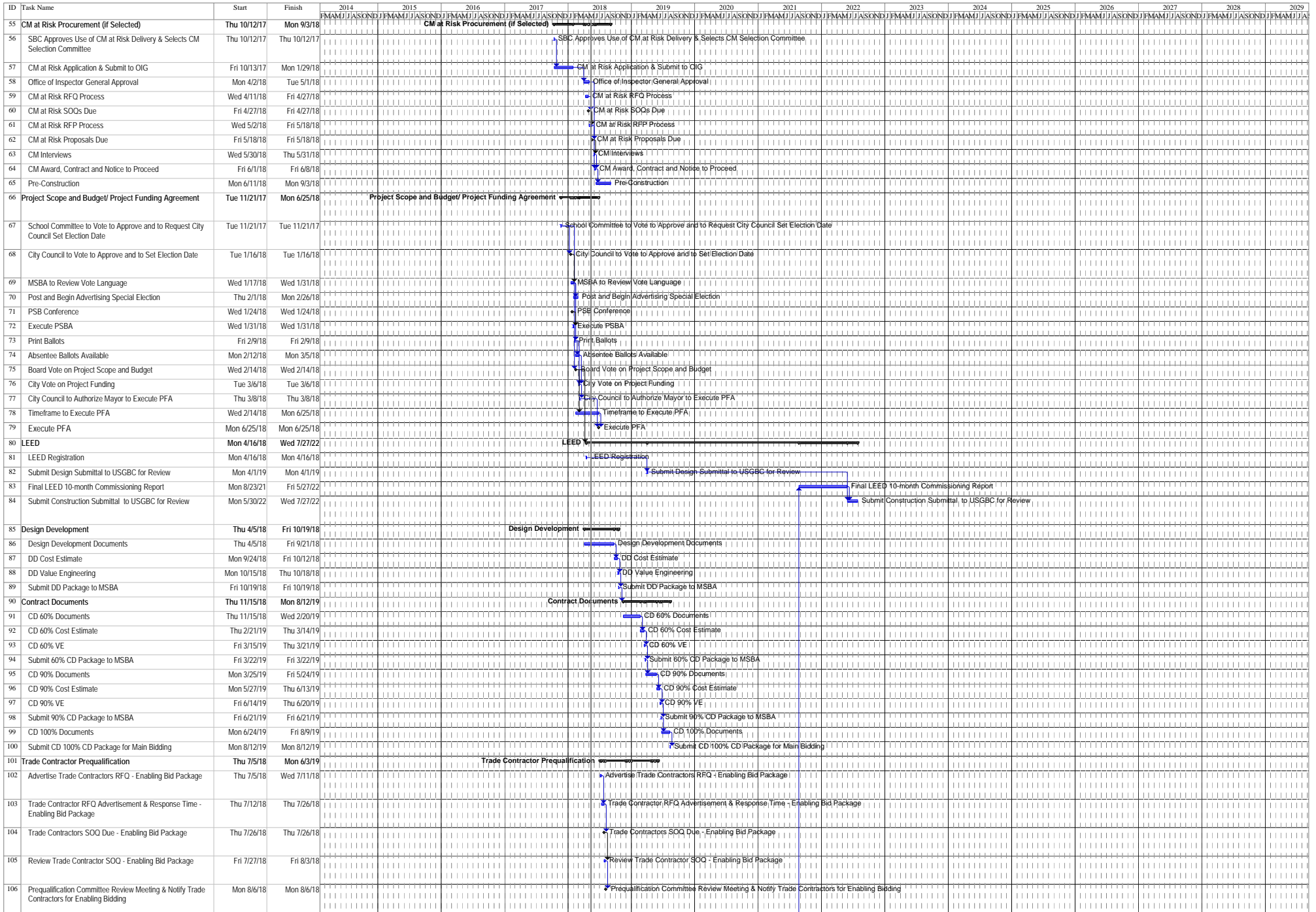
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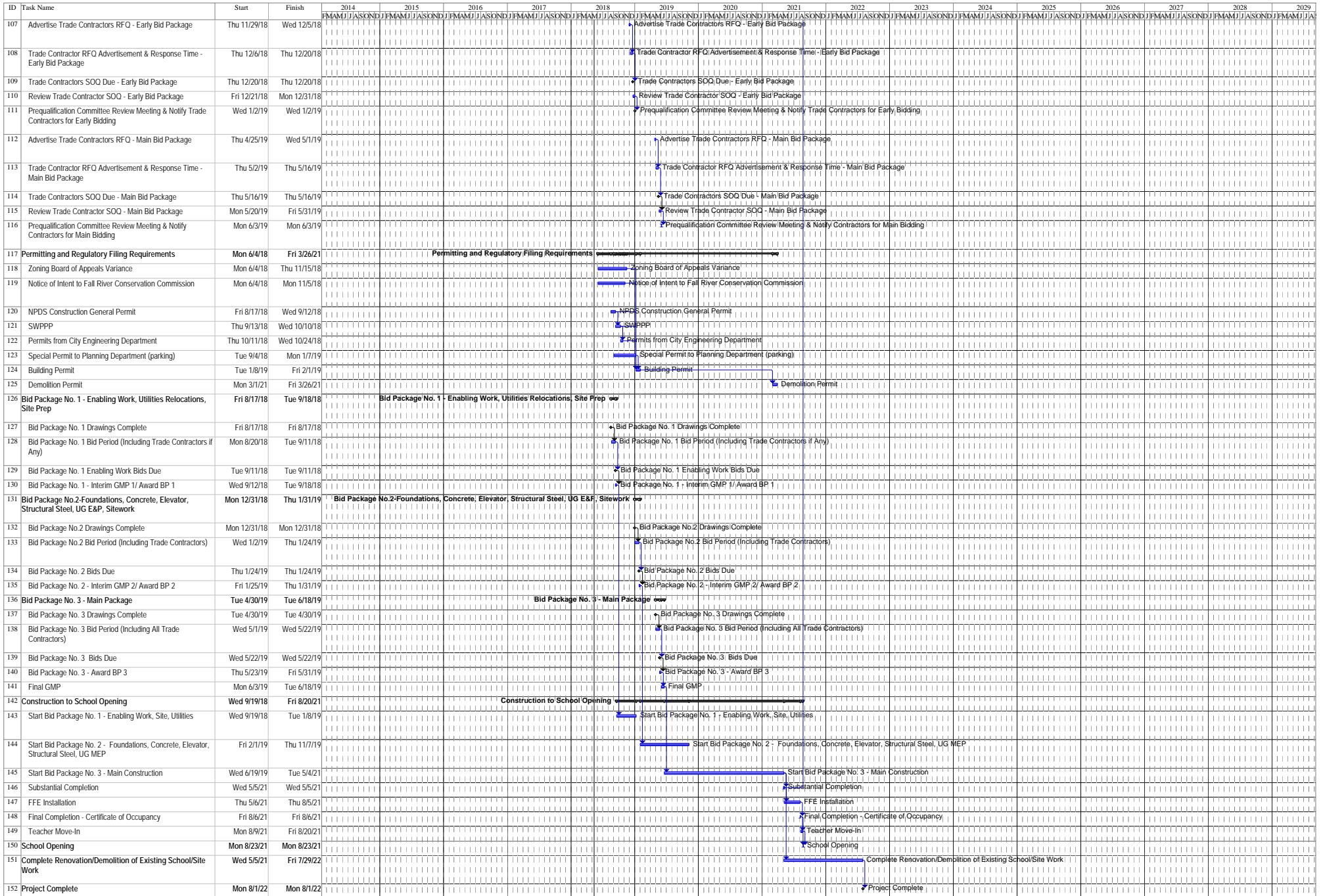
FALL RIVER - BMC DURFEE HIGH SCHOOL
PRELIMINARY PROJECT SCHEDULE
Design Development Phase: April 30, 2018



FALL RIVER - BMC DURFEE HIGH SCHOOL
PRELIMINARY PROJECT SCHEDULE
Design Development Phase: April 30, 2018



**FALL RIVER - BMC DURFEE HIGH SCHOOL
PRELIMINARY PROJECT SCHEDULE
Design Development Phase: April 30, 2018**





526 BOSTON POST ROAD
WAYLAND, MA 01778

T: 508-358-0790
F: 508-358-0791

May 11, 2018

MEMO

BMC Durfee High School
Ai3 Project #1607.00

Re: Electronic Information Transfer
Revit Model

To: Construction Management Firms

From: Troy Randall, Ai3

At your request, Ai3 Architects, LLC (Ai3) will provide electronic files for your convenience and use in the preparation for construction manager interviews related to BMC Durfee High School, subject to the following terms and conditions:

- Electronic information is a component of the instruments of service and is only for the Construction Management Firm's benefit on the specific project and for a specific use. Any other use or reuse by you or by others will be at your sole risk and without liability or legal exposure to Ai3. You agree to make no claim and hereby waive, to the fullest extent permitted by law, any claim or cause of action of any nature against Ai3, its officers, directors, employees, agents or sub-consultants which may arise out of or in connection with your use of the electronic files.
- Furthermore, you shall, to the fullest extent permitted by law, indemnify and hold harmless Ai3 from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from your use of these electronic files.
- There is no representation of the suitability of the electronic information for other purposes, of the durability of the information or the medium through which the information is furnished.
- Transfer of the information does not transfer any license to use the underlying software or extinguish the rights of the sender to reuse the information in the general course of a professional practice.
- The electronic information provides design information current as of the date of release, however it may not incorporate all or any of the information issued as Addenda, Change Orders, or other revisions. Ai3 makes no representation regarding the accuracy or completeness of the electronic files you receive. By your use of the electronic files, the Construction Manager is not relieved of his duty to fully comply with the Contract Documents, including and without limitation, the need to check, confirm and coordinate all dimensions and details, take field measurements, verify field conditions and coordinate your work with that of other contractors for the project.

If you are in agreement with these terms, please sign and return to Ai3.

Construction Manager: _____

Sign: _____

Date: _____

Print: _____

**BMC DURFEE HIGH SCHOOL
City of Fall River, Massachusetts**

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

OWNER - CONSTRUCTION MANAGER AGREEMENT

Awarding Authority: CITY OF FALL RIVER

This agreement ("Contract") is made as of the [DAY, MONTH, YEAR] by and between the CITY OF FALL RIVER, with a principal place of business at Fall River City Hall, One Government Center, Fall River, MA, and represented by Owner's Project Manager, LeftField, LLC, and [NAME OF CM FIRM], a Construction Manager with a principal place of business at [CM ADDRESS], hereinafter called the "Construction Manager or CM."

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

Preliminary Statement

- A. Pursuant to M.G.L. c. 149A the CITY OF FALL RIVER ("Owner") is undertaking the construction of the B.M.C. DURFEE HIGH SCHOOL ("the Project").
- B. The Construction Manager shall be liable to Owner for all of the obligations, responsibilities and liabilities of the Construction Manager under this Contract.
- C. Owner has engaged Ai3 ARCHITECTS, LLC (the "Designer") and LEFTFIELD, LLC (the "Owners Project Manager") under separate agreements to provide design and project management services for the Project.

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

Article 1. The Work.

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

Article 2. The Contract Documents.

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

Article 3. Relationship of the Parties.

- 3.1 CM's Obligation. The CM accepts the relationship of trust and confidence between Owner and the CM established by this Agreement and covenants with Owner to cooperate at all times with Owner, the Designer and any other consultants or project representatives engaged or employed by Owner, and to utilize the CM's best skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and, consistent with the requirements of the Contract Documents, to perform the Work in the best way and most expeditious and economical manner consistent with the interests of Owner and to make every effort to achieve time savings and construction efficiencies without compromising any safety with respect to the Work. The CM, in performing its services under this Agreement, is an independent contractor and is not an agent or employee of, or a joint venturer with, Owner. The CM shall endeavor to promote harmony and cooperation among Owner, the Designer, the CM, Subcontractors, separate contractors and other persons or entities engaged by Owner or otherwise employed in connection with the Project, as well as other public agencies having jurisdiction with respect to the Project. Owner agrees to use its best efforts to enable the CM to perform the Work in an expeditious manner by furnishing on a timely basis information required by the CM and making payments to the CM in accordance with the requirements of the Contract Documents.
- 3.2 Standard of Performance. The CM represents that it is experienced and skilled in construction of projects of the type, magnitude and complexity described in the Contract Documents, that it is familiar with the special problems and requirements of construction of the type required for the Project and in the location of the Site, and that it will furnish a complete and fully operable Project as indicated by and reasonably inferable from the Contract Documents.

Article 4. Contract Time.

- 4.1 Commencement Date. The CM shall begin pre-construction and construction phase services pursuant to the terms and conditions included in written Notices to Proceed ("NTP") issued by Owner.
- 4.1.1 Pre-Construction Services. The NTP for Design Development Phase pre-construction services shall be issued within a reasonable time following execution of the Contract. NTPs for Remaining Design Phase pre-construction services will be provided in separate NTPs.
- 4.1.2 Construction Services. The NTP for construction services shall be issued within a reasonable time following the execution of the GMP Amendment as defined in Paragraph 6.7.2, provided that, in Owner's discretion, it may elect to issue such NTP prior to the execution of the GMP Amendment. If the NTP is issued prior to the execution of the GMP Amendment, Owner may, in its discretion, limit the scope of the NTP in whatever manner it deems appropriate until the execution of the GMP Amendment, at which time, such limitations, if any, shall be rescinded.

- 4.2 Substantial and Final Completion. The Contract Time commences immediately from the date a written Notice to Proceed for Construction of the Project is issued to the CM. Early Bid Packages may begin on or about October 2018. The CM is to achieve Substantial Completion of the School Building no later than August 2021 and the entire Work, no later than July 2022, subject to any adjustments in the Contract Time approved by Owner in accordance with the Contract Documents (the “Substantial Completion Date”). The CM shall achieve Final Completion of the Work, no later than August 2022, subject to adjustments of the Contract Time approved by Owner in accordance with the Contract Documents (the “Final Completion Date”).
- 4.3 Time is of the Essence. The CM acknowledges that time is of the essence of this agreement with respect to Substantial Completion of the Work, Final Completion of the Work, any other milestones for completion of portions of construction, times for submitting proposals for contract modifications, and other times set forth in the Contract Documents are essential conditions of this Agreement.
- 4.4 Liquidated Damages.
- 4.4.1 If the CM shall neglect, fail or refuse to achieve Substantial Completion of the Work within the Contract Time, as adjusted in accordance with the provisions of the Contract Documents, the CM and the CM’s surety agree, as a part of the consideration for the execution of this Contract by Owner, to pay Owner the amounts set forth in this Subsection 4.4.1 below, not as a penalty, but as liquidated damages to cover certain losses, expenses and damages of Owner for such breach of contract as herein set forth. The CM acknowledges that delay in Substantial Completion of the Project will cause disruption of Owner’s operations and those of the Fall River Public Schools. Such disruptions include without limitation, loss of productivity and efficiency and duplication of effort of the Owner and of employees and contractors engaged by the Owner for operation of the completed facility. Owner will incur other direct administrative, professional, rental, storage, moving, transportation and other costs in the event of such delay. Delay in Substantial Completion will also require Owner to incur additional costs for compensation to the Designer and other consultants or contractors for extended or additional work on the Project. In light of the costs, damages, losses, risks and liabilities described above, the parties have agreed upon the liquidated damages stated below. Such damages have been fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages Owner would in such event sustain, and said amounts may be retained by Owner on or after the scheduled date of Substantial Completion from current progress payments or any other amounts owing to the CM. The agreed liquidated damages amounts are \$3,000 per day for each calendar day of delay in achieving Substantial Completion.
- 4.4.2 Except as otherwise expressly provided, none of the following shall constitute a waiver of the CM’s or its surety’s obligations to pay liquidated damages or any portion thereof:
- (a) Acceptance of any portion of the Work or payment to the CM or its surety therefore;
 - (b) Completion of a portion of the Work or the use or occupancy thereof by Owner or others;
 - (c) Owner’s requiring or allowing the CM or its surety to complete the Work.

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

Article 5. Construction Manager's Services.

- 5.1 Pre-Construction Services. Commencing upon the date of this Agreement, unless otherwise directed in a notice to proceed issued by Owner, the CM shall perform pre-construction services as provided in this Article and elsewhere in the Contract Documents.
- 5.1.1 Construction Planning. The CM shall attend regular Project meetings with Owner and the Designer. If requested by Owner, the CM shall schedule and lead such meetings and keep minutes of such meetings. The CM shall consult with Owner and the Designer concerning planning for construction of the Project. The CM shall make recommendations as to the purchase and assist in expediting the procurement of long lead items, which are required for the Project to ensure their delivery by the required dates. The CM shall review and, if appropriate, make recommendations with respect to the phasing of the Work, and shall otherwise advise and assist Owner and the Designer with respect to the division of the Work to facilitate the development of bid and proposal packages, bidding and awarding of subcontracts, allowing for scheduled sequential bid and proposal packages and taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.
- 5.2 Pre-Construction and Construction Services. The CM shall perform its pre-construction and construction services, responsibilities and obligations concurrently as necessary during the term of this Agreement as directed by Owner.
- 5.2.1 Design Review. The CM shall review, on a continuous basis, development of the Drawings, Specifications and other design documents produced by the Designer. Review of the documents is to discover inconsistencies, errors and omissions between and within design disciplines. The CM shall consult with Owner and the Designer regarding the selection of materials, building systems and equipment, and shall recommend alternative solutions whenever design details affect construction feasibility, schedules, cost or quality (without, however, assuming the Designer's responsibility for design) and shall provide other value engineering services to Owner. Without limitation, the CM shall review the design documents for clarity, consistency, constructability, maintainability/operability and coordination among the trades, coordination between the specifications and drawings, compliance with M.G.L. c.149A for procurement, installation and construction, and sequence of construction, including recommendations designed to minimize adverse effects of labor or material shortages. The CM reviews shall be performed by the project team members as approved by Owner. The reviews shall be provided in writing with detailed notations on the drawings and specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution. The CM shall attend meetings as necessary with the Designer and Owner in order to discuss and resolve all issues. The CM shall provide a Building Information Modeling (BIM) Coordinator to perform a

BIM clash detection on exports of the Architectural, Structural, and MEP models with reports to review with Design Team.

5.2.2 Master Development Schedule. The CM shall assist Owner to meet any scheduling responsibilities assigned by Owner. The CM shall also coordinate and integrate its Project schedules with the services and activities of Owner and other parties. The requirements provided herein are in addition to and not in limitation of the CM's obligation to prepare and maintain the Baseline Critical Path Method (CPM) Schedule and other schedules as provided in the Contract Documents.

5.2.3 Cost Estimates.

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

Alternatives into the design of the Project if doing so would result in a violation of Applicable Laws.

- (c.) The process and responsibilities of the CM described in this Section 5 shall also apply to any separate cost limits within the Construction Budget that have been established by Owner for certain phases, components or elements of the Work.

5.2.4 Permits and Approvals. Consistent with the General Conditions, the CM shall assist Owner and the Designer in identifying all governmental permits, user fees, approvals and licenses of any kind which must be obtained and be met in connection with the construction, use and occupancy of the Project (“Permits and Approvals”). The CM shall be responsible for obtaining all Permits, user fees and Approvals. The CM shall perform the Work in accordance with all conditions, mitigation measures and other requirements of all Permits and Approvals. The CM shall obtain and pay for all permits, inspections and certificates of occupancy for the Project. All applications, requests, appeals, filings and other documents, materials and information prepared by the CM to be submitted to governmental authorities in connection with the Permits and Approvals shall be subject to the prior approval of Owner, and shall be delivered to Owner sufficiently in advance of the time of their proposed filing or submission so as to permit a reasonable period for the review and comment of Owner and its consultants. If requested by Owner at any time, any such documents or materials to be used in connection with the Permits and Approvals may be prepared by Owner or other persons designated by Owner, and Owner or other persons designated by Owner may appear on behalf of Owner at any hearing, presentation or conference. In addition, the CM shall promptly complete and provide such other documentation as may be required by Owner, other agencies of the Commonwealth of Massachusetts or such other parties as Owner may indicate, provided that if the CM believes in any instance that compliance with such requirement materially modifies, enlarges or abridges the CM’s duties, obligations or rights under the Contract Documents, the CM may submit a proposal for an increase in the Contract Price and/or the Contract Time in accordance with the applicable provisions of the Contract Documents.

5.2.5 Monthly Progress Reports. On the fifth (5th) day of each month, or on such other day established by Owner, the CM shall submit to Owner the documents listed in this paragraph for the preceding month, in form and substance acceptable to Owner, containing, without limitation, the following information:

- (a) Project status overview including, without limitation, the following:
 - (i) Progress report by division of work or area;
 - (ii) Quality control/quality assurance report;
 - (iii) Safety and loss control report;
 - (iv) MBE/WBE and workforce participation status;
- (b) Procurement status report, including, without limitation, a status of MBE/WBE participation;
- (c) Project schedule update including, without limitation, a Summary Schedule (progress bar chart) from the CPM;
- (d) Project cost update, including, without limitation, the following:
 - (i) Cost summary;

- (ii) Cash flow update;
- (iii) List of outstanding Change Orders and Change Directives;
- (iv) List of potential changes and outstanding Change Proposal requests and CM Change Requests; and
- (e) Such other reports, logs or documents as Owner may reasonably require for the management of the Project.

5.2.6 Executive Summary Progress Report. On the fifteenth (15th) day of each month, or such other day established by Owner, the CM shall submit to Owner an Executive Summary Progress Report in form and content satisfactory to Owner. Such Report shall include but not be limited to a summary of the important information from the submittals listed in Paragraph 5.2.5 and a discussion of the important issues facing the Project as of the date of the Report's submittal.

5.2.7 Subcontracts. Unless otherwise specifically approved by Owner, all Work shall be performed by the CM pursuant to Subcontracts awarded by the CM in accordance with the General Conditions of the Contract, Appendix D: Procedures for Award of Subcontracts.

- (a) The CM shall consult with Owner with respect to proposed bidding and proposal forms and procedures for all subcontracts. The CM understands and agrees that Owner may participate in negotiations with Subcontractors and that Owner and its representatives shall have access to any documents submitted by all Trade Contractors and Other Subcontractors to the CM, for review as to compliance with bidding and proposal procedures and other requirements of the Contract Documents. No Subcontract or other agreement between the CM and any third party for the furnishing or supply of any labor, materials or equipment in the performance of the Work shall be entered into without Owner's prior written approval. Owner shall respond promptly to any request for approval of a Subcontract. Standard forms of subcontract agreement for all Trade Contractors and Other Subcontractors are attached as Appendix F to the General Conditions of the Contract. No material revisions shall be made to any such Subcontract or other agreement approved by Owner without the prior approval of Owner. Copies of all executed Subcontracts shall be provided to Owner promptly.
- (b) Purchases from Affiliated Entities. Except in the event of an emergency as provided herein, neither the CM nor any Subcontractor shall enter into any subcontract, contract, agreement, purchase order, or other arrangement (collectively, an "Arrangement") for the performance of any portion of the Work or the furnishing of any materials, services or equipment in connection therewith with any party or entity if such party or entity is an Affiliated Entity (as defined below), unless such Arrangement has been approved by Owner, after full disclosure in writing by the CM and Subcontractor, if applicable, to Owner of such affiliation and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the CM and/or any Subcontractor, as applicable, or with respect to which the CM and/or any Subcontractor, as applicable, has direct or indirect ownership or control, including, without limitation, any entity owned in whole or in part by the CM and/or any Subcontractor, as applicable; any holder of the issued and outstanding shares of, or the

holder of any interest in, the CM and/or Subcontractor, as applicable; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the CM and/or any Subcontractor, as applicable, has a direct or indirect interest which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

5.3 Construction Services. Commencing upon the date of the Notice to Proceed with Construction, unless otherwise directed by Owner, the CM shall perform Construction Services as provided in these paragraphs and elsewhere in the Contract Documents.

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

5.3.2 Quality Assurance/Quality Control. The CM shall prepare and submit to Owner for its approval a Quality Assurance/Quality Control program. Such program shall provide that the CM shall be responsible for insuring that adequate quality assurance and quality control programs are developed, implemented and enforced by the CM's staff and all Subcontractors, including an experienced full-time quality manager, employed by the CM, whose sole responsibility shall be quality assurance and quality control and shall be stationed at the Project Site and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work. The Quality Manager shall report to Owner and its representatives on a weekly basis the status of the program for each trade, and any deficiencies, and a recommended plan for corrective action. The CM's BIM coordinator shall organize and manage a BIM coordination process with Subcontractors, developing a separate BIM Construction Model for the Architectural, Structural, Mechanical, Electrical, Plumbing, Fire Protection, and Communication trades. The BIM coordinator shall work with a specialized MEP coordinator during the coordination process. This shall include:

- (a) Preparation of Clash Reports
- (b) Preparation of Construction Record Model & Documents
- (c) Three-dimensional Coordination Modeling and Documents

5.3.3 Prevailing Wage. Work under this project is subject to the prevailing wage laws M.G.L. c. 149, s.26-27 H. The Schedule for Prevailing Wages will be provided at the mid-point of the Design Development Phase for use for the work of early packages.

5.3.4 Criminal Offender Record Information Check. All employees and/or prospective employees of the CM, Trade Contractors and Subcontractors working on this project may be subject to a CORI (Criminal Offender Record Information) and a SORI (Sex Offender Registry Information) check pursuant to chapter 6 of the Massachusetts General Laws.

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

5.3.6 Conditions Where CM May Perform Work. The CM may submit its qualifications to bid on trade contract or subcontract work in accordance with the provisions of the Trade Contractor Section Process set forth in the General Condition; provided that the CM firm customarily performs the work for which it submits qualifications; provided further, that the CM firm must perform the work with employees on its own payroll; and provided further, that the CM firm meets all the requirements of the selection process. The CM firm may also self-perform work included in the Supplementary General Conditions (also known as "Division 1") made necessary by an emergency to protect life or to prevent serious property damage pursuant to an advance written approval by Owner where possible. Where advance written approval is not possible due to an extreme emergency, written approval must be obtained from Owner as soon as possible after work begins to alleviate the emergency.

5.4 General Requirements for Pre-Construction and Construction Services

5.4.1 Design Related. The recommendations and advice of the CM concerning design modifications or alternatives shall be subject to the review and approval of Owner. If the CM recognizes or discovers that any portion of the Drawings and Specifications is at variance with Applicable Laws, the CM shall promptly notify the Designer and Owner in writing, and if the CM fails to promptly so notify the Designer and Owner, having recognized or discovered such variance, the CM shall be liable for an equitable portion of any loss, cost or damage sustained by Owner on account of such variance.

5.4.2 CM's Organization and Staff. The CM shall establish an organization and lines of communication required to carry out the requirements of this Agreement in order to organize and direct the complete construction of the Project. A listing of the CM's key staff is set forth as **Exhibit GC** attached hereto and incorporated herein. **Exhibit GC** shall incorporate information provided by the CM in their proposal **Forms B, C and D** as modified by any negotiations. Proposed staffing provided in **Form D** shall be reviewed as part of the negotiations for the GMP. All key staff shall be available for and actively participate in the performance of the services provided under the Contract Documents unless such failure is for good cause beyond the control of the CM. No substitution of any assigned and approved key staff shall be made by the CM without the prior written consent of Owner in its sole discretion. Before any such substitution is made, the CM shall submit to Owner the qualifications of any proposed replacement. The removal or replacement, without Owner's consent, of any of the key staff listed in **Exhibit GC**, other than as a result of retirement, disability, death or bona fide termination of employment, shall constitute a material breach of this Agreement and Owner reserves the right to terminate the contract and assess damages. Within thirty (30) days after execution of this Agreement, the CM shall furnish to Owner a detailed organizational chart (the "Organizational Chart") for approval by Owner. Such chart shall reflect the same persons as set forth in the Proposal unless otherwise approved by Owner. The Organization Chart shall expand upon and update the General Conditions Cost Administrative Breakdown set forth in **Exhibit GC**, and shall identify each staff position, the

anticipated start date and end date for each identified staff person and the estimated personnel cost on account of each such staff person. Upon approval by Owner, which approval shall not be unreasonably withheld, the Organizational Chart shall supersede and replace the General Conditions Cost Administrative Breakdown set forth on **Exhibit GC**. The CM's management and field supervisory staffing shall be in accordance with the approved Organizational Chart. All modifications to the Organizational Chart after initial approval by Owner must be approved by Owner, such approval not to be unreasonably withheld. Owner may require replacement of any member of the CM's staff with or without cause, and may require increased levels of staffing by the CM, at no increase in the Contract Price, if necessary to achieve proper production, management, administration or superintendence, or if otherwise necessary to maintain progress in accordance with the Project Schedule. By executing this Agreement, the CM certifies that the CM and each member of its key staff comply with all licensing, registration and other requirements applicable to the CM and the performance of its services hereunder pursuant to Applicable Laws. Furthermore, Owner shall have the right to require the CM and any Subcontractor to replace any on-site personnel who it reasonably finds objectionable, with other personnel approved by Owner.

Article 6. Contract Price

6.1 Contract Price.

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

6.2 General Conditions Payment.

- 6.2.1 In consideration of the performance by the CM of the work described in the Contract Documents Owner shall pay to the Construction Manager, as full and complete compensation to the Construction Manager for all General Conditions costs incurred in the performance of such work an amount not to exceed the payment specified in Form B of **Exhibit GC** ("General Conditions Costs"), subject to Subsection, 6.2.5 below. The total dollar values for Construction General Conditions Costs set forth in Form B of **Exhibit GC** represent the maximum amount to be paid to the CM for all Pre-Construction and Construction General Conditions Costs. The provisions in the Contract Documents

concerning the anticipated schedule for the Project and the durations of the Pre-Construction Period, and Construction Period, are not for the purpose of describing the compensation for General Conditions Costs and do not extend or authorize any extension of the Contract Substantial Completion date and/or the Final Completion date. The CM may make a claim for extension of the Contract Substantial Completion date and/or the Final Completion date only as provided in, and subject to the limitations specified in, the Contract Documents.

6.2.2 Intentionally Omitted

6.2.3 Construction. During the Construction Period monthly payments to the CM on account of General Conditions Costs shall be made. The amount of the monthly payments shall be determined by applying the percentage of the Hard Cost of the Work approved for payment by Owner to the total amount of the Construction Period General Conditions Costs set forth in Exhibit GC, and deducting from such value any amounts previously paid to the CM on account of Construction Period General Conditions Costs. For each month or partial month during the period from the commencement of the Construction Period, through Final Completion, the CM shall submit a monthly invoice to Owner requesting payment of the Construction Period General Conditions Costs. Payment shall be processed in accordance with the provisions of Article VIII of the General Conditions of the Contract.

6.2.4 Either Owner, or the Construction Manager, subject to the approval of Owner, may request that one or more specific items included in General Conditions Costs be included in a Subcontract bid or proposal package or otherwise separately procured. Whether included in a Trade Contractor bid package or Subcontractor proposal or otherwise separately procured, each such item shall be bid as an alternate and, if accepted by Owner, the cost of such item shall be considered part of the Hard Cost of the Work, and the amount of the General Conditions Payment due hereunder shall be reduced by the total cost of such item.

6.2.5 If the Construction Manager performs additional work of the type described in Exhibit GC under a Change Order approved by Owner, compensation, if any, due to the Construction Manager shall be computed in accordance with Section 6.4, below, and Article VII of the General Conditions of the Contract; otherwise, Owner shall have no obligation to compensate the Construction Manager on account of the cost of the work for any amounts exceeding the total payments as set forth in Form B in **Exhibit GC**.

6.2.6 The General Conditions Costs for payment bond, performance bond and builders risk Insurance that appear in Form D, Section D of Exhibit GC shall be adjusted up or down by change order, based on the difference between the GMP and the estimated Project amount carried in Exhibit GC. There will be no CM Fee attributable to any such adjustment.

6.3 Construction Manager's Fee.

6.3.1 In further consideration of the performance of the Contract by the CM, Owner shall pay to the CM a fee associated with Phase 1 Design Development Pre-Construction Services in the amount of \$_____ and a fee associated with Phase 2 Main Pre-Construction Services in the amount of \$_____ as identified on Form B in Exhibit GC (the "Pre-Construction Services Fee") in monthly payments. From the commencement through

the end of the Pre-Construction Period, equally divided lump sum payments of \$_____ for the _____ months of Phase 1 Design Development Pre-Construction Services and of \$_____ for _____ months of Phase 2 Main Pre-Construction Services, shall be made on a monthly basis. For each month or partial month during the period from the commencement of the Pre-Construction Period through the period when Pre-Construction Services end, the CM shall submit a monthly invoice to Owner requesting payment of the Pre-Construction Services Fee. Payment shall be processed in accordance with Article VIII of the General Conditions of the Contract.

6.3.2 Construction. In further consideration of the performance of the Contract by the CM, Owner shall pay to the CM a fee associated with construction services in the amount of \$_____ as identified on “Line 2” in Form B of Exhibit GC (the “CM Construction Fee”) in monthly payments. The amount of the monthly payments shall be determined by applying the percentage of the Hard Cost of the Work approved for payment by Owner, to the total amount of the CM Construction Fee set forth in Exhibit GC and deducting from such value any amounts previously paid to the CM on account of the CM Construction Fee.

6.4 Changes in the Work. Owner may make changes in the Work when Owner considers it to be necessary or desirable, as further provided in Article VII of the General Conditions of the Contract.

6.5 Intentionally Omitted.

6.6 Retainage. Owner shall retain five percent (5%) from the amount approved for payment in the monthly Applications for Payment, as provided in the General Conditions of the Contract. Such retainage shall be applied with respect to all amounts payable under the Application for Payment, including the Hard Cost of the Work, the CM Fee and the General Conditions Payment. Retainage shall be paid as provided in the General Conditions.

6.7 Guaranteed Maximum Price.

6.7.1 On the date agreed upon by Owner and the CM, or, if no such date is agreed upon, on the date established by Owner by written notice to the CM, which date shall be at least 20 days after the date of such written notice, the CM shall submit to Owner a proposed GMP, which shall be the sum of the estimated total Hard Cost of the Work, the Construction Contingency (hereafter defined), total payment for General Conditions Costs, and the CM Fee. The CM shall include with the GMP proposal a written statement of its basis in form and substance satisfactory to Owner, which shall include at least:

- (a) a list of the Project design documents upon which the GMP proposal is based;
- (b) N/A;
- (c) a list of any assumptions, qualifications and clarifications made by the CM in the preparation of the GMP proposal to supplement the information contained in the Project design documents;

- (d) a statement that the proposed GMP is based on the Baseline CPM Schedule and the Substantial Completion Date specified in this Agreement;
- (e) the proposed GMP, including a detailed statement of the actual and estimated Hard Cost of the Work organized by CSI (Construction Specification Institute) format with quantities, units, and unit rates, Pre-Construction and Construction General Conditions Costs, Construction Contingency, Pre-Construction and Construction CM Fee and other items that comprise the GMP;
- (f) a schedule of applicable alternate prices;
- (g) a schedule of applicable unit prices; and
- (h) the time limit for acceptance of the GMP proposal (which shall not be less than 90 days).

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

Article 7. Hard Cost of the Work.

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

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

7.1.2 Costs of Materials and Equipment Incorporated in the Completed Construction

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

7.1.3 Intentionally Omitted

7.1.4 Emergencies and Repairs to Damaged or Nonconforming Work.

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

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

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

7.1.5 Miscellaneous Hard Costs

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

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

7.2 Construction Contingency.

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

- (a) unanticipated cost overruns on the CM’s procurement of Subcontracts or other purchases of materials or labor costs, provided that the same are not caused by the fault, negligence, or breach of contract of the CM or any Subcontractor;
- (b) expediting or acceleration costs required to meet the Baseline CPM Schedule, as long as the same are not made necessary by the fault or negligence of the CM or any Subcontractor; and
- (c) such other unforeseen events and conditions as may be specified in the Contract Documents as chargeable to the Construction Contingency.

After execution of the GMP Amendment, if the contract price of any subcontract as awarded is less than the amount carried for such subcontract in the GMP breakdown, the Construction Contingency referenced in this section shall be increased by the amount of such savings.

7.2.2 Costs authorized to be paid from the Construction Contingency by Paragraph 7.2.1 shall be paid to the CM as Hard Cost of the Work only if and to the extent reasonably approved by Owner. The Construction Contingency shall be reduced by the net amount of the additional Hard Cost of the Work resulting from the use of the Construction Contingency as authorized by Paragraph 7.2.1. The CM shall not receive any CM Fee in connection with any use of the Construction Contingency.

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

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

- (a) Salaries, bonuses and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal offices, or other offices, except the site office for this project.
- (b) Expenses of the Construction Manager's principal offices, site office or other offices, except the site office for this project (including, without limitation, in-house computer costs, and other costs of doing business, services, and related expenses to maintain such offices).
- (c) Overhead and general expenses of any kind, including but not limited to office or fabrication shop overhead and drafting and printing costs, except as specifically provided in **Exhibit GC**.
- (d) The CM's capital expenses, including interest on the CM's capital employed for the Work.
- (e) Costs of machinery and equipment owned or rented by the CM, except as specifically provided in **Exhibit GC**.
- (f) Costs incurred due to the fault, negligence or breach of contract of the CM, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, death or injury to person or damage to property, the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, unanticipated cost overruns incurred by the CM in the procurement of Subcontracts, materials or labor, and making good damage to property not forming part of the Work, except: (i) to the extent reimbursement is received through the recovery of insurance proceeds, or (ii) to the extent such items may be charged to the Construction Contingency pursuant to Paragraph 7.2.1.
- (g) Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated into the Work, except as specifically provided in **Exhibit GC**.
- (h) Penalties, fines or costs imposed by governmental authorities in connection with, or resulting from any violation of, or noncompliance with Applicable Laws by the Construction Manager or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- (i) Any legal fees incurred by the Construction Manager, unless the same are incurred at the written direction, or with the prior written approval, of Owner.
- (j) Travel or meal expenses and personnel relocation expenses, except as specifically provided in **Exhibit GC**.
- (k) General Conditions Costs in excess of the total of all General Conditions costs as set forth in Form B in **Exhibit GC**.
- (l) Any cost incurred by the CM as a result of knowing violation of or failure to comply with this Agreement or the other Contract Documents by the CM.
- (j) Costs which would cause the GMP to be exceeded.
- (k) Costs incurred by the CM after final payment; provided, however, that to the extent there is Contingency remaining at final payment, such Contingency shall be available to pay costs incurred during the one year period after final payment, but only if

Contingency would be available, subject to reasonable approval by Owner, to pay such costs had such costs been incurred prior to final payment.

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

7.5 Accounting Records

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

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

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

- 7.5.4 If any inspection of the Construction Manager's or any Subcontractor's books, records or other documents reveals an overcharge, the Construction Manager shall pay Owner or, at Owner's election, Owner may reimburse itself by taking as a credit against future payments due the Construction Manager, an amount equal to the overcharge. If one or more overcharges is equal to or greater than two hundred thousand dollars (\$200,000) in the aggregate, the CM shall also pay all administrative and auditing expenses up to an aggregate of forty thousand dollars (\$40,000) incurred by Owner in determining the existence and amount of the overcharges. Nothing contained in this provision is intended as a limitation of any other rights or remedies which may be available to Owner and/or the Commonwealth, be they civil or criminal.

Article 8. Payments to Construction Manager.

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

Article 9. Equal Employment Opportunity, Nondiscrimination and Affirmative Action

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

Article 10. Miscellaneous Provisions

- 10.1 Successors and Assigns. Owner and the CM bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither the CM nor any partner of the CM shall assign or transfer the Contract or sublet or subcontract it (other than subcontracting portions of the Work as expressly permitted by and in accordance with the Contract Documents), or otherwise transfer or assign any of its or their rights or obligations under all or any portion of the Contract Documents without the prior written consent of Owner, which consent may be withheld by Owner in its sole discretion, nor shall the CM or any partner of the CM assign any moneys due or to become due to it hereunder, without such prior written consent of Owner. Any assignment of the Contract or any interest therein by the CM or any partner of the CM shall be void, and the assignee in such case shall acquire no rights in the Contract or in such moneys. Owner may assign the Contract to any successor or assignee of Owner's interests, provided that Owner demonstrates to the reasonable satisfaction of the CM that such successor or assignee has the capability of fulfilling Owner's obligations under the Contract.
- 10.2 Additional Information. Recognizing that Owner may find it necessary during the progress of the Work to establish the current status of performance under the Contract Documents, the CM shall, without limitation of any other requirements of the Contract Documents, promptly provide

upon request statements, documents or information to Owner or others regarding the status of the Work, compliance of the Work with the Contract Documents, compliance by the CM or any Subcontractor with the Contract Documents, the names of Subcontractors or suppliers, amounts due or to become due or amounts previously paid to Subcontractors or suppliers, estimates of the portion of the Work completed and the cost of completing the Work, and such other matters within the scope of the CM's performance under the Contract Documents as Owner may reasonably require.

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

10.4 Governing Law. The Contract shall be governed by the laws of the Commonwealth of Massachusetts.

10.5 No Personal Liability; Consequential Damages.

10.5.1 No member, officer, consultant, volunteer participant, employee, agent or representative of Owner or the Designer shall be personally liable to the CM under any term or provision of this Contract for Owner's payment obligations or otherwise, or because of any breach hereof, the CM agreeing to look solely to the assets of Owner or the Designer entities for the satisfaction of any liability hereunder.

10.5.2 In no event shall Owner or the Designer be liable to the CM except for obligations expressly assumed by Owner or the Designer under the Contract Documents, nor shall Owner or the Designer ever be liable to the CM for indirect, special or consequential damages.

10.6 Conflict of Interest. The CM shall familiarize its employees assigned to perform services under this Agreement with the provisions of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict-of-interest statute). The CM acknowledges that Owner is a "state agency" for purposes of the aforementioned statute and that the CM is an "interested party" for purposes of the aforementioned manual. Accordingly, the CM, its employees and agents shall not offer or provide any employee of Owner any gift, gratuity, favor, meal, entertainment, loan or other item of monetary value. The CM warrants and represents that it currently has no interest and shall not acquire any interest, direct or indirect, which would be adverse to or conflict in any manner with the performance of its services under this Agreement or with the interest of Owner or the Project. The CM further agrees that in the performance of this Agreement no person or entity having any such adverse or conflicting interest shall be employed or granted a subcontract. Except with Owner's knowledge and express consent, the CM shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to be adverse to the interests of Owner or to compromise the CM's professional judgment with respect to the Project. The CM has a continuing obligation to divulge to Owner all circumstances of its relationships with third parties, as well as any other interests that may have an effect on Owner or the Project at the time of execution of this Agreement or during its effectiveness. If Owner believes that there is or has been a conflict of interest, or the appearance of a conflict of interest, it will so notify the CM. The CM shall make full disclosure of all material facts, and shall have a

period of thirty (30) days after receipt of such notice to cure the conflict of interest or the appearance of conflict of interest, including the right to request a meeting with a representative of the Owner to explain its position. If the conflict of interest or appearance of conflict of interest is not cured to the satisfaction of Owner or the controversy otherwise resolved prior to expiration of such thirty (30) days period, the CM shall be deemed to be in default of this Agreement and Owner may exercise any remedies available to it under this Agreement or applicable law.

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

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

Exhibit A	Additional Insurance Provisions
Exhibit B	Forms Used During Contract Award and Execution
Exhibit C	Prevailing Wage Rates (and Davis-Bacon Compliance Provisions if applicable)
Exhibit GC	Price Proposal Forms B, C and D

Article 11. Approved Subcontractors.

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

Article 12. Certifications.

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

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

The applicable goals, if any, for minority business enterprise and woman business enterprise participation established for this Contract are as follows:

Combined MBE/WBE: **10.4%** of the GMP.

See also Appendix B to the General Conditions of the Contract and Article XIII of the General Conditions of the Contract.

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

CONSTRUCTION MANAGER

By: _____

Name: _____

Title: _____

Date: _____

CITY OF FALL RIVER

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

By: _____

Name: _____

Title: _____

Date: _____

Approved as to Form:

By: _____

Name: _____

Title: _____

Date: _____

Attach Exhibits A, B, C and GC