

**CITY OF EVERETT
MASSACHUSETTS**



**SUPPLY AND SERVICE A MOBILE BOILER CONTRACT
Contract Number 24-33**

November 2023

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**EVERETT CITY HALL
PROCUREMENT OFFICE**

484 Broadway
Everett, MA 02149

INVITATION TO BID

The City of Everett, Massachusetts invites bids for "**DELIVER, SUPPLY, INSTALL AND SERVICE PORTABLE BOILER (8-10 Million BTU's) CONTRACT**" Contract No. 24-33 for the OLD Everett High School.

The Proposal, Specifications and Bid Forms for the contract may be downloaded via [Purchasing - Everett, MA - Official Website \(cityofeverett.com\)](https://www.cityofeverett.com) after 9 am on November 8, 2023. Please note that City Hall is closed on Fridays.

Bids must be submitted to the Procurement Office, Room 14 at the above address before **2:00 P.M. on November 27, 2023**, at which time and place the bids will be publicly opened and read aloud.

The contract will be awarded under the provisions of M.G.L. c. 149 to the lowest cost responsible and responsive bidder offering the lowest total price for all three years of the contract.

It is the responsibility of prospective proposers and or bidders to check the City of Everett's website for new information any addenda or modifications to any solicitation.

MA Prevailing Wage Rates apply to this project.

If, at the time of the scheduled bid opening, the bid opening location shall be shut down as the result of an emergency, the bids will be due and opened at the same time and location on the 1st business day the building is able to re-open. Bids will be accepted until that date and time.

The City of Everett accepts no responsibility and will provide no accommodation to Bidders who submit a response and or bid based on an out-of-date solicitation or on information received from a source other than the City of Everett.

The City of Everett reserves the right to reject any and all bids, or to award or not to award the contract for any reason the mayor determines to be in the City's and/or the public's best interest.

SECTIONS 2: INSTRUCTIONS TO BIDDERS

This contract is being awarded under provisions of M.G.L. c. 149. Attention of all bidders is directed to all applicable Sections of the General Laws of the Commonwealth of Massachusetts, and Municipal Ordinances and By-Laws, as most recently amended, which govern this contract. They will be deemed to be included in the contract the same as though written out in full.

No bid received after the closing time and date established in the INVITATION TO BID for the receipt of bids will be considered regardless of the cause for delay in the receipts of such bids.

Examination of all City and School Buildings prior to bid submission is suggested. The City/School buildings are available for a pre-bid inspection daily from 7:00 a.m. to 4:00 p.m. in order that each bidder may acquaint themselves with the circumstances and conditions of these buildings as they exist, that he/she may fully understand the facilities, difficulties, and restrictions applicable to the execution of the work under these specifications.

ARTICLE 1 - BIDDER'S REPRESENTATION

1. Each General Bidder (hereinafter called the "Bidder") by making a bid (hereinafter called "bid") represents that:

a. The Bidder has read and understands the Bidding Documents, Contract Forms, General Conditions, Conditions of the Contract, General Requirements and Project Specifications (collectively, referred to as the "Contract Documents") and the bid is made in accordance therewith.

b. The Bidder has visited the work site and is familiar with the local conditions under which the work has to be performed.

2. Failure of any bidder to acquaint himself with the bid, work sites and contract documents shall in no way release that bidder from the obligations with respect to his bid.

ARTICLE 2 - REQUEST FOR INTERPRETATION/ADDENDA

1. Bidders shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.

2. Questions concerning this invitation for bids must be submitted in writing to: City of Everett, Attn: Allison Jenkins, 484 Broadway, Everett, MA 02149 or via email to allison.jenkins@ci.everett.ma.us. The city will only answer such requests if received **7 calendar days** prior to the bid opening. If necessary, an addendum will be posted to the City of Everett's website.

3. Interpretation, correction, or change in the contract documents will be made by addendum which will become part of the Contract Documents. The city will not be held accountable for any oral communication.

4. Bidders or proposers contacting ANY CITY EMPLOYEE regarding an Invitation for Bid (IFB) or a Request for Proposal (RFP), outside of the Procurement Office, once an IFB or RFP has been released, may be disqualified from the procurement process.

5. The City of Everett accepts no responsibility and will provide no accommodation to Bidders who submit a response and or bid based on an out-of-date solicitation or on information received from a source other than the City of Everett.

ARTICLE 3 - PREPARATION AND SUBMISSION OF BIDS

1. Bids shall be submitted on the "FORM OF GENERAL BID " as appropriate, furnished by the City.
 2. All bid forms shall be completely filled in and signed by an authorized representative of the Contractor.
 3. Each bid must be submitted on the prescribed forms which are included as pages of this document. All blank spaces bid prices must be filled in, in ink or typewritten, and must be legible. Forms which are incomplete or obscure, or which contain work not in accordance with the specifications, will be rejected.
 4. Where so indicated on the Form of General Bid, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.
 5. Bid Deposits shall be submitted in the amount specified in the Invitation for Bids. They shall be made payable to the City and shall be either in the form of cash, certified check, treasurer's or cashier's check issued by a responsible bank or trust company, or a bid bond issued by a surety licensed to do business in the Commonwealth of Massachusetts; and shall be conditioned upon the faithful performance by the principal of the agreements contained in the bid. Bidders are reminded that the bid deposit covers the city for damages when a bidder withdraws its bid after the bid submission date. Be advised that to the extent permitted by the law the city will retain all bid deposits for withdrawn bids.
 6. Bid deposits of the three (3) lowest responsible and eligible Bidders shall be retained until the execution and delivery of the City-Contractor agreement.
 7. Each bid must be submitted in a sealed envelope bearing on its outside the name of the bidder, company address, and **"SEALED BID – SUPPLY, INSTALL AND SERVICE PORTABLE BOILER CONTRACT " Contract No. 24-33"** - Attn: Procurement Office, Room 14
- IF FORWARDED BY MAIL**, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified.
8. If, at the time of the scheduled bid opening, the bid opening location shall be shut down as the result of an emergency, the bids will be due and opened at the same time and location on the 1st business day the building is able to re-open. Bids will be accepted until that date and time.
 9. By submitting his bid, the bidder agrees to execute the contract, to provide insurance certificates, and to commence work within the time limits stated in the Contract Documents. If the successful bidder does not meet this requirement, the City may then, at its option, award the contract to the next lowest bidder, or rebid the contract if determined by the mayor to be in the public interest to do so. The mayor will then sign for the City, after which the contract will become effective.

EACH BID PACKAGE MUST CONTAIN:

- (a.) Contractor's Price Proposal (Form of General Bid) - signed by an authorized person. A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed and a Certificates as To Corporate Bidder.
- (b.) Bid Deposit (5% of the value of the total bid)

ARTICLE 4 – ALTERNATES *(there are NO alternatives with this bid)*

1. Each Bidder shall acknowledge alternates *(if any)* in Form of General Bid Form.
2. In the event an alternate does not involve a change in the amount of the base bid, the Bidder shall indicate by writing "No Change", or "N/C" or "0" in the space provided for that alternate.
3. Bidders shall enter on the Bid Form a single amount for each alternate which shall consist of the amount for work performed by the Contractor.
4. The low Bidder will be determined on the basis of the sum of the base bid and the accepted alternates.

ARTICLE 5 – WITHDRAWAL OF BIDS

1. Any bid may be withdrawn prior to the time designated for receipt of bids on written or electronic request. Electronic withdrawal of bids must be confirmed over the Bidder's signature by written notice postmarked on or before the date and time set for receipt of bids.
2. Any bidder may modify his bid at any time prior to the scheduled closing time for receipt of bids provided such is received by the Procurement Office, room 14 prior to the closing time, and provided further that the final prices or terms will not be disclosed to the City of Everett until the sealed bid is opened.
3. Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.
4. No bids may be withdrawn within sixty (60) days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

ARTICLE 6 - CONTRACT AWARD

1. The contract will be awarded to the lowest responsible and responsive bidder offering the lowest total **price for all three years of the contract.**
2. The City will award the contract to the lowest responsible and eligible Bidder within sixty (60) days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.
3. The City reserves the right to waive minor informalities in or to reject any or all Bids if it be in the public interest to do so.
4. The City reserves the right to reject any bidder who has failed to pay any local taxes, fees, assessments, betterments, or any other municipal charge, unless the bidder has a pending abatement application or has entered into a payment agreement with the collector-treasurer.
5. As used herein, the term "lowest responsible and eligible Bidder" is defined by M.G.L. c. 30 § 39M.
6. Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the City a contract in the form included in the Contract Documents in such number of counterparts as the City may require.
7. In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process chosen by the City such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

8. The City of Everett, acting by its mayor, reserves the right to award the contract, or to reject any and all bids if it is in the public interest to do so.

ARTICLE 7 – TAXES

1. The Bidder shall not include in this bid any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.

2. The City is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid.

END OF SECTION

SPECIFICATIONS FOR SUPPLY, INSTALL AND SERVICE MOBILE BOILER CONTRACT

I. General Purpose

This bid is solicited for the purpose of procuring the supply, installation and service of a 8 – 10 Million BTU portable boiler to be provided to the City of Everett for the Old Everett High School for a minimum of one year with the option to extend annually for an additional two years at the sole discretion of the city.

II. Scope of Work

The City of Everett is seeking a qualified firm to supply and maintain a portable boiler for the Old Everett High School.

The mobile boiler shall be a completely self-contained unit with all essential elements for operation.

The boiler must be able to heat existing building by use of natural gas.

The boiler must be between 8-10 million BTUs.

The delivery, installation and removal of the boiler is to be handled by the contractor each year.

Service to be provided by the contractor include any start up adjustments, water treatment and heated hoses.

The contractor will work with the Commonwealth on the annual inspection required by the Commonwealth of MA.

Provide all labor, materials, equipment, tools, permits and supervision necessary for to supply, install and service a mobile boiler at the Old Everett High School as directed by the Director of Facilities, in accordance with the conditions, requirements, and specifications attached.

- Inspection of all piping for leaks, by checking suction and pressure.
- Lubrication of bearings (except where sealed) in all dampers, fans, and motors and oil changes.
- Clean drain pans, nozzles, and drain lines for the system and up to the building drains.
- Adjust control motors, motor starters, solenoids, switches, thermostats, relays, expansion valves, dampers, and belt tension.
- Clean and change filters
- Service the system in accordance with industry practices for protection from damage.
- Repair equipment as directed by the Director of Facilities.

A. General Requirements

1) Contractor shall furnish all labor, materials, equipment, staging and trucking as required for work on the boiler in accordance with all specifications.

2) Prices submitted on bid forms will be effective for one year from the date of award of the contract and can be extended for two (2) additional one (1) year periods by written agreement between City of Everett and the successful bidder. The City of Everett shall have the unilateral option to extend the contract.

3) Contractor shall obtain and pay for all permits, inspections, licenses, bonds, and certificates required for work under this section. All work shall be performed in strict conformity with all laws, regulations, and ordinances of the federal, state, and municipal governments and all departments and bureaus thereof having jurisdiction.

4) Reserved

5) Payment and Performance Bonds as required pursuant to M.G.L. 149. The contractor has 10 days from the date of the notification of the contract award to obtain the bond(s). The cost(s) of obtaining the bond(s) shall be paid for by the Contractor.

6) Contractor must certify that all employees on the worksite have successfully completed at least 10 hours of OSHA approved training, pursuant to M.G.L. c 30, 39S.

7) All work shall be authorized by the Director of Facilities or his/her designee through the issuing of a work order. Work under a specific work order shall begin and end upon the recording by a representative of the Facilities Department of the arrival and departure time of the contractor at the jobsite. It shall be incumbent upon the contractor to notify the Director of Facilities or his/her designee of their arrival at and departure from the jobsite. A copy of the service report including date of work, start time and finish time, name(s) of person(s) performing work and time each person worked, brief description of the work, materials used, and recommendations or comments pertaining to the condition of the work area shall be left at the jobsite upon the completion of the work. Any and all alterations to the scope covered by this contract are subject to the owner's approval.

8) All materials used are to be exact duplicate, or an approved substitute of the original used and/or specified by the owner, and in every case, guaranteed as per manufacturer's specification(s). All materials supplied by the contractor must be free of any lien, claim, or encumbrance.

9) The Director of Facilities or his/her designee may authorize work outside normal working hours or days.

10) Hourly rates shall include all travel and mileage costs. No separate travel, truck, or equipment charges will be accepted. No other method or items of compensation shall be paid other than the basis specified herein.

11) Invoicing for all work must be done weekly and must be accompanied by copies of original bills for material used. Invoices must indicate separate charges for labor and materials and material charges must be itemized. The contractor may only invoice for materials that have been furnished; materials on order shall not be billed prior to installation. All invoices shall reference the relevant work order number for the authorized work. Weekly payroll reporting forms for prevailing wage rates and signed statement of compliance must be submitted with all invoices. No invoices will be processed for payment without the above referenced documentation. The City of Everett reserves the right to audit vouchers for material to determine proper pricing.

12) Work performed during a specific fiscal year must be submitted before the end of that fiscal year. Work performed at or near the end of any fiscal year (June 30) must be invoiced immediately and in any case, before July 15th of the same calendar year. Payments may not be made if invoices are submitted after July 15th following the close of the fiscal year (July 1 – June 30).

13) All workmanship by the successful bidder shall be guaranteed against failure or defects during normal use for a period of one (1) year from the date of completion of the work. All materials supplied by the successful bidder will have the standard manufacturers' warranties. Any defective materials supplied by the contractor shall be replaced at no cost to the City of Everett.

14) The obtaining of the insurance certificate(s) shall be a condition precedent to the effectuation of the contract. The premiums for this insurance coverage shall be paid for by the Contractor. The insurance shall remain in force during the full term of the contractual agreement and/or until all work is completed and accepted by the City.

The City is to be named as an additional insured, and is to be given notice prior to any changes or lapses of insurance coverage.

General Liability: At least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit

Automobile Liability: At least \$1,000,000 Bodily Injury and Property Damage per accident.

Workers' Compensation Insurance Per M.G.L. c. 152 as amended.

Property Coverage for materials and supplies being transported by the contractor, as the City's Property Contract provides coverage for personal property within 1000 feet of the premises.

Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate.

15) The contractor must supply all applicable MSDS forms as requested by the City of Everett. Pursuant to MGL Chapter 111F, Sections 8-10, any vendor who receives a contract resulting from this invitation agrees to submit a Material Data Sheet for each toxic or hazardous substance or mixture containing such substance when deliveries are made. The contractor agrees to comply with all requirements set forth in the pertinent laws.

16) The contractor shall keep all exterior doors locked when the buildings are unoccupied and shall be responsible for locking the doors of the buildings or any portion(s) of the buildings at times other than when they are in normal use. Any City property damaged by the contractor in carrying out the provisions of this contract shall be restored to its original condition by and at the expense of the contractor. The City of Everett shall hold the contractor responsible for any City property that is lost or stolen during the execution of the work. The contractor shall prohibit his employees from smoking, and they will be held responsible for any damage caused by smoking by any of his employees.

17) All material and debris shall be cleaned up immediately and removed from the building, leaving the premises in a clean condition.

18) Reserved

19) They must have a 365 day per year availability 24/7. Work will be performed on an on-call basis as needed and determined by the Director of Facilities or his/her designee. Response time for regular service calls must be within Four (4) hours and for emergency calls within one (one) hour. The contractor must be available on a 24-hour basis in case of emergencies and shall employ an answering service or cellular telephone capable of reaching a service person twenty-four (24) hours a day. Answering machines are not acceptable.

20) The contractor must have established a minimum of 5 years' experience in the field of mobile boiler services contained herein.

21) The contractor shall use trained and experienced employees to perform the services, directly employed and supervised by him.

22) All tradesmen shall have a copy of any required licenses on file.

23) The contractor shall give personal supervision to the work and shall employ a competent foreman during the progress of the work. The contractor shall employ an efficient number of competent workmen who are experienced thoroughly in this type of work. It will be presumed that most jobs will require only one worker. Where more than one worker will be on the job, advance agreement must be in writing between the Director of Facilities or his/her designee and the Contractor.

24) The contractor shall be required to be available, at no cost to the City of Everett, during the working day, at times mutually convenient to himself and a representative of the City of Everett for consultation regarding potential work, to visit work locations, and to prepare estimates. If requested by the Director of Facilities or any other authorized representative of the City of Everett, the contractor will supply a written estimate of the work to be done. There shall be no fee charged for any such estimate.

25) If the contractor finds upon examination of the assigned job, that the work will be more extensive than originally ordered, he should contact the Director of Facilities or his/her designee within 24 hours for authorization to proceed with the additional work.

26) The City of Everett reserves the right to purchase equipment and material to be installed under this contract. In all cases, all replaced parts are to be left with the City of Everett representative, unless otherwise directed.

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SECTION 3: BID FORM FOR GENERAL CONTRACTOR

FORM OF GENERAL BID

The undersigned proposes to furnish all labor and materials as is required for this contract for the OLD High School Portable Boiler operated by the City of Everett in accordance with the accompanying specifications, requirements, terms and conditions contained herein for the contract price specified.

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Pursuant to M.G.L. c. 30, § 39 S (a), I certify under the penalties of perjury:

(1) that I am able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;

(2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and

(3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

The Contractor is required to review any related plans, conduct a full site review, and read all the provisions in the document before inserting prices.

The contract will be awarded to the lowest responsible and responsive bidder offering lowest total price for all three years of the contract.

This bid MUST be signed by authorized individual(s). The bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

By signing Form of General Bid, the Bidder confirms compliance with applicable state and federal employment laws or regulations, including Worker's Compensation Insurance as required by M.G.L. Chapter 152.

Business Name: _____

Business Address: _____

City/State/Zip: _____

Signed: _____

(Date)

Printed Name: _____ Title: _____

F.I.D. #: _____

Telephone: _____ Fax: _____

Email address: _____

Addendums: _____

Alternates: *(there are NO alternatives with this bid)*

1. HOURLY RATES FOR REPAIRS AND MAINTENANCE

YEAR 1

YEAR 2

YEAR 3

TERM		12/1/23-12/1/24		12/1/24-12/1/25		12/1/25-12/1/26	
Description	Estimated Hours Only	Hourly Rate	Total	Hourly Rate	Total	Hourly Rate	Total
Monday – Friday 7:00 am – 4:00 pm	100 x	\$	=\$	\$	=\$	\$	=\$
Monday – Friday 4:00 pm – 7:00 am	10 x	\$	=\$	\$	=\$	\$	=\$
Saturdays, Sundays, Holidays	10 x	\$	=\$	\$	=\$	\$	=\$

1. TOTAL: \$ _____ \$ _____
(Hours are for evaluative purposes only and do not reflect actual estimate of hours required under contract)

2. ANNUAL FEE FOR PORTABLE BOILER \$ _____

CONTRACTOR MARKUP

Materials - The contractor shall furnish all materials (equipment, parts and supplies) required under this contract at the actual cost (wholesale) net price plus _____ percent:

3. TOTAL CONTRACTOR MARK UP \$ _____ = (\$10,000* X ____%)
Estimated material cost is for evaluative purposes only and does not reflect actual estimate materials required under contract.

3. Total of (1) HOURLY RATES, (2) ANNUAL FEE FOR PORTABLE BOILER and (3) CONTRACTOR MARKUP plus \$10,000 in supplies = TOTAL CONTRACT ESTIMATE FOR 3 Years

\$ _____

Amount written in words

END OF SECTION

SECTION 4: BIDDER'S QUALIFICATION FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet. This information will be utilized by the City for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract. In order to be responsive to this IFB, each bidder's company must have:

- a. Five (5) or more years in the Maintenance and Service of Portable Boilers.
- b. Representation of fleet vehicle and licensed personnel capable of responding within the required response time(s); and,
- c. The successful bidder must possess adequate labor, equipment, and management capabilities to effectively service this contract over the anticipated term, including all renewal options.
- e. The availability and proximity of the contractor's prime business location.

1. FIRM NAME: _____
2. WHEN ORGANIZED: _____
3 INCORPORATED? ____ YES ____ NO (DATE AND STATE OF INCORPORATION: _____
4. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

- 1. Do you have at least five (5) years demonstrated experience performing similar services?
_____ Yes _____ No
- 2. Do you have the vehicles and licensed personnel capable of performing the requested services within the required response time? _____ Yes _____ No
- 3. Do you possess adequate labor, equipment, engineering, and management capabilities to effectively service this contract over the anticipated term, including all renewal options? _____ Yes _____ No
- 4. Have you or your firm ever been terminated on an awarded contract, or have you ever otherwise failed to complete any work awarded? _____ Yes _____ No

If "yes," please describe circumstances below: (Attach a separate sheet of paper if necessary.)

**CITY OF EVERETT
CONTRACT AGREEMENT**

This Contract Agreement for *(insert project title)*

_____ (hereinafter the "Project") is made the
_____ day of _____, 2023, by and between *(insert company name)*
_____ a corporation *(or partnership, etc.)*
organized under the laws of the Commonwealth of Massachusetts, *(or State of _____)* with a usual place
of business at

_____, hereinafter called the
"Contractor" and the City of Everett, a municipal corporation duly organized under the laws of the
Commonwealth of Massachusetts, acting through its Mayor, hereinafter referred to as the "City", the "Owner",
or the "Awarding Authority".

WITNESSETH that the Contractor and the City for the consideration hereinafter
named agree as follows:

In all respects, this contract shall be governed by and performed consistently with all laws of the
Commonwealth of Massachusetts for public construction contracts including, but not limited to, M.G.L. Ch. 7C,
10, 30, 144 and 149. The provisions of the Massachusetts General Laws regarding public construction shall
take precedence over any and all other contract provisions or documents. Any conflicts among provisions
and/or between documents shall be resolved and/or interpreted according to the Massachusetts General Laws.
However, compliance with a statute does not diminish the Contractor's responsibilities hereunder. The
Contractor warrants that he is familiar with and agrees to abide by all laws of the Commonwealth of
Massachusetts Municipal Ordinances and By-Laws, as most recently amended, which govern the award of this
contract. They will be deemed to be included in the contract the same as though written out in full.

ARTICLE 1: CONTRACT DOCUMENTS

- 1.1 The Contract Documents consist of the following:
 - 1.1.1 This Contract Agreement Form of General Bid (signed by the contractor)
 - 1.1.2 Addenda _____ issued prior to the execution of this Contract Agreement and all
Modifications issued after execution of this Contract Agreement
 - 1.1.3 Drawings and Specifications for the Project
 - 1.1.4 Invitation to Bid and Bidding Documents
 - 1.1.5 Copies of all required bonds, certificates of insurance, copies of policies, vote of corporation, and
licenses required under the contract.

These documents form the entire Agreement between the parties and there are no other agreements between the
parties. Any amendment to this agreement must be in writing and signed by an official with authority to bind
the City.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.

1.2.1.1 In the event of conflict in or between the Contract Documents, the Contractor shall be held to the highest standard therein. Where compliance with two or more industry standards or set of requirements is specified, and overlapping of those different standards or requirements established different or conflicting minimums or level of quality, the most stringent requirements is intended.

1.2.1.2 In the event of a conflict between any provision or language of the Construction Contract and any provision or language of the contract documents, the provision or language of the Construction Contract shall control. In the event of any conflict or inconsistency between this contract, the Contract Documents and any Governing Laws and Building Code, the Governing Laws and Building Code shall prevail.

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade except sections designated for Filed Sub-Bids as otherwise required by law. The General Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the work of the mechanical, electrical, and other specialized trades, and to all of the sections of the specifications, and shall perform all Work reasonably inferable therefrom as being necessary to produce the indicated results.

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

1.2.4 The Drawings and Specifications are intended to supplement one another. Materials and workmanship described are not necessarily found in both. Drawings are not intended to be scaled or to act as shop drawings. Inadvertent discrepancies or omissions shown on one drawing but not on others shall not be cause for additional charges or claims. In case of discrepancies, figured dimensions shall take precedence over smaller scale drawings. Specifications shall take precedence over Drawings for quality of materials and general performance of the work.

1.2.5 Whenever an item is specified and/or shown on the Drawings by details or reference, it shall be considered typical for other items which are obviously intended to be the same even though not so designated or specifically named but do serve the same function for this project.

1.2.6 Where the terms “necessary,” “as directed,” “when directed,” “satisfactory,” “good and sufficient,” “approved,” or other general qualifying terms are used on the Drawings, they are deemed to be followed by the words “in the opinion of the Designer” or “by the Designer” as the case may be.

1.2.7 The terms “approval,” “approved,” “approved equal,” “or equal,” or “other approved” mean as approved by the Designer.

1.2.8 Where reference is made to ASTM Specifications, it shall mean the standard specific specifications of the International Society for Testing and Materials of the most recent designation.

1.2.9 Similarly, where reference is made to Specifications, Standards or requirements of A.S.M.E. or A.S.H. & V.E., they shall mean respectively those American Society for Mechanical Engineers and the American Society for Heating and Ventilating Engineers, and shall be from the latest editions.

1.2.10 Any material specified by reference to the number, symbol, or title of a specific standard, such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date indicated on the specifications, except as limited, or modified in such reference. Where compliance with two or more industry standards or set of requirements is specified, and overlapping of those different standards or requirements established different or conflicting minimums or level of quality, the most stringent requirements is intended.

1.2.11 The standards referred to, except as modified in the Contract Documents, shall have full force and effect as though printed in the Contract Documents. These standards are not furnished to the Contractor for the reason that the manufacturers and trades involved are assumed to be familiar with their requirements. The Contractor shall make himself aware of the contents of such documents and furnish the field office with one full set of each.

1.2.12 Where codes, requirements, and publications of public and private bodies are referred to in the Contract Documents, references shall be understood to be the latest revision prior to the date of receiving bids, except where otherwise indicated.

1.2.13 Mechanical and Electrical Drawings are diagramed only, and are not intended to show the exact physical locations or configurations of Work. Such Work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Exact location of fixtures and outlets shall be obtained from the Designer before the Work is roughed in; work installed without such information from the Designer shall be relocated at the General Contractor's expense.

ARTICLE 2: DEFINITIONS

2.1 Work. The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project. .

2.2 Modification. A “Modification” is (1) a written amendment to the Contract Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Designer.

2.3 Drawings. The “Drawings” are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

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

2.5 Site. The word “site” shall mean the project site, the parameters of which are indicated on the Contract Drawings.

2.6 Governing Laws and Building Code. The term “governing laws and building code,” whenever used, shall mean all laws, ordinances, rules, regulations, and lawful orders of any public authority, federal, state, or local bearing on the performance of the Work and the building code or codes legally applicable to work.

2.7 Claim. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

ARTICLE 3: TIME OF COMPLETION - PERIOD OF PERFORMANCE

3.1 The date of Commence of the Work shall be provided in a written Notice to Proceed from the Owner to the Contractor.

3.2 The Contract Time shall be measured from the date of commencement.

3.3 The Contractor shall achieve Substantial Completion of the entire Work no later than _____ days from the date of commencement.

3.4 **Liquidated Damages for Delay in Substantial Completion:** Because both parties recognize (1) that the time for completion of this Contract is of the essence, (2) that the Owner will suffer loss if the work is not completed in accordance with the phasing requirements and within the contract time specified, plus any extensions thereof allowed in accordance with the provisions of this Contract, and (3) that there are significant delays, expense and difficulties associated with a legal proceeding to determine the actual loss suffered by the Owner if the work is not completed on time; therefore, it is agreed that the Contractor will pay the Owner, as liquidated damages, the sum of One Thousand Dollars (\$1000.00) per day for each and every day thereafter that it fails to deliver such Work completed according to the requirements of the Contract Documents. Such liquidated damages shall be paid not as a penalty, but to partially cover losses and expenses to the Owner,

including intangible costs and losses that are or may be impracticable to ascertain. Allowing the Contractor to continue to finish the work (or any portion of the work) after the time specified for completion of the Work shall not operate as a waiver on the part of the Owner of any of its rights under the Contract Documents or otherwise under law or equity. The Owner's right to impose liquidated damages shall in no way prohibit or restrict the Owner's right to bring legal action for damages in lieu of its option to impose liquidated damages from money due the Contractor, and if such money is insufficient to cover the liquidated damages, then the Contractor shall pay the amount due.

3.5 The Contractor hereby agrees that if he fails to commence the work, carry on the work with reasonable speed or stops work altogether without due cause, as determined in each case by the City, the City may give notice to the Contractor in writing to proceed with the work as per the schedule or to carry on the work with reasonable speed. Three days after the presentation of such notice if the work is not proceeding to the satisfaction of the City, the Contractor shall be considered to have defaulted in the performance of this Agreement.

ARTICLE 4: THE CONTRACT SUM

4.1 The total amount billed under this contract shall not exceed \$ _____, subject to additions and deductions as provided in the Contract Documents. The Contractor shall keep and maintain records necessary to ensure this billing limit is not exceeded unless authorized in writing by the City.

ARTICLE 5: OBLIGATIONS OF THE CONTRACTOR

5.1 The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Designer in the Designer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

5.2 Contractor's Financial Condition. The Contractor represents and warrants that its financial condition is sound and that the Contractor is capable of performing the work required pursuant to the Contract Documents. Upon request by the Owner, the Contractor shall make available to the Owner such audited and unaudited financial statements of the Contractor as the Owner may reasonably request. The Contractor shall promptly advise the Owner of any occurrence, event, fact, or other matter that has had, will have, or might reasonably be predicted to have a material adverse effect upon the financial condition of the Contractor.

5.3 Review of Contract and Field Conditions. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become thoroughly familiar with all the existing conditions at the site, has taken all such conditions into consideration as they may affect the Work under his Contract, and correlated personal observations with requirements of the Contract Documents. No allowance will be made in the Contract or the Work under the Contract for failure of the Contractor to visit the site.

5.3.1 Should any omissions, error or conflict be found in the Contract Documents, during the bidding period and prior to the times set forth in the Instructions for Bidders for receipt of such inquiries, the bidders shall request in writing that such conditions be explained by the Designer in the method described therein.

5.3.2 Should the work proceed, after the discovery of errors, conflict, or omissions by the Designer and clarification has not been received from the Designer, the Contractor will be held fully responsible for replacement or correction of the affected area, as directed by the Designer, at the Contractor's expense.

5.3.3 Before ordering any material or doing any work, each trade shall verify all measurements at this project and shall be responsible for the correctness of the same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated on the Drawings, any

difference which may be found shall be submitted to the Designer for consideration before proceeding with the work.

5.3.4 Where no explicit quality or standards for material or workmanship are established for work, such work is to be of as good quality of the surrounding work and of the construction of the Project generally.

5.3.5 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

5.4 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as any information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Designer in writing any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Designer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Before starting the work and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the contract documents with each other and with any information furnished by the Owner and shall at once report to the Designer any error, inconsistency or omission the Contractor may discover. Any necessary change will be ordered as provided in Article 10, subject to the requirements of the Contract Documents. If the Contractor proceeds with the Work without such notice, the Designer, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents he could be discovered such, the Contractor shall bear all cost arising therefrom.

5.4.1 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Designer in writing any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Designer or Owner may require.

5.5 The Contractor shall reimburse the Owner for costs incurred by the Designer and the Owner's Project Manager for design and construction administration services which are caused by the Contractor's inefficient or otherwise faulty administration or execution of its Work. These may include but are not limited to the cost of the Designer or Owner's Project Manager to perform:

5.5.1 Repeated review of the Contractor's resubmittals, substantially out of sequence from the submittal schedule provided by the Contractor and agreed to by the Designer.

5.5.2 An extensive number of responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

5.5.3 An extensive number of Change Orders and Construction Change Directives requiring evaluation of proposals and the preparation or revision of Instruments of Service and not otherwise caused by the design defects of the Designer.

5.5.4 Consultation regarding replacement of Work resulting from fire or other cause during construction.

5.5.5 Evaluation of an extensive number of claims not otherwise caused by design defect.

5.5.6 Evaluation of substitutions proposed by the Contractor and making subsequent revisions to Instruments of Services resulting therefrom.

5.5.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Contractor.

5.5.8 Contract administration services made necessary by the Contractor's failure to complete the project on schedule, achieve milestones, including substantial and final completion.

5.5.9 Contract administration services provided 60 days or more after Substantial Completion.

5.5.10 Preconstruction Inspection. The Contractor shall notify the Owner and Designer in writing of any existing damage to the property or any unsafe conditions at the site prior to commencing the Work.

5.6 The General Contractor shall give the Designer timely notice of any additional design drawings, specifications or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

5.7 The General Contractor shall not proceed with any work not clearly and consistently defined in detail in the Contract Documents, but instead shall request additional drawings or instructions from the Designer. If the General Contractor proceeds with such work without obtaining further drawings or instructions, he shall correct work incorrectly done at his own expense.

5.8 Supervision and Construction Procedures.

5.8.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Designer and shall not proceed with that portion of the Work without further written instructions from the Designer. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents, unless the Contractor has given timely notice to the Owner and Designer in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Owner has then instructed the Contractor in writing to proceed at the Owner's risk.

5.8.2 The Contractor shall be responsible to the Owner for acts and omissions of all entities or persons performing or supplying the Work other than those providing work under separate contracts with the Owner.

5.8.2.1 The Contractor shall employ workers competent to perform the work required by the contract and, upon written request of the Owner, remove and replace workers whom the Owner deems to be disorderly, careless or incompetent, or to be employed in violation of the terms of the Contract Documents, at no increase in the Contract Sum or the Contract Time.

5.8.2.2 The Contractor shall neither permit nor suffer smoking where it creates a hazard, nor the introduction or use of spirituous or intoxicating liquors upon or about the works embraced in this Contract or upon any of the ground occupied by him.

5.8.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

5.9 Labor

5.9.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The word 'provide' shall mean furnish and install complete, including connections, unless otherwise specified.

5.9.2 Weather Protection and Adequate Heat. The Contractor shall install weather protection and furnish adequate heat in the protected area from November 1 to March 31 as required by M.G.L. c. 149, § 44F.

5.9.3 Sanitary Facilities. The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements of the appropriate authorities. The maintenance of all sanitary facilities shall be subject to the laws of the Commonwealth of Massachusetts and to the rules and regulations of the State Board of Health and the Board of Health for the City.

5.9.4 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

5.9.5 The Contractor agrees as a material obligation to this Contract to pay its own laborers and to ensure that its subcontractors, material suppliers and sub-subcontractors pay their own laborers employed on the Project, wages in an amount no less than the applicable prevailing wage rates established for the Project by the Massachusetts Department of Labor and Industries. The Contractor shall defend and indemnify the Owner for, from and against any loss, expense, damages, actions, or claims (including any expense incurred in connection with any delay or stoppage of the Work) arising out of or related to the Contractor's failure to comply with such laws or regulations.

5.9.5.1 Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided. The Owner shall assume no responsibility for the accuracy of the rates set forth in the schedule and no claims for additional compensation will be considered because of the inaccuracy in the rates so set forth. The schedule of wages referred to above are minimum rates only, the Owner will not consider any claim for additional compensation made by the Contractor because of any payment by the Contractor of any wage rate in excess of said minimum rates. All substantive and procedural requirements of the minimum wage rate laws shall be met. The schedule of rates shall be kept posted in a conspicuous place at the site of the work.

5.9.6 CORI Checks. No person shall be given access to a school site without first passing a Criminal Offender Record Information (CORI) check. Contractor shall provide Owner with proof, satisfactory to Owner, that each employee, agent, contractor, subcontractor and invitee ("Contractor Worker(s)") that visits the site has passed a CORI check. The Contractor shall see to it that no Contractor Worker shall perform any Work at the site if the Owner has objected to such person being at the site based upon information contained in the CORI check. The

Contractor shall not allow any Contractor Worker on the site until the Owner has reviewed such worker's CORI check and has not objected within ten (10) days after the receipt of the CORI check to such worker being at the site on account of the CORI check, unless the Owner waives such requirement for advance review of a Contractor Worker's CORI check prior to that worker entering the site (which waiver shall only be effective as to the Contractor Worker(s) that the Contractor requests the Owner to provide such waiver in each instance). Notwithstanding the foregoing, the Contractor shall remain liable for the conduct of its workers, employees, subcontractors, agents and invitees on site.

5.9.7 Restriction on Hours. No laborer, worker, mechanic, foremen or inspector working within the Commonwealth of Massachusetts in the employ of the Contractor, subcontractors or other persons doing or contracting to do the whole or part of the work contemplated by this contract, shall be required or permitted to work more than 8 hours in any one calendar day; or more than 48 hours in one week, or more than 6 days in any one week in full compliance with the provisions of M.G.L. c. 149, § 34, except in cases of emergencies.

5.9.8 Weekly Wages. M.G.L. c. 149, § 148, requires the weekly payment of employees.

5.9.10 Register of Employees. The Contractor shall keep a true and accurate register of all mechanics, teamsters, chauffeurs and laborers employed upon the work contemplated by this Contract showing the name, address and occupational classification of each such employee, the hours worked by and the wages paid to each such employee, and shall furnish the Massachusetts Department of Labor and Industries upon its request a true statement thereof.

5.9.11 If the Contractor uses or stores toxic hazardous substances, he is subject to M.G.L. c. 111F, § 2, the "Right to Know" law and regulations promulgated by the Department of Public Health, the Department of Environmental Protection and the Department of Labor and Industries; and must post a Workplace Notice obtainable from the Department of Labor and Industries.

5.9.12 Preference to Veterans and Citizens. M.G.L. c. 149, § 26 is incorporated by reference herein.

5.10 Materials

5.10.1 Unless otherwise specifically provided in the Contract Documents, the Contractor shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

5.10.2 Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices. The Contractor shall inform himself as to, and shall comply with, the provisions of M.G.L. c. 7, s. 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Work, including the provisions of M.G.L. c.7, s. 22, paragraph 17 which provides that there be "a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and, second, of supplies and materials manufactured and sold elsewhere within the United States."

5.11 Taxes

5.11.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

5.11.2 The Owner is exempt from payment of certain Sales and Use taxes applicable in the Commonwealth of Massachusetts. At the Contractor's request, Tax Exemption Certificates will be furnished by the Owner to the Contractor with respect to such tax-exempt articles as may be required under this Contract.

5.11.3 The Contractor shall not pay, and the City shall not reimburse or pay the Contractor or any other party either directly or indirectly for any tax for which an exemption is provided under law.

5.11.4 By executing the Contract Documents, the Contractor certifies under the pains and penalties of perjury pursuant to Chapter 62C, Section 49A(b) of the Massachusetts General Laws that the Contractor has complied with all of the laws of the Commonwealth of Massachusetts relating to taxes.

5.12 Permits, Fees, Compliance with Laws

5.12.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

5.12.2 The Contractor shall keep itself fully informed of and comply with all existing and future federal, state and municipal laws and regulations and all orders and decrees of any governmental bodies or tribunals (hereinafter also referred to as 'laws') having jurisdiction in any manner which affect this contract or construction, including but not limited to such laws affecting those engaged or employed in the work, the materials used in the work or in any way affecting the conduct of the work. If any clause in this contract does not conform to such law, then such clause shall be void and the law operative shall be inserted in lieu thereof. If any discrepancy or inconsistency is discovered in the specifications, drawings, or contract documents in violation of the law, the Contractor shall forthwith report the same in writing to the Owner. The Contractor shall cause its employees, agents and subcontractors to also observe and comply with all such laws. It shall protect and indemnify the Owner and its officials, board members, employees and duly appointed agents against any claim or liability arising from or based on any violation, whether by the Contractor or its officials, employees or subcontractors, of any such law.

5.12.2.1 If the Contractor performs Work which it knows or should know it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall be responsible for such Work and shall bear the costs attributable to correction along with any other damages incurred by the Owner.

5.13 Superintendent

5.13.1 The Contractor shall employ a competent superintendent, reasonably acceptable to the Owner, and necessary assistants who shall be in attendance at the project site full time during the progress of the work until the date of substantial completion, and for such additional time thereafter as the Designer may have determined to be necessary for the expeditious completion of work. The Superintendent's duties shall include coordination of all work including the work of all subcontractors. The Contractor shall not remove the Superintendent without City's consent. The Contractor shall remove the Superintendent if requested to do so in writing by the Owner, and shall promptly replace him with a competent person reasonably acceptable to the Owner. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

5.13.2 The Contractor, prior to the commencement of Work, shall furnish in writing to the Owner through the Designer the name and qualifications of a proposed superintendent and any necessary assistants. The Designer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Designer has reasonable objection to the proposed superintendent or (2) that the Designer requires additional time to review. Failure of the Designer to reply within the 14-day period shall constitute notice of no reasonable objection.

5.13.3 The Contractor's Superintendent and similar authorized representatives of any Sub-Contractor, Supplier, or any other person or organization shall attend all meetings that are requested by the Owner, and as required by the Contract Documents.

5.13.4 The Contractor shall not employ a proposed superintendent to whom the Owner or Designer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

5.14 Carpenters

5.14.1 The Contractor shall install all rough and finish carpentry work in a good workmanlike manner with carpenters on his own payroll except for any finish carpentry work for which the Owner gives specific prior approval for (a) performance by a named subcontractor and (b) the terms of the subcontract, and shall at all times have a sufficient number of carpenters on his payroll to perform all such rough and finish carpentry work and a sufficient number of laborers on his own payroll to keep the entire construction site clean and free from obstacles hindering the performance of work.

5.14.2 The Contractor and each of the subcontractors shall furnish to both the Owner and the Designer the names, addresses, and telephone numbers of the Superintendent and at least two other of the Contractor's authorized representatives indicating where they can be contacted at times other than normal working hours in case of emergency.

5.14.3 When the presence of a Subcontractor or Sub-subcontractor is required at a job meeting, the Subcontractor or Sub-subcontractor shall be represented by an authorized representative who is empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Notices required under the Contract may be served on such representatives.

5.15 Construction Schedules

5.15.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's, Owner's Project Manager's and Designer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall utilize the Critical Path Method and shall (1) include an estimated cash flow schedule, showing anticipated monthly expenditures throughout the duration of the Contract based on the Schedule of Values required under Section _____ of this Contract Agreement; (2) accurately reflect the relationships between activities; (3) contain no activities of greater than 30 days duration; and (4) clearly indicate the critical path activities and float values for non-critical activities. Contractor shall submit an updated schedule monthly that accurately reflects the progress achieved and any changes in Contractor's planned activities and logic relationships.

5.15.1.1 The Owner's, Owner's Project Manager's, and Designer's review and comments on the construction schedule shall not constitute a waiver of contract requirements and shall not relieve the Contractor of requirements established by the Contract Documents and/or by applicable laws and standards.

5.15.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Designer's approval. The Designer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Designer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

5.15.3 The Contractor shall perform the Work in strict accordance with the Construction Schedule. The Contractor's compliance with the Construction Schedule shall be a material obligation of this Contract.

5.16 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Designer and shall be delivered to the Designer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

5.17 Shop Drawings

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

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

5.17.3 The Contractor shall review, approve, and submit to the Designer, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor that are not required by the Contract Documents or that do not comply with the Contract Documents may be returned without action.

5.17.4 The Contractor shall prepare and keep current for the Designer's approval a schedule of submittals that is coordinated with the Progress Schedule and allows the Designer reasonable time to review submittals. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Designer. Such Work shall be in accordance with Approved submittals. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field

construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

5.18 Tests

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

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

5.19 "Or Equal" Submissions.

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

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

5.19.3 Whenever the Contractor submits a material for approval as a substitute for a material named or described in the Contract Documents, such submission shall be made at least one hundred twenty (120) days prior to the date the materials will be used in the Work. In no event shall the Contractor maintain a claim for delays based upon the Designer's review of such substituted materials if the Contractor has failed to comply with the one hundred twenty (120) day submission requirement.

5.19.4 The Contractor shall save the written calculations, pricing information, and other data that the Contractor used to calculate the General Bid (the "Bid Pricing Materials") for at least six years after the Owner makes Final Payment under this Contract Agreement. No increase in the Contract Sum shall be allowed for any material later found to have been improperly rejected as not being equal unless the Contractor can show persuasive evidence that the rejection increased the Contractor's costs over those provided for in the Bid Pricing Materials, net of all savings the Contractor obtained by substituting other "or-equal" items. Without limiting the foregoing, if the Owner rejects a proposed substitution on the basis that the item is not equal and if after the Contractor complies with the appeal procedures required by law and by the Contract Documents, the appropriate authority finds that the proposed substitution was equal, the Contract Sum may be increased only to the extent that (1) the item that the Contract Documents specifically require costs more than the item later approved as equal, (2) the Bid Pricing Materials prove that the Contractor calculated its bid using the cost of the item later found as equal, (3) any increase is reduced by any cost that the Contractor would have incurred for structural or mechanical changes necessary to accommodate the substitute item, (4) the Contractor shall not be entitled to any adjustment for overhead and profit, (5) any increase must exceed the aggregate amount that the Contractor saved using products or materials that the Owner approved as equal under this Contract Agreement. In calculating the Contractor's aggregate saving under the preceding clause (5), the Contractor shall provide the Owner with the Bid Pricing Materials and a calculation based on the Bid Pricing Materials that compare the price (stated in the Bid Pricing Materials) of each item replaced with an "or equal" item, with the cost of the approved equal item, specifically describes all costs that Contractor would have incurred making structural or mechanical changes to include within the Work the item later found to have been improperly rejected and copies of all plans, specifications, shop Drawings, and other design documents that the Owner deems necessary or desirable.

5.20 Delivery and Storage of Materials

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

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

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

expenses.

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

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

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

5.21 Defective and Damaged Materials

5.21.1 The Designer may reject materials if the Designer reasonably determines that such materials do not conform to the Contract Documents in any manner, including but not limited to materials that have become damaged or deteriorated from improper storage whether or not such materials have previously been accepted. The Contractor at its own expense shall remove rejected materials from the Work. No rejected material, the defects of which have been subsequently corrected, shall be used except with the written permission of the Designer. Should the Contractor fail to remove rejected material within a reasonable time, the Designer and/or Owner may, in addition to any other available remedies, remove and/or replace the rejected material, and to deduct the cost of such removal and/or replacement from any moneys due or to become due the Contractor. No extra time shall be allowed for completion of Work by reason of such rejection. The inspection of the Work shall not relieve the Contractor of any of its obligations herein prescribed, and any defective Work shall be corrected. Work not conforming to the Contract Documents may be rejected notwithstanding that such Work and materials have been previously overlooked or misjudged by the Designer and accepted for payment. If the Work or any part thereof shall be found defective at any time before Final Acceptance of the whole Work, the Contractor shall forthwith make good such defect in a manner satisfactory to the Designer. Nothing in the Contract shall be construed as vesting in the Contractor any property rights in the materials used after they have been attached or affixed to the Work or the Site; but all such materials shall upon being so attached or affixed become a property of the Owner.

6. PAYMENT

6.1 Schedule of Values. Before the first application for payment the Contractor shall submit to the Designer and the Owner a schedule of values allocated to various portions of the Work in sufficient detail to reflect the various major components of each trade (with filed Subcontractors as well as MBE/WBE noted), including quantities when requested, aggregating the total Contract Price and divided so as to facilitate payments for work under each section of the Specifications. The schedule shall be prepared in such form and supported by such data to substantiate its accuracy as the Designer or the Owner may require. Each item in the schedule shall include its proper share of overhead and profit. When Approved by the Designer and the Owner, it shall constitute the Schedule of Values and shall be used only as a basis for the Contractor's requests for payments.

6.2 Applications for Payment. At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage.

6.2.1 **PENCIL REQUISITION:** In order to expedite monthly payments during the course of the Project, the Contractor shall review with the Architect a preliminary draft of each Application for Payment before final copies the application are typed and formally submitted. The Architect shall then review the Contractor's formal, notarized Application for Payment, supported by such data substantiating the Contractor's Application for Payment as the Owner or Architect may require, and certify in writing the total value of Work completed, including an allowance for the value of materials delivered and suitably stored at the site at the time of such Application.

6.3 Based upon Applications for Payment submitted by the Contractor and Certificates for Payment issued by the Designer, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

6.4 Payment to the Contractor shall be made by the City in accordance with in accordance with M.G.L. c. 30, Sec. 39K:

Within fifteen days (30 days in the case of the commonwealth, including local housing authorities) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances, but less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one per cent of the original contract price, or (b) the contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such a periodic estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The payment shall be in full less 5% retainage for furnishing all materials, supplies, labor, services, supervision, tools and equipment and use thereof. Acceptance of periodic payments by the Contractor shall constitute a waiver of claims known or knowable at the time by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of periodic payment.

6.5 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a certificate signed by each Subcontractor under pains and penalties of perjury stating that the Subcontractor has been paid all amounts due the Subcontractor on the basis of the previous periodic payment to the Contractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall furnish the Contractor's own written explanation to the Owner through the Engineer. Such waiver or certificate shall be in a form acceptable to the Owner. The Contractor warrants that title to all work covered by an application for payment will pass to the Owner either by incorporation into the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to in this article as 'liens.' The Contractor further agrees that the submission of any application for payment shall conclusively be deemed to waive all liens with respect to set work to which the Contractor may then be entitled, provided that such waiver of the lien rights shall not waive the Contractor's right to payment for such work.

6.6 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

6.7 Retainage shall be withheld until Substantial Completion of the entire project. The Owner will pay ninety-five percent (95%) of the amount due the Contractor on account of progress payments. This retainage of five percent (5%), less any amount due from the Contractor for Liquidated Damages and applicable costs of the Designer, and Designer's Consultants, and less amounts based on the established value of punch list items and any other Owner claims or back-charges against the Contractor, will be paid within sixty-five (65) days of Substantial Completion in accordance with M.G.L. c.30, §39K. Acceptance of periodic payments by the Contractor shall constitute a waiver of claims known or knowable at the time by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of periodic payment.

6.8 If at any time there shall be evidence of any lien or other claim for which, if established, the Owner may become liable, directly or indirectly, and which is chargeable to the Contractor, the Owner may retain out of the payment then due or thereafter to become due, an amount sufficient to completely indemnify it against any such claim. If there proves to be any such claims after all the payments are made, the Contractor shall refund to the Owner all moneys that the Owner pays in discharging such claim in consequence of the Contractor's default.

6.9 The Contractor warrants that title to all Work (including materials and equipment) covered by an Application for Payment will pass to the Owner either by incorporation in the Work or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances.

6.10 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

6.11 The Contractor warrants that title to all Work (including materials and equipment) covered by an Application for Payment will pass to the Owner either by incorporation in the Work or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances.

6.12 The Contractor, his Subcontractors and Sub-subcontractors shall obtain prior written approval from the Owner through the Designer for permission to store materials to be incorporated in the Work, for which Progress Payments will be requested, at off-site locations. In no case shall stored materials or equipment, whether stored at the site or at some other location, be considered payment unless, in the sole judgment of the Owner, the materials or equipment are ready for and actually scheduled for prompt use. Written request for payment of stored material must be made thirty days in advance of the due date for the Application for Payment. Any and all charges for storage, including insurance, shall be borne solely by the General Contractor. Before approval, the Owner will require proper proof of insurance and a letter in which is furnished: (a) the name of the Contractor and/or the Subcontractor or Sub-subcontractor leasing the storage area; (b) the location of such leased space; (c) the leased area (the entire premises or certain areas of a warehouse given the number of floors or portions thereof); (d) the date on which the material is first stored; and (e) the value of the material stored.

6.12.1 The General Contractor, his Subcontractors and Sub-subcontractors shall notify the Designer and the Owner to inspect, at least once each month, the materials being stored at any location.

6.12.2 The General Contractor, his Subcontractors and Sub-subcontractors shall mark each sealed carton with the name of the Project and the Designer.

6.12.3 A perpetual inventory shall be maintained for all materials held in storage for which payment has been requested.

6.12.4 Payment for materials stored off site shall be at the sole discretion of the Owner. Any additional costs to the Owner resulting from storage of material off site for which payment is requested, such as, but not limited to, travel expenses and time for inspectors, shall be charged to, and paid by, the General Contractor.

6.13 The Contractor shall submit four (4) copies of its Application for Payment.

6.14 Certificates for Payment

6.14.1 The Designer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Designer determines is properly due, or notify the Contractor and Owner in writing of the Designer's reasons for withholding certification in whole or in part as provided herein.

6.14.2 The issuance of a Certificate for Payment will constitute a representation by the Designer to the Owner, based on the Designer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Designer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Designer. However, the issuance of a Certificate for Payment will not be a representation that the Designer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

6.14.3 The Designer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Designer's opinion the representations to the Owner required by Section 6.12.2 cannot be made. If the Designer is unable to certify payment in the amount of the Application, the Designer will notify the Contractor and Owner as provided in Section 6.12.1. If the Contractor and Designer cannot agree on a revised amount, the Designer will promptly issue a Certificate for Payment for the amount for which the Designer is able to make such representations to the Owner. The Designer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Designer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 5.8.2, because of

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or a separate contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the retainage currently held by the Owner would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. failure to carry out the Work in accordance with the Contract Documents.
8. failure of mechanical trade or electrical trade, or any other trade, subcontractor to comply with mandatory requirements for maintaining record drawings. The Contractor shall check record drawings each month. Written confirmation that the record drawings are current will be required by the Designer before approval of the Contractor's monthly payment requisition.

6.14.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld, and which are properly due the Contractor.

6.14.5 If the Designer withholds certification for payment under Section 6.12.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Designer and the Designer will reflect such payment on the next Certificate for Payment.

6.14.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

ARTICLE 7: PAYMENT OF SUBCONTRACTORS

7.1 The Contractor shall make payment to subcontractors in accordance with M.G.L. c. 30, § 39F, which is quoted in this section below. For purposes of this Agreement, the word "forthwith" appearing in paragraph (1)(a) of the quoted provision shall be deemed to mean "within five (5) business days." The Contractor shall, at the Owner's request, furnish satisfactory evidence that all such obligations have been paid, discharged, or waived. M.G.L. c. 30, § 39F provides:

- (1) Every contract awarded pursuant to sections forty-four A to L, inclusive, of chapter one hundred and forty-nine shall contain the following subparagraphs (a) through (i) and every contract awarded pursuant to section thirty-nine M of chapter thirty shall contain the following subparagraphs (a) through (h) and in each case those subparagraphs shall be binding between the general contractor and each subcontractor.

(a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.

(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct

payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the general contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a general contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

(i) If the subcontractor does not receive payment as provided in subparagraph (a) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g) and (h).

7.2 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Designer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

ARTICLE 8: DIFFERING SITE CONDITIONS; CONTRACT CLAIMS AND DISPUTES

8.1 As required by M.G.L. c. 30, Section 39N, the parties hereby agree:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be

delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

8.2 CLAIMS AND DISPUTES

8.2.1 Notice of Claims. Claims against the Owner must be initiated within seven (7) days after occurrence of the event giving rise to such Claim or within seven (7) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Designer and the other party.

8.2.1.1 The Contractor's failure to provide written notice in strict accordance with this paragraph will result in the Contractor's having waived its Claim. Written notice submitted by the Contractor must include pricing of the Claim.

8.2.1.2 The Contractor shall furnish the Designer with such additional documentation as the Designer may request to evaluate the Claim.

8.2.2 Claims shall be referred to the Initial Decision Maker for initial decision. The Designer will serve as the Initial Decision Maker, unless otherwise indicated in the Contract Documents. An initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered.

8.2.2.1 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

8.2.2.1.1 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

8.2.2.2 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Designer, if the Designer is not serving as the Initial

Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and/or litigation of the claim as provided herein.

8.2.3 Regardless of the disposition or status of a Claim, (except as otherwise agreed in writing or as provided elsewhere in the Contract Documents), the Contractor shall proceed diligently with performance of the Contract. The Designer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

8.2.4 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

8.2.4.1 Contractor hereby acknowledges that the Owner has the contractual right to delay the Work. Such right may not be exercised unreasonably. In addition, Contractor shall not be entitled to additional compensation as a result of delay, even if caused by the Owner or those for whom the Owner is responsible. The Contractor's sole remedy for any delay is an extension of time, notwithstanding the above. Furthermore, the Contractor acknowledges that the Construction Schedule reflects the Contractor's schedule expectations, based upon the Contract Documents, tests, surveys or plans heretofore submitted to the Contractor and Contractor's visual inspection of the Project Site. The Contractor hereby agrees that it has taken these factors into account and the Contractor shall have no entitlement to an increase in the Contract Sum or any other additional costs, expenses or damages of whatsoever nature as they may relate to or otherwise arise from any delay, impact, or acceleration, except as and to the extent expressly provided under M.G.L. c.30, § 39O. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time provided the Contractor complies with notice requirements contained in Section 8.2.1.

8.2.5 Claims for Additional Time. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. In the case of a continuing delay, only one Claim is necessary.

8.2.5.1 No increase in the Contract Time will be allowed for Work that is delayed as a result of the Contractor's failure to timely submit, revise or resubmit shop drawings, product data, and/or samples.

8.2.5.2 No extension of time shall be granted because of seasonal, normal or abnormal variations in temperature, humidity, or precipitation, which conditions shall be wholly at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. Any additional cost of operations or conditions resulting therefrom shall be the responsibility of the Contractor.

8.2.5.3 The Owner shall not extend the Contract Time due to a delay until all Contract Float is used.

8.2.5.4 The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time and shall furnish the Designer with such documentation relating to the claim as the Designer may reasonably require. The Progress schedule in the format required by the Contract Documents shall be used for determining the Contractor's Rights to an extension of time under Section 9.2. The Designer will not be obligated to grant an extension of time unless the Contractor can demonstrate that the schedule has been negatively affected for reasons allowable under Section 9.3. If requested to do so by the Designer, the Contractor shall furnish additional hard copy print-outs of the revised Schedules and charts reflecting the actual or estimated time changes resulting from Change Orders or other events or actions which are the basis for the Claim for Additional Time.

8.2.6 The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with the Contract Documents.

8.2.7 Claims, disputes or other matters in question between the parties to this Contract Agreement arising out of or relating to this Contract Agreement or breach thereof shall be subject to and decided by the Superior Court of Massachusetts in Suffolk County, if jurisdiction exists, and if jurisdiction does not exist in the Superior Court, said action shall be brought in the Woburn District Court of Massachusetts. A claim, dispute or other matter may be submitted to mediation, in accordance with the provisions of the American Arbitration Association, at the sole discretion of the Owner.

8.2.7.1 In the event that the Owner elects to demand mediation to settle any claim, dispute or matter in question, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

8.2.8 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 9: PROGRESS OF WORK, SUBSTANTIAL COMPLETION, FINAL COMPLETION

9.1 Time limits stated in the Contract Documents are of the essence. The Contractor and its Subcontractors shall perform and coordinate all Work without delay. By executing the Agreement the Contractor confirms it has reviewed the Contract Documents and that the Contract Time is a reasonable period for performing the Work. The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

9.2 The term "Substantial Completion" as used in this Contract shall mean the point at which, as certified in writing by the Designer, the Designer has determined that the Project is at a level of completion in strict compliance with this Contract such that the Owner or its designee can enjoy beneficial use and can use or operate it in all respects for its intended purpose and only minor items which can be corrected or completed without any material interference with the Owner's use of the Work remain to be corrected or completed. Partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of substantial completion.

9.2.1 The Contractor shall submit, prior to requesting substantial completion, written certification that: (a) Equipment and systems have been tested in the presence of the Owner's Representative and are operational; (b) Owner's designated staff have been instructed on all equipment and systems and an Owner signed receipt has been furnished to the Designer; (c) Operational and Maintenance Manuals and record drawings have been submitted to and reviewed by the Designer and have been delivered to the Owner with required corrections. Submit copies of receipts signed by Owner's representative; (d) Owner has received the specified guarantees and spare parts and the Owner has signed a receipt for same; and (e) Project has been completed and is ready for final inspection and an appropriate Certificate of Occupancy has been issued.

9.2.1.2 The Contractor shall also submit the following: (a) Contractor's Affidavit of Payments for Debts and Claims; (b) Contractor's Affidavit of Release of Liens; (c) Consent of Surety to Final Payment; and (d) Maintenance Guarantee.

9.2.2 The Contractor shall obtain and deliver promptly to the Designer any Occupancy Permit and any certificates of final inspection of any part of the Contractor's Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, and air compressors, which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Designer shall be a condition precedent to determining that the Work is Substantially Complete.

9.2.3 Punch List. When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Designer a comprehensive list, organized by room and trade, of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The punch list is to be complied with and in a process of active completion at the time of Substantial Completion, prior to the de-mobilization of major subcontractors.

9.2.3.1 Upon receipt of the Contractor's list, the Designer, Owner's Project Manager, and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Designer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Designer. In such case, the Contractor shall then submit a request for another inspection by the Designer to determine Substantial Completion.

9.2.4 When the Work or designated portion thereof is substantially complete (in accordance with this Section 9.2), the Owner, with the advice and recommendation of the Designer, will determine the date of Substantial Completion, and the Designer will prepare a Certificate of Substantial Completion reflecting such date of Substantial Completion that shall establish the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate.

9.2.4.1 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.3 Partial Occupancy or Use. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Designer as provided under Section 9.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Designer.

9.3.1 Immediately prior to such partial occupancy or use, the Owner, Contractor and Designer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.3.2 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.4 Final Completion and Payment. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Designer, Owner's Project Manager, and Owner will promptly make such inspection and, when the Owner, after consultation with the Designer, finds the Work acceptable under the Contract Documents and the Contract fully performed, will request the Designer to promptly issue a final Recommendation for Payment stating that to the best of the Designer's knowledge, information and belief, and on the basis of the Designer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents, and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable.

9.4.1 Contractor shall submit, prior to requesting final inspection, written certification that: (a) Work has been completed in accordance with Contract Documents; and (b) Project has been inspected for compliance with Contract Documents. If the Designer or Owner does not consider the work finally complete, the Contractor will be notified, in writing, with the reasons stated. The Contractor will take immediate steps to correct the stated deficiencies and then submit a second written certification to the Designer, Owner and Owner's Project Manager.

9.4.2 Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.4.3 Reinspection Costs. Should the Designer be required to reinspect the work because of failure of the Contractor to comply with the certification listed in 9.4.1, the Designer will bill the Owner for all related cost incurred, such cost will be deducted from the Contractor's payment.

9.4.4 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Designer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien.

9.4.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee.

9.4.6 One-Year Warranty Repair List and Inspection. Approximately thirty (30) days prior to the expiration of the comprehensive one-year warranty period, the Contractor shall schedule an appointment with the Owner for a re-inspection of the Work with the Owner, and shall thereafter inspect the work at the time scheduled. Based

on this inspection and on prior inspections, the Owner shall issue a “Warranty Repair List” of items to be corrected by the Contractor. The Contractor shall make the repairs and/or replacements listed within thirty (30) days of the issuance of the Warranty Repair List unless otherwise agreed by the Owner in writing.

ARTICLE 10: CHANGES IN THE WORK

10.1 Upon the request of the Owner or the Designer, the Contractor shall, within 15 days (sooner if necessary to avoid delays in work) and without cost to the Owner, submit to the Designer, in such form as the Designer may require, an accurate written Change Order Proposal for the cost of any proposed extra work or change. The estimate shall indicate the quantity in unit cost of each item of materials, and the numbers of hours of work and an hourly rate for each class of labor, as well as the description in amounts of all other costs sought by the Contractor and chargeable under the terms of this article. Unit labor costs for the installation of each item of materials shall be shown if required by the Designer. The Contractor shall promptly revise and resubmit such estimate if the Designer determines that it is not in compliance with the requirements of this article, or that it contains errors of fact or determines that it is not in compliance with the requirements of this article, or that it contains errors of fact or mathematical errors. If required by the Designer in order to establish the exact cost of the new work added or of previously required work omitted, the Contractor shall obtain and furnish to the Designer bona fide proposals from subcontractors and suppliers for furnishing any labor and material included in such work. Such estimates shall be furnished promptly so as to occasion no delay in the work and be furnished at the Contractor’s expense. The Contractor shall state in the estimate any extension of time required for the completion of the work if the change or extra work is ordered. Percentages for overhead and profit included in the proposal shall be in accordance with Paragraph 10.2.

10.1.2 Change Order Proposals shall be complete and definitive, and the amount of the adjustment in the Contract Sum and the Contract Time, if any, shall be stated in the proposal for all Work affected by the proposed Change. Once a Change Order is executed, the Contractor shall be required to perform all of the Work required therein (including incidental work and changes to related Work which may be required to complete the Change Order) in accordance with the Contract Documents, for the amounts stated in the Change Order.

10.1.3 Contractor’s requests for changes or substitutions shall be subject to the same requirements as change initiated by the Designer or Owner.

10.2 Where the value of work performed directly by the Contractor under a Change Order or a Construction Change Directive is determined by either a lump sum proposal or by actual cost of work as it progresses, the Contractor will be allowed an additional amount of five percent (5%) of the total cost of material and labor, as combined overhead, superintendence, and profit. Cost of the work shall include the cost at prevailing rates for direct labor, material and use of equipment, plus the cost of workmen’s compensation insurance, liability insurance, federal social security and Massachusetts unemployment compensation. Mark-up for overhead, superintendence, and profit shall include (and no additional payment shall be made for) general conditions, management, supervision, coordination, insurance, bonds, mobilization, record drawings, engineering/layout, small tools/computers, “tools of the trade,” transit staging/scaffolding, lifting, hoisting, dumpster, handling, clean-up, temporary weather protection, temporary heat and utilities, shipping/receiving, administration, accounting, punch list, O & M manuals, estimator time, schedule updating, safety protection, certified payrolls, street sweeping, police barricades, signs, construction fences, and the like. Surcharges for subcontracted work, where required or permitted, shall be as follows: (a) To the Subcontractor or Sub-subcontractor performing the work, five percent (5%) of the total cost of labor and materials; (b) To payments made to a Sub-subcontractor, the Subcontractor will be allowed an additional five percent (5%); (c) To the total payment made to the Subcontractor, the Contractor will be allowed an additional five percent (5%) to cover increased overhead and profit; (d) On any changes involving the Contractor, application of the percentage allowed for the Contractor’s overhead and profit; (e) No additional costs will be allowed of any lower tier of Subcontractors.

10.2.1 If deductions are ordered, the credit shall be computed as net cost.

10.2.2 The General Contractor shall not sublet any work under a Change Order or a Construction Change Directive unless work under the basic Contract of a similar type was previously subcontracted; and Subcontractors will not be allowed to further sublet any work under a Change Order unless the work under the basic Contract of a similar type was previously sublet by them, without the written approval and acceptance of the Owner.

10.2.3 All changes in the Work shall be in accordance with provisions of the M.G.L. c. 30, § 39I.

10.3 The Contractor agrees to perform all Work as directed by the Owner, and if the Owner or the Owner's Project Manager determines that certain Work that the Contractor believes to be or to warrant a Change Order under this Article does not represent a change in the Work, the Contractor shall perform said Work. The Contractor shall be deemed to have concurred with the Owner's or Owner's Project Manager's determination as aforesaid unless the Contractor shall perform Work under protest in compliance with the following subsections 10.3.1 and 10.3.2, below.

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

10.3.2 On or before the second working day after the commencement of such work or the sustaining of such damage, and daily thereafter, the Contractor shall file to the extent possible with the Designer, the Owner and the Owner's Project Manager, itemized statements on forms reasonably acceptable to the City of the details and costs of such work performed or damage sustained. If the Contractor shall fail to make such statements to the extent possible, then the Contractor shall not be entitled to additional compensation for any such work or damages

10.4 CHANGE ORDERS

10.4.1 A Change Order is a written instrument prepared by the Designer and signed by the Owner, Contractor and Designer stating their agreement upon all of the following: (a) the change in the Work; (b) the amount of the adjustment, if any, in the Contract Sum; and (c) the extent of the adjustment, if any, in the Contract Time.

10.4.2 As provided in M.G.L., c. 30, § 39P, whenever the City, awarding authority, engineer or architect is requested to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, he shall make that decision promptly and, in any event, no later than thirty days after the written submission for decision. However, if such decision requires extended investigation and study, the person making the decision shall, within thirty days after receipt of the submission, give the party making the decision written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

10.4.3 A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract Sum and Contract Time.

10.4.4 M.G.L. c. 44, Sec. 31 C provides that no change order that results in additional cost shall be deemed to have been given until the accountant or other officer of the City having similar duties has certified thereon that an appropriation in the amount of such order is available therefore; but such certificate shall not be construed as an admission by the City of its liability to pay for such work; rather, such certification shall bar any defense by the City on the grounds of insufficient appropriation.

10.5 CONSTRUCTION CHANGE DIRECTIVES

10.5.1 A Construction Change Directive is a written order prepared by the Designer or the Owner and signed by the Owner and Designer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

10.5.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

10.5.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods: (a) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (b) unit prices stated in the Contract Documents or subsequently agreed upon; (c) cost to be determined in a manner agreed upon by the parties and, if required or permitted, an additional amount or surcharge as provided in Section 10.2; or (d) As provided in Section 10.7.

10.5.4 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

10.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Designer, Owner, and Owner's Project Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

10.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner, after obtaining the recommendation of the Designer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for combined overhead, superintendence and profit as set forth in Section 10.2. In such case, and also under Section 10.5.3(d), the Contractor shall keep and present, in such form as the Designer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 10.7 shall be limited to the following: (a) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; (b) costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed; and (c) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others.

10.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Designer and agreed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change

10.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Designer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Designer determines, in the Designer's professional judgment, to be reasonably justified. The Designer's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with this Contract Agreement.

10.10 When the Owner and Contractor agree with a determination made by the Designer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Designer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

10.11 Minor Changes in Work. The Designer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Designer and shall be binding on the Owner and Contractor.

ARTICLE 11: NONPERFORMANCE

11.1 In the case of any default on the part of the Contractor with respect to any of the terms of this Agreement, the City shall give written notice thereof, and if said default is not made good within such time as the City shall specify in writing, the City shall notify the Contractor in writing that there has been a breach of the Agreement and thereafter the City shall have the right to secure the completion of the work remaining to be done on such terms and in such manner as the City shall determine, and the Contractor shall pay for the completion of such work and reimburse the City for all expenses incurred by reason of said breach. The Contractor in case of such breach shall be entitled to receive payment only for work completed satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Contract sum, and the amount of any balance due the Contractor shall be determined by the City and certified to the Contractor. The Contractor shall reimburse the City for the cost of additional services required by the City in the case of a breach.

11.2 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to immediately correct such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have (including Termination in accordance with the Contract Documents), correct such deficiencies. In such case an appropriate Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Project Manager's and Designer's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In the event that the Contractor's failure to prosecute the Work causes (in the opinion of the Owner), a risk of harm to the public, the Owner shall have the right to carry out the Work without notice at the Contractor's cost and/or deduct such sums from monies due the Contractor.

11.3 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required herein or fails to carry out Work in accordance with the Contract Documents, the Owner may in addition to any other remedy it may have herein, terminate in accordance with this Agreement or issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

ARTICLE 12: TERMINATION

12.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Further, if the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of the Contractor's creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor consistently or repeatedly refuses or fails, excepting cases of which extension of time is appropriated, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make prompt payment to the Subcontractors of for materials or labor, or persistently disregards law, ordinances, rules, regulations, or orders of any public authority having jurisdiction or disregards an instruction, order or decision of the Designer, or otherwise is guilty of a substantial violation of any provision of the contract, then the Contractor shall be in default, and the Owner may, without prejudice to any other right or remedy and upon written notice to the Contractor, take possession of all materials, tools, appliances, equipment, construction equipment, and machinery and vehicles, offices and other facilities on the project site and all material intended for the work, wherever stored, and seven days after such notice may terminate the employment of the contract, accept assignment of any or all Subcontractor's contracts, and furnish the work by whatever method the Owner may deem expedient. The Owner shall be entitled to collect from the Contractor all direct, indirect, consequential damages suffered by the Owner of behalf of the Contractor's defaults, including without limitations additional services and expenses of the Designer, the Designer's consultants, and/or the Owner's Project Manager made necessary thereby. The Owner shall be entitled to hold all amounts due to Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such damages.

12.1.2 The Owner shall incur no liability by reason of such termination.

12.2 Upon receipt of written notice from the Owner of termination for the Owner's convenience, the Contractor shall: (a) cease operations as directed by the Owner in the notice; (b) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (c) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

12.3 In case of termination for the Owner's convenience, the Contractor shall be entitled to receive payment only for work executed and to the extent approved and to the extent recommended by the Designer and approved by the Owner. Contractor waives all claims for damages, including loss of anticipated overhead recovery or profits, on account of such termination. The payments provided for herein shall be Contractor's sole rights and remedy in the event of termination for convenience or for cause. Provisions of the Contract Documents that by their nature survive final acceptance of the Work shall remain in full force and effect after such termination to the extent therein provided.

12.4 The Contractor shall not be relieved of liability to the Owner by virtue of any termination of this Contract, and any claim for damages against the Contractor relating to the Contractor's performance under this Contract shall survive any termination hereunder.

ARTICLE 13: SUBCONTRACTING

13.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Designer through the Owner's Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Designer may reply within 14 days to the Contractor in writing stating (1) whether the Owner, Owner's Project Manager, or the Designer has reasonable objection to any such proposed person or entity or (2) that the Designer requires

additional time for review. Failure of the Owner, Owner's Project Manager, or Designer to reply within the 14-day period shall constitute notice of no reasonable objection.

13.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Owner's Project Manager, or Designer has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

13.3 If the Owner, Owner's Project Manager, or Designer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Designer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

13.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner, Owner's Project Manager, or Designer makes reasonable objection to such substitution.

13.5 The provisions of Sections 12.1 through 12.4 shall not apply to the designated filed Sub-Bidders under this Contract. Such Subcontracts shall be in accordance with Chapter 149, Sections 44A through 44I inclusive of the General Laws of Massachusetts as amended.

13.6 The subcontract for Filed Sub-Bidders shall be the FORM FOR SUBCONTRACT included in the Contract Documents or, if not published with these specifications, it shall be the form and language established by Chapter 149 of the Massachusetts General Laws.

13.7 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Owner's Project Manager, and Designer. Each subcontract agreement shall preserve and protect the rights of the Owner, Owner's Project Manager, and Designer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

13.7.1 Unless the Owner agrees otherwise, all Subcontracts shall be consistent with the form of Subcontract approved in advance by the Owner. The Subcontract shall include the following terms: (a) Work to be performed pursuant to the Subcontract shall be in accordance with the Contract Documents; (b) as a condition for payment under the Subcontract, the Subcontractor shall submit to the Contractor of a request for payment and partial waivers of lien within a time frame which will allow the Contractor to request such payment from the Owner; (c) the Subcontractor shall carry and maintain liability insurance in accordance with the Contract

Documents; and (d) the Subcontractor and its sub-subcontractors shall furnish final releases and full waivers of mechanic's liens in form satisfactory to Owner.

13.8 If any lien or encumbrance on account of the Work is filed by any Subcontractor or sub-subcontractor of any tier, the Contractor shall (a) upon receiving notice of such filing, immediately give notice thereof to the Owner, (b) if such lien is not the result of the Owner's failure to make payment to the Contractor hereunder, either discharge the lien of record by bonding or otherwise or cause the responsible Subcontractor or supplier to discharge the lien by bonding or otherwise in accordance with the terms of the applicable Subcontract, in either case within ten (10) business days of the receipt of notice of the filing of such lien.

ARTICLE 14: CONSTRUCTION BY OWNER UNDER SEPARATE CONTRACTS

14.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

14.1.1 The Owner may award other contracts for additional work. The Contractor shall cooperate fully with other contractors, afford other contractors reasonable opportunity for the introduction and storage of their material and the execution of their work, and carefully fit its own work to that of other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any acts which will interfere with the performance of work by any other contractor.

14.1.2 If such separate Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or arbitration costs which the Owner has incurred.

14.1.3 The Owner reserves the right to access any part of the Project at any time to install other Work, either with its own forces or with separate contractors hired by the Owner. Such access is not to be construed as partial occupancy by the Owner. The Contractor shall permit the Owner to place and install furniture, equipment and other acceptance of the Work or any portion thereof.

14.1.4 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

14.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Designer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

14.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction.

14.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors.

15. NOTICE

15.1 All notices required to be given under this Agreement shall be given in writing and shall be effective upon receipt by hand delivery or certified mail to:

The City of Everett: City of Everett
Attn: Mayor’s Office
484 Broadway
Everett, MA 02149

The Contractor: Name _____
Title _____
Company _____
Address _____

ARTICLE 16: INSURANCE AND WORKER'S COMPENSATION

16.1 The Contractor shall purchase and maintain insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

16.1.1 All policies shall be written on an occurrence basis and be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth with a financial strength rating of A- or better as assigned by AM Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner, or otherwise acceptable to the Owner.

16.1.2 The Contractor shall file a certificate of insurance one certified complete copy of all policies and endorsements with the Owner prior to execution of this Contract Agreement. If the Owner is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall be responsible for all costs and damages to the Owner attributable thereto.

16.1.3 Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

16.1.4 The Contractor is responsible for the payment of any and all deductibles under all of the insurance required below. The Awarding Authority shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.

16.2 The Contractor shall obtain and maintain the following types of insurance in the amounts provided below:

16.2.1 Commonwealth of Massachusetts Statutory Worker’s Compensation and other benefits as required under the General Laws of Massachusetts: \$500,000/\$500,000/\$500,000.

16.2.2 Broad form Commercial General Liability, written on a “per occurrence” basis with an aggregate cap no less than three (3) times the required limit: \$1,000,000 C.S.L. Products/Completed Operations insurance shall be maintained for a minimum period of three (3) years after final payment, and the Contractor shall continue to provide evidence of such coverage to Owner on an annual basis during the aforementioned period. Property Damage Liability shall include coverage for X-C-U hazard of explosion, collapse, and damage to underground property.

16.2.3 Umbrella or Excess Liability coverage following form of underlying General, Automobile and Employers' Liability Coverage: Minimum of \$5,000,000 C.S.L. over primary insurance. No more than \$10,000 Retention.

16.2.4 Comprehensive Automobile Liability covering owned, non-owned, and hired or borrowed vehicles: \$1,000,000 C.S.L.

16.3 The above insurance policies shall also be subject to the following requirements:

16.3.1 Whenever applicable, including, but not limited to Contractor's Broad Form General Liability Insurance, all insurance coverage shall be on an "occurrence basis" and not a "claims-made basis".

16.3.2 The Owner (including its officials, employees, agents and representatives) shall be named as additional insured on Contractor's General Liability, Automobile Liability and Umbrella or Excess Liability Insurance Policies.

16.4 Neither the Owner's nor the Owner's Project Manager's authority to review certificates and policies of insurance, nor their decision to raise or not to raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the Owner or the Owner's Project Manager to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor, or Supplier, or any other party.

16.5 The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in the Contract Documents, and at all times after that when the Contractor may be correcting, removing or replacing defective Work. The Completed Operations insurance shall be maintained for three (3) years after Final Payment.

16.6 Insufficient insurance shall not release the Contractor from any liability for breach of its obligations under this Agreement.

16.7 The Contractor shall be responsible for procuring at its sole cost property insurance covering portions of the Work stored off the site or in transit.

ARTICLE 17: PERFORMANCE AND PAYMENT BONDS

17.1 In accordance with M.G.L. c. 149, § 44E, prior to execution of a contract pursuant to this section, the Contractor shall furnish to the City a payment bond and a performance bond of a surety company qualified to issue bonds in the Commonwealth and satisfactory to the City each in the sum of the contract price. These bonds shall (a) guarantee the faithful performance by the Contractor of all its obligations under this contract and (b) constitute the security required by M.G.L. c. 149, § 29 and M.G.L. c. 30, § 39A, as amended, for payment by the Contractor or its subcontractors used or employed in connection with the contract. Each bond shall incorporate by reference the terms of this contract. These bonds shall remain in full force and effect for at least one year after the project's completion, and longer if required to cover guarantees and/or pending claims.

17.2 It is distinctly agreed and understood that any changes made in the drawings and specifications for this work, whether such changes increase or decrease the amount of work required, or any change in the manner or time of payments made by the City to the Contractor, shall in no way void, release or affect the liability and surety on the bond given by the Contractor

17.3 If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in Massachusetts, the Contractor shall within twenty (20) days thereafter substitute another bond due until the new surety or sureties have furnished an acceptable bond to the Owner.

ARTICLE 18: MISCELLANEOUS PROVISIONS

18.1 Clerk's Certificate (Corporation). If the Contractor is a corporation, it shall endorse upon the contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the contract is executed by the Contractor.

18.2 Foreign Corporation. The Contractor, if a foreign corporation, shall comply M.G.L. c. 30, § 39L.

18.3 Municipal Prerequisites. This contract shall not be enforceable against the City unless and until the Contractor complies with this section. This contract is only binding upon, and enforceable against the City if: (a) the contract is signed by the City of Everett _____ or its designee; and (b) endorsed with approval by the City Accountant as to appropriation or availability of funds.

18.4 Subject to Appropriation. The obligations of the City hereunder shall be subject to appropriation on a fiscal year basis. In the absence of appropriation, this agreement shall be terminated immediately without liability of the City for damages, lost profits, penalties, or other charges arising from early termination.

18.5 CONFLICT OF INTEREST. Both the City and the Contractor stipulate to the applicability of the State Conflict of Interest Law (M.G.L. c. 268A), and this contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated its applicability to the performance of this contract; and by executing the contract documents the Contractor certifies to the City that neither it nor its agents, employees or subcontractors are thereby in violation of M.G.L. c. 268A.

18.5.1 The Contractor warrants that it has complied with all provisions of law regarding the award of this contract and that it, or its employees, agents, officers, directors or trustees have not offered or attempted to offer anything of any value to any official or employee of the City in connection with this Contract.

18.5.2 The Contractor further warrants that no official or employee of the City including unpaid members of City boards and commissions, serves as an officer, director, trustee or employee of the Contractor, and that no official or employee of the City has or will have a direct or indirect financial interest in this Contract.

18.5.3 The Contractor shall not during the term of this Contract hire or employ on either a full-time or part-time basis any person or persons employed by the City.

18.5.4 Violation of this Article shall be a material breach of this contract and shall be grounds for immediate termination of this contract by the City without regard to any enforcement activities undertaken or contemplated by any enforcement agency. Termination of this contract pursuant to this Article shall not waive any claims for damages the City may have against the Contractor resulting from the Contractor's violation of the terms of this Article.

18.6 Assignment or Transfer of Contract. The Contractor shall not sell, transfer, assign by power of attorney or otherwise, sublet, or otherwise dispose of the work or any part thereof, without the previous written consent of the City by its Contracting Officer. Nor shall the Contractor either legally or equitably assign any of the moneys payable under this Contract or any claim thereto unless by and with like written consent on the part of the Contracting Officer and the City Treasurer.

18.7 Record Keeping and Management Controls. The Contractor shall comply with M.G.L. c. 30, § 39R.

18.8 Non-Discrimination. The Contractor shall not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of sub-contractors, the procurement of material and rental of equipment, employment decisions or in any aspect of the performance of this contract. The Contractor shall also comply with all applicable laws and regulations pertaining to non-discrimination. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, each potential subcontractor shall be notified by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and it shall be a term of each contract with a subcontractor in connection with the performance of this work under this Agreement, that the subcontractor be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Contractor hereunder.

18.9 Reserve Police Officer. In accordance with M.G.L. c. 149, § 34B, the Contractor shall pay to any reserve police officer employed by it the prevailing wage paid to regular police officers.

18.10 Severability. If any provision of this Contract is held invalid by any court or body of competent jurisdiction, the remainder of this Contract shall remain in full force and effect.

18.11 Headings. The section headings in this Contract are for convenience and reference only and in no way define or limit the scope or content of this contract or in any way affect its provisions.

18.12 Liability of Public Officials. To the fullest extent permitted by law, no official, employee, agent, or representative of the City shall be individually or personally liable on any obligation of the City under this contract.

18.13 Independent Contractor. The Contractor is not an employee or agent of the city, but is an independent contractor.

18.13 Certification of Non-Debarment. By execution of this Contract, the Contractor, pursuant to Section 29F of Chapter 29 of the Massachusetts General Laws, certifies under the penalties of perjury that it is not presently debarred or suspended from doing public construction work in the Commonwealth of Massachusetts pursuant to said section, or any applicable debarment or suspension provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

18.14 Governing Law. This Agreement and performance hereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable City by-laws and administrative rules, regulations and orders.

ARTICLE 19: WARRANTY

19.1 The Contractor warrants that the materials and equipment furnished under the contract will be new and of recent manufacture and that all Work will be of good quality, free from faults and defect, and in conformance with the Contract Documents. If required by the Designer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

19.1.1 Materials, supplies, or equipment to be incorporated into the Work shall not be purchased by the Contractor subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. All materials are to be of the best and finest quality of their several kinds.

19.1.2 The Contractor guarantees and warrants to the Owner that all labor furnished under this Contract will be competent to perform the tasks undertaken that the product of such labor will yield only first-class results.

19.1.3 The Contractor shall be solely responsible for determining that all materials furnished for the Work meet all of the requirements of the Contract Documents. The Designer or Owner may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Designer, would lead to a reasonable certainty that any material used or proposed to be used, and the work meets the requirements of the Contract Documents all such data shall be furnished at the Contractor's expense. This provision shall not require the Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed at the Contractor's expense.

19.2 The warranties provided in this Section 18 shall be in addition to and not in limitation of any warranty required by the Contract Documents or otherwise described by law.

19.3 The Contractor shall secure and deliver to the Designer, no later than the date claimed by the Contractor as the date of final completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

19.4 All warranties and guarantees shall commence on the date of Final Completion. Warranties and guarantees shall extend for a minimum of one (1) year. Notwithstanding the forgoing, any special warranties, as defined by the Designer, required by the Contract Documents or manufacturers' standard warranties, extending longer than one (1) year, shall remain in effect for the full warranty period.

19.5 All warranties and guarantees required in the various Sections of the Specifications which originate with a Subcontractor or Manufacturer must be delivered to the Owner before final payment to the Contractor may be made for the amount of that sub trade or for the phase of work to which the guarantee or warranty relates. The failure to deliver a required guarantee or warranty shall be held to constitute a failure of the Subcontractor to fully complete his work in accordance with the Contract Documents. The Contractor's obligation to correct work is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications. 19.6 If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which in the opinion of the Owner is rendered necessary as a result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract, the Contractor shall, promptly upon receipt of notice from the Owner and at his own expense: (a) place in satisfactory condition in every particular all of such guaranteed work, correct all defect therein; (b) repair all damage to the site, or equipment or contents thereof, which in the opinion of the Owner is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and (c) repair good any work or material, or the equipment or site, which is disturbed in fulfilling any such guarantee.

19.7 The Contractor's obligations contained in this Section 18 shall survive termination of the Contract.

ARTICLE 20: PROTECTION OF WORKS AND PROPERTY

20.1 The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Contract. The Contractor shall at all times safely guard, and protect his own work, and that of adjacent property from damage. All passageways, guard fences, lights and other facilities required for protection by State or Municipal laws and regulations and local conditions, must be provided and maintained.

ARTICLE 21: WEATHER PROTECTION

21.1 As required by M.G.L. c. 149, § 44F, the Contractor shall provide weather protection to the site, materials and all of the Owner's property during the winter months.

ARTICLE 22: OWNERSHIP OF DOCUMENTS

22.1 Upon completion of the final payment to the Contractor, the Owner shall be the owner of all plans, specifications, electronic data and computations created by the Contractor that relate to this Agreement.

CONTRACTOR:

Date Signed

CITY OF EVERETT:

Angelo Febbo
Facilities Director, City

Date Signed

Allison Jenkins
Chief Procurement Officer

Date Signed

Eric Demas
Chief Financial Officer/City Auditor

Date Signed

Colleen Mejia, Esq.
City Solicitor

Date Signed

Carlo DeMaria
Mayor

Date Signed

WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE

In accordance with M.G.L. c. 149, §27B, a true and accurate record must be kept of all persons employed on the public works project for which the enclosed rates have been provided. A Payroll Form is available from the Department of Labor Standards (DLS) at www.mass.gov/dols/pw and includes all the information required to be kept by law. Every contractor or subcontractor is required to keep these records and preserve them for a period of three years from the date of completion of the contract.

On a weekly basis, every contractor and subcontractor is required to submit a certified copy of their weekly payroll records to the awarding authority; this includes the payroll forms and the Statement of Compliance form. The certified payroll records must be submitted either by regular mail or by e-mail to the awarding authority. Once collected, the awarding authority is required to preserve those records for three years from the date of completion of the project.

Each such contractor and subcontractor shall furnish weekly and within 15 days after completion of its portion of the work, to the awarding authority directly by first-class mail or e-mail, a statement, executed by the contractor, subcontractor or by any authorized officer thereof who supervised the payment of wages, this form, accompanied by their payroll:

STATEMENT OF COMPLIANCE

I, _____, _____, 20____

(Name of signatory party) (Title)

do hereby state: That I pay or supervise the payment of the persons employed by

_____ on the _____

(Contractor, subcontractor or public body) (Building or project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty-nine of the General Laws.

Signature _____ Title _____

WAGE RATE REQUIREMENTS

1. GENERAL

A. This section summarizes the requirements for the payment of wages to laborers and mechanics employed under the Contract.

B. Other duties and requirements of law which may not be specified in this section apply and are inherently part of the Contract.

2. WAGE RATES

A. The rate per hour to be paid to mechanics, apprentices, teamsters, chauffeurs, and laborers employed on the Work shall not be less than the rate of wages in the attached "Minimum Wage Rates" as determined by the Commissioner of Labor and Industries. The schedule of prevailing wage rates will be updated annually for all public construction projects lasting longer than one (1) year. The contractor shall pay the prevailing wage rate set out in the applicable prevailing wage rate schedule. Increases in prevailing wage rates shall not be the basis for a change order.

B. Keep posted on the site a legible copy of said schedule. Keep on file the wage rates and classifications of labor employed on this Work in order that they may be available for inspection by the CITY, Administrator, or the Architect.

C. Apprentices employed pursuant to this determination of wage rates must be registered and approved by the State Apprenticeship Council wherever rates for journeymen or apprentices are not listed.

D. The Contractor and all subcontractors shall, on a weekly basis throughout the term of the contract, provide to the City of Everett certified payroll affidavits verifying compliance with M.G.L. c.149, §§27, 27A and 27B.

E. The Contractor and all subcontractors shall provide a Statement of Compliance within 15 days of the completion of its portion of the work. This statement shall be submitted to the CITY on the form found elsewhere in this section.

F. The Contractor shall maintain accurate and complete records, including payroll records, during the Contract term and for three years thereafter. Filings made by the Contractor pursuant to Clauses 47, 48 and 49 of the General Conditions shall be deemed to constitute compliance with State filing requirements under the Massachusetts Prevailing Wage Law

WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE

In accordance with M.G.L. c. 149, §27B, a true and accurate record must be kept of all persons employed on the public works project for which the enclosed rates have been provided. A Payroll Form is available from the Department of Labor Standards (DLS) at www.mass.gov/dols/pw and includes all the information required to be kept by law. Every contractor or subcontractor is required to keep these records and preserve them for a period of three years from the date of completion of the contract.

On a weekly basis, every contractor and subcontractor is required to submit a certified copy of their weekly payroll records to the awarding authority; this includes the payroll forms and the Statement of Compliance form. The certified payroll records must be submitted either by regular mail or by e-mail to the awarding authority. Once collected, the awarding authority is required to preserve those records for three years from the date of completion of the project.

Each such contractor and subcontractor shall furnish weekly and within 15 days after completion of its portion of the work, to the awarding authority directly by first-class mail or e-mail, a statement, executed by the contractor, subcontractor or by any authorized officer thereof who supervised the payment of wages, this form, accompanied by their payroll:

STATEMENT OF COMPLIANCE

I, _____, _____, 20____
(Name of signatory party) (Title)

do hereby state: That I pay or supervise the payment of the persons employed by
_____ on the _____
(Contractor, subcontractor or public body) (Building or project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty-nine of the General Laws.

Signature _____ Title _____