

**24-55 ON-CALL OVERHEAD DOOR REPAIRS
AND REPLACEMENT SERVICES**

INVITATION FOR BIDS

CITY OF EVERETT, MASSACHUSETTS

RELEASED: MAY 29, 2024

DUE BY: June 13, 2024 BY 2:00 P.M.

DELIVER TO:

**City of Everett
Office of the Purchasing Office
484 Broadway, Room 14
24-55 On Call Overhead Doors
Everett, MA 02149**

CITY OF EVERETT
ON-CALL OVERHEAD DOOR REPAIRS AND
REPLACEMENT SERVICES

INVITATION FOR

BIDS TABLE OF

CONTENTS

Section	Description
1.	Introduction
2.	General Bid Requirements
3.	Description of Work
4.	References
5.	Form for General Bid
6.	Prevailing Wage Statement
7.	Statement of Qualification
8.	OSHA Compliance Certification
9.	Contract Authorization Forms
10.	Sample Copy of Standard Contract

ON-CALL OVERHEAD DOOR REPAIRS AND REPLACEMENT SERVICES

RESPONDENT'S CHECKLIST

Please ensure all documents listed on this checklist are included, and/or acknowledged with your submission. Failure to do so may subject the proposer to disqualification.

_____ Respondent's Checklist (this form)

_____ Letter of Transmittal

_____ 5% Bid Deposit

_____ Statement of Qualification

_____ OSHA Compliance Certification

_____ Form for General Bid (Bid Pricing)

_____ References

_____ Certificate of Non-Collusion

_____ Certificate of Tax Compliance

_____ Clerk Certificate

_____ W9 Form

_____ Acknowledgement of Addenda (submission of copy of addenda issued, if any)

SECTION 1: INTRODUCTION

INTRODUCTION

The City of Everett Purchasing Department is soliciting bids from qualified contractors interested in providing labor, materials and permits to provide On-Call Overhead Door Repairs and Replacement Services at various city-owned locations on an as needed basis; as outlined in the attached bid specifications. A contract will be awarded for the base year. Two (2) one (1) year renewals are available at the sole discretion of the city.

ANTICIPATED IFB TIME TABLE

Dates and times listed on this IFB Time Table are subject to change.

IFB issued	May 29, 2024
Deadline for submitting questions	June 6, 2024 at noon
Bids Due	June 13, 2024 @ 2:00 p.m.
Award of contract	June 2024

SECTION 2.0: GENERAL INSTRUCTIONS AND CONDITIONS

- Bid Open Date:** Pursuant to M.G.L. Chapter 149, the City of Everett seeks bids from qualified vendors interested in providing repairs and replacement of various sized overhead doors, on an as needed basis. Bidder shall submit one (1) copy of their bid in a sealed envelope and properly labeled as “**On-Call Overhead Door Repairs and Replacement Services**” Bids are due on or before 2:00 p.m., June 13, 2024 at the Office of the Purchasing Office. Late bids will not be considered.
- Time for Award:** The Chief Procurement Officer, after a recommendation from the initiating department head shall review and award. An award of contract will be made within thirty (30) days after the bid submission date or as soon as practicable thereafter. The time for award may be extended for up to thirty (30) days by mutual agreement.
- Addenda:** If any changes are made to this IFB, an addendum will be issued. Addenda will be posted with the bid on the city’s website. If the City issues any addenda to this IFB, each bidder shall acknowledge on the Price Bid Form the receipt of each addendum by addendum number.
- Questions** concerning this IFB must be submitted in writing to Allison Jenkins, Chief Procurement Officer, **before noon., June 6, 2024**. Questions may be emailed to allison.jenkins@ci.everett.ma.us. Written responses will be posted as addenda to our website. The City of Everett has identified a sole point of contact with bidders for the purpose of this IFB. Any attempt to contact any other City of Everett employee or to circumvent these procedures in any manner may be grounds for disqualification of the bidder from the procurement process.
- Modify Bid:** All bids received by Everett in response to this IFB shall be considered “firm” and may only be withdrawn as provided by M.G.L. c.149. A proposer may correct, modify or withdraw a bid by sealed written notice clearly marked as a correction, modification or withdrawal and received in the Office of the Purchasing Agent prior to the time and date set forth for bid submission.

6. **Withdrawal of Bid:** Once a bid is submitted and received by the City for final consideration and comparison with other bids similarly submitted, the Bidder agrees that he/she may not and will not withdraw his/her bid within thirty (30) consecutive days after the actual date of opening bids.
7. **Miscalculation of Bid Price:** After the bid submission deadline, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the City or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended correct bid and the proposer will be notified in writing; the proposer may not withdraw the bid. A proposer may withdraw a bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident. Wherever there is a discrepancy between the bid price and the written words, the written word shall prevail.
8. **Reject Bids:** The City reserves the right to cancel this IFB, or reject in whole or in part any and all bids, if the City determines that cancellation or rejection serves the best interests of the City.
9. **Conditional Bid:** Bids which are incomplete, conditional, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected.
10. **Appropriation:** The contract award is subject to an appropriation by the City Council for the fiscal year in which the contract is executed and for any subsequent fiscal year during the contract term.
11. **Conflict of Interest:** It is prohibited for any bid to be submitted that would constitute a violation of the conflict of interest statute, M.G.L. chapter 268A.
12. **IFB:** This Invitation for Bid (IFB), with all of its terms and conditions, will be part of the contract.
13. **Invoices:** All invoices are to be submitted to the ordering department, Attention: Accounts Payable. Only invoices referencing a valid purchase order authorized by the City of Everett Auditor and Purchasing Agent will be processed for payment.

All invoices submitted in the manner stated above will be processed and forwarded to the City Facilities Office for payment within thirty (30) days, provided the equipment, materials, supplies and/or services have been delivered, as directed and accepted by the City of Everett

- To ensure a proper invoice, the invoice must include the following information and/or attached documentation:
 - a. Name of the business concern, invoice number and invoice date;
 - b. Contract number, or authorization for delivery of property or performance of services;
 - c. Description, price, quantity and services/supplies actually delivered or rendered;
 - d. Shipping and payment terms;
 - e. Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent; and
 - f. Other substantiating documentation or information as required by the contract.

Invoices submitted for payment by the Contractor that does not list the above information will be rejected and not paid.

14. **Evaluation of Bids:** Bids will be evaluated in good faith and bidders are expected to bid in good faith on an hourly rate that will be charged to the City in order to make the necessary repairs. An eligible bidder is a bidder who has submitted a bid that conforms in all respects to the invitation for bids. A responsible bidder is a bidder who has the capability to perform fully the contract requirements and the integrity and reliability that assure good faith performance.

All bids submitted in response to this IFB will be evaluated in accordance with the provisions established under Massachusetts General Law Chapter 149. Bidders will be required to adhere to the guidelines established under this statute.

15. **Use of Trade Names:** The use of a proprietary or trade name in any description of equipment, materials or supplies in this IFB is not intended to restrict this IFB to the manufacturer or proprietor; instead it is intended only to describe, by convenient reference to familiar products, the features or characteristics required by the City of Everett. Further, the use of any trademark in any description of equipment, materials or supplies does not constitute any endorsement of the product by the City of Everett.

Any item that is the equivalent, in style, quality dimensions and color, to the brand specified will be acceptable to the City of Everett. Items not marked on the cost bid form, as being equivalent shall be evaluated as being the item specified and be ordered as such, if an award is made. The City of Everett will be the sole judge as to the fitness of any equivalent item for the purpose intended in this bid.

16. **References:** Bidders shall provide the City of Everett with a list of three ongoing municipality projects that include contact names and telephone numbers.
17. **Rule for Award:** A contract for up to three years shall be awarded pursuant to M.G.L. Chapter 149 to the responsible and eligible bidder offering the lowest total bid price.

These specifications are in anticipation of funding. All contracts are voided if funds are not available.

In case a party to whom a Contract is awarded shall fail or neglect to execute the Contract within 14 days (Saturday's, Sunday's and Holiday's excluded), the City may determine that the Bidder has abandoned the Contract and may award the contract to the next lowest bidder. THIS CLAUSE WILL BE STRICTLY ENFORCED.

18. **City's Rights:** The City of Everett reserves the right to seek alternative quotes and execute an agreement, if needed, pursuant to proper procurement statutes for work covered under this IFB.
19. **City of Everett Standard Contract:** These specifications contain a copy of the City of Everett Standard Contract that the successful bidder will be required to sign upon notification of contract award. The City of Everett Standard Contract must be executed prior to the acceptance of any services.

Software License Agreements and Leases may be incorporated into the Standard Contract and are subject to the approval of the City Solicitor. Any software licensing agreements or leases that are to be part of the Standard Contract must be included with the bid documents in order to allow the City Solicitor to review the agreement(s) or lease(s), prior to awarding of the contract(s).

20. **Bid Deposit:** Bidders must submit a five percent (5%) bid deposit with their bid. The bid deposit must be in the form of a bid bond issued by a surety company certified to do business in the Commonwealth of Massachusetts; a certified treasurer's or cashier's check drawn on a responsible bank or trust company payable to the City of Everett.
21. **Prevailing Wage Requirements:** The contractor is required to pay prevailing wages on all projects associated with this contract in accordance with attached Prevailing Wage Statement. Certified payroll records must be submitted to the ordering department.
22. **Payment & Performance Bond Requirements:** The bidder awarded the contract is required to submit within (5) five days, a 100% payment bond drawn on a responsible bank or trust company authorized to do business in the Commonwealth of Massachusetts and made payable to the City of Everett.

In case to whom a contract is awarded shall fail or neglect to submit a payment & performance bond within the five days as pursuant to M.G.L. Chapter 149, the City may determine that the Contractor has abandoned the contract and may award the contract to the next lowest responsible and responsive bidder. THIS CLAUSE WILL BE STRICTLY ENFORCED.

23. **OSHA Requirement:** Awarded Contract shall furnish certification documents for all employees to be employed in the project subject to this bid showing that they 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.

No contract will be issued to a vendor without proof of OSHA certification pursuant to M.G.L. c. 149, §44A.

24. **Licenses:** The Contractor shall possess a Massachusetts contractor's license. Licensure from any other state will be subject to approval by the City.
25. **Insurance:** Contractor who is awarded a contract as a result of this IFB shall provide the City of Everett with a Certificate of Insurance name the City of Everett as the Additional Insured.

Contractor shall obtain and keep in force during the term of the contract general comprehensive public liability insurance insuring Contractor and the city of Everett, against all claims and demands for personal injury or damage to property which may be claimed to have occurred upon City property or arising out of the use of or occupancy thereof. Said insurance shall be written on an occurrence basis to afford protection in such amount as Everett shall, from time to time, reasonably determine, which can be up to \$1,000,000.00 combined single limit for personal and bodily injury and death; and for property damage, said insurance shall include a provision for medical payments in the amount of \$500,000.00 per person.

Contractor shall carry worker's compensation insurance as required by law, and such other insurance in such amounts as Everett may reasonably require from time to time.

The insurance coverage required under this agreement and all renewals shall be by standard policies, obtained from financially sound and responsible insurance companies authorized to do business in Massachusetts. Contractor's insurance policies shall contain only such deductibles as Everett shall approve, such approval not be unreasonably withheld or delayed. Duly executed certificates of insurance, or, if required by Everett, certified copies or duplicate original policies, together with reasonably satisfactory evidence of payment of the premiums therefore, shall be delivered to Everett on or immediately after the Commencement Date of the agreement. If Contractor fails to either acquire or maintain the insurance required by this agreement or to pay the premium for such insurance, this agreement shall be terminated.

Contractor assumes all risk and responsibility for and in connection with any and all activities engaged in by Contractor on city property, or by its agents, contractors, servants or employees, or any other person and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property, unless caused by and directly attributable to the negligence of Everett, its agents, servants or employees.

26. **Permits, Fees and Notices:** The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work. The Contractor shall coordinate all efforts required to obtain these permits unless otherwise directed in writing by the city. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, codes, and lawful orders of public authorities bearing on the performance of the Work. **The City will not honor any request for payment of permits.**

27. **Change Orders:** A change order may be issued by the City of Everett for changes in the Work within the scope of the Contract, including but not limited to, changes in: (1) the Plans and Specifications; (2) the method or manner of performance of the Work; (3) the City of Everett-furnished facilities, equipment, materials, services, or Site; or (4) the schedule for performance of the Work. The Contractor shall immediately perform any change order work that is ordered in writing and signed by the Chief Procurement Officer of the City.

The City is not obligated to pay for change orders that are not approved in writing by the Chief Procurement Officer.

28. **Orders:** Verbal Orders are not binding on the City of Everett and any delivery made or work performed without written order or written Contract are at the risk of the Seller or Contractor and may result in an unenforceable claim. The actual needs of City Departments shall govern the actual amount delivered under Contract to be drawn and entered into between the successful bidder and the City. Purchase Orders issued by the City to pay for goods or services shall be made part of the contract.

29. **Examination of Premises:** The Contractor will sign in/out with the Building & Facilities Manager upon entering any City or School Buildings. The Contractor will contact the Director or his designee prior to entering any of the School Buildings. The Contractor shall fully inform himself of the existing conditions where repairs are to be performed. The Contractor shall, as requested, furnish estimates and survey potential work at no cost to the City. Failure to sign in/out of city and school buildings where repairs are to be performed may result in non-payment for those repairs. Signing in/out shall not be an attestation that work was performed but rather that the Contractor was on the premises.

The Contractor shall provide materials of a quality equal to or exceeding that of original materials and/or shall be of a quality compatible to existing materials to provide desired results as approved by the City of Everett.

30. **Quality of Workmanship:** Fully qualified, OSHA certified, skilled personnel must do all work in a thorough workmanlike manner. The Contractor shall be fully qualified to perform repairs and maintenance to all elevator units and related work. The City of Everett reserves the right to judge on the quality of workmanship of those bidding based on prior work performed and/or reference checks. Quality of workmanship and references will be a determining factor when awarding this bid.

31. **Experience:** The Contractor shall have been established in the electrical business for at least five (5) years. All employees scheduled to work on any city property must be properly licensed. The City reserves the right to request license information from all employees performing services on City property.
32. **Laws and Regulations:** The Contractor shall comply with all Federal, State and Local Ordinances and Regulations governing the type of work indicated in these specifications.
33. **Authorization:** The Director of Facilities will authorize all repairs to city and school buildings.
34. **Removal of Debris:** The Contractor will remove all debris and dispose of in accordance with all applicable laws, after work is completed.

SECTION 2.1: REJECTION OF BIDS

The City of Everett reserves the right to reject any and all bids received in response to this IFB. The City also reserves the right to waive what it may consider minor informalities with bids submitted. A bidder's bid may be rejected if the bidder:

1. Fails to adhere to one or more of the provisions established in this IFB.
2. Fails to submit its bid at the time and in the format specified herein or to supply the minimum information requested.
3. Fails to meet unconditionally or is unable to demonstrate competence to meet the mandatory technical and business specifications required by this IFB.
4. Fails to submit its bid to the required address on or before the deadline date established by the Transmittal Letter.
5. Fails to submit any of the following: Clerk Certificate, Tax Compliance, Non-Collusion, W9, as specified in this IFB.
6. Misrepresents its products or provides demonstrably false information in its bid, or fails to provide material information.
7. Fails to sign the Form for General Bid.
8. Fails to submit the required 5% Bid Bond at the time of bid opening.
9. Does not meet some or any of the Quality Requirements as required in this IFB.

SECTION 2.2: FORM AND STRUCTURE OF BID

One complete copy of the bid must be submitted in a sealed envelope and labeled as follows:
24-55 On-Call Overhead Door Repairs and Replacement Services.

To be considered a complete bid, bidders must include all of the following in their submittal. The bid must be organized in the following manner:

- **Respondent's Checklist**
- **Letter of Transmittal.** Each bid shall include a letter of transmittal, not to exceed two pages in length, which bears the signature of an authorized representative of the prime Vendor and designates by name not more than two (2) individuals who will execute the contract with Everett on behalf of the prime Vendor. The letter of transmittal shall also state that the proposal will remain in effect for a period of thirty (30) calendar days after the deadline for submission of proposals.
- **Bid Deposit.** *Each bid shall include a bid surety in the amount of 5% of their bid price.* The bid deposit must be in the form of a bid bond issued by a surety company certified to do business in the Commonwealth of Massachusetts; a certified treasurer's or cashier's check drawn on a responsible bank or trust company payable to the City of Everett.
- **Statement of Qualification.** This form must be completed and submitted with the bid.
- **OSHA Compliance Certification.** This form must be completed and submitted with the bid.
- **Quality Requirements.** Each bidder shall respond to each criterion as listed in this IFB with a Yes or No and submit with their bid. A failure to respond to any of the following minimum standards may result in disqualification of your bid.

- **Form for General Bid.** (Bid Pricing) This form MUST be properly completed and submitted with your bid. Absolutely no changes to this form will be accepted and will result in the rejection of your bid.
- **References.** Bidders shall submit a list of three ongoing municipality projects similar in scope and size.
- **Required Forms.** In this section shall be a fully completed and signed Clerk Certificate, Certificate of Non-Collusion, Certificate of Tax Compliance and W9 Form.

QUALITY REQUIREMENTS

Quality requirements, or basic business requirements, are the minimum set of standards that an entity must meet and certify to be considered responsible and responsive. **Please complete the Quality Requirements form below and submit it with your completed bid.** The City of Everett may disqualify any response that does not meet the minimum requirements. A “NO” response to any items or a failure to respond to any of the following minimum standards may result in rejection of your bid.

QUALITY REQUIREMENTS		YES	NO
1.	Contractor has been regularly and actively engaged in the business of repair and installation of overhead doors, operating under the same business name and business organization structure; and performing the type of work described in Section 3, Scope of Work for a minimum of 5 years?		
2.	Are you able to respond to a work request from the Director of Facilities or an authorized agent, within 24 hours?		
3.	Can you be available at the job site within 2 hours in case of emergency?		
4.	Bidder has submitted a complete proposal with all required documents signed; i.e. Non-Collusion, Tax Compliance, Clerk Certificate, DCAMM Update Statement/Certificate of Eligibility and W9; as instructed in Form and Structure of Bid in this IFB?		
5.	Contractor is fully licensed, bonded and insured and can provide proof if requested?		
6.	Does Contractor have documented record of non-performance or significant unsatisfactory performance by any Massachusetts municipalities? <ul style="list-style-type: none"> • If so, you must submit the reporting municipality, contact person & telephone number. 		
7.	Are all parts & labor warrantied for one year or more? _____years		

In order to provide verification of affirmative responses to items 1 - 7 under the quality requirements listed above, bidders must submit written information that details the general background, experience and qualifications of the organization. Subcontractors, if applicable, must be also included.

SECTION 3: DESCRIPTION OF WORK

GENERAL

The City of Everett is seeking bids from qualified contractors to provide all labor, materials and equipment necessary for the successful repair and/or replacement of overhead doors at city-owned buildings on an as needed basis for a one year contract, with up to two (2) one (1) year renewals at the sole discretion of the city.

1. Bid prices shall include, but not limited to, the costs of labor, materials, equipment, permits, services and transportation necessary to complete the repairs or replacement of the overhead doors as directed.
2. Cut sheets shall be provided for all door, motors and any other significant materials.
3. Overhead door replacements shall be commercial grade overhead doors and the installation of doors, tracks, trolleys, hardware, motors and all other safeguards be to the manufacturer's recommended specifications.
4. All materials, including hinges, stiles, rails, rollers, washers and nuts shall be what door manufacturer's require to ensure proper installation and meet warranty requirements.
5. All steel sections warranted against splitting, cracking and rusting through for ten (10) years (or greater depending upon the door installed) from date of installation. All other components are warranted for one (1) year.
6. All doors shall meet or exceed 110 MPH wind loading.
7. All installation material including nuts, bolts, hinges, knobs, handles, etc. shall be provided by and included in the cost by the contractor.
8. All electrical disconnection, demolition and new power wiring to complete the installation shall be provided by the contractor and in accordance with Massachusetts State and National Electric Code.
9. All work shall be performed during building occupied hours, unless otherwise specified or necessary to meet schedule. All building services must be restored to their original condition including complete clean-up of the area and functionally tested to insure proper operation by the end of the day. All cut-over of services shall be scheduled with Owner prior to commencement of work.

SPECIFICATIONS

In the case where new electric or manual doors, tracks, frames or associated items needed to properly install or repair an overhead door, the following technical requirements, at a minimum, shall be met. Sub-par installation or repair of any overhead door will not be paid and the contractor will be responsible to rectify the issue with no additional cost to the City. The City shall be the sole judge of the quality of workmanship provided by the Contractor.

A. Doors and Frames

1. Thermally-broken insulated steel backed construction, fabricated with a foam core insulation (CFC free polyurethane insulation with an R value of 17 or better), faced both sides with shop finished sheet steel, 2 1-3/4" integral roll-formed integral struts per section (or EQUIVALANT); wind load of equal or greater than 110 MPH. If glass is requested, Glass shall be 7/16" tempered insulated, low E-glass. Finish shall be factory baked on resistance primer with finished coat of enamel finished with color requested (or EQUIVALENT such as Kynar)
2. Weather seals: Provide continuous rubber, neoprene or flexible/adjustable weather-strip gaskets at the tops and compression able astragal at bottom of each overhead door to prevent water and air infiltration; white perimeter climate seal on sides and tops as required to ensure water and air tight seal. If using existing wood pads to mount tracks, caulk the existing "gaps" between the existing moldings and cement edifice.

B Tracks, supports and accessories:

1. Tracks: Provide manufactures' standard regular lift, galvanized steel track system, sized for the door size and weight, and designed for clearances shown. Provide complete track assembly including brackets, bracing and reinforcing for rigid support ball bearing roller guides, for required door type. Slot vertical section track at 2" oc for the door drop safety device. Slope track at proper angle from vertical, or otherwise design to ensure tight closure at jambs when door is closed. Weld or bolt to track supports.
2. Track reinforcement and supports: provide galvanized steel track reinforcement and support members. Secure, reinforce and support tracks as required for size and weight of the door to provide strength and rigidity, and ensure against sag, sway and detrimental vibration during opening and closing of doors. Weld supports to opening by welding directly to steel jamb angles.
3. Support and attach tracks to opening jambs with continuous angle welded to tracks and attached to wall. Support horizontal (ceiling tracks) with continuous angle welded to track and support by laterally-braced attachments to overhead structural members and end of tracks (see the existing track assembly as a reference to track attachment). Clip angle or reverse angle track mounted to 2'x8' existing wood pads. Track radius is 15" (structural issues not withstanding)
4. Weather seals: Provide continuous rubber, neoprene or flexible/adjustable weather-strip gaskets at the tops and compression able astragal at bottom of each overhead door (including white perimeter climate seal). If using existing wood pads to mount tracks, caulk the existing "gaps" between the existing moldings and cement edifice.

C. Hardware

1. Provide heavy duty, rust-resistant hardware, with galvanized or cadmium-plated or stainless steel fastened, to suit type of door.

2. Hinges: Provide heavy steel hinges at each end stile and at each intermediate stile, per manufacture's recommendations for size of door. Attach hinges to door section through stiles and rails with bolts and lock nuts or lock washers and nuts. Use rivets or self-tapping fasteners only where access to nuts is not possible.
3. Rollers: Provide Proved heavy duty rollers, with steel ball bearing in case hardened steel races, mounted with varying projections to suit slope of track. Extend roller shaft through both hinges where double hinges are required. Provide roller tires to suit 2" track and case hardened steel tires for normal installations.

D. Counterbalancing Mechanisms:

1. Torsion Spring: Hang door assembly for operation by torsion spring counterbalance mechanism, consisting of adjustable tension tempered steel torsion springs mounted on a case hardened steel shaft, and connected to door with galvanized aircraft type lift cable
2. Counter balanced Extension Springs - Use this where the doors has a low clearance and cannot safely manage torsion springs. The 1 O' doors have a low clearance and have extension springs today. IF extension springs are used, they need to maintain the same safety, tolerances, and fatigue characteristics as a similar torsion spring
3. Provide cast aluminum or gray iron casting drums, grooved to receive cable. Mount counterbalance mechanism with manufacture's standard ball-bearing brackets at each end of the shaft with one additional mid-point bracket for shafts up to 16' long unless closer spacing recommended by door manufacture.
4. Include a spring-loaded steel or bronze cam mounted to bottom door roller assembly on each side, designed to stop door automatically if either cable breaks. Provide either a compression spring or leaf spring bumper installed at the end of each horizontal track to cushion door at end of opening operation.

E. Electric Door Operators

1. Furnish electric door operator assembly of size and capacity recommended and provided by door manufacture; complete with electric motor and factory pre-wired motor controls, gear reduction unit, solenoid operated brake, clutch, remote control stations and control devices; center pull, heavy duty operator.
2. Provide hand-operated disconnect or mechanism for automatically engaging sprocket chain operator and releasing brake for emergency manual operation. Include interlock device to automatically prevent motor from operating when emergency sprocket is engaged.
3. Design operator so that motor may be removed without disturbing limit-switch adjustment and without affecting emergency auxiliary operator
4. Provide trolley or drawbar type, V-belt and roller chain and sprocket primary drive, and chain and sprocket secondary drive (or EQUIVALENT in accordance with door manufactures specifications)
5. Electric Motors: Provide high-starting torque, reversible, constant duty, Class A insulated electric motors with overload protection, sized to move door in either direction, from any position, at not less than 2/3' or more than 1' per second. Motor shall be .5 HP minimum or in accordance with door manufactures specifications to effectively and safely manage door operation.

6. Coordinate wiring requirements and current characteristics of motors with building electrical system providing 115 volt, single phase motor.
7. Remote control station: Provide momentary-contact, 3 button stations with push button controls labeled "open", "close" and "stop"
 - a) Provide interior units, full-g geared, surfaced-mounted, heavy duty with general purpose NEMA Type 1 encloser.
 - b) Controls shall be located at each door (as they are today)
 - c) Provide hand held remote control devices, 2 for each door located in the fire apparatus. Remotes shall be of two button design and shall be capable of operating a door from inside fire engine cab with all doors closed from 300 feet away.
 - d) Door remote supplier shall coordinate the operating code with the Lakeville Fire Department.
8. Automatic Reversing Control: Finish each door with automatic safety switch, extended full width of door bottom, and located with neoprene or rubber astragal mounted to bottom door travel. Furnish manufacture's standard take-up reel or self-coiling cable.
 - a) Provide electrically actuated automatic bottom bar
 - b) Provide photoelectric beam over ride control on motor contact for each motor operated door
 - c) Photo electric control device shall be furnished with substantial wire guards to prevent them from being knocked out of alignment.

SECTION 4: REFERENCES

Bidders must list below at least three references from current or most recent projects.

1. Contact _____
Company Name _____
Address _____
Phone _____
Brief Description of project _____

2. Contact _____
Company Name _____
Address _____
Phone _____
Brief Description of project _____

3. Contact _____
Company Name _____
Address _____
Phone _____
Brief Description of project _____

SECTION 5: FORM FOR GENERAL BID

To the Awarding Authority:

- A. The Undersigned proposes to furnish all labor and materials required for ***On-Call Overhead Door Repairs and Replacement Services*** in Everett, Massachusetts, in accordance with the accompanying plans and specifications for the contract price specified below, subject to additions and deductions according to the terms of the specifications.
- B. This bid includes addenda numbered _____
- C. Number of years in business _____
- D. The below estimated repair hours and materials do not guarantee the actual amount that will be purchased during the year, but the total amount will be used in determining the low bidder. The following prices shall include delivery, the cost of fuel, the cost of labor and all other charges. A copy of the contractor’s current list price schedule **MUST** be submitted with this bid.

Rule for Award: Up to a three-year contract may be awarded pursuant to M.G.L. Chapter 149 to the responsible and eligible bidder offering the lowest total bid price.

YEAR 1

	ITEM	EST QT Y	UNIT PRICE	TOTAL
Regular Repair & Maintenance				
A	Regular Time Hourly Rate 7:00 a.m. – 5:00 p.m.	200 hrs	\$ _____ p/h	\$ _____
B	Overtime Hourly Rate 5:00 p.m. to 7:00 a.m.	50 hrs	\$ _____ p/h	\$ _____
Emergency Repair & Maintenance (to be onsite in one hour)				
C	Regular Time Hourly Rate 7:00 a.m. – 5:00 p.m.	50 hrs	\$ _____ p/h	\$ _____
D	Overtime Hourly Rate 5:00 p.m. to 7:00 a.m.	30 hrs	\$ _____ p/h	\$ _____
E	TOTAL LINES A - D		\$	
Parts & Materials				
<u>Vendor must indicate what price option is being used and leave the other one blank and MUST submit a copy of his current list price schedule with this bid</u>				
	OPTION (Pick 1 OR 2)	% UP or DOWN	FIXED COST	TOTAL
1	OPTION 1 – City to be charged list price only (no markup or down)	0%	\$10,000.00	\$ 10,000.00

2	OPTION 2 – City to be charged percentage markup or discount on list price		\$10,000.00	\$ _____
TOTAL BID PRICE YEAR 1 <i>(add Total from line E & Option 1 or 2)</i>			\$ _____	

YEAR 2

	ITEM	EST QT Y	UNIT PRICE	TOTAL
Regular Repair & Maintenance				
A	Regular Time Hourly Rate 7:00 a.m. – 5:00 p.m.	200 hrs	\$ _____ p/h	\$ _____
B	Overtime Hourly Rate 5:00 p.m. to 7:00 a.m.	50 hrs	\$ _____ p/h	\$ _____
Emergency Repair & Maintenance (to be onsite in one hour)				
C	Regular Time Hourly Rate 7:00 a.m. – 5:00 p.m.	50 hrs	\$ _____ p/h	\$ _____
D	Overtime Hourly Rate 5:00 p.m. to 7:00 a.m.	30 hrs	\$ _____ p/h	\$ _____
E	TOTAL LINES A - D		\$ _____	
Parts & Materials				
<u>Vendor must indicate what price option is being used and leave the other one blank and MUST submit a copy of his current list price schedule with this bid</u>				
	OPTION (Pick 1 OR 2)	% UP or DOWN	FIXED COST	TOTAL
1	OPTION 1 – City to be charged list price only (no markup or down)	0%	\$10,000.00	\$ 10,000.00
2	OPTION 2 – City to be charged percentage markup or discount on list price		\$10,000.00	\$ _____
TOTAL BID PRICE YEAR 2 <i>(add Total from line E & Option 1 or 2)</i>			\$ _____	

YEAR 3

	ITEM	EST QT Y	UNIT PRICE	TOTAL
Regular Repair & Maintenance				
A	Regular Time Hourly Rate 7:00 a.m. – 5:00 p.m.	200 hrs	\$ _____ p/h	\$ _____
B	Overtime Hourly Rate 5:00 p.m. to 7:00 a.m.	50 hrs	\$ _____ p/h	\$ _____
Emergency Repair & Maintenance (to be onsite in one hour)				
C	Regular Time Hourly Rate 7:00 a.m. – 5:00 p.m.	50 hrs	\$ _____ p/h	\$ _____
D	Overtime Hourly Rate 5:00 p.m. to 7:00 a.m.	30 hrs	\$ _____ p/h	\$ _____
E	TOTAL LINES A - D		\$ _____	
Parts & Materials				
<u>Vendor must indicate what price option is being used and leave the other one blank and MUST submit a copy of his current list price schedule with this bid</u>				
	OPTION (Pick 1 OR 2)	% UP or DOWN	FIXED COST	TOTAL
1	OPTION 1 – City to be charged list price only (no markup or down)	0%	\$10,000.00	\$ 10,000.00
2	OPTION 2 – City to be charged percentage markup or discount on list price		\$10,000.00	\$ _____
	TOTAL BID PRICE YEAR 3 <i>(add Total from line E & Option 1 or 2)</i>		\$ _____	

GRAND TOTAL THREE-YEAR COST \$ _____
(add total bid prices from years 1-3)

In words _____

Charges incurred by the Contractor for the time spent in transit (portal-to-portal) from the Contractor's place of business to the job site and back are not part of the Contract and will not be paid by the City. Computation of the number of hours worked shall include only those hours spent at the job site excluding meal times.

All awarded contractors must agree to comply with all applicable Prevailing Wage Rates. By signing this form, the bidder agrees to pay the applicable prevailing wage rate and agrees to obtain and abide by the Prevailing Wage Rates that are posted with this bid.

QUANTITY OF WORK: The above estimated quantities do not guarantee the actual amount that will be purchased or awarded during the year, but the total amount will be used in determining and evaluating the low bidder.

- A. **CONTRACT:** The undersigned agrees that, if he is selected as General Contractor, he will, within five (5) days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the Awarding Authority, execute a Contract in accordance with the terms of this Bid and furnish a Payment Bond, issued by a Surety Company qualified to do business under the laws of the Commonwealth and satisfactory to the Awarding Authority, in the sum of fifty (50%) of the Contract value, the premiums for which are to be paid by the Contractor and are included in the Contract Price.
- B. **LABOR:** The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the Work, and that he will comply fully with all laws and regulations applicable to awards made subject to Section 44A of Chapter 149 of the Massachusetts General Laws.
- C. **INSURANCE:** The undersigned agrees to provide an Insurance Certificate specifying the City of Everett as “Named Insured.”
- D. **OSHA CERTIFICATION:** In accordance with M.G.L. c. 30, Section 39S bidders shall include with their bids a certificate indicating “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...”.
- E. **NON-COLLUSION CERTIFICATION:** The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.
- F. **DEBARMENT:** The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.
- G. **TAXES:** As required by M.G.L. Chapter 62c, Section 49A, Chapter 62C, the undersigned certifies that the bidder has complied with all laws of the Commonwealth relating to taxes.

Date _____

(Name of General Bidder)

By _____
(Name of Person Signing Bid and Title)

(Business Address)

(City and State)

_____/_____
(Telephone) (Fax)

(Email Address)

SECTION 6: PREVAILING WAGES

SECTION 7: STATEMENT OF QUALIFICATION

This form must be completed and submitted with the bid.

Statement of Qualification

This statement is to certify that _____ has been in the business
(Company name)

of _____
(Service(s) provided)

for a period of _____years. We, _____, have the ability to
(Company name)

perform the type, magnitude and quality of work within the scope of for the services specified herein..

This company _____has _____has not been involved in any bankruptcy proceedings within the last five years. (If the company has been involved in bankruptcy proceedings, please give a detailed description below.) This company _____has _____has not undergone a name change within the last five years. (If the company name has changed, please provide a detailed description below.)

Contractor Ability/Description:

Bankruptcy proceedings:

Name change information:

I certify to the best of my knowledge that all information above is true and correct.

Authorized Signature

Position in Company

Date

SECTION 8: OSHA COMPLIANCE CERTIFICATION

OSHA COMPLIANCE CERTIFICATION

Any person submitting a bid for, signing a contract to work on, the construction, reconstruction, alteration, remodeling or repair of any building or public works project undertaken by a public awarding authority in Massachusetts and estimated to cost more than \$10,000 must certify on the bid or contract, under penalties of perjury, as follows:

1. That he is able to furnish labor than can work in harmony with all other elements of labor employed or to be employed at the work
2. 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. (MGL. c. 30, Section 39S (a))

Pursuant to M.G.L. c. 30, Section 39M and M.G.L. c. 149, I certify under penalties of perjury that, to the best of my Knowledge and belief, I am in compliance with the OSHA requirements as stated above.

Company Name _____

Authorized Signatory _____ Date _____

SECTION 9: AUTHORIZATION TO SIGN CONTRACT FORMS

Must be completed and submitted with bid.

Clerk Certificate Authorization to Sign Contract

At a duly authorized meeting of the Board of Trustees/Directors of the

_____ held on
Name of Organization

_____ at which all the Trustees/Directors were present and waived
Date

notice, it was VOTED, that _____, _____
Name *Officer*

of this organization, is authorized to execute contract in the name and behalf of said organization,

and affix its corporate seal thereto; and such execution of any contract or obligation in this

organization’s name on its behalf by such _____ under the
Officer

seal of the organization shall be valid and binding upon this organization.

I hereby certify that I am the clerk of the _____
Name of Organization

and that _____ is the duly elected _____
Type name *Officer*

of said organization, and that the above vote has not been amended or rescinded and remains in full force and effect as of this date.

***Corporate Seal Here:
(if no seal, print “none”)***

Signature

Type name

Date

Title

Must be completed and submitted with bid.

Certificate of Non-Collusion

The undersigned certifies under the penalties of perjury that this bid or bid 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.

Signature of person submitting contract/bid

Date

Name of Business

Must be completed and submitted with bid.

Certificate of Tax Compliance

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.

*Social Security Number or
Federal Identification Number*

*Signature of Individual or
Corporate Name*

*Corporate Officer
(if applicable)*

CITY OF EVERETT
SAMPLE DO NOT RETURN
CONTRACT AGREEMENT

This Contract Agreement for *(insert project title)*

_____ (hereinafter the "Project") is made the ____ day of _____, 2024, 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 diagrammatic 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.

5.1 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.

5.2 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.

5.2.1 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.

5.2.2 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.

5.2.3 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.

5.2.4 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.

5.2.5 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.

5.3 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.

5.3.1 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.

5.4 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:

5.4.1 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.

5.4.2 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.

5.4.3 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.

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

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

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

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

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

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

5.5 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

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:

Social Security Number or Federal Identification Number: _____

By: _____
Date Signed

Printed Name: _____

Title: _____

CITY OF EVERETT:

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

CERTIFICATE OF AUTHORITY - CORPORATION

At a duly authorized meeting of the Board of Directors of the _____
(Name of Corporation)

held on _____ at which all the Directors were present or waived notice, it was voted
(Date)

that _____
(Name) (Officer/Title)

of this company be and he hereby is authorized to execute contracts and bonds in the name and behalf of said company,
and affix its Corporate Seal thereto, and such execution of any contract of obligation in this company's name on its behalf
of such _____ under
(Officer)

seal of the company, shall be valid and binding upon this company.

A TRUE COPY, ATTEST: _____
(Signature/Title)

Place of Business: _____

I hereby certify that I am the _____ of the _____
(Title) (Name of Corporation)

that _____ is duly elected _____
(Officer, Name) (Title)

of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date
of this contract.

Full Legal Name of Business Telephone Number

State of Incorporation* Principal Place of Business

Qualified in Massachusetts Place of Business in Massachusetts

Signature

*If state of incorporation is Massachusetts, insert MASSACHUSETTS on State of Incorporation line and disregard other
parts of the form.

(Affix Corporate Seal)

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 _____