



CITY OF EVERETT, MASSACHUSETTS

Citywide Tree Watering Services

CITY PROJECT NO.: PLD-26-93B

Delivery Method: M.G.L. c. 30 § 39M

May 20, 2026



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CITY OF EVERETT, MASSACHUSETTS

CITY-WIDE TREE WATER SERVICES

CITY PROJECT NO.: PLD-26-93B

INVITATION TO BID AND INSTRUCTIONS TO BIDDERS

GENERAL CONTRACTOR SERVICES

I. SUMMARY OF WORK AND PROJECT SCHEDULE

The City of Everett maintains a growing inventory of public shade trees that require consistent watering, particularly during the first three years after planting. This contract supports the City's urban forestry and sustainability goals by ensuring that newly planted and established trees receive adequate hydration throughout the watering season.

The City of Everett requests sealed bids from qualified vendors to provide Tree Watering Services throughout the City.

All work to be performed in accordance with the Bid Documents as herein defined.

On-Site Construction Start: June 8, 2026

Final Completion: November 15, 2026

II. INVITATION FOR BIDS

The City of Everett, Massachusetts (the "City") hereby requests bids from General Contractors interested in bidding for the Work described herein pursuant to the requirements of M.G.L. c. 30, § 39M and all other applicable provisions of the Massachusetts General Laws. If it be in the best interest of the City to do so, the City reserves the right to reject any and all Bids, to waive any informalities or minor deviations, to cancel the project and Bid Documents at any time prior to award, and/or to advertise for new Bids if funds are not available for the Project.

These instructions provide Bidders with information intended to enable them to prepare and submit Bids for consideration and evaluation by the City. These instructions cover all work as documented in the attached bid documents, as modified by addenda, if any (collectively, the "Bid Documents"). Bids shall be submitted in compliance with and shall be governed by the Agreement between Owner and Contractor, the General Conditions and Supplementary Conditions, if any.



III. BIDDING REQUIREMENTS

- (A) **Bid Form.** Bids shall be submitted on the appropriate Bid Form attached hereto. All entries on the Bid Form shall be made by typewriter or in ink. No modifications should be made to the Bid Forms. Sums shall be expressed in both words and figures in the space indicated on the Bid form. Where there is a discrepancy between the sum expressed in words and the sum expressed in figures, the amount expressed in words shall control. Total lump sum price will be basis of award regardless of any mathematical errors by bidders. Bids shall be signed by the person having legal authority to bind the Bidder to the terms and conditions of the Bid, and the person so signing shall give the person's own name, business address and title. **Bids not properly signed will be rejected as non-responsive.**
- (B) **Bid Deposit.** Each bid must be secured by an accompanying deposit of five percent (5%) of the total amount of the Bid. Deposits shall be in the form of a bid bond, or a certified check, treasurer's or cashier's check issued by a responsible bank or trust company, payable to the City of Everett. No cash will be accepted. Bid deposits of all Bidders, except those of the three lowest responsible and eligible Bidders, will be returned within five (5) business following the Bid opening. Except as provided in the "BONDS AND INSURANCE CERTIFICATES" and "FOREIGN CORPORATION" sections appearing below, the Bid Deposits of the three lowest responsible and eligible bidders will be returned upon the execution of the Contract or, if no award is made, upon the expiration of the time prescribed for making an award.
- (C) **Submission of Bids.** Bids shall be enclosed in a **sealed envelope** with the following plainly marked on the outside:

Bid for: **Everett City Hall**
 Kiara M. Freeman, Chief Procurement Officer

Project Number: _____.

Project Name: _____.

Bidder's Name

Business Address

Phone Number

Bids must be received at Everett City Hall – Purchasing Department, 484 Broadway, Room 14 Everett, MA 02149 on or before the bid due date and time. Timely delivery of a Bid to the location designated shall be the full and sole responsibility of Bidder.

- (D) **Form of Agreement.** Any contract awarded by the City pursuant to this solicitation shall be governed by the Contract Documents including, but not limited to, the Agreement between Owner and Contractor, the General Conditions, and Supplementary Conditions, if any. A bidder may not, in its Bid, take exception to the form of Agreement Between Owner and Contractor or otherwise condition its bid on changes to the form of Agreement



Between Owner and Contractor. The bidder to whom a contract is awarded will be required to enter into the City form of Agreement Between Owner and Contractor within five (5) business days of presentation of the contract by the City.

- (E) **Prevailing Wage.** Minimum Wage Rates as determined by the Commissioner of the Department of Workforce Development under the provisions of Massachusetts General Law, Chapter 149, §§ 26-27, inclusive, apply to this project. It is the responsibility of each Bidder, before opening of Bids, to request if necessary any additional information on Minimum Wage Rates for those trades people who may be employed for the proposed work under this Contract. The Minimum Wage Rates to be used for this Contract are shown on the schedule provided in the Bid Documents.

IV. BID SCHEDULE

- Bid Documents available to Bidder: Wednesday, May 20, 2026
- Question/Clarification Period closes: Wednesday, May 27, 2026 at 4:00PM.
- Bid Due Date and Time: **Wednesday, June 3, 2026 at 2:00PM** at the office of the **Kiara M. Freeman, Chief Procurement Officer, Everett City Hall, Purchasing Department, 484 Broadway, Room 14 Everett Ma, 02149.**

Timely submission of Bids shall be the sole responsibility of the Bidder.

V. BIDDER'S REPRESENTATIONS

By submitting its Bid in response to this solicitation, each Bidder makes the following representations:

- a) The Bidder has read and understands the Bid Documents and the Bid is made in accordance therewith. The Bidder has visited the site where the Work is to be performed and is familiar with the local conditions under which the Work will be performed. Failure to so examine the Bid Documents and site will not relieve any Bidder from any obligation under the Bid as submitted.
- b) The information contained in the Bid is true and complete to the best knowledge of the Bidder.
- c) The Bid has been prepared in good faith and the Bidder is duly authorized to submit the Bid on behalf of the Bidder.
- d) In preparation and development of the Bid, the Bidder has not, directly or indirectly, solicited or received any advice, assistance, or information concerning the Project from any representative of the City, its agents, or consultants that was not issued in writing by the City to all Bidders.



- e) The Bidder has filed with the Secretary of State all certificates and annual reports required by Chapter 156D, § 16.22 (domestic and foreign corporation), § 15.03 (foreign corporations), § 109 (Massachusetts business corporation), or Chapter 180, § 26A (non-profit corporation) as applicable, of the Massachusetts General Laws.

VI. WRITTEN QUESTIONS

Bidders shall promptly notify the City in writing of any ambiguity, inconsistency or error that they may discover upon examination of the Bid Documents, the site, and local conditions.

Bidders requiring clarification or interpretation of the Bid Documents shall make a written request to the design consultant and a copy to the City by email or by fax as follows:

City of Everett
Kiara M. Freeman, Chief Procurement Officer
484 Broadway, Room 14
Everett, MA 02149
Kiara.Freeman@ci.everett,ma.us

Requests for interpretation of the Bid Documents by phone will not be accepted. Any responses to written questions may be issued as an addendum to the Bidding Documents and posted at City of Everett website. Any Bidder that contacts directly or indirectly any member or employee of the City, or the City's consultants, in connection with the selection process or the contract contemplated herein, other than by participation in the pre-bid conference, submission of a written question or request for clarification or interpretation as prescribed in this section, may be subject to disqualification.

The City will not be responsible for, and a Bidder shall not rely upon or use, any information, explanation, or interpretation of this Invitation to Bid/Instructions to Bidders rendered in any fashion except written responses by the City posted at [the](#) City of Everett's website.

It is the sole responsibility of Bidders to ascertain the existence of any and all Addenda. Only written Addenda issued as described in these Instructions to Bidders shall be effective to modify the Bid Documents. All registered plan holders will be electronically notified when addenda are issued. Hard copies of the addenda may not be forwarded to the registered plan holders. In preparing its bid, each Bidder must acknowledge that it has reviewed all addenda.

VII. MODIFICATION AND WITHDRAWAL OF BIDS

After Bid opening, 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 Bidder



will be allowed to correct them. If a mistake and the intended Bid are clearly evident on the face of the Bid proposal, the mistake will be corrected to reflect the indeed correct Bid, and the Bidder will be notified in writing - the Bidder may not withdraw the Bid in such circumstances. A Bidder 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.

A Bid may be withdrawn prior to the time designated for receipt of Bids upon written request made to the City. Withdrawal of Bids must be confirmed over the Bidder's signature by written notice post-marked or sent by facsimile on or before the date and time set for receipt of Bids. Withdrawn Bids may be resubmitted up to the time designated for the receipt of Bids.

VIII. EVALUATION PROCESS

The City will evaluate all Bids in accordance with the provisions of the Bid Documents and the criteria described below. The City may consider in its evaluation all information contained in the Bid and any other information obtained or received by the City. Any Bid from a Bidder that is determined to be nonresponsive or not in conformance with the requirements of the Bid Documents may be rejected. Bids that are deemed, in the judgment of the City, to contain unrealistic prices or substantially deviate from the City's estimate of cost to complete all of the Work, or any portion thereof, will be considered as not responsive to the Invitation to Bid and may be rejected at the sole discretion of the Authority.

The City will award the contract in accordance with the "CONTRACT AWARD" section below. Before award, the City may conduct interviews with selected Bidders. The purpose of the interviews will be to clarify and assure understanding of the contents of the Bid, as well as the requirements of the Bid Documents, and discuss any other matters relevant to such Bid as the City may determine appropriate. No statements made or actions taken by any representative of the City during such discussions shall be binding on the City. If requested by the City, the key personnel identified in the Bid shall participate in the discussions or be available for an interview with City representatives.

IX. BASIS OF AWARD

The criteria listed below are the criteria that will be applied to evaluate the Bids.

- A. Price
Award will be to the lowest eligible and responsible Bidder with selected alternates provided that all required documents listed below are attached and satisfactory. The City may consider in its evaluation the reasonableness of the prices proposed by the Bidder.
- B. Required Documents to be Submitted with Bid



1. Bid Form
2. Bid Deposit of 5% of the total bid amount (bid bond, certified check, or treasurer's or cashier's check payable to the City of Everett).
3. A proposed construction schedule showing all work included in the Bid. The proposed construction schedule must include key milestones substantial and final completion.

X. CONTRACT AWARD

- (A) The City will open Bids on the Bid Due Date immediately following the deadline, and a register will be maintained of those firms submitting timely Bids. Bids shall be publically open and read.
- (B) The City will award the Contract to the lowest responsible and eligible bidder within thirty (30) days after the opening of Bids, subject to the reservations contained herein and the exceptions set forth in Massachusetts General Laws Chapter 30 and 149, whichever is applicable. The selected Bidders will be notified in writing.
- (C) If a selected Bidder fails or refuses to execute the Agreement between Owner and Contractor in the form included in the Bid Documents, as modified by addenda, if any, and furnish the other documents required in connection with execution of the contract, within ten (10) business days after the presentation of the Agreement between Owner and Contractor, as applicable, by the City, the City may award the Contract to another Bidder.
- (D) THE CITY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS if it determines that such action is in the best interest of the CITY. Any Bid which is incomplete, conditional or obscure may be considered invalid and the CITY may reject such Bid. In addition, the CITY may reject any Bid which is not prepared and submitted in accordance with all requirements of these Bid Documents and the attached forms or which contains alterations, contingencies or additions not called for or errors or irregularities of any kind; PROVIDED, HOWEVER, that the CITY reserves the right to waive any and all informalities or minor irregularities contained in the Bid. If these Bid Documents, the Bid Forms, or any other document or applicable law requires submission of certain information or other items as a part of or to accompany Bids and any Bidder neglects to furnish such information or other items with its Bid, the CITY may reject the Bid of such Bidder as incomplete; PROVIDED, HOWEVER, that the CITY reserves the right to deem any such omission as an informality for which such Bid will not be rejected, and to subsequently receive such information or other items prior to award of the contract.
- (E) More than one Bid from the same Bidder, whether or not the same or different names appear on the signature page, will not be considered. Reasonable grounds for believing



that any bidder is so interested in more than one Bid for the work contemplated may cause rejection of all Bids made by that Bidder directly or indirectly.

- (F) Any and all Bids potentially affected by collusion will be rejected if there is reason for believing that collusion exists between the Bidders. The decisions of the CITY will be final. Bidders whose Bids have been rejected because of evidence of collusion will not be considered in future bids for the same work and may be disqualified from bidding on future work. The City shall reject any Bid that does not include the signed Non-Collusion and Attestation Forms provided in the Bid Documents.
- (G) As used herein, the term “lowest responsive and responsible bidder” shall mean the Bidder (1) whose Bid is the lowest of those Bidders possessing the skill, ability and integrity necessary for the faithful performance of the work described in the Bid documents; (2) who shall certify that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (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 (4) who obtains within ten (10) days of the notification of contract award the security by bond required under section 29 of chapter 149 from a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the City; provided further, that if there is more than one (1) surety company providing such bond, the surety companies shall be jointly and severally liable. The City may consider the reasonableness of the prices proposed for the scope of the work involved in its evaluation of the Bids.
- (H) The City reserves the right to amend these Bid Documents at any time. Any amendments to these Bid Documents shall be issued by means of written addenda. All addenda so issued shall become part of these Bid Documents.
- (I) The City reserves the right to withdraw this Invitation to Bid at any time in its sole discretion before award of a contract.
- (J) The City assumes no responsibility for the costs incurred by the Bidders in the preparation of a Bid or any related activities. The Bid Documents and this Invitation to Bid/Instructions to Bidders have been prepared solely to solicit Bids, and are not contract offers. The only document that may be binding on the City is the Agreement between Owner and Contractor, and all documents incorporated therein by reference, only when duly executed by the City and the contractor to whom the contract is awarded.

XI. ADDITIONAL PROVISION



CITY OF EVERETT MASSACHUSETTS
CITY_WIDE TREE WATERING SERVICES
CITY PROJECT # PLD-26-93B

- (A) Council Approval. In all cases, the award of the contract shall be subject to the approval of the members of the Everett City Council in a public meeting.
- (B) Estimated Quantities. Unless otherwise stated, quantities shown in the Bid Documents represent the estimated quantities of labor and materials that might be expected to be encountered during the contract period. In the event of a discrepancy between the estimated quantities shown in the Specifications and those shown in the Price Sheets, quantities shown in the Price Sheets shall control. The City does not expressly or by implication agree that the actual amount of work will correspond therewith. These estimated quantities will be used solely for the comparison of Bids. The City reserves the right to increase, decrease, or delete the amount of any or all items of work after Bids have been received. Such increase, decrease or deletion in the quantity for any item shall not be regarded as cause for an increase or decrease in the unit prices. No allowance will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly or indirectly from such increased, decreased, or deleted quantities or from unbalanced allocation among the Contract items or overhead expenses on the part of the Bidder and subsequent loss of expected reimbursement therefore or from any other cause.
- (C) Bonds and Insurance Certificates. Should the successful bidder fail to perform its agreement to furnish the required bonds and insurance certificates required herein, the Bid Deposit shall become and be the property of the City as liquidated damages; provided that, the amount of the Bid Deposit which becomes the property of the City shall not, in any event, exceed the difference between its bid price and the Bid Price of the next lowest responsible and eligible Bidder.
- (D) Foreign Corporations. If the successful bidder is a foreign corporation as defined at G.L. c. 156D, § 1.40, and if successful bidder fails to perform its agreement to furnish the required certificate of the state secretary, the Bid Deposit shall become and be the property of the City as liquidated damages; PROVIDED THAT, the amount of the Bid Deposit which becomes the property of the City shall not, in any event, exceed the difference between its Bid Price and the Bid Price of the next lowest responsible and eligible Bidder.
- (E) Sales and Use Taxes. Bidders are advised that City is exempt from sales and use taxes and shall submit its Bid Prices without taxes. An Exemption Certificate may be obtained by the successful Bidder from the City upon request.
- (F) Health and Safety. This Contract is subject to the Safety and Health Regulations of the U.S. Department of Labor set forth in Title 29 CFR, Part 1926 and to all subsequent amendments, and to the Massachusetts Department of Labor and Industries, Division of Industrial Safety "Rules and Regulations for the Prevention of Accidents in Construction Operations" (Chapter 454 CMR 10.00 et seq.). Bidders shall be familiar with the requirements of these regulations.



CITY OF EVERETT MASSACHUSETTS
CITY_WIDE TREE WATERING SERVICES
CITY PROJECT # PLD-26-93B

- (G) Monthly Price Adjustments for Certain Items. Monthly price adjustments will be made for qualifying work orders using diesel fuel, gasoline, asphalt, concrete, and steel in accordance with the Bid Documents.
- (H) Permits and Approvals. The successful Bidder will be solely responsible for obtaining all necessary construction permits, licenses, and approvals required in connection with the Project and/or under the Bid Documents, including without limitation as set forth in Contract between Owner and Contractor and the General Conditions. All bidders shall be responsible for investigating in detail the permitting requirements of the work and shall be responsible for making such examination thereof as may be necessary to satisfy themselves in regard to the character of the permitting required, and shall Bid in sole reliance upon their own investigation.
- (I) Bid Information. The City's receipt or discussion of any information (including information contained in the proposal and any ideas or other material communicated or exhibited by the Bidder or on its behalf) shall not impose any obligation whatsoever on the City or entitle the Bidder to any compensation therefor, except to the extent specifically provided in such written agreement as may be entered into between the City and the Bidder. Any such information given to the City before, with, or after submission of the proposal, either orally or in writing, except as noted below, is not given in confidence, and may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with the terms of this paragraph, whether made as part of or in connection with any information received from the Bidder or made at any other time in any fashion, shall be void and of no effect.



CITY OF EVERETT, MASSACHUSETTS

Project Number: PLD-26-93B

City-wide Tree Watering Services

GENERAL CONTRACTOR SERVICES

BID FORM

Bid of: _____ (“Bidder”)

Check one:

Corporation organized under the laws of _____

Partnership

Joint Venture

Individual doing business as _____

To: City of Everett, Massachusetts (“Owner”)

A. GENERAL BID SUBMISSION

The undersigned Bidder, having examined the Invitation for Bids, specifications, and all other Contract Documents for Tree Watering Services, and having familiarized themselves with all conditions affecting the work, hereby proposes to furnish all labor, equipment, and materials necessary to perform the services in full accordance with the Contract Documents.

The Bidder agrees to commence work on or before the date specified in the City’s written Notice to Proceed.

B. ADDENDA ACKNOWLEDGMENT Addendum No. _____

TREE WATERING RATES

SECTION 1 – City Tree Watering

No	DESCRIPTION	UNIT	Price	ESTIMATE	TOTAL
1	Fill watering bags at assigned tree or trees with minimum 20 gallons of water once per week during the watering season.	Per Tree	\$	100	\$
2	TOTAL SECTION 1				\$

Written Amount: _____



The City reserves the right to perform any portion of the work with City staff and to supply materials as needed. In the event of a discrepancy between written and numerical amounts, the written amount shall govern. Unit prices shall include all labor, equipment, overhead, profit, insurance, and all other costs necessary to complete the work.

(A) **Contract Execution.** The undersigned agrees that, if selected as general contractor, general contractor will within five (5) days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the City, execute a contract in accordance with the terms of this Bid and furnish a performance bond and also a labor and materials payment bond, each of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the City and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

(B) **Withdrawal of Bids.** As provided in the Instructions to Bidders, the Bidder hereby agrees that he will not withdraw this Bid within thirty (30) consecutive calendar days after the actual date of the opening of Bids. Should the Bidder fail to fulfill any of his agreements as hereinabove set forth, the Owner shall have the right to retain as liquidated damages the amount of the bid security which shall become the Owner's property. If a bid bond was given, it is agreed that the amount thereof shall be paid as liquidated damages to the Owner by the Surety.

(C) **Certification Regarding Labor Harmony.** 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 forty-four A.

(D) **Certification Regarding Contract Requirements.** Contractor certifies that he has carefully examined the site of the proposed work and fully informed and satisfied himself as to the conditions there existing, the character and requirements of the proposed work, the difficulties attendant upon its execution and the accuracy of all estimated quantities stated in this Bid, and he has carefully read and examined the drawings, specifications, and other Contract Documents therein referred to and knows and understands the terms and provisions thereof.

(E) **Information Regarding Subsurface Conditions.** Contractor understands that information, if any, relative to subsurface and other conditions, natural phenomena, existing pipes and other structures (surface and/or subsurface) has been furnished only for his information and convenience without any warranty or guarantee, expressed or implied, that the subsurface and/or other conditions, natural phenomena, existing pipes and other structures (surface and/or subsurface) actually encountered will be the same as those shown on the drawings or in any of the other Contract Documents and he agrees that he shall not use or be entitled to use any such information made available to him through the Contract Documents or otherwise or obtained by him in his own examination of the site, as a basis of or ground for any claim against the Owner or the Engineer arising from or by reason of any variance which may exist between the aforesaid information made available to or acquired by him and the subsurface and/or other conditions, natural phenomena, existing pipes and other structures.



- (F) **Certification Regarding Quantities.** Contractor certifies that he understands that the quantities of work tabulated in this Bid or indicated on the Drawings or in the Specifications or other Contract Documents are only approximate and are subject to increase or decrease as deemed necessary by the Architect.
- (G) **Certification Regarding Labor:** The undersigned hereby certifies under penalties of perjury that: (i) that all employees to be employed in the work included in 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 ten (10) hours in duration; and (ii) any employee found on worksite subject to this bid without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (10) hours in duration shall be subject to immediate removal.
- (H) **Certification Regarding Financial Position/Business Organization:** 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.
- (I) **Certification Regarding Tax Compliance:** The undersigned further certifies under penalty of perjury that the said undersigned has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support pursuant to the provisions of M.G.L. c. 62C, §49A(b).
- (J) **Certification of Compliance of Secretary of State Requirements:** The undersigned further certifies under penalty of perjury that the Bidder has filed with the Secretary of State for the Commonwealth of Massachusetts all certificates and annual reports required by Chapter 156B, Section 109 (business corporation), by Chapter 181, Section 4 (foreign corporation), or Chapter 180, Section 26A (non-profit corporation) of the Massachusetts General Laws.
- (K) **Certification Regarding Non-Collusion:** The undersigned further certifies under penalty of perjury that this 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.
- (L) **Certification Regarding Prevailing Wage Compliance:** The undersigned further certifies under penalty of perjury that the said undersigned shall comply with the provisions of sections 26 and 27D of chapter one hundred and forty-nine of the General Laws governing the payment of prevailing wages.

Name of Contractor

Date: _____



CITY OF EVERETT MASSACHUSETTS
CITY_WIDE TREE WATERING SERVICES
CITY PROJECT # PLD-26-93B

Signature

Name & Title of Person Signing Bid

Business Address

Telephone/Fax/Email

Facsimile

Attach: Bid Security (five percent of Contract Sum)

DIVISION 32

EXTERIOR IMPROVEMENTS

SECTION 32 90 00

TREE WATERING SERVICES

PART 1 – GENERAL

1.01 SUMMARY

- A. This Section includes all labor, equipment, tools, transportation, and materials required to perform **City-Wide Tree Watering Services** at designated locations throughout the City of Everett.
- B. The City will provide the Contractor with a list of trees to be watered, including locations and identification numbers.

PART 2 – PRODUCTS

(Not Used)

PART 3 – EXECUTION

3.01 GENERAL REQUIREMENTS

- A. Perform all work in accordance with industry best practices and as directed by the City.
- B. Conduct all operations in a neat, orderly, and safe manner.
- C. Contractor shall be responsible for any damage caused by their operations.

3.02 COPE OF WORK

A. Watering Frequency & Volume

- 1. Fill watering bags at each assigned tree with a **minimum of 20 gallons of water** once per week during the watering season.

B. Water Source

- 1. Water shall be drawn **only from DPW-designated hydrants**.
- 2. No other hydrants or water sources may be used without written authorization from the City.

C. Watering Bag Inspection & Maintenance

- 1. Ensure all watering bags are properly secured, filled, and functioning.
- 2. Report any **damaged, missing, or compromised bags** to the City immediately.

D. Documentation & Reporting

- 1. Maintain a **weekly log** documenting:
 - 2. Date and time of watering

3. Tree location and ID
4. Volume of water applied
5. Any issues or observations

E. Logs shall be submitted to the City weekly or as otherwise directed.

3.03 SEASON DURATION

- A. The watering season typically runs from **June through November**, subject to weather conditions and direction from the City.
- B. The City reserves the right to modify the schedule as needed.

3.04 CITY RESPONSIBILITIES

- A. Provide access to a designated hydrant located at the **northwest corner of the DPW yard at 19 Norman Street**, available **Monday–Friday, 7:00 AM to 2:00 PM**, excluding City holidays.
- B. Provide the list of trees to be watered.
- C. Reserve the right to perform any portion of the work with City staff.

3.05 PERFORMANCE REQUIREMENTS

- A. The City may withhold payment for missed or incomplete watering.
- B. The City may require additional watering cycles during drought or emergency conditions.

3.06 MEASUREMENT AND PAYMENT

- A. Payment shall be made at the **unit price per tree** as listed in the Bid Form.
- B. The unit price shall include all labor, equipment, materials, transportation, overhead, profit, insurance, and all other costs necessary to complete the work.

END OF SECTION

CITY OF EVERETT, MASSACHUSETTS



**GENERAL CONDITIONS OF THE
CONTRACT FOR CONSTRUCTION**

to the

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
PURSUANT TO M.G.L. CHAPTER 30, § 39M**

Dated as of July 9, 2025

by and between

**CITY OF EVERETT, MASSACHUSETTS
AS OWNER**

and

**[NAME]
AS CONTRACTOR**

CITY OF EVERETT, MASSACHUSETTS

AGREEMENT BETWEEN OWNER AND CONTRACTOR

This **AGREEMENT** (the “Agreement”) is made and entered into as of the ___ day of ____, 20__ by and between the Owner and the Contractor in connection with the Project, all as defined below, pursuant to the applicable provisions of Massachusetts General Laws, Chapter 30, § 39M.

Owner: **City of Everett, Massachusetts**
484 Broadway, Room 14
Everett, MA 02149

Contractor: _____

Project: _____
(City Project No. _____)

Site: _____

Architect: _____

Architect’s Representative: _____

Owner’s Representative: _____

Owner’s Representative Contact Person: _____

Contractor’s Project Team: **Project Executive:** _____
Project Manager: _____
Project Superintendent: _____



In consideration of the mutual agreements and covenants of the Owner and the Contractor (collectively, the “Parties”) set forth herein, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS & EXHIBITS

1.1 Definitions. Capitalized terms not defined in this Agreement shall have the meanings defined elsewhere in this Agreement or in the General Conditions of the Contract for Construction or in other provisions of the Contract Documents. In the event of conflict in the definitions of capitalized terms, the definitions set forth in this Agreement shall take precedence followed by definitions in the General Conditions.

1.2 Exhibits. The following is a list of the documents which, when completed or provided, shall become exhibits to this Agreement, each of which is incorporated into this Agreement by reference and shall be deemed a part hereof:

<u>Exhibit</u>	<u>Description</u>
A	List of Specifications
B	List of Drawings
C	List of Addenda
D	Equal Employment Opportunity Requirements
E	Affirmative Action Requirements
F	Form of Project Workforce Monthly Report
G	Certificates of Insurance
H	Certificate of Vote of Authorization
I	Performance and Payment Bonds
J	Insurance Requirements

1.3 Applicable Statutory Provisions. This Project is subject to certain statutory provisions. The applicable statutory provisions are enumerated in the General Conditions and in the Special Conditions of the Contract of the Specifications and shall be deemed incorporated in the Contract Documents in their entirety to the extent such statutory provisions apply to this Project. Any other provisions required by statute to be included herein but not set forth in the Contract Documents shall be deemed to be so included. In case of a conflict between the provisions of the Contract Documents and the provisions of any applicable statute, the statutory provisions shall govern.



ARTICLE 2

THE WORK

2.1 Scope of the Work. The Work of the Project includes all labor, materials, equipment, tools, supplies, supervision, coordination, administration, and all other items or services required to fully complete the Project as described in the Contract Documents or as may be reasonably inferable therefrom. The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The Contractor shall ensure that the Work is completed within the Contract Time at a cost no greater than the Contract Sum, as further provided in Article 4 and elsewhere in the Contract Documents.

2.2 Contract Documents. The Contract Documents consist of this Agreement and the Exhibits hereto, the General Conditions of the Contract for Construction, the Supplementary General Conditions, if any, Drawings, Specifications, Change Orders, other written amendments to this Agreement duly executed by the Owner and the Contractor, Construction Change Directives, Performance Bond, Labor and Material Payment Bond, and all other documents set forth or incorporated by reference herein or elsewhere in the Contract Documents. The Contract Documents are all as fully a part of this Agreement as if attached to this Agreement and repeated herein and together constitute the “Agreement” or the “Contract.” The Contract represents the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations or agreements, either written or oral.

2.3 Representations. In addition to other representations set forth in the Contract Documents, the Contractor represents that it is a duly-licensed and registered business entity which is experienced and skilled in construction of projects of the type, magnitude, and complexity described in the Contract Documents and that it is familiar with the special problems, regulations, and requirements of construction of the type required hereunder. The Contractor further represents that it is fully cognizant of all aspects of the overall development of the Site as described by the Owner and of the relationship of the Project to such overall development, and that it will furnish, at a cost not to exceed the Contract Sum, a complete and fully operable Project as indicated by or reasonably inferable from the Contract Documents.

ARTICLE 3

CONTRACT TIME

3.1 The Contractor shall commence performance upon the issuance of a Notice to Proceed by the Owner for a portion, or all, of the Work. The period of time from the date of the initial Notice to Proceed to the Final Completion Date, together with any valid extensions thereof approved by the Owner in accordance with the Contract Documents, shall constitute the Contract Time. The Contractor shall achieve Substantial Completion of the entire Work on or before _____. Final Completion of the entire Work shall be achieved fourteen (14) calendar days after the date of Substantial Completion.



3.2 The Contractor shall proceed to carry out the Work in a timely, diligent and continuous manner in accordance with the requirements of the Project Schedule and all other Contract Documents and in accordance with the directions of the Owner so as to ensure (i) Substantial Completion of the Work, or any specified portion thereof, on or before the Substantial Completion Date, and (ii) Final Completion of the Work, or any specified portion thereof, on or before the Final Completion Date, as such dates may be extended as provided in the Contract Documents.

3.3 It is understood and agreed that the time of commencement and the dates of Substantial Completion and Final Completion of the Work are material conditions of this Agreement, and that TIME IS OF THE ESSENCE of this Agreement.

ARTICLE 4

CONTRACT SUM

4.1 Contract Sum. The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract in accordance with the requirements of the Contract Documents. The Contract Sum is hereby established as _____ Dollars (\$ _____), subject to additions and deductions as provided in the Contract Documents.

4.2 Alternates. The Contract Sum is based on, and inclusive of, the following alternates:

<u>No.</u>	<u>Description</u>	<u>Price</u>
X	(Insert alternate description here)	\$

4.3 Unit Prices. Unit prices, if any, applicable to this Contract are as follows:

<u>No.</u>	<u>Description</u>	<u>Unit</u>	<u>Price</u>
X	(Insert alternate description here)	per _____	\$

4.4 Pricing of Alternates and Unit Prices. The Alternate Prices and Unit Prices specified shall include all services, labor, materials, supplies, equipment, transportation, taxes, insurance, bonds, permits and all other expenses, including overhead, superintendence and profit required to complete the alternate or unit price Work. Unless otherwise specified, the Alternate Prices and Unit Prices listed in this Article 4 shall be applicable to both increases and decreases in the Contract Sum on an equal basis.

4.5 Variation in Estimated Quantities. The quantities contained in the Agreement are set forth as a basis for the comparison of bids only and may not necessarily reflect the actual quantity of Work required to be performed. The City reserves the right to increase, decrease or eliminate the quantity of any particular item of Work. Where the actual quantity of an item varies



by more than 25 percent above or below the estimated quantity stated in the Agreement, an equitable adjustment in the Contract Price for that pay item shall be negotiated upon demand of either party regardless of the cause of the variation in quantity. No allowances will be made for loss of anticipated overhead costs or profits suffered or claimed by the Contractor resulting directly or indirectly from such increased, decreased or eliminated quantities or from unbalanced allocation among the contract items from any other cause. It is the intention of this provision to preserve the bid basis while limiting the Contractor's risk exposure to 25% of each bid quantity. In the case of an overrun, the Contractor will be compensated at the Contract Unit Price for a quantity up to 125% of the Contract quantity. The adjusted unit price shall only be applied to that quantity above 125% of the contract quantity. Neither party shall be required to demonstrate any change in the cost to perform the work based solely on the overrun. The original Contract unit bid price shall have no bearing on determining the adjusted unit price for an overrun. The adjusted unit price shall be based on the estimated cost of performing the added work over 125% of the bid quantity. To assist the Engineer in the determination of an equitable adjustment for an overrun, the Contractor shall prepare a submission in the following manner and accept as full payment for work or materials an amount for an equitable adjustment in the Contract Price equal to the following: (1) The actual cost or a reasonable cost estimate for direct labor, material (less value of salvage, if any) and use of equipment, plus 10 percent of this total for overhead; (2) Plus actual cost or a reasonable cost estimate of Worker's Compensation and Liability Insurance, Health, Welfare and Pension Benefits, Social Security deductions and Employment Security Benefits; (3) Plus 10 percent of the total of (1) and (2) for profit and other unallocated costs; (4) Plus the estimated proportionate cost of surety bonds. No allowance shall be made for general superintendence and the use of small tools and manual equipment.

4.6 Insurance. The Owner and Contractor shall purchase and maintain insurance and bonds in accordance with the requirements of the Contract Documents. The Contractor shall carry insurance coverages with limits no less than those identified on **Exhibit J**, attached hereto.

ARTICLE 5

PAYMENTS

5.1 Based upon Applications for Payment submitted to the Engineer by the Contractor in accordance with Section 10.2 of the General Conditions and Certificates for Payment issued by the Engineer in accordance with Section 10.3 of the General Conditions, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.2 Prior to Substantial Completion, progress payments will be made in amounts equal to the percentage indicated below but, in each case, less than the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract Documents.



- (1) 95% of Work completed (with the balance being retainage)
- (2) 95% percent of the cost of materials and equipment not incorporated in the Work but which satisfies the requirements of the General Conditions (with the balance being retainage)

5.3 Upon satisfaction of the Substantial Completion procedures set forth in Section 10.7 of the General Conditions, Owner shall pay an amount sufficient to increase total payments to Contractor to 99% of Work completed, less such amounts as Engineer may determine or Owner may withhold in accordance with the Contract Documents.

5.4 Upon Final Completion and Acceptance of the Work and satisfaction of the procedures set forth in Section 10.8 of the General Conditions, the Owner shall pay the remainder of the Contract Sum as recommended by Engineer as provided in the General Conditions.

ARTICLE 6

OTHER PROVISIONS

6.1 No Personal Liability. No member, officer, director, principal, joint venturer, beneficiary, trustee, representative, consultant, volunteer participant, employee, agent or representative of the Owner or the Contractor shall be personally liable to the other party under any term or provision of this Contract for any payment obligations or otherwise, or because of any breach hereof, each party agreeing to look solely to the assets of the other party for the satisfaction of any liability hereunder.

6.2 Consequential Damages. In no event shall the Owner be liable to the Contractor except for payment for Work performed pursuant to and in accordance with the Contract Documents, nor shall the Owner ever be liable to the Contractor for indirect or consequential damages of any name or nature.

6.3 Termination or Suspension. This Agreement may be terminated or suspended as provided in Articles 16 and 17, respectively, of the General Conditions and as provided elsewhere in the Contract Documents.

6.4 Certification Relating to Tax Compliance. Pursuant to M.G.L. c. 62C, § 49A, the individual signing this Contract on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his or her knowledge and belief the Contractor has complied with any and all applicable state and federal tax laws.

6.5 Certification Relating to Debarment. The individual signing this Contract on behalf of the Contractor further certifies under penalties of perjury that the Contractor is not presently debarred from doing public construction work in the Commonwealth under the provisions of M.G.L. c. 29, § 29F, or any other applicable debarment provisions of any other



chapter of the General Laws or any rule or regulation promulgated thereunder and is not presently debarred from doing public construction work by any agency of the United States.

6.6 Certification Relating to Health and Safety (M.G.L. c. 30, § 39S). The individual signing this Contract on behalf of the Contractor further certifies: (1) Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and the Contractor 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 Contract 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal in multiple counterparts, each of which shall be deemed to be an original hereof and collectively comprising a fully executed instrument, as of the date and year first above written.

CONTRACTOR

Name
Title

Date Signed

CITY OF EVERETT:

Managing Department

Date Signed

City Engineer

Date Signed

Chief Procurement Officer

Date Signed

Chief Financial Officer/City Auditor

Date Signed



Approved as to Form:

City Solicitor

Date Signed

Mayor

Date Signed



Exhibits:

- Exhibit A: List of Specifications
- Exhibit B: List of Drawings
- Exhibit C: List of Addenda
- Exhibit D: Equal Employment Opportunity Requirements
- Exhibit E: Affirmative Action Requirements
- Exhibit F: Form of Project Workforce Monthly Report
- Exhibit G: Certificates of Insurance
- Exhibit H: Certificate of Vote of Authorization
- Exhibit I: Performance and Payment Bonds
- Exhibit J: Insurance Requirements



CITY OF EVERETT MASSACHUSETTS
[[PROJECT NAME]]
CITY PROJECT # [[XXX-##-##]]

EXHIBIT A

LIST OF SPECIFICATIONS



CITY OF EVERETT MASSACHUSETTS
[[PROJECT NAME]]
CITY PROJECT # [[XXX-##-##]]

EXHIBIT B

LIST OF DRAWINGS



CITY OF EVERETT MASSACHUSETTS
[[PROJECT NAME]]
CITY PROJECT # [[XXX-##-##]]

EXHIBIT C

LIST OF ADDENDA



EXHIBIT D

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

1. **Definitions.** For purpose of this contract, the term “minority” refers to Asian–Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. The term “Commission” refers to the Massachusetts Commission Against Discrimination.

2. **Obligations.** During the performance of this contract, the Contractor and each of its subcontractors, and suppliers (hereinafter collectively referred to as the “Contractor”) for themselves, their assignees, and successors in interest, agree as follows:

In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, handicap or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places on the project site, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).

In connection with the performance of work under this contract, the Contractor, shall undertake, in good faith, affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this construction project undertaken by the Owner.

As part of its obligation under the foregoing section, the Contractor shall use its best efforts to maintain on this project a not less than 15.3% ratio of minority employee person hours to total person hours, and a not less than 6.9% ratio of women employee person hours to total person hours.

3. **Compliance with Requirements.** To the extent applicable, the Contractor shall comply with the provisions of Executive Order No. 526, which is herein incorporated by reference and made a part of this contract.



4. Solicitations for Trade Contractors or Subcontractors, and for the Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential trade contractor or subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to equal employment opportunity, non-discrimination and affirmative action.

5. Compliance-Information, Reports and Sanctions. The Contractor will provide all information and reports required by the Owner, and the Contractor will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Owner to affect the employment of personnel. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Owner and shall set forth what efforts it has made to obtain the information. Without limiting the foregoing, the Contractor shall require all trade contractors and subcontractors to submit to the Contractor a Project Workforce Monthly Report, in the form attached to the Agreement between Owner and Contractor as **Exhibit F**. The Contractor shall submit the Project Workforce Monthly Reports to the Owner on a monthly basis, together with a summary report prepared by the Contractor, in a form satisfactory to the Owner, aggregating the information provided in the trade contractors' and subcontractors' Project Workforce Monthly Reports with the Contractor's own workforce information and showing the monthly and total Project-to-date ratios of minority and women workforce hours.

Whenever the Owner believes the Contractor or any trade contractor or subcontractor may not be operating in compliance with the terms of this Section, the Owner, or its designated agent, may conduct an appropriate investigation, and may confer with the parties, to determine if the Contractor is operating in compliance with the terms of this Section. If the Owner finds the Contractor or any trade contractor or subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify the Contractor in writing of such steps as will in the judgment of the Owner bring the Contractor into compliance.

6. Severability. The provisions of this Exhibit are severable, and if any of these provisions shall be held unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

7. Equal Employment Opportunity for Persons with Disabilities. In connection with the performance of work under this contract, the Contractor, trade contractors, subcontractors and suppliers of goods and services shall not discriminate against persons with disabilities. Furthermore, the Contractor, trade contractors, subcontractors and suppliers of goods and services must give written notice of their commitments under this Exhibit to any labor union, association or brotherhood with which they have a collective bargaining contract or other agreement.



EXHIBIT E

AFFIRMATIVE ACTION REQUIREMENTS

During the performance of this contract, the Contractor and each of its subcontractors and suppliers (hereinafter collectively referred to as the “Contractor”) for themselves, their assignees, and successors in interest, agree as follows.

1. Percentage Participation. On this contract, the Contractor shall use best efforts to enter into contracts and subcontracts including contracts with suppliers, distributors and manufacturers who are women/minority business enterprises. The Contractor shall use best efforts to enter into contracts worth a combined total 10.4% of the Contract Sum with W/MBE firms.
2. Definitions.
 - a. Women/minority business enterprise (“W/MBE”) means any business organization certified by SDO as an MBE or WBE. To be certified as a W/MBE, the minority or women must demonstrate at least 51% ownership and control, according to SDO rules and regulations.
 - b. Joint Ventures -
 - (1) A joint venture between a certified W/MBE and non-minority or non-WBE shall be certified by SDO as a W/MBE if the certified W/MBE has at least 51% control over the management and receipt of profits of the project bid upon.
 - (2) A joint venture between a certified W/MBE subcontractor and a non-W/MBE subcontractor, in which the W/MBE does not exercise more than 51% control over management and profits, shall be entitled to a credit as a W/MBE for the proportion of the joint venture’s contract equal to the W/MBE participation in the joint venture.
 - (3) Whenever a general bid is filed by a joint venture with a certified W/MBE participant in the joint venture that does not exercise more than 51% control over management and profits, that joint venture shall be entitled to credit as a W/MBE for the portion of the joint venture’s price equal to the W/MBE participation in the joint venture.
 - (4) Whenever a joint venture with a certified W/MBE participant files a general bid or sub-bid, and requests a credit as a W/MBE, the bid must be accompanied by the pre-bid joint venture agreement for that project. SDO certified joint ventures should submit a copy of SDO certification.



- c. Material Supplier - A vendor certified by SDO as a W/MBE engaged in sales to the construction industry from an established place of business or source of supply, which either:
 - (1) Manufactures goods from raw materials or substantially alters them before resale, entitling the Contractor to W/MBE credit for the full amount of the purchase order; or
 - (2) Maintains a storage facility for materials utilized in the work, entitling the Contractor to W/MBE credit for 10% of the purchase order.
 - d. Amount of Participation - The actual dollar amount which will be paid to W/MBE for work performed on this contract, in accordance with Section 2(b) and 2(c).
 - e. Contractor - Any successful general bidder to whom the Owner makes the contract award.
 - f. SDO - The Massachusetts Supplier Diversity Office (SDO).
 - g. Owner - The City of Everett, Massachusetts.
3. **Determination of W/MBE Status.**
- a. Any Contractor subcontractor, sub-subcontractor or material supplier may apply to SDO for W/MBE status. Applications must be made on the W/MBE application form prepared by SDO. The applicant may request a form from SDO.
 - b. SDO is responsible for preparing, publishing, and updating a list of certified Women and Minority Owned businesses. The list is published in the Central Register established by G.L. Chapter 9, Section 20A and is available from SDO. Bidders shall rely on the list that is most current at the time the work is advertised and shall use it as a reference source to assist in meeting the requirements of these conditions.
- Submission of an application to SDO does not constitute certification.**
4. **Compliance with Requirements.** To the extent applicable, the Contractor shall comply with the provisions of Executive Order No. 524, which is herein incorporated by reference and made a part of this contract.



CITY OF EVERETT MASSACHUSETTS
[[PROJECT NAME]]
CITY PROJECT # [[XXX-##-##]]

EXHIBIT F

FORM OF PROJECT WORKFORCE MONTHLY REPORT



CITY OF EVERETT MASSACHUSETTS
[[PROJECT NAME]]
CITY PROJECT # [[XXX-##-##]]

EXHIBIT G

CERTIFICATES OF INSURANCE



EXHIBIT H

CERTIFICATE OF VOTE OF AUTHORIZATION

AT A DULY AUTHORIZED MEETING OF THE BOARD OF DIRECTORS OF THE [NAME OF CORPORATION] held on [DATE], at which a quorum of the Directors were present or waived notice, it was voted that [NAME AND TITLE] of this company be and 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 or bond of obligation in this company's name on its behalf of such [OFFICER] under seal of the company shall be valid and binding upon this company.

A TRUE COPY,

ATTEST: _____

Place of Business:

I hereby certify that I am the [TITLE] of the [NAME OF CORPORATION] and that [NAME OF OFFICER] is the duly elected [TITLE] of said company, and the above vote has not been amended or rescinded effect as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____

(Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS, SS. _____, 20__

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be his/her free act and deed before me.

NOTARY PUBLIC _____

My commission expires: _____



CITY OF EVERETT MASSACHUSETTS
[[PROJECT NAME]]
CITY PROJECT # [[XXX-##-##]]

EXHIBIT I

PERFORMANCE AND PAYMENT BONDS



EXHIBIT J

STANDARD INSURANCE LIMIT REQUIREMENTS

The following minimum insurance limits shall apply to the Contract and be provided by the Contractor. The Contractor shall refer to the Contract Documents for all other insurance requirements relating to this Contract.

Coverage	Estimated Construction Cost	General Contractor
General Liability¹	-	\$1,000,000 per Occurrence/ \$2,000,000 Aggregate
Auto²	-	\$1,000,000 each accident
Worker's Compensation	-	Statutory
Employers Liability	under \$1m	\$500,000 Each Accident \$500,000 Disease - Each Employee \$500,000 Disease - Policy Limit
Employers Liability	\$1m and over	\$1,000,000 Each Accident \$1,000,000 Disease - Each Employee \$1,000,000 Disease - Policy Limit
Excess/Umbrella	under \$1m	\$2,000,000 Per Occurrence \$2,000,000 Aggregate or Higher

¹ Must evidence per location aggregate or per project aggregate.

² Combined single limit



Coverage	Estimated Construction Cost	General Contractor
Excess/Umbrella	between \$1m and \$5m	\$5,000,000 Per Occurrence \$5,000,000 Aggregate or Higher
Excess/Umbrella	under \$10m	\$10,000,000 Per Occurrence \$10,000,000 Aggregate or Higher
Excess/Umbrella	\$10m and over	\$20,000,000 Per Occurrence \$20,000,000 Aggregate or Higher
Contractor's Pollution Liability	-	\$5,000,000 per occurrence and \$5,000,000 Annual Aggregate or higher.
Drone/UAV Aircraft Liability³	-	No less than \$2,000,000

³ Required only if the work of the vendor includes operation, or arranging for the operation, of unmanned aerial systems (i.e., drones) services.



CITY OF EVERETT MASSACHUSETTS
[[PROJECT NAME]]
CITY PROJECT # [[XXX-##-##]]

City Project #:



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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 DEFINITIONS; CONTRACT DOCUMENTS

1.1 DEFINITIONS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof. The order of the terms defined below is alphabetical, and is not intended to indicate any priority.

1.1.1 Affiliated Entities - Any entity related to or affiliated with the Contractor or any Subcontractor or with respect to which the Contractor or any Subcontractor has direct or indirect ownership or control, including without limitation, any entity owned in whole or in part by the Contractor or any Subcontractor, as applicable; any holder of any issued and outstanding shares of, or the holder of any interest in, the Contractor or any Subcontractor, as applicable; any entity in which any officer, director, partner, shareholder, member, or manager (or member of the family of any of the foregoing persons) has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, shareholder, officer, director, member, manager, or agent.

1.1.2 Agreement – The fixed-price Agreement between Owner and Contractor.

1.1.3 Applicable Laws - As defined in Subsection 1.2.1.

1.1.4 “Approve”, “approved” or “approval” means written approval by a duly authorized representative.

1.1.5 Engineer - The Engineer designated in the Agreement or its authorized representatives.

1.1.6 Engineer’s Supplemental Instructions - A written document issued by the Engineer for clarification which may order a minor change in the Work and which does not require an adjustment in the Contract Sum and/or an extension of the Contract Time. The Engineer’s Supplemental Instructions shall be issued on AIA Document G710 or other form issued by or acceptable to the Owner.

1.1.7 Change Order - A written order prepared by the Engineer, issued by the Owner to the Contractor and signed by the Owner, the Contractor and the Engineer authorizing an addition to, deletion from or revision in the Work and any adjustment in the Contract Sum and/or Contract Time that may be required in accordance with the terms of the Contract. Change Orders shall be issued on AIA Document G701/2000 or other form issued by or acceptable to the Owner.



1.1.8 Construction Change Directive - A written order prepared by the Engineer, issued by the Owner to the Contractor, and signed by the Owner and the Engineer authorizing the Contractor to proceed with a change in the Work. Construction Change Directives shall be issued on AIA Document G714 or any other form issued by or acceptable to the Owner. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith and shall be considered a Change Order.

1.1.9 Construction Period - The period of the Contract Time which commences upon the issuance of the initial Notice to Proceed with Construction and concludes on the Final Completion Date.

1.1.10 Contract - As defined in the Agreement.

1.1.11 Contract Documents - As defined in the Agreement.

1.1.12 Contract Sum - As defined in the Agreement, subject to amendment in accordance with the provisions of the Contract.

1.1.13 Contract Time - As defined in the Agreement, subject to amendment in accordance with the provisions of the Contract.

1.1.14 Contractor - The entity with which the Owner has executed the Agreement. Wherever the term "Contractor" appears in the Contract Documents, it means the Contractor and Subcontractors who are obligated to perform all, or a part of, the Work described by the Contract Documents.

1.1.15 Critical Path - The sequential Critical Path Activities shown on the Project Schedule from the date of commencement of the Work through Final Completion.

1.1.16 Critical Path Activity - Any activity identified on the Project Schedule which, if delayed or prolonged, would cause the Construction Period to extend beyond the Contract Time.

1.1.17 Day - As used in the Contract Documents, the term shall mean calendar day. The terms "working day" and "business day" shall mean any calendar day except Saturdays, Sundays, and legal holidays at the place where the Project is located.

1.1.18 Delay Event - As defined in Subsection 9.4.1 of these General Conditions.

1.1.19 Drawings - The graphic and pictorial depictions of the Work prepared by the Engineer, wherever located and whenever issued, showing the design, location, scope and dimensions of the Work, or parts thereof, generally including plans, elevations, sections, details, schedules and diagrams and any narrative notes thereon.



1.1.20 Excusable Delay - Any act, omission, event or condition which delays performance of the Work, for which the Contractor is entitled, under applicable provisions of the Contract Documents, to an extension of the Contract Time.

1.1.21 Final Completion - As defined in Subsection 10.8.5 of these General Conditions.

1.1.22 Final Completion Date - The date set forth in the Agreement on or prior to which Final Completion is required to be achieved.

1.1.23 Notice to Proceed (NTP) – A written communication issued by the Owner to the Contractor authorizing it to proceed with a specified portion of the Work.

1.1.24 Owner’s Representative - A project manager retained by the Owner to represent it in connection with the Project. The Owner’s Representative is designated in the Agreement.

1.1.25 Product Data - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and any other information furnished by the Contractor to illustrate a material, product, assembly, or system for a portion of the Work. Product data are not Contract Documents.

1.1.26 Project Schedule - As defined in Section 9.2 of these General Conditions.

1.1.27 “Provide” or “Provided” - where used in the Contract Documents, such words shall be construed to mean “furnish(ed)” and “install(ed)” and/or “connect(ed)”, unless specifically stated otherwise.

1.1.28 Request for Information (RFI) - A written and logged request issued by the Contractor, or any Subcontractor through the Contractor, to the Engineer, with a copy sent to the Owner’s Representative, requesting information about some aspect of the Contract Documents.

1.1.29 Samples - Physical examples that illustrate materials, products, equipment or workmanship and which, when approved in accordance with the Contract Documents, establish standards by which the Work will be inspected and judged. Samples are not Contract Documents.

1.1.30 Schedule of Values – A schedule, prepared and maintained by Contractor for lump sum portions of the Work, allocating portions of the Contract Sum to various portions of the Work as required by Section 10.1 of these General Conditions.

1.1.31 Shop Drawings - All drawings, prints, diagrams, illustrations, brochures, schedules and other data prepared by the Contractor, a Subcontractor, or a Supplier



to illustrate how specific portions of the Work shall be fabricated and/or installed. Shop Drawings are not Contract Documents.

1.1.32 “Shown” or “shown on Drawings” - Where used in the Contract Documents, such words shall be construed to mean “noted”, “indicated”, “scheduled”, “detailed”, or any other diagrammatic or written reference made in any of the Contract Documents.

1.1.33 Site - The area or areas indicated within the contract limit lines on the Drawings or otherwise defined in the Contract Documents, together with such additional areas or locations adjacent thereto in which construction operations or Work required under the Contract may be performed.

1.1.34 Specifications - Written narrative descriptions, prepared by the Engineer, of requirements for materials, equipment, systems, standards and workmanship for the Work, and requirements for the performance of construction services.

1.1.35 State University – the State University campus on which the Project is located.

1.1.36 Subcontractor - An entity having a contract with the Contractor or with any other Subcontractor, regardless of tier, for the performance of a part of the Work required under the Contract Documents.

1.1.37 Substantial Completion - As defined in Subsection 9.1.3 of these General Conditions.

1.1.38 Substantial Completion Date - The date set forth in the Agreement on or prior to which Substantial Completion is required to be achieved.

1.1.39 Supplier - Any entity having a contract with the Contractor, any Subcontractor or other supplier regardless of tier, who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the Site.

1.1.40 Work – As defined in the Agreement.

1.2 INTERPRETATION OF CONTRACT DOCUMENTS

1.2.1 This Contract is subject to all applicable laws, regulations, codes, ordinances, rules, and orders of the United States of America, the Commonwealth of Massachusetts, and other governmental or public agencies and authorities with jurisdiction over the Project, and to all contracts and other agreements between the Owner and any such governmental or public agencies and authorities, referred to or incorporated in the Contract Documents (the “Applicable Laws”).



1.2.2 The Contractor shall inform itself of all Applicable Laws in any manner affecting the Work, or the materials used or employed in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or over the Work. The Contractor shall comply, and shall cause all persons and Subcontractors employed in the performance of the Work to comply, with all Applicable Laws.

1.2.3 Where any requirements contained in the Contract Documents do not conform to or are inconsistent with such Applicable Laws to which the Contract is subject or by which it is governed, such Applicable Laws shall have precedence over any matters set forth herein and the Contractor agrees to comply fully therewith. The Owner makes no representation as to and assigns no responsibility for the correctness or completeness of such statutory matters referred to or set forth in the Contract Documents.

1.2.4 The Contractor represents that it has examined and understands all of the Contract Documents and has visited the Site, examined and familiarized itself with the local conditions under which the Work is to be performed, including any work in progress under previously awarded contracts, verified to its satisfaction the nature and quantity of the Work involved, and correlated its observations with the requirements of the Contract Documents, and, by execution of the Agreement, the Contractor acknowledges its satisfaction with the same.

1.2.5 The intent of the Contract Documents is to describe the Work that, once constructed by the Contractor, will result in a functionally complete facility. It is intended that the Contractor shall furnish all Work necessary for the proper execution and completion of the Project in accordance therewith, including all Work incidental to or reasonably inferable from the Contract Documents as being necessary to produce the intended results, unless it is specifically indicated in the Contract Documents that such work is to be performed by others, and to complete the Project in a satisfactory manner, ready for use, occupancy, and operation by the Owner. The Contractor recognizes, and agrees to perform the Work consistent with the extra degree of care and skill required in an occupied academic campus setting with respect to safety, protection of pedestrians, cleanliness of the Site, health and the protection of existing utilities, adjacent streets and property. In agreeing to the Contract Time and the Contract Sum, the Contractor has considered and included those circumstances.

1.2.6 Unless the Contract Documents specifically provide otherwise or the context clearly requires a different meaning, the terms “directed,” “required,” “permitted,” “ordered,” “designated,” “prescribed,” and words of like import shall imply the direction, requirement, permission, order, designation, or prescription of the Owner’s Representative or the Engineer, subject in each case to the final determination of the Owner; and “approved,” “acceptable,” “satisfactory,” and words of like import shall mean approved by, or acceptable or satisfactory to the Owner’s Representative or the Engineer, subject in each case to the final determination of the Owner; and “necessary,” “reasonable,” “proper,” “correct,” and words of like import shall mean necessary, reasonable, proper or correct in the judgment of the Owner’s Representative or the Engineer, subject in each case to the final determination of the Owner.



1.2.7 In case of discrepancies or conflicts among the Contract Documents or within any of the Contract Documents, the Contract Documents shall be interpreted on the basis of the following priorities:

- (a) First, written amendments, including Change Orders, to the Agreement – those of a later date shall take precedence over those of an earlier date;
- (b) Second, the Agreement Between Owner and Contractor;
- (c) Third, Supplementary General Conditions, if any;
- (d) Fourth, General Conditions;
- (e) Fifth, Specifications; and
- (f) Sixth, Drawings.

Among Drawings, large scale details shall control over small scale details, and indicated dimensions shall control over Drawings not dimensioned. In the event of a conflict or ambiguity within or between the Specifications or Drawings as to the quantity or quality of work or materials, the higher quality or greater quantity shall be furnished unless otherwise directed in writing by the Owner or the Engineer.

1.2.8 Any information contained in the Specifications that has been omitted from the Drawings or vice versa shall be construed as though contained in both. In the event of any duplication, conflict, inconsistency, error, omission, or discrepancy among or within the Drawings and the Specifications (or among or within other portions of the Contract Documents so far as the same pertain to the Drawings or the Specifications), the matter shall promptly be brought to the attention of the Engineer for instructions. If, having identified any duplication, conflict, inconsistency or discrepancy, the Contractor proceeds with the Work without receiving instructions from the Engineer, the Contractor does so at its own risk and shall be responsible for performing any corrective Work at its own cost and without entitlement to any adjustment in the Contract Sum or the Contract Time.

1.2.9 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Contract Documents, except where a contrary result is explicitly indicated by the Contract Documents. A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout the corresponding parts of the Work. Where necessary and where reasonably inferable from the Contract Documents, the Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the Engineer. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.



1.2.10 Where laws, regulations, codes, standards, requirements or publications of public or private bodies are referred to in the Contract Documents, references shall be understood to be to the latest revision in effect on the date of execution of the Contract Documents, except where otherwise indicated. The Contractor warrants that all Work performed hereunder shall meet the requirements of all such laws, regulations, codes, standards, requirements and publications which are applicable to the Project. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.11 The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- (a) a duly-executed amendment to the Contract;
- (b) a Change Order (pursuant to Section 13.1); or
- (c) a Construction Change Directive (pursuant to Section 13.2).

The Contract Sum and the Contract Time may only be changed by a Change Order or a written amendment. In addition, the requirements of the Contract Documents may be clarified or supplemented, and minor variations and deviations in the Work may be authorized, by the Engineer's Supplemental Instructions pursuant to Section 13.6 or by the Engineer's approval of Submittals pursuant to Section 3.8.

1.2.12 The organization of the Specifications into divisions, sections and articles, and the 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 or subcontractor. A section or division of the Specifications may cover the Work of more than one Subcontractor and the Work of one Subcontractor may be covered by more than one section or division of the Specifications. The Contractor and all Subcontractors shall refer to all of the Drawings, and to all of the Sections of the Specifications, and shall perform all Work reasonably inferable therefrom as being necessary to produce the intended results. The Owner assumes no liability to the Contractor arising out of jurisdictional issues raised or claims advanced by trade organizations, Subcontractors or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings. In the event of any claim arising out of any duplication, conflict, inconsistency or discrepancy within the Contract Documents as to the allocation of the Work among and between the Subcontractors and the Contractor's own forces, the Contractor shall be solely responsible for resolving the claim and shall be responsible for ensuring that all of the Work is completed without additional cost to the Owner and without delay, regardless of where or how it is described in the Contract Documents.

1.2.13 If any term or provision of any of the Contract Documents, or the application thereof to any party or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remaining provisions of the Contract Documents, or the application of



such term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of each of the Contract Documents shall be valid and shall be enforced to the fullest extent permitted by law.

1.2.14 The Contract Documents shall not be construed to create a contractual relationship of any kind between: (1) the Engineer and the Contractor; (2) the Owner and any Subcontractor or Supplier; or (3) between any other persons or entities other than the Owner and the Contractor. The Contractor understands and agrees that the obligations of the Owner's Representative and the Engineer are solely to the Owner and, by performing those obligations properly, the Owner's Representative or the Engineer may increase the burdens and expenses of the Contractor, its Subcontractors, or sureties or any of them.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Contract Documents and other related materials and copies thereof prepared or furnished to the Contractor are the property of the Owner, subject to the rights of the Engineer as provided in the Owner-Engineer Agreement. With the exception of one contract set for the Contractor, such documents shall be returned (or suitably accounted for) to the Owner, or if requested by the Owner, lawfully disposed of by the Contractor at the completion of the Work, as a condition precedent to final payment. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project shall not be construed as publication in derogation of the Engineer's common law copyright or other reserved rights.

1.4 OTHER REPRESENTATIONS

1.4.1 The Contractor shall perform the Work strictly in accordance with the Contract Documents. The Contractor accepts the relationship of trust and confidence established between it and the Owner established by the Agreement and other Contract Documents. The Contractor covenants with the Owner to furnish its best skill and judgment and to cooperate with the Owner, the Owner's Representative, the Engineer and any other consultants employed by the Owner in furthering the interests of the Owner. The Contractor agrees to furnish efficient business administration, coordination, and superintendence and to furnish at all times an adequate supply of workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests of the Owner and to make every effort to achieve time savings and construction efficiencies with respect to the Work.

ARTICLE 2 ADMINISTRATION OF THE CONTRACT

2.1 OWNER'S REPRESENTATIVE

2.1.1 The Owner's Representative, if one has been retained by the Owner, and the Engineer will assist the Owner in the administration of the Contract as provided in the



Contract Documents. The Owner's Representative and the Engineer may act directly or through their properly authorized agents, such agents acting within the scope of the particular duties entrusted to them. The Engineer and the Owner's Representative will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents or as may be specified in writing by the Owner.

2.1.2 The Engineer and the Owner's Representative will be representatives of the Owner during construction of the Work and until final payment is due and will advise and consult with the Owner as to the performance and progress of the Work. The Owner may communicate with the Contractor directly or through the Owner's Representative or the Engineer. The Owner will endeavor to furnish to the Engineer copies of any communications from the Owner to the Contractor, directly or through the Owner's Representative.

2.2 DESIGNER'S SITE VISITS

2.2.1 The Engineer will visit the Site at intervals appropriate to the stage of construction as may be required to familiarize itself generally with the progress and quality of the Work and to determine in general whether the Work is proceeding in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections. On the basis of its on-site observations as a design professional, it will keep the Owner's Representative and the Owner informed of the progress and quality of the Work.

2.2.2 Neither the Owner, the Owner's Representative, nor the Engineer will have control, or charge of, or be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and nor will any of them be responsible for the acts or omissions of the Contractor, Subcontractors or any other persons or entities performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

2.2.3 All portions of the Work shall be subject to inspection and testing by the Engineer and the Owner's Representative. The Engineer will have authority to reject Work which does not conform to the Contract Documents. The Contractor shall, at its sole cost and expense, furnish the Engineer with such information and assistance (including, without limitation, labor, tools, equipment and transportation) as is required for the Engineer to make complete and detailed inspections or tests. Whenever the Engineer considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Engineer will have authority to require special inspection or testing of portions of the Work in accordance with Article 8 hereof whether or not such Work be then fabricated, installed or completed. However, neither the Engineer's authority to act hereunder, nor any decision made by the Engineer in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any of their agents or employees, or any other person or entity performing any of the Work.



2.3 DESIGNER'S SUPPLEMENTAL INSTRUCTIONS

2.3.1 The Engineer will render, in writing, Engineer's Supplemental Instructions and other interpretations necessary for the proper execution or progress of the Work, with reasonable promptness. Either party to the Contract may request such interpretations from the Engineer by giving written notice of such request to the Engineer with a copy thereof given to the other party, or the Engineer may initiate such Engineer's Supplemental Instructions or other interpretations upon notice to the Owner's Representative. The Engineer will, as it judges necessary or desirable, issue as a part of such Engineer's Supplemental Instructions additional drawings, specifications, or instructions indicating in greater detail the construction or design of the various parts of the Work reasonably inferable from the Contract Documents, and, provided such Engineer's Supplemental Instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such Engineer's Supplemental Instructions without increase in the Contract Sum or extension of the Contract Time. Such change shall be effected by written order issued by the Engineer and delivered to the Contractor. If the Engineer determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Engineer may make a recommendation to the Owner, which may authorize further investigation of such change. Upon such authorization, and based upon any information furnished by the Owner's Representative, the Engineer shall review and advise the Owner and the Owner's Representative concerning the additional cost and time that might result from such change. With the Owner's approval, the Engineer shall request the Contractor to incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

2.4 DESIGNER'S INTERPRETATIONS

2.4.1 Interpretations and decisions of the Engineer shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in written or graphic form. In the capacity of interpreter, the Engineer shall endeavor to secure faithful performance by both the Owner and the Contractor, shall not show partiality to either, and shall not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.5 SUBMITTALS

2.5.1 The Engineer will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples but only for the purpose of checking for conformance with the design concept and with the information in the Contract Documents. The Engineer shall communicate all such approvals or other actions to the Contractor with copy to the Owner's Representative. Review of such submittals is not conducted for the purpose of substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the



Contractor. The Engineer's review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences, or procedures. The Engineer's approval of a specific item shall not constitute approval of an assembly of which the item is a component. The Engineer shall not be required to review partial submittals nor submittals for which necessary correlated submissions have not been received.

2.6 REPLACEMENT DESIGNER

2.6.1 In case of the termination of the employment of the Engineer, the Owner shall appoint a designer whose status under the Contract Documents shall be that of the former designer. The Contractor shall cooperate with the replacement designer in connection with the completion of the Work. Replacement of the Engineer shall not entitle the Contractor to any adjustment in the Contract Sum or the Contract Time.

ARTICLE 3 CONTRACTOR'S RESPONSIBILITIES

3.1 DUTY TO REVIEW CONTRACT DOCUMENTS AND SITE CONDITIONS

3.1.1 Before starting the Work, and continuously during the progress thereof, the Contractor shall carefully examine the Site, take field measurements, and carefully study and compare the Contract Documents with each other and with conditions at the Site, including work completed or in progress under other contracts, and with such other information, documents, plans and criteria as may be available in connection with the Project and shall immediately communicate to the Engineer and the Owner, in writing, all errors, inconsistencies and omissions it discovers. If the Contractor proceeds with the Work without such notice to the Engineer and the Owner, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents and other conditions the Contractor could have discovered the same, the Contractor shall perform all necessary corrective work and bear all costs and expenses arising therefrom and shall have no claim for increases in the Contract Sum or extensions of the Contract Time for extra work made necessary thereby.

3.1.2 The Contractor shall give the Engineer timely written notice of any additional Drawings, Specifications, clarifications or instructions required to define the Work in greater detail or otherwise required to permit the proper progress of the Work. The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Engineer. If the Contractor proceeds with such Work without obtaining further drawings or instruction, the Contractor shall correct, at its own expense, Work incorrectly done.

3.1.3 Without limitation, the Contractor shall review the Contract Documents for clarity, consistency, constructability, maintainability, operability and coordination among trades, and time requirements for procurement, installation and construction, and sequence of



construction, including recommendations designed to minimize adverse effects of labor or material shortages.

3.1.4 If the Contractor recognizes or discovers that any portion of the Drawings and Specifications is at variance with Applicable Laws, the Contractor shall immediately notify the Owner and the Engineer in writing and shall not proceed with such Work without specific written direction by the Owner. If the Contractor performs any Work knowing or having reason to know that said Work is contrary to Applicable Laws and without so notifying the Owner and the Engineer, the Contractor shall assume full responsibility therefor and shall bear all costs of correction thereof, and any other costs including any loss, cost or damage sustained by the Owner attributable thereto.

3.1.5 The Contractor shall at all times provide the Engineer, its representatives and consultants, the Owner's Representative, and the Owner, and its agents, employees, representatives, other contractors, and consultants with access to the Site and the Work wherever it is in preparation and progress. The Contractor shall provide safe and proper facilities for such access and for observation, testing, and inspection of the Work.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 The Contractor shall supervise, coordinate, and direct the Work competently and efficiently, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents. The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Engineer or the Owner's Representative in their administration of the Contract, or by inspections, tests or approvals required or performed under Article 8 hereof by persons other than the Contractor.

3.2.2 The Contractor's Project Team shall consist of, as a minimum, a qualified Project Executive, Project Manager, Project Superintendent, and other necessary assistants and technical and administrative personnel. The Project Superintendent shall be licensed by the Commonwealth of Massachusetts. No change shall be made in the composition of the Project Team without the Owner's prior written approval. The removal or replacement without the Owner's consent of any of the identified members of the Contractor's Project Team shall constitute a material breach of the Contract. The Owner may require replacement of any member of the Contractor's Project Team upon notice to the Contractor with or without cause.

3.2.3 Both the Project Manager and the Project Superintendent shall have full authority to act on behalf of the Contractor. The Project Manager or Project Superintendent and necessary assistants shall be in attendance at the Site at all times during the progress of the Work until Final Completion. The Project Manager and the Project Superintendent shall



represent the Contractor and notices or other communications given to the Project Manager or the Project Superintendent shall be as binding as if given to the Contractor directly.

3.2.4 During the course of construction, the Engineer or the Owner's Representative shall schedule, convene and conduct Project meetings for the purpose of conducting an orderly review of the progress of the Work, as often as the Engineer or the Owner deems necessary, but at least once each week, in accordance with a schedule established by the Engineer. Such meetings shall be held at the Site and shall be attended by representatives of the Owner, the Contractor and the Engineer. Representatives of Subcontractors shall attend such meetings as necessary when Subcontractors are performing significant work on the Project or when a Subcontractor's presence is requested by the Owner or the Engineer. The Contractor's representative(s) at each meeting shall be the Project Manager and the Project Superintendent. The Engineer shall take minutes of each meeting in form, substance, and detail acceptable to the Owner.

3.2.5 The Contractor shall furnish sufficient forces, plant, and equipment as may be necessary to insure the progress of the Work in accordance with the Project Schedule (as defined below). If the Contractor falls behind the Project Schedule, the Contractor shall promptly submit a proposal demonstrating the manner in which the rate of progress may be increased and shall take such steps as may be necessary to meet the Project Schedule at no additional cost to the Owner. It shall be the responsibility of the Contractor to maintain its schedule so as not to delay the progress of the Work or the scheduled work of other contractors.

3.2.6 The Contractor shall be solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work. It shall verify the figures shown on the Drawings before laying out the Work and will be responsible for any errors or inaccuracies resulting from its failure to do so.

3.2.7 Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the Work, such mention is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of Work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor, who shall notify the Owner's Representative and the Engineer in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. 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's Representative and the Engineer in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Contractor has then been instructed in writing to proceed at the Owner's risk.



3.2.8 If any portion of the Work is suspended by the Contractor for any reason at any time, prior notice shall be given to the Owner's Representative of such suspension and of the resumption of such Work.

3.2.9 If the Contractor observes or determines that any Work previously performed under the Contract or any work performed by the Owner or by a separate contractor is not in accordance with the Contract Documents or is otherwise unsatisfactory, the Contractor shall promptly notify the Owner's Representative and the Engineer in writing describing the situation in full detail.

3.3 LABOR AND MATERIALS

3.3.1 The Contractor shall provide competent, suitably qualified personnel to perform all Work as required by the Contract Documents. Unless otherwise specified in the Contract Documents, the Contractor shall furnish at its expense and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other utilities, services, facilities and incidentals necessary for the proper furnishing, performance, testing and completion of the Work.

3.3.2 All materials and equipment shall be of first quality and new and of recent manufacture, except as otherwise expressly provided in the Contract Documents. If required by the Engineer, or the Owner's Representative, the Contractor shall furnish written information or other satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment, and stating the original sources of supply of materials and products manufactured or produced at locations other than the Site of the Work. In order to permit time for required inspections, testing and approvals, such information shall be furnished at least thirty days (or as otherwise directed by the Engineer or the Owner's Representative) in advance of the incorporation of any such materials or products in the Work. The Contractor shall make no claim for extra cost or extension of the Contract Time arising directly or indirectly out of its failure to timely select materials or products to permit a reasonable time for completion of inspections, testing or approvals, or because of the Contractor's purchase of materials or products in advance of approval.

3.3.3 Reference in the Contract Documents to any product, material, equipment, method or process by proprietary name, manufacturer, vendor, supplier, make or catalog number shall be interpreted as establishing a standard of quality.

3.3.4 Except in the case of minor changes in the Work authorized by the Engineer in accordance with the provisions of the Contract Documents, the Contractor may make substitutions only in conformance with the provisions of Section 00.73.73 of the Specifications (M.G.L. c. 30, § 39M(b)).

3.3.5 The Contractor's attention is directed to M.G.L. c. 30, § 39I which provides criminal penalties for unauthorized deviations from the Drawings and Specifications:



“Contractor shall perform all Work required by the Contract in conformity with the plans and specifications contained therein or made a part thereof. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the Owner or by the Engineer who is duly authorized by the Owner to approve such deviations. In order to avoid delays in the prosecution of the Work required by the Contract such deviation from the plans or specifications may be authorized by a written order of the Owner or Engineer so authorized to approve such deviation. Within thirty days thereafter, such written order shall be confirmed by a certificate of the Owner stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the Project as a whole; (3) that either the work substituted for the Work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the Owner and the Contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the Owner. Such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the Work contracted for. Whoever violates any provision of this section willfully and with intent to defraud shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than six months, or both.”

3.3.6 The Owner will consider formal written requests made through the Engineer for the substitution of products in place of those specified only under the conditions set forth in the Contract Documents, unless otherwise expressly agreed by Owner in its sole discretion. By making requests for substitutions, the Contractor:

- (a) represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, and expressly warrants that such proposed substitute product will perform adequately the functions and achieve the results called for by the Contract Documents;
- (b) represents that it will provide the same warranties and guarantees for the substitute product that it would for that specified;
- (c) certifies that the cost data presented is complete and includes all related costs under the Contract but excluding costs under other contracts (but separately identifying such costs, if any, of other contracts), and excluding the Engineer’s redesign costs, if any, and waives all claims for additional costs related to the substitution which subsequently become apparent;
- (d) certifies that the proposed substitution will not result in any increase in the Contract Sum and represents and agrees that any cost savings will be passed through to the Owner in the form of a credit against the Contract Sum; and



- (e) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

Notwithstanding approval or acceptance of such substitution by the Owner, any additional cost, or any loss or damage to the Owner arising from the substitution of any material or any method for those originally specified, shall be borne by the Contractor, including, without limitation, the costs of modifying Contract Documents and additional fees of the Engineer, the Owner's consultants or engineers, unless such substitution was made at the written request or order of the Owner.

3.3.7 The Contractor shall at all times enforce strict discipline and good order among and between its employees and the employees of its Subcontractors and shall not employ or permit to be employed on the Work any person who is not properly skilled in the work to be performed by it or who is otherwise unfit. Whenever the Owner shall notify the Contractor in writing that any person employed on the Work is, in the opinion of the Owner or the Engineer, incompetent, disorderly or otherwise unsatisfactory, such person shall be discharged immediately and shall not again be employed on the Work except with the prior written consent of the Owner.

3.3.8 The Contractor shall furnish labor that can and will work in harmony with all other elements of labor employed or to be employed on the Project. The costs of maintaining labor harmony, including without limitation, the cost of security, public safety measures and necessary traffic management shall be paid by the Contractor and the Contractor shall have no claim for any costs of maintaining labor harmony.

3.3.9 Any employee found on site subject to M.G.L. c. 30, § 39S without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (10) hours in duration shall be subject to immediate removal and the Contractor shall immediately remove any such employee.

3.3.10 The Contractor will not be entitled to additional compensation for Work performed outside of regular working hours, except as otherwise expressly authorized in writing by the Owner prior to the performance of such overtime or premium shift work. Additional compensation for such authorized overtime or premium shift work shall be limited to the direct cost of the premium portion of such authorized overtime. The Contractor shall comply with M.G.L. c. 149, §§ 30, 34 and 34A which provide that no laborer, workman, mechanic, foreman or inspector working within the Commonwealth in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or part of the Work shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in cases of extraordinary emergency.

3.3.11 All materials and equipment shall be delivered, handled, stored, installed and protected to prevent damage in accordance with the best current practice in the industry, in



accordance with the manufacturers' specifications and recommendations, and in accordance with Contract Document requirements. The Contractor shall deliver materials and equipment in ample time to facilitate inspection and testing prior to installation. The term "delivery" in reference to any item specified or indicated, means the unloading and storing with proper protection at the Site. Damaged materials or equipment may be rejected and the Contractor shall provide conforming materials or equipment at no additional cost.

3.3.12 The Contractor shall be responsible for determining that all materials furnished for the Work meet all the requirements of the Contract Documents. The Owner's Representative or the Engineer may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of studies by qualified experts, or other evidence which, in the opinion of the Engineer, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents.

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

3.3.14 The layout of mechanical and electrical systems, equipment, fixtures, piping, duct work, conduit, specialty items, and accessories indicated on the Contract Documents is diagrammatic, and all variations in alignment, elevations, and detail required to avoid interferences and satisfy architectural, engineering and structural limitations are not necessarily shown. Prior to the commencement of the portion of the Work relating to the mechanical, electrical, plumbing, fire protection or any similar systems, the Contractor shall furnish the Owner with a coordination drawing, illustrating all systems, equipment, fixtures, conduit, pipes, valves and all related installations in CADD format. Actual layout of such Work shall be carried out without affecting the architectural, engineering and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, obtain maximum headroom, provide adequate clearances as required for operation and maintenance, and provide an orderly appearance when exposed. Exact locations of fixtures and outlets shall be obtained from the Engineer as provided in the Contract Documents before the Work is roughed in. Work incorrectly installed without such information from the Engineer shall be relocated at the Contractor's expense.

3.3.15 Every employee under these General Conditions shall lodge, board and trade where and with whom he or she elects, and neither the Contractor nor its agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person. [NTD: see GL c. 149, s. 25]



3.4 PHASES OF THE WORK—CONSTRUCTION PHASE

3.4.1 The construction phase shall commence upon the issuance by the Owner of a written Notice to Proceed with the Work.

3.4.2 The Contractor shall be responsible for ensuring that adequate quality control programs are developed, implemented and enforced by the Contractor’s staff and all Subcontractors, including assigning an experienced quality manager, who may be the Project Superintendent employed by the Contractor, who shall be stationed at the Project Site and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work.

3.4.3 The Contractor shall be responsible for overall management, supervision, and coordination of all Subcontracts and of labor relations in connection with the Project to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work and in accordance with the requirements of the Contract Documents. The Contractor shall identify and resolve jurisdictional issues and disputes prior to bidding and award of the applicable Subcontracts, so as to cause no delay in the Work.

3.4.3.1 In consultation with the Owner’s Representative and the Engineer, the Contractor shall develop and implement procedures for orderly completion of Punch-List items, check out of utilities, operational systems and equipment and initial start-up and testing. The Contractor shall prepare and deliver to the Engineer warranties, as-built drawings, maintenance manuals and the like, and generally administer closeout of the Work. In connection with the closeout of the Work, the Contractor shall take steps to ensure the performance of all warranty and guarantee obligations, resolution of all claims and other post construction requirements in accordance with the terms of the Contract Documents.

3.5 PERMITS AND FEES; COMPLIANCE WITH LAW

3.5.1 The Contractor, at its cost, shall secure and pay for all demolition permits, construction or building permits, utility inspection and connection fees, and all other permits and approvals and governmental fees or charges (including, without limitation, microfilming charges), licenses, inspections and certificates of inspection necessary for the proper execution, completion and use of the Work, including, without limiting the generality of the foregoing, permits for obstruction of or projection into, over or under public streets and sidewalks and other public ways, curb-cut permits, and notifications to and permits or approvals from the Massachusetts Department of Environmental Protection or others necessary in connection with the performance of the Work (the “Permits and Approvals”). The Contractor shall promptly deliver to the Owner’s Representative and the Engineer copies of all such Permits and Approvals (and supporting applications), licenses and certificates, and satisfactory



evidence that disposal of all waste material in connection with the Project is done in full compliance with Applicable Laws.

3.5.2 The Contractor shall arrange for and provide at its expense all local policemen required to be present at or adjacent to the Site for traffic control purposes.

3.5.3 The Contractor shall give all notices required by and shall otherwise comply with all Applicable Laws bearing on the performance of the Work including, without limitation, applicable environmental laws and ordinances and regulations concerning noise pollution and dust control.

3.6 UTILITIES

3.6.1 The Contractor shall be solely responsible for verifying the precise locations of utilities on the Site or serving the Project. The Drawings and Specifications endeavor to indicate all pipes, conduits, lines or other structures or equipment of public and private utility companies (“Utility Equipment”) at and adjacent to the Site of which the Owner is aware. However, the Owner makes no representation or warranty that the utility equipment shown on the Drawings or referred to in the Specifications is the only utility equipment that may be encountered. Prior to commencing the Work, the Contractor shall visit the Site and to the extent possible shall confirm the existence and location of all utility equipment and shall, during the course of the Work, make diligent and continuous efforts to confirm the locations of all utility equipment at and adjacent to the Site. The Contractor shall promptly notify the Owner and Engineer in writing, prior to commencing affected portions of the Work, of any Utility Equipment that it discovers and that has not been identified on the Drawings. If and as directed by the Owner, the Contractor shall make necessary arrangements with utility companies for the protection, alteration and relocation of utility equipment necessary in connection with performance of the Work, and shall notify all municipal departments and utility companies concerned of the time and location of any work which may affect them. To the extent not covered by insurance, the Contractor shall be responsible for all costs and all claims, damages and liabilities arising directly or indirectly from any damage to Utility Equipment or any intentional or unintentional interruption of service occurring in connection with the performance of the Work and caused by the Contractor or any Subcontractor or other operations of the Contractor.

3.6.2 The Contractor shall perform the Work so as not to interfere with utility companies or municipal departments that may enter on the Site to make changes in Utility Equipment or to place new utility equipment. Except as otherwise set forth in Section 9.4 hereof, the Contractor shall have no claim for or on account of any delay which may be due to or result from such work of utility companies or municipal departments.

3.7 DOCUMENTS AND SAMPLES AT THE SITE

3.7.1 The Contractor shall maintain at the Site in a safe and secure place one record copy of: (i) all Contract Documents and other Project-related documents marked



currently to record all changes made during construction; (ii) approved Shop Drawings, Product Data and Samples; (iii) copies of all building, electrical, plumbing, public safety and other codes and regulations applicable to the Work; (iv) certified payroll reports; and (v) all permits, licenses, approvals, inspection reports and certificates obtained as required by Section 3.5. These shall be available to the Engineer, the Owner's Representative, and the Owner for reference and shall be delivered to the Owner's Representative upon completion of the Work. The Contractor shall keep all such documents in good order and shall maintain current logs of all Project-related documents, which logs shall be in form and detail satisfactory to the Owner and the Engineer.

3.7.2 The Contractor shall keep a separate and complete set of black-line prints of the Drawings and Specifications on which shall be noted neatly, accurately, completely, and promptly, as the Work progresses: (a) the progress of the Work installed by coloring in all pipe lines, ducts and apparatus as constructed or installed; and (b) all changes, deviations, revisions to the plumbing, electrical, and all other Work, wherever such Work was installed other than as shown on the Contract Documents. The Contractor shall be responsible for assuring that the progress of the Work and all changes, deviations, and revisions are delineated by the Subcontractors responsible for performing the specific Work. Failure to maintain such as-built Drawings and Specifications may result in withholding of payments to the Contractor. The Owner, the Owner's Representative, the Engineer, and their respective agents, representatives, and other consultants, shall have access to all Project documents maintained by the Contractor at all times. The Contractor shall cooperate with and assist the Engineer in connection with the Engineer's periodic reviews of the as-built Drawings and other Project documents prepared and maintained by the Contractor.

3.7.3 Upon Substantial Completion of the Work, the Engineer shall make a final review of the as-built Drawings prepared by the Contractor and if any omissions, incorrect information, or inconsistencies are found, the Drawings shall be revised by the Contractor until acceptable to the Engineer. When the final as-built Drawings are complete to the satisfaction of the Engineer, the Contractor shall furnish to the Engineer a complete set of as-built Drawings with each sheet being clearly marked "AS-BUILT DRAWING" and containing the date of the print and the Contractor's certification that the as-built Drawing accurately and completely depicts the Work as constructed. The Contractor shall deliver the as-built Drawings to the Engineer in hand-marked and electronic form in the Engineer's and the Owner's CADD format, containing a full set of CADD as-built Drawings for the Work.

3.7.4 Upon Substantial Completion of the Work, if appropriate, the Contractor shall prepare and deliver to the Engineer four (4) copies of a full and complete operating and maintenance manual for the Project. In accordance with the Specifications, the manual shall contain full information for each item of mechanical, electrical or other operating equipment, copies of warranties therefore, schematic diagrams of control systems, circuit directories for each electric and communications panel board, and charts showing the tagging of all valves. The Contractor shall obtain and include in the manual reduced scale photocopies of the relevant, revised as-built Drawings referred to in Subsection 3.7.3. Each volume of the manual shall



contain all information required by the Specifications and these General Conditions, shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name, telephone number, and other pertinent contact information for the responsible member of each organization. Such manuals shall be delivered to the Owner prior to, and as a condition precedent to, final payment.

3.7.5 The Contractor shall arrange for instruction in the operation and maintenance of the fire protection, plumbing, electrical and mechanical systems for State University employees. It is the intent of this Subsection 3.7.5 to require the Contractor and the applicable Subcontractors to furnish as much detailed instruction as is required by the Contract Documents to educate State University facilities personnel in the proper use of the facilities equipment. This instruction shall be provided by the manufacturer's representative for each item of equipment at no additional cost to the Owner. In some cases, this may require several visits to the Project by those responsible for the instruction. The Contractor shall, with written consent of all instructors, videotape all such training sessions, and a copy of each videotape shall be delivered to the Owner, prior to, and as a condition precedent to, final payment.

3.8 SUBMITTALS

3.8.1 The Contractor shall prepare or review, approve and submit to the Engineer, with a copy of the transmittal to the Owner's Representative, for review, sufficiently in advance and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate Contractor, all Shop Drawings, Product Data and Samples or other submittals required by the Contract Documents, all in accordance with the requirements set forth in the Specifications. Neither the Owner nor the Engineer shall be responsible for Work performed in shop or field prior to approval of any applicable Shop Drawings, Product Data or Samples.

3.8.1.1 Within thirty (30) days of receiving a Notice to Proceed with construction from the Owner, the Contractor shall submit to the Engineer and the Owner's Representative a detailed submittal schedule detailing the submittal and review process for all shop drawings, product data, samples, and other submittals. The submittal schedule shall incorporate appropriate time periods for the Engineer's review of Shop Drawings and all other submittals required by the Contract Documents. The submittal schedule shall be coordinated with the Project Schedule and shall be in form, substance, and detail acceptable to the Owner and the Engineer.

3.8.2 By preparing, approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor thereby represents that it has determined and verified all materials, design required in the implementation of the Work, dimensions, quantities, field measurements, details, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples or similar submittals and compliance with all the requirements of the Contract Documents. The accuracy and completeness of all such information is the responsibility of the Contractor. Approval by the Contractor shall be clearly indicated on each submittal, in ink or



by stamp, and signed or initialed and dated by the Contractor. Submittals that have not been reviewed and approved by the Contractor in accordance with the requirements stated in this Section 3.8 and the Specifications shall be returned to the Contractor with no action taken by the Engineer. Such submissions shall be re-submitted to the Engineer with the Contractor's review and approval provided as required. Language contained in the Contractor's approval of submittals shall not be interpreted to limit in any respect or otherwise affect the Contractor's responsibilities and liabilities hereunder.

3.8.3 The Engineer shall review the Contractor's submittals in accordance with Section 2.5. If corrections are required, a full set of copies of duplicate parts or corrected submittals shall be submitted to the Engineer for approval, and this procedure shall be followed until final approval of the submittal has been given by the Engineer. All portions of the Work shall be performed strictly in accordance with the approved submittals.

3.8.4 If Shop Drawings submitted by the Contractor indicate a deviation from the Contract Documents, the Contractor shall specifically inform the Engineer and the Owner's Representative, in writing, of such deviation at the time of submission. The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data or Samples or other submittals, unless the Contractor has specifically informed the Engineer and the Owner's Representative in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Engineer's approval thereof. The Engineer's approval of a specific item shall not constitute approval of an assembly of which the item is a component.

3.8.5 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or other submittals to revisions other than those requested by the Engineer on previous submittals. Unless such written notice has been given, the Engineer's approval of a revised submittal shall not constitute approval of any changes not requested by the Engineer on the prior submittal.

3.8.6 No acceptance or approval of any Shop Drawing, Product Data or Sample, nor any indication or request marked by the Engineer on any Shop Drawing shall constitute an authorization for any increase in the Contract Sum.

3.9 SITE ACCESS

3.9.1 The right of possession of the Site and the improvements made thereon by the Contractor shall remain at all times with the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine its apparatus and equipment, storage of materials, and all operations at the Site to areas permitted by law, ordinances, permits, the Contract



Documents, and the directions of the Owner's Representative, and shall not unreasonably encumber the Site with any materials or equipment.

3.9.2 The Contractor shall not use, occupy or obstruct, nor permit any Subcontractor or any other person performing the Work to use, occupy or obstruct, any lands or areas outside of the legal limits of the Site, unless written permission in form and substance satisfactory to the Owner has been obtained by the Contractor at the Contractor's sole cost.

3.9.3 The Contractor may, subject to the Owner's prior written consent, install a construction sign as provided in the Specifications, but shall not permit the posting of any other sign, trademark, advertisement, or other identification symbol in or about the Site. The Owner shall have the right, without notice to the Contractor, to remove any sign, trademark, advertisement or other identification symbol installed in violation of this Subsection 3.9.3 at the Contractor's expense. The construction sign installed by the Contractor shall also identify the Subcontractors or, alternatively, the Contractor shall provide a single location, approved by the Owner in writing, for Subcontractor signage.

3.9.4 Any damage to the premises or equipment of the Owner caused by the Contractor or any Subcontractor shall be corrected by the Contractor as directed by the Owner and at the expense of the Contractor, subject to the Contractor's right to coverage under the Owner's builders risk insurance obtained with respect to the Project, but such right shall pertain only to the extent of proceeds actually received by the Owner, the Contractor being responsible for any deductible and for any of the Owner's losses not covered.

3.10 CUTTING AND PATCHING

3.10.1 The Contractor shall be responsible for all cutting and patching, as approved by the Engineer, necessary for the completion of the Work in accordance with the Contract Documents.

3.10.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by excavation, cutting, patching or otherwise altering any Work. The Contractor shall not unreasonably withhold from the Owner or any other contractor its consent to excavating, cutting, patching, or otherwise altering the Work.

3.11 INTENTIONALLY OMITTED

3.12 WASTE DISPOSAL AND CLEANING

3.12.1 All wastes, including any special or hazardous wastes, construction waste, demolition waste, and general rubbish, generated as a part of the Work, shall be properly classified by the Contractor and transported and disposed in accordance with all local, state, and federal laws and regulations that pertain to such materials. The Contractor shall retain the services of a qualified and properly licensed waste transporter. The Contractor shall make all arrangements and give and obtain all notices, communications, documentation, permits,



certificates, and approvals necessary for disposal from the owner or officials in charge of such landfills, disposal or recycling facilities. The Contractor shall bear all fees and costs in connection with such classification, removal, transportation, and disposal. The Contractor shall not permit any storage of debris or waste of any name or nature on the premises.

3.12.2 Chemical waste shall be stored in corrosion resistant containers, removed from the premises, and disposed of in accordance with all Applicable Laws and any Contract Documents requirements. Disposal of chemical waste shall be performed in accordance with requirements of the U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (DEP). The Contractor shall immediately notify the Owner, the Engineer, and the appropriate governmental agency of any hazardous materials release large enough to require reporting under Applicable Laws. The Contractor shall be responsible for immediately cleaning up, in accordance with Applicable Laws, any oil or hazardous materials releases resulting from its operations on the Project. Any costs incurred by the Contractor in cleaning up any such releases and any damages incurred by the Owner arising from such release shall be borne by the Contractor.

3.12.3 The Project and the Site shall be maintained in a neat and orderly condition and kept free from accumulation of waste materials and rubbish during the entire Construction Period. All crates, cartons and other flammable waste materials or trash shall be removed from the work areas at the end of each working day. If the Project and Site are not maintained properly, after 24 hours prior written notice to the Contractor, the Owner may have any accumulations of waste materials or trash removed and charge the cost to the Contractor. Electrical closets, pipe and duct shafts, chases, furred spaces and similar spaces which are generally unfinished, shall be cleaned and left free from rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt and dust.

3.12.4 At the completion of the Work, the Contractor shall remove all its tools, construction equipment, machinery and surplus materials, and shall leave the Site in a neat and clean condition satisfactory to the Owner. Immediately prior to the Engineer's inspection for Substantial Completion of the entire Work, or any portion thereof, the Contractor shall, when directed to do so by the Owner, completely clean any and all portions of the Project to be inspected. Without limitation, concrete surfaces shall be cleaned and washed; resilient coverings shall be cleaned, waxed and buffed; ; fixtures, and equipment shall be thoroughly cleaned; stains, spots, dust, marks and smears shall be removed from all surfaces; and hardware and all metal surfaces shall be cleaned and polished. All damaged, broken and scratched surfaces shall be replaced by the Contractor at the Contractor's sole expense.

3.12.5 If the Owner elects to take use or occupancy of specific areas or portions of the Work prior to the completion and acceptance of the entire Work as provided in Article 15 hereof, the Contractor shall carry out final cleaning operations as herein specified in such specific areas or portions of the Work prior to use or occupancy thereof, as directed by the Owner. The Contractor shall remove or, when appropriate, relocate, all surplus materials,



equipment, supplies, construction plant, and facilities as required in order to permit the occupancy and utilization of such specific areas or portions of the Work.

3.13 PROJECT COMMUNICATIONS

3.13.1 Copies of all communications from the Contractor to the Engineer or the Owner's Representative shall be provided simultaneously to the other and, if required by the Contract Documents, also to the Owner.

3.13.2 The Contractor shall forward to the Engineer any communications which the Contractor transmits to the Owner relating to any matter within the purview of the Engineer pursuant to the provisions of the Contract Documents.

3.14 ROYALTIES AND INTELLECTUAL PROPERTY

3.14.1 The Contractor shall pay all royalties and license fees, shall defend all suits or claims for alleged infringement of any intellectual property rights, and shall indemnify and save the Owner, the Owner's Representative, the Engineer, and the State University harmless from loss on account thereof, except that the Contractor shall not be responsible for such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is specified, unless the Contractor has reason to believe that the design, process, or product specified is an infringement of intellectual property rights, in which event the Contractor shall be responsible for such loss unless it promptly gives such information to the Owner.

3.15 FINANCIAL CONDITION

3.15.1 The Contractor warrants and represents that its financial condition is sound and that the Contractor is capable of performing the Work and obtaining any bonds now or hereafter required pursuant to the Contract Documents. Upon request by the Owner, the Contractor shall make available to the Owner, within fourteen (14) days, such audited and unaudited financial statements of the Contractor as the Owner may reasonably request or as may be required by Applicable Law. 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.

3.16 PREVAILING WAGE; RECORDKEEPING; PERSONNEL

3.16.1 The Contractor shall comply with the Massachusetts Prevailing Wage Law, M.G.L. c. 149, § 26-27H. The Prevailing Wage Law requires that a true and accurate record be kept of all persons employed on the a project for which the prevailing wage rates have been provided. The Contractor and all Subcontractors shall keep these records and preserve them for a period of three years from the date of completion of the Contract. Such records shall be open to inspection by any authorized representative of the Owner at any reasonable time, and as often as may be necessary. The Contractor shall, and shall cause its Subcontractors to,



submit weekly copies of their weekly payroll records to the Owner. In addition, the Contractor and each Subcontractor shall furnish to the Executive Department of Labor within fifteen days after completion of its portion of the Work a signed statement in the form required by the Owner.

3.16.2 The Contractor shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, § 148 which requires the weekly or biweekly payment of employees within six days of the end of the pay period during which wages were earned if employed for five or six days of a calendar week, and within other periods of time under certain circumstances as set forth therein.

3.17 EEO/AA AND M/WBE REQUIREMENTS

3.17.1 The Contractor shall comply at all times in all respects with all government laws, regulations and ordinances affecting or regulating employment of persons in connection with the Work, and with the equal employment opportunity and affirmative action requirements set forth in **Exhibit D** and **Exhibit E** to the Agreement.

3.17.2 The Contractor shall submit a construction employment plan to the Owner pursuant to which the Contractor will specify its plan for meeting and monitoring the Owner's employment requirements. The plan shall comply with the provisions set forth in **Exhibit D** and **Exhibit E**. The Contractor shall provide the Owner with such reports concerning its compliance with the construction employment plan as the Owner shall require.

3.18 LINES AND GRADES; SURVEY

3.18.1 The Contractor agrees that the Work shall be constructed within the contract limit lines established in the Contract Documents and other information made available to the Contractor.

3.18.2 The Contractor shall engage a land surveyor registered in the Commonwealth of Massachusetts to establish, and the Contractor shall be responsible for the accuracy of, base lines for the Work.

3.18.3 The Contractor shall establish and plainly mark such points, lines and grades as are necessary to assure that location, orientation and elevations established for each structure or element of the Work are in accordance with the lines and elevations shown on the Drawings.

3.18.4 After the perimeter foundation walls are in place, the Contractor shall verify that lines and grades meet the requirements of the Drawings and Specifications. Such verification shall be provided by a registered land surveyor or professional engineer who shall record actual as-built lines and grades on the as-built Drawings.

3.18.5 During the progress of the Work the registered land surveyor or professional engineer shall record actual as-built lines and grades on the as-built Drawings. The



Contractor shall, from time to time, furnish to the Owner surveys certified by a registered land surveyor, in such form as may be required by the Owner, of the location of all improvements and utilities on the Site.

ARTICLE 4 OWNER

4.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

4.1.1 If available, the Owner shall furnish to the Contractor surveys describing the physical characteristics, legal limitations for the Site, and a legal description of the Site.

4.1.2 The Owner may furnish the Contractor with certain reports, plans, studies, tests, information and other documentation relating to utilities and subsurface and other conditions affecting or relating to the performance of the Work (the "Site Conditions Documents"). The Contractor represents that it has thoroughly studied and is familiar with the Site Conditions Documents which it has received. In the case of Site Condition Documents to be supplied by the Owner after execution of the Agreement, the Contractor shall study and become familiar with such documents. The Contractor shall advise the Owner in writing of any errors, omissions, inconsistencies discovered by the Contractor in its review of the Site Condition Documents. The Contractor represents further that it has examined the Site and local conditions and as they are developed will carefully study and compare the Contract Documents with each other and with conditions at the Site, and with the Site Conditions Documents. Unless otherwise specifically stated, the Owner does not assume any responsibility for the accuracy or completeness of the Site Condition Documents. Such information and data is furnished to the Contractor for its informational value, but the Owner does not hold out such information or data to the Contractor as being complete nor as an accurate or approximate indication of surface, subsurface or other conditions. No claim for extra cost or any extension of the Contract Time resulting from reliance by the Contractor on the Site Conditions Documents shall be allowed except as expressly provided in the Contract Documents.

4.1.3 Information or services required of the Owner under the Contract Documents and requested in writing by the Contractor shall be furnished by the Owner, if available, with reasonable promptness so as to endeavor to avoid delay in the orderly progress of the Work.

4.1.4 The Contractor will be furnished, free of charge, four (4) copies of the Contract Documents.

4.1.5 The Owner may, but shall not be required to, forward instructions to the Contractor through the Owner's Representative. If communicated directly to the Contractor by the Owner, the Owner will endeavor to provide copies of such communications to the Owner's Representative and the Engineer.

4.2 CONFIDENTIAL INFORMATION



4.2.1 The Contractor shall not disclose, at any time during or after the Work, either directly or indirectly, any confidential records, knowledge or information which the Contractor may acquire about the Project or the Owner, except as may be required by law or by order of a court of competent jurisdiction. The Contractor shall treat all information relating to the Project and all information supplied to the Contractor by the Owner, the Owner's Representative, or the Engineer as confidential and proprietary information of the Owner and shall not permit its release to third parties or make any public use of such information without the Owner's prior express written authorization. The Contractor shall require all Subcontractors to comply with this provision.

4.3 TAX EXEMPTION

4.3.1 The Owner, as an authority of the Commonwealth of Massachusetts, is exempt from certain taxes. The Owner's taxpayer exemption number is 042-379-317. The Contractor hereby acknowledges that the Contract Sum has been established based upon the understanding that the Owner is exempt from certain taxes. It is therefore required that the Contractor and Subcontractors purchasing materials and supplies to be used in construction of the Project (including rental charges for construction vehicles, equipment and machinery rented specifically for use on the site of the Project or while being used exclusively for the transportation of materials for the Project) ("Construction Materials") apprise vendors of the tax-exempt status of the Owner, so that certain taxes will not be imposed upon the purchase of Construction Materials. At the time of purchase of Construction Materials, the purchaser shall provide the vendor with copies of certificates or other documentation necessary to permit the sale of such Construction Materials to be exempt from sales, use and other applicable taxes imposed by any state or federal taxing authority. If such taxes are paid on any Construction Material used in the construction of the Project, the Contractor shall be responsible for reimbursing the Owner, whether the purchases were made by the Contractor, a Subcontractor or Supplier, the full amount of such taxes and the Owner shall have the right to recover any such amounts not promptly reimbursed by reducing any payment due the Contractor under the Contract by such amount. Taxes not applicable to the Owner include, but may not be limited to: (a) Sales and Use Tax imposed by the Commonwealth under M.G.L. c. 64H and c. 64I on Construction Materials; and (b) Federal Excise Taxes as applied to articles which are taxable under Chapter 32 of the Internal Revenue Code of 1986, as amended.

ARTICLE 5 INDEMNIFICATION

5.1 CONTRACTOR'S INDEMNITY

5.1.1 The Contractor shall indemnify, defend with counsel acceptable to the Owner, keep and save harmless the Commonwealth, the State University, and the Owner, including their respective board members, trustees, directors, officers, contractors, consultants, agents, employees, and other representatives, in both their respective individual and official capacities, against all liabilities, suits, claims, damages, losses, expenses, penalties, fines, fees including, but not limited to, attorneys' fees, expert witness fees and other legal expenses



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(including fees and expenses in connection with any alternative dispute resolution process) and other costs and liabilities caused by, arising out of, resulting from, or incidental to, the following, each to the full extent allowed by the laws of the Commonwealth of Massachusetts and not beyond any extent that would render these provisions void or unenforceable:

- (a) breach or default under or failure to perform or comply with the terms of the Contract by the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible;
- (b) negligent acts or omissions of the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible;
- (c) infringement of any patent or trademark, or violation of any copyright, right of privacy or any similar right protected by any law affecting intellectual property arising out of or relating to the use of methods, processes or information, or products or other materials or property, in connection with performance of the Work by the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible, or otherwise relating to the Work;
- (d) violation of any Applicable Law in connection with performance of the Work by the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible;
- (e) violation of or noncompliance with the conditions of any Permits and Approvals by the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible;
- (f) failure of the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible to pay any federal, state or local taxes based upon gross receipts, income, purchases, rentals or sales, the use of any property, unemployment insurance or any other social security or social benefit taxes applicable to employees of the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible, or any other taxes imposed in connection with the Contract or the Work;
- (g) personal injury, sickness, emotional distress, disease or death directly or indirectly caused by, arising out of, resulting from, or incidental to the performance of the Contract or otherwise relating to the Work or any act or omission of the Contractor, any Subcontractor or Supplier, or any other party for whose acts or omissions the Contractor is or becomes liable;



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- (h) loss or damage to any property of the Contractor, and loss or damage to any property of Subcontractor, Supplier, or other parties for whom the Contractor is or becomes responsible;
- (i) claims by Subcontractors, Suppliers, or others against the Contractor or the Owner on account of amounts due or claimed to be due to such Subcontractor, Supplier, or others in connection with the performance of the Work;
- (j) loss or damage to property owned by the Owner or any third parties located on or about the Site, in whole or in part arising out of, resulting from, or incidental to the performance of the Work or any acts or omissions of the Contractor, any Subcontractor, Supplier, or any other party for whom the Contractor is or becomes responsible;
- (k) neglect or failure to construct the Work within the contract work lines, or by reason of any encroachment by any element or portion of the Work, or any part or projection thereof, on adjoining land if such encroachment shall result from the Contractor's failure to construct the Work within said contract work lines;
- (l) release or threatened release of any hazardous material which: (i) was brought onto the Site by the Contractor, or any Subcontractor, Supplier, or any other party for whom the Contractor is or becomes responsible; or (ii) was negligently removed from, handled on, or disposed of on the Site by the Contractor, any Subcontractor, Supplier, or any other party for whom the Contractor is or becomes responsible, regardless of the source or origin of such hazardous material or the method of deposit of such hazardous material on the Site or, in the case of the removal of any hazardous material from the site, on the Site to which such hazardous material was removed;
- (m) claims or assertions by any separate contractor of disruption, delay or loss caused by interference by the Contractor (or its Subcontractors or others for whom the Contractor is or becomes responsible) with or hindrance of the progress or completion of work being performed by separate contractor, or failure of the Contractor or any Subcontractor, Supplier, or any other party for whom the Contractor is or becomes responsible, to cooperate reasonably with such separate contractor; and
- (n) failure of the Contractor, any Subcontractor or Supplier, or others for whom the Contractor is or becomes responsible to comply with their obligations to not use undocumented workers to perform any part of the Work.



Such agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or remedy which would otherwise exist as to any party or person described in this Section 5.1.

5.1.2 Provisions of this Section 5.1 shall be for the benefit of each party indemnified hereunder with the same force and effect as if each individual were in privity of contract with the Contractor, and each party so indemnified shall have the right to bring a direct action against the Contractor to enforce this indemnity. Each party so indemnified is hereby made a third party beneficiary of the Contract with respect to the provisions of this Section 5.1.

5.1.3 In connection with any and all claims against the Owner, the Owner's Representative or the Engineer or their consultants or separate contractors, or any of their Subcontractors, agents or employees, by any employee of the Contractor, any Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligation under this Section 5.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.

5.1.4 In the event that a claim, demand or action is asserted against a party indemnified under this Section 5.1 with respect to which the Contractor is obligated to indemnify such party in accordance with this Section, such party shall give timely notice to the Contractor of such claim and may request that the Contractor undertake the defense of such claim with counsel reasonably satisfactory to such indemnified party and without cost to such indemnified party, or the indemnified party may undertake the defense of such claim, with counsel satisfactory to the Contractor, in which case the Contractor shall cooperate and assist in the defense and resolution of such claim, and shall be responsible for all costs of defense, judgments, settlements and other liabilities as provided in this Section 5.1. Failure of the indemnified party to notify the Contractor as provided in the preceding sentence shall not waive, release or otherwise affect the indemnification obligations of the Contractor hereunder, except to the extent that the Contractor establishes that such failure to give notice has prejudiced the Contractor in the defense of such claim.

5.1.5 The indemnification obligations of the Contractor under the Contract shall survive the termination or expiration of the Contract and completion of the Work.

5.1.6 The obligations of the Contractor under this Article 5 shall not extend to the liability of the Engineer, his agents or employees, arising out of the performance of the Engineer's obligations under the Contract Documents.

ARTICLE 6 SUBCONTRACTORS

6.1 SUBCONTRACTS



6.1.1 All Subcontractors shall look solely to the Contractor for payment for their Work performed in accordance with the Contract Documents except as expressly otherwise permitted by law. The Contractor shall furnish the Owner with executed copies of all Subcontracts promptly upon execution thereof.

6.1.2 Contractor shall make payments to Subcontractors in accordance with M.G.L. c. 30, § 39F. For the purposes of this Contract, the word “forthwith” appearing in paragraph (1)(a) of M.G.L. c. 30, § 39F shall be deemed to mean “within five (5) business days”.

6.1.3 The Contractor hereby conditionally assigns to the Owner all Subcontracts now or hereafter executed by the Contractor in connection with the Work and in accordance with the requirements of the Contract Documents.

(a) Such assignment shall become an effective and present assignment only upon a termination by the Owner of the Contract in accordance with the provisions of the Contract Documents and only as to those Subcontracts which the Owner explicitly accepts and assumes in writing. The Owner shall have the sole option to determine which Subcontracts the Owner shall accept as aforesaid.

(b) This Subsection 6.1.3 shall serve as the instrument of assignment at such time as the assignment provided for above becomes effective. The Contractor agrees, however, at the Owner’s request, to execute whatever instruments the Owner requests to confirm such assignment.

6.1.4 The Contractor shall maintain and distribute to the Owner, the Owner’s Representative, and the Engineer a Project Directory listing the names, addresses, email addresses, and telephone numbers of the principal members of the staff of each Subcontractor in addition to any other information requested by the Owner or the Engineer regarding Subcontractors. The Contractor shall update such Project Directory periodically during the Project. The principal contact for each Subcontractor and his/her home telephone number shall be indicated in the Project Directory so that such person may be reached in emergency situations.

ARTICLE 7 OTHER WORK

7.1 OWNER’S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

7.1.1 In addition to the Work required to be performed under the Contract, the Owner may perform other work related to the Project at the Site with its own forces, have other work performed by utility suppliers, or award separate contracts for such work or other work



on the Site under these or other conditions of the contract. If the fact that such other work is to be performed is not noted in the Contract Documents, notice thereof will be given to the Contractor prior to commencement of such other work.

7.1.2 If, after commencement of the Work, the plans of the Contractor and any such separate contractors performing work in connection with the Project, or other contractors, are inconsistent with respect to methods, scheduling, progress or otherwise, the Contractor shall promptly take all steps necessary to coordinate its Work with that of other contractors. The Contractor shall have no claims against the Owner or such separate contractors performing work in connection with the Project or other contractors for any delays arising from joint use of any work area or staging area, or from joint use of access. All coordination undertaken by the Contractor shall be acceptable to Owner in all respects.

7.2 MUTUAL RESPONSIBILITY

7.2.1 The Contractor shall provide the Owner, utility suppliers and other separate contractors proper and safe access to the Site and a reasonable opportunity for the delivery and storage of materials and equipment and the execution of their work, and for reasonable access to, and use of, the Contractor's hoisting facilities, if provided, and temporary electric, water and sanitary facilities. Disputes arising with respect to delivery or storage of materials or equipment, or otherwise relating to coordination of the Work under the Contract with the work of utility suppliers or separate contractors shall initially be submitted to the Engineer. Recognizing the constraints imposed upon the Contractor by the requirements of this Section, the Owner agrees to give the Contractor as much advance notice as is practicable of the particular needs of separate contractors and utility suppliers for access to the Site and joint use of the Site and site facilities so as to minimize the impacts upon the Contractor's scheduling and operations. The Contractor shall cooperate with the Owner, utility suppliers and separate contractors, and require and enforce the cooperation of its Subcontractors in such manner as to permit the expeditious, efficient connection of utilities and to facilitate completion of the Project as a whole and completion of specific parts of the Project for early use or occupancy by the Owner in accordance with the Project Schedule.

7.2.2 If any portion of the Contractor's Work depends, for proper execution or results, upon other work of the Owner or any such utility supplier or other separate contractors, the Contractor shall, prior to proceeding with that portion of the Work, inspect and promptly report to the Engineer and the Owner, in writing, any delays, discrepancies or defects in such other work discoverable as a result of prudent examination, testing and observation by the Contractor that render such other work unavailable or unsuitable to receive Contractor's Work. Failure of the Contractor to so report shall constitute an acknowledgment that such other work is fit and proper to receive the Contractor's Work, except as to defects not so discoverable.

ARTICLE 8 INSPECTION AND TESTING

8.1 INSPECTION AND TESTING



8.1.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of, or conditions imposed by, any government entity having jurisdiction over the Project require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner's Representative (with a copy to the Engineer), the Owner's testing agents or consultants, and if applicable, government entities requiring such inspection, testing or approval, timely notice (at least five (5) full business days) prior to the commencement of Work or operations requiring such inspection, testing or approval so the Engineer, such government entities and agents or consultants may perform or observe such inspection, testing or approval. The Contractor shall perform and bear all costs of such inspections, tests and approvals, unless otherwise provided in the Contract Documents. Except in the event of an unforeseen emergency, Work or operations requiring such inspection, testing or approval shall not be performed at times other than during the normal working day without the prior approval of the Owner. The Contractor will provide all required assistance (including, without limitation, labor, tools, equipment and transportation) as the Engineer or such government entities or agents or consultants may request in connection with such inspection, testing or approval. The Contractor shall make all necessary arrangements at its expense to permit the Engineer to make factory, shop or other inspections of materials or products ordered for the Work and in the process of manufacture, fabrication or extraction or in storage at locations other than the Site of the Work. Where certain testing and inspection requirements are required by the Contract Documents to be performed at the expense of the Owner, the Owner will retain the services of testing laboratories, agencies or consultants, to perform such tests or inspections and render such services as may be required to verify that the Work fulfills the requirements and intent of the Contract Documents. Such services will be performed in a manner consistent with the requirements of the Owner and the various agencies having jurisdiction over the Work and in accordance with sound standards of professional architectural and engineering practice applicable thereto. The Contractor and Subcontractors shall place their personnel at the Engineer's disposal for field checking during any inspection period. When layouts of the site work are to be made, the Contractor shall notify the Owner's Representative and the Engineer in sufficient time so that they may be present.

8.1.2 The Contractor shall make no claim for delay or extra costs or extension of the Contract Time arising directly or indirectly out of reasonably required inspection or testing or out of the Contractor's failure to give timely notice so as to permit performance or observance of inspections, testing or approvals. Inspections and testing of the Work shall not relieve the Contractor of any obligations under the Contract Documents. Without limiting any other provisions hereof, defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such Work and materials have been previously inspected by the Engineer and accepted or estimated for payment or paid for.

8.2 SPECIAL TESTING

8.2.1 If the Owner or the Engineer determines that any portion of the Work requires special inspection, testing, or approval beyond that required in the Contract Documents, the Owner's Representative, upon written authorization from the Owner, or the



Owner, will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Section 8.1 hereof. If such special inspection or testing reveals a failure of the Work to comply strictly with the requirements of the Contract Documents, the Contractor shall correct such Work and bear all costs of such inspection, testing and corrections, including compensation for the additional services of the Engineer and other consultant made necessary by such failure; otherwise the Owner shall bear the costs of such inspection or testing, and an appropriate Change Order shall be issued. In no event shall the Contractor be entitled to any claim for delay or extra cost or extension of the Contract Time as a result of any such inspection, testing or corrections.

ARTICLE 9 CONTRACT TIME

9.1 DEFINITIONS

9.1.1 The Contract Time is the period of time stated in the Agreement to achieve Final Completion of the Work, as may be adjusted in accordance with the Contract.

9.1.2 The date of commencement of the Work is date of the issuance of a Notice to Proceed by the Owner for a portion, or all, of the Work.

9.1.3 The Date of Substantial Completion of the Work, or a designated portion thereof, is the date certified by the Engineer when the requirements of the Contract Documents have been satisfied. Substantial Completion of the Work shall not be deemed to be achieved until either (1) the Work required by the Contract has been completed except for Work having a contract price of less than one per cent of the then adjusted total Contract Sum, or (2) substantially all of the Work has been completed and opened to public use except for minor incomplete or unsatisfactory Work items that do not materially impair the usefulness of the Work required by the Contract

For purposes of this Article 9, Substantial Completion refers to Substantial Completion of the entire Project. In the event of any question or dispute as to the date of Substantial Completion, such question or dispute shall be determined by the Engineer in its sole discretion, and neither the Engineer nor the Owner shall have any liability to the Contractor arising out of such determination made by the Engineer in good faith.

9.2 PROGRESS AND COMPLETION

9.2.1 Upon execution by the Owner of the Agreement and issuance of a written Notice to Proceed by the Owner, the Contractor agrees to proceed with the Work, or portion thereof covered by a Notice to Proceed with Construction, promptly, continuously, and diligently. The Contractor agrees to adhere to the Project Schedule, to achieve all interim completion milestones, if any, and to achieve Substantial Completion of the Work on or before the Substantial Completion Date set forth in the Agreement. It is agreed that TIME IS OF THE ESSENCE of the Contract Documents.



9.2.2 Recognizing that, from time to time during the progress of the Work, the Owner may find it necessary to establish the current status of performance under the Contract Documents, the Contractor shall, at the request of the Owner, promptly provide statements, documents or certificates to the Owner regarding the status of the Work, compliance of the Work with the Contract Documents, compliance by the Contractor or any Subcontractor with the Contract Documents, and such other matters within the scope of the Contractor's performance under the Contract Documents as the Owner may require.

9.2.3 The Contractor shall submit a detailed written report on the status of the Work compared to the current Project Schedule for the Owner's review with each Application for Payment. Each such report shall reflect all items required by the Contract Documents. If the Contractor fails to complete any activity by its latest scheduled completion date, the Contractor shall, within seven (7) days of such failure, submit a written statement showing how the Contractor intends to correct such failure and return to the current Project Schedule. The Contractor shall update the Project Schedule weekly to reflect changed logic, adjusted and modified sequences of Work, and other identifiable changes, including, without limitation, specific strategies for continuing to meet the Substantial Completion Date. With its monthly report on the status of the Work, the Contractor shall submit a written certification by the Contractor's Project Manager that the Project Schedule submitted with the report is the actual schedule being utilized for execution of the Work and that the Work is progressing in accordance therewith.

9.2.4 If, at any time, the Owner determines that the progress of the Work is delayed or has not reached the level of completion required by the current Project Schedule, the Owner shall have the right to direct the Contractor to take all measures necessary to recover any lost time and return the Work to the level of progress required by the current Project Schedule ("Recovery Measures"). In such event, within five (5) business days of receiving the Owner's direction to take Recovery Measures, the Contractor shall notify the Owner in writing of the steps which the Contractor proposes to take to remedy the situation, shall furnish Owner with an updated Project Schedule reflecting such Recovery Measures, and shall implement such steps promptly. Such Recovery Measures shall continue until the progress of the Work is returned to the stage of completion required by the current Project Schedule. If the Contractor disputes the Owner's direction to the Contractor to take Recovery Measures, the Contractor shall, nonetheless, promptly and diligently perform the Recovery Measures and shall have no right whatsoever to fail or refuse to take Recovery Measures once so directed by the Owner. If, and to the extent the delays giving rise to a direction from the Owner to the Contractor to take Recovery Measures are not Excusable Delays, the Contractor shall not be entitled to an extension of the Contract Time or an adjustment of the Contract Sum in connection with undertaking Recovery Measures. If and to the extent that any delay giving rise to a direction from the Owner to implement Recovery Measures is an Excusable Delay, the Contractor shall be entitled to assert a claim in accordance with the Contract.

9.3 EXTENSION OF THE CONTRACT TIME AS A RESULT OF DELAY EVENT



The provisions of this Section 9.4 govern, and constitute the Contractor's sole remedy, if a Delay Event is encountered by the Contractor in the course of performance of the Work. Any claim for an extension of the Contract Time associated with a Change in the Work shall be governed by, and subject to, the provisions of Article 13. If the Contractor is entitled, subject to the provisions of this Section 9.4, to an extension of the Contract Time by reason of a Delay Event, then an extension of the Contract Time may be granted for the period of the necessary delay caused to Critical Path Activities, determined in accordance with, and subject to, this Section 9.4, and other applicable provisions of the Contract Documents. A Change Order effecting such extension will be furnished to the Contractor within a reasonable period after such determination. No extension of the Contract Time shall be granted to the Contractor under the Contract (except as expressly authorized in connection with a Change in the Work) unless the requirements of this Section 9.4 shall have been satisfied.

9.3.1 Types Of Delay Events

"Delay Event" shall be limited to any of the following acts, omissions, events or conditions which delays completion of the Work or prevents performance of the Contractor's obligations under the Contract and which could not be prevented by the Contractor even though the Contractor were to take all appropriate care to avoid or diminish the adverse consequences of the Delay Event:

- (a) Unavoidable casualty;
- (b) Act of war, civil disorder, riot or similar occurrence;
- (c) Order, legislation, judgment or other official action, of any governmental body, agency or official having jurisdiction over the Project;
- (d) Any act or omission of the Owner or the Engineer, such as a temporary stoppage or suspension of Work, not resulting from, or caused, in whole or in part, by any act or omission of the Contractor, any Subcontractor or any other person or entity for whom the Contractor is responsible;
- (e) Any work of utility companies or municipal departments that may enter the Site to make changes in utility equipment or to place new utility equipment, to the extent such delay does not result, in whole or in part, from the act or omission of the Contractor, any Subcontractor or any other person or entity for whom the Contractor is responsible;
- (f) Unusually severe weather preventing the Contractor from engaging, on a particular day, at least 75% of the labor force and equipment that was scheduled for engagement on Critical Path Activities on that particular day for at least 50% of that day; and



- (g) Strikes or work shutdowns caused by labor disputes and lockouts (other than lockouts caused by the Contractor, Subcontractors or Sub-Subcontractors unrelated to the Contractor's forces or the forces of any Subcontractor).

The financial difficulties of the Contractor (or any Subcontractor, supplier or other party for whom the Contractor is responsible) or the consequences thereof, shall not constitute a Delay Event.

9.3.2 NOTICE AND PROCEDURES AS TO DELAY EVENTS

9.3.2.1 Initial Notice. The Contractor shall provide the Owner with an initial written notice of any occurrence, event or condition which the Contractor claims (or may intend to claim) constitutes a Delay Event. Such initial written notice shall be submitted to the Owner within five (5) business days of the commencement of such occurrence, event or condition, and shall:

- (h) State in detail the factual circumstances which form the basis of the delay, and the current and anticipated future effects on the Contractor's performance and Project Schedule; and
- (i) State the date of commencement of the delay and the duration or expected duration of the delay with respect to each affected portion of the Work.

The submission of such initial written notice within the time period provided above shall be a condition precedent to any extension of the Contract Time. Neither the Owner's Representative and nor the Engineer nor any other agent, consultant or employee of either shall have authority to modify or waive, expressly or by implication, such condition precedent or the corresponding condition precedents set forth in Subsection 9.4.2. and any action, inaction or statement by any of them to such effect shall not be binding upon the Owner.

9.3.2.2 Second Notice. Following submission of the initial written notice, not later than fifteen (15) business days of the commencement of any occurrence, event or condition which the Contractor claims (or intends to claim) constitutes a Delay Event, the Contractor shall submit to the Owner's Representative written notice of such occurrence, event or condition. This written notice shall (i) state whether an extension of the Contract Time is claimed and the Contractor's alleged contractual entitlement thereto; (ii) state in detail the factual circumstances which form the basis of the delay; (iii) identify Work activities alleged to have been delayed; (iv) state the calendar dates on which the Work activities were delayed and are anticipated to be further delayed; (v) state the number of calendar days by which the Contractor is requesting the Contract Time to be extended; (vi) fully and completely state the analysis justifying the request, including a schedule impact (fragnet) analysis worksheet prepared in a time-scale to graphically illustrate the effect of the alleged delay on affected activities; (vii) state the date of commencement and duration or expected duration of the delay



and its effect on the various portions of the Work; and (viii) state any other information reasonably requested by Owner.

9.3.2.2.1 The Contractor shall provide such detailed supporting documentation, including, where appropriate, an updated Project Schedule indicating all of the activities affected by the circumstances which form the basis for the claim. The submission of such written notice within the time period provided above shall be a condition precedent to any extension of the Contract Time.

9.3.2.2.2 Because the possible necessity for an extension of the Contract Time might materially alter the scheduling, plans and other actions of the Owner and because, with sufficient opportunity, the Owner might (if it knew of the Contractor's claim) attempt to mitigate the effect of a delay for which an extension of the Contract Time was to be claimed, and only oral notice might cause disputes as to the existence or substance of such claim, and because delayed notice might seriously hinder or prevent the Owner's investigation of the pertinent facts, the giving of written notice within the time periods stated above in Subsections 9.4.2.1, and 9.4.2.2 shall be of the essence of the Contractor's obligations, and failure of the Contractor to comply with these requirements shall be deemed a conclusive, full and final waiver of any claim for extension of the Contract Time.

9.3.2.2.3 It shall in all cases be presumed that no extension or further extension of the Contract Time is appropriate unless the Contractor shall affirmatively demonstrate the Contractor's entitlement to such extension under all applicable terms and conditions of the Contract Documents. To this end, the Contractor shall maintain adequate records supporting any claim for an extension of the Contract Time, and in the absence of such records, the foregoing presumption shall be conclusive.

9.3.3 Limitations On Delay Computation

9.3.3.1 Whenever the Contractor claims an extension of the Contract Time as a result of a Delay Event, only the unavoidable delay caused to completion of the Work as a whole shall be considered in measuring or evaluating the extent of the delay. If, for example, extra work can be (or could have been) performed along with the regular Work called for by the Contract Documents so as to reduce or eliminate a delay in the progress of the Work or some portion thereof, without causing necessary delay to such regular work, no claim for extension of the Contract Time shall be granted. An extension of the Contract Time may be granted only for Delay Events affecting Critical Path Activities. In any event, even though a Delay Event meets all of the above conditions, an extension may be granted only to the extent that the effect of such cause cannot be (or could not have been) avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling, resequencing Work activities, and reallocating and redeploying work forces), whether before or after the occurrence of the cause of delay. If a concurrent delay occurs (*i.e.*, either a single delay resulting from two or more causes where at least one delay is the responsibility of the Contractor, or multiple delays, where at least one delay is the responsibility



of the Contractor), no extension of the Contract Time shall be granted to the Contractor during the period of any such concurrent delay for which the Contractor is responsible.

9.3.4 Sole Remedy

9.3.4.1 Except as expressly provided in the Contract Documents, the Contractor assumes the financial risk of all delays of any kind or duration, whether or not within the contemplation of the parties and whether foreseeable or unforeseeable. The Contractor shall have no right to rescind or terminate the Contract except as expressly provided herein, and the Contractor shall have no cause of action under any theory of quasi-contract or *quantum meruit* by reason of any such delay. The Contractor agrees that extensions of the Contract Time, as provided herein, shall be the Contractor's sole and exclusive remedy against the Owner in the event the Work is delayed, except to the extent otherwise provided in Subsections 9.4.4.2 and 9.4.4.3 below.

9.3.4.2 Adjustment of the Contract Sum as a Result of Certain Delays

If, and to the extent that, the Contractor establishes that all of the following have occurred:

- (j) The Contractor is entitled to an extension of the Contract Time pursuant to this Section 9.4,
- (k) The Contractor suffered Compensable Losses (as defined below) as a result of the delay, and
- (l) The Contractor could not have avoided or mitigated such Compensable Losses despite having taken all reasonable precautions, efforts and measures to avoid or reduce the amount thereof, including, without limitation, mitigating delays by resequencing Work activities, and reallocating and redeploying work forces of the Contractor, Subcontractors and Sub-Subcontractors to the maximum extent practicable.

In such event the Owner may adjust the Contract Sum by an amount equal to the Contractor's Compensable Losses directly attributable to the Delay Event giving rise to the extension of the Contract Time. A Change Order effecting the adjustment to the Contract Sum will be furnished to the Contractor within a reasonable period after such determination.

"Compensable Losses" include only the reasonable verified amounts of necessary direct costs of: (i) idle time of equipment; (ii) idle time of workers; and (iii) moving of equipment and extended field office overhead expenses. No mark-up of Compensable Losses will be allowed for home office overhead or profit. For purposes of the Contract, "extended field office overhead" expenses shall mean those indirect costs incurred at the Site (sometimes also referred to as general conditions costs or job site overhead costs): (i) which cannot reasonably be allocated to any specific work item within the Work, and (ii) which increase or decrease as a



function of the duration of the Contract Time. Examples of extended field office overhead items include: project manager, superintendent, temporary utilities and temporary facilities, clerical staff, office equipment and supplies and project trucks and automobiles. The Contractor shall provide to the Owner all documentation and information reasonably requested by the Owner to substantiate the sum of Compensable Losses.

9.3.4.3 The following clauses (a) and (b) of this Subsection 9.4.4.3 are included herein pursuant to requirements of M.G.L. c. 30, § 39O. In the event that a suspension, delay, interruption or failure to act of the Owner increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of its performance as provisions (a) and (b) give the Contractor against the Owner, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the Contractor or the Subcontractor may have against each other.

(a) The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Owner; provided, however, that if there is a suspension, delay or interruption for fifteen (15) days or more or due to a failure of the Owner to act within the time specified in the Contract, the Owner shall make an adjustment in the Contract Sum equal to the actual increase in the cost of the Work but shall not include any profit to the Contractor with respect to such increase; and provided further, that the Owner shall not make any adjustment in the Contract Sum under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which the Contract provides for an equitable adjustment of the Contract Sum under any other contract provisions.

(b) The Contractor must submit the amount of a claim under provision (a) hereof to the Owner in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of submission of the Application for Payment seeking final payment under the Contract and, except for costs due to a suspension order, the Owner shall not approve any costs in the claim incurred more than twenty (20) days before the Contractor notified the Owner in writing of the act or failure to act involved in the claim.

ARTICLE 10 PAYMENTS AND COMPLETION

10.1 SCHEDULE OF VALUES

10.1.1 Prior to the first Application for Payment, and as a condition precedent to the making of any payments to the Contractor, the Contractor shall submit to the Owner's Representative and Engineer, for approval by the Owner, a preliminary Schedule of Values allocating the Contract Sum among the various portions of the Work, prepared in such form and detail and supported by such data to substantiate its accuracy as the Owner may require. Such Schedule of Values shall be based upon, and consistent with, the Project Schedule. The



Schedule shall be reviewed and revised from time to time to reflect changes in the Work, or if found by the Owner's Representative or Engineer to be inaccurate. Once approved by the Owner and so long as the Schedule of Values remains up to date and accurate, the approved Schedule of Values shall be used as a basis for the Contractor's Applications for Payment.

10.2 APPLICATIONS FOR PAYMENT

10.2.1 The Contractor shall submit to the Owner's Representative and the Engineer for review, no later than the first day of each month, a draft of the Application for Payment which the Contractor intends to submit that month. Such draft Applications shall not be considered the Application for Payment for purposes of Subsection 10.2.2.

10.2.2 The Contractor shall submit to the Owner's Representative and the Engineer an itemized Application for Payment for Work completed as of the end of the preceding month, based upon the approved Schedule of Values and supported by such data substantiating the Contractor's right to payment as the Owner may require, including invoices with check vouchers attached, payrolls, receipted bills, requisitions from Subcontractors and Suppliers, and reflecting the retainage set forth in the Contract. The format of such Applications for Payment shall be AIA Documents No. G702 and G703 (Contractor's Application for Payment) or such other form as may be required by the Owner. The Contractor shall submit its Applications for Payment no later than the fifth (5th) calendar day of each month for each payment period constituting the preceding calendar month. The Application for Payment shall show the total cost of the Work performed and materials furnished by the Contractor and each Subcontractor to date, based on a percentage of the work completed.

10.2.3 Unless otherwise provided in the Contract Documents, such Application for Payment may include materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and, if approved in advance in writing by the Owner, in its sole discretion, payment may be requested for materials or equipment suitably stored at some other location agreed upon in writing, all in accordance with Section 10.9, below. Payments for materials or equipment stored on or off the Site shall be conditioned upon submission by the Contractor of bills of sale, invoices or such other documents, information or procedures as may be required by the Owner to establish the Owner's title to such materials or equipment free and clear of all liens, claims, security interests or encumbrances (collectively referred to in the Contract Documents as "liens"), or otherwise to protect the Owner's interests, and if off-site storage is involved, compliance in full with the requirements of Section 10.9, below.

10.2.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner automatically without further action by the parties, free and clear of all liens or other encumbrances and upon the first to occur of: (i) incorporation in the construction, or (ii) the receipt of payment by the Contractor. Transfer of title to the Owner shall not relieve the Contractor of any of its duties or obligations under the Contract Documents or of any responsibility or liability for the safe delivery and safeguarding, custody, or warehousing of the materials or equipment, nor shall it constitute any



waiver of the Owner's right to absolute fulfillment by the Contractor of all of the terms of the Contract, nor shall it commence any warranty or guarantee period prior to Substantial Completion. The Contractor warrants that no Work, materials or equipment covered by an Application for Payment shall have been acquired by the Contractor, or by any other person performing Work at the Site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or any other secured party or otherwise imposed by the Contractor or any other person or entity.

10.2.5 At the request of the Owner, each Application for Payment shall be accompanied by an affidavit or certificate from each Subcontractor stating that it has been paid all amounts due it on the basis of the previous periodic payment(s) to the Contractor, or stating the amount not so paid and the reason for any discrepancy. In the event of any such discrepancy, the Contractor shall furnish its own written explanation to the Owner through the Owner's Representative. If requested by the Owner, the Contractor shall furnish a statement accounting for the disbursement of funds received under prior Applications for Payment.

10.2.6 Each Application for Payment shall include a monthly status report on the progress of the Work, including those items more particularly set forth in the Contract, in these General Conditions, and in the Specifications. The Contractor acknowledges that such status report is of significant importance to the Owner in determining whether the Contractor is entitled to payment pursuant to such Application for Payment, and failure to deliver such status report, in form, substance, or detail satisfactory to the Owner, shall be deemed to be just cause for withholding payment to the Contractor. Any waiver by the Owner of the requirement of submission of such status report (or any portion thereof) with respect to any Application for Payment shall not be deemed to be a waiver of the Owner's right to require the full and complete status report with respect to any future Application for Payment. Each status report shall include the items specified in the Agreement, in these General Conditions, and in the Specifications and any other reports or items requested by the Owner's Representative or the Owner. All status reports shall be in form and substance satisfactory to the Owner.

10.3 CERTIFICATES FOR PAYMENT

10.3.1 Within five (5) days after receipt of the Contractor's Application for Payment, the Engineer will either issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Owner and Contractor in writing its reasons for withholding a Certificate for Payment, or any portion thereof, as provided in Subsection 10.6.1.

10.3.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's observations, that the Work has progressed to the point indicated, that to the best of the Engineer's knowledge, information and belief the quality of the Work indicated therein is in accordance with the Contract Documents (subject to evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of any subsequent tests required by or performed under the



Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate), that the submission includes all necessary prevailing wage submittals and that the Contractor is entitled to payment in the amount certified. The Engineer shall not certify the final payment until an inspection for Final Completion has been performed and the Owner has acted affirmatively on the Engineer's recommendation that the Project be accepted.

10.4 PROGRESS PAYMENTS TO THE CONTRACTOR

10.4.1 [Reserved]

10.4.2 Within twenty-five (25) days after receipt of a Certificate for Payment issued by the Engineer, the Owner shall make payment of amounts properly due to the Contractor, subject to the terms and conditions of the Contract Documents.

10.4.3 Upon receipt of payment from the Owner, the Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which the Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its lower tier Subcontractors in similar manner.

10.4.4 Neither the Owner nor the Owner's Representative nor the Engineer shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as set forth in this Section 10.4.

10.4.5 Pursuant to M.G.L. c. 30, § 39F, the Contractor shall make payments to Subcontractors in accordance with the following provisions:

(a) Forthwith after the Contractor receives payment on account of an Application for Payment, the Contractor shall pay to each Subcontractor the amount paid to the Contractor 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 Contractor.

(b) Not later than the sixty-fifth (65th) day after each Subcontractor substantially completes its Work in accordance with the plans and specifications, the entire balance due under the subcontract, less amounts retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of Work, shall be due the Subcontractor; and the Owner shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the Owner less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.



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(c) Each payment made by the Owner to the 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 Contractor for the account of that Subcontractor; and the Owner shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the Owner has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in subparagraphs (a) and (b), the Owner shall act upon the demand as provided in this Subparagraph 10.4.5.

(d) If, within seventy (70) days after the Subcontractor has substantially completed the subcontract work, the Subcontractor has not received from the Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the Owner. The demand shall be by a sworn statement delivered to or sent by certified mail to the Owner, and a copy shall be delivered to or sent by certified mail to the 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 Owner and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Owner, 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 Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.

(e) Within fifteen (15) days after receipt of the demand by the Owner, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Owner 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 Contractor, less any amount (i) retained by the Owner 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 Contractor in the sworn reply; provided that the Owner 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 Owner 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 Owner 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 Contractor and the Subcontractor in a bank in Massachusetts selected by the Owner or agreed upon by the Contractor and the Subcontractor and shall notify the 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 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 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 Contractor and in the order of receipt of such demands from Subcontractors. All direct payments shall discharge the obligation of the Owner to the Contractor to the extent of such payment.

(h) The Owner shall deduct from payments to the 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 Contractor.

10.5 PAYMENT NOT ACCEPTANCE

10.5.1 No Certificate for Payment, nor any progress payment made by the Owner, nor any partial or full use or occupancy of the Work or the Project by the Owner, shall constitute an acceptance of the Work, or any portion thereof, that is not in accordance with the Contract Documents.

10.6 PAYMENTS WITHHELD

10.6.1 The Engineer may decline to certify payment, and may withhold its Certificate for Payment, in whole or in part, to the extent necessary to protect the Owner, if in the Engineer's opinion the Engineer is unable to make representations to the Owner as provided in Subsection 10.3.2. In such case, the Engineer will notify the Owner and the Contractor as provided in Subsection 10.3.1. The Engineer will issue a Certificate for Payment for the amount for which it is able to make all of the representations to the Owner set forth in Subsection 10.3.2. The Engineer may also decline to issue a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, it may nullify or amend the whole or any part of any Certificate for Payment previously issued, or, notwithstanding that the Engineer has issued a Certificate for Payment, the Owner (in addition to and without limitation of any other rights and remedies of the Owner under the Contract Documents) may withhold payment of any



amounts claimed to be due by the Contractor and certified for payment by the Engineer, in each case to such extent as may be necessary in order to provide for retention covering the fair value of any possible claims the Owner may have against the Contractor, which amounts may include, but shall not be limited to, the fair value of costs or losses arising from:

- (a) defective Work not remedied,
- (b) third party claims filed or reasonable evidence indicating probable filing of such claims,
- (c) failure of the Contractor to make payments properly due to Subcontractors or Suppliers,
- (d) reasonable evidence that the Work cannot be completed in accordance with the Contract Documents for the unpaid balance of the Contract Sum,
- (e) reasonable evidence of any previous overpayment or improperly issued payment upon an Application for Payment,
- (f) improper prior allocation of the Owner's contingency,
- (g) damage to the Owner or another contractor,
- (h) reasonable evidence that the Work is not progressing in accordance with the Project Schedule or will not be completed within the Contract Time,
- (i) failure to carry out the Work in accordance with the Contract Documents or other default by the Contractor under, or failure of the Contractor to comply with any provisions of, the Contract Documents,
- (j) claims for damages for delay (including accrued liquidated or actual damages, if any), or
- (k) any lien, attachment or other encumbrance not discharged as required by the Contract Documents.

If and when the grounds set forth above are removed without cost to the Owner, payment may be requested and shall be made for amounts withheld because of such grounds, less any cost or damage incurred by the Owner as a result thereof.

10.7 SUBSTANTIAL COMPLETION

10.7.1 When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete as defined in Subsection 9.1.3, the Contractor shall prepare and submit to the Owner's



Representative for delivery to the Engineer and to the Owner all documents, records, permits and licenses required by the Contract Documents in a form satisfactory to the Engineer and the Owner, and a monetized punch list of items to be completed or corrected. Failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

10.7.2 [Reserved] .

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

10.7.4 Subject to the procedures set forth in this Section 10.7, within 21 days after presentation of Contractor's certification, Engineer on behalf of Owner shall present to Contractor either a written declaration that the Work has been Substantially Completed or an itemized list of incomplete or unsatisfactory work items required by the Contract sufficient to demonstrate that the Work has not been Substantially Completed. Engineer's declaration shall be made in accordance with the following procedures:

1. Promptly after Contractor's notification, Owner, Contractor and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing within 10 days of the Contractor's presentation of the certification required under Paragraph 10.7.1, giving reasons therefor.
2. If Engineer considers the Work substantially complete, Engineer will, within 10 days of the Contractor's presentation of the certification required under 10.7.1, deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed and corrected before final payment. Owner shall have 7 days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 21 days after presentation of Contractor's certification under Paragraph 10.7.1, notify Contractor in writing, stating the reasons therefor and providing an itemized list of incomplete or unsatisfactory Work items required by the Contract. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 21 days, execute and deliver to Owner and contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting



such changes from the tentative certificate as the Engineer believes justified after consideration of any objection from Owner

10.7.5 At the time of Engineer's delivery of the tentative certificate of Substantial Completion to Owner, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment..Engineer shall be entitled to withhold certification of Substantial Completion if Contractor has not brought all substantially completed Work to functioning condition to the satisfaction of Owner.

10.7.6 Within 15 days after the effective date of the declaration of Substantial Completion. Owner shall send to Contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond its control, Contractor shall complete all work items within 45 days after the receipt of such list or before the then Contract Completion Date, whichever is later. If Contractor fails to complete such work within such time, Owner may, subsequent to 7 days' written notice to Contractor by certified mail, return receipt requested, terminate the Contract and complete the incomplete or unsatisfactory work items and charge the cost of same to Contractor.

10.7.7 Within 65 days after the effective date of the declaration of Substantial Completion, Owner shall prepare and forthwith send to Contractor for acceptance a Substantial Completion estimate for the quantity and price of the Work done and all but one percent retainage on that Work, including the quantity, price, and all but one percent retainage for the undisputed part of each Work item and extra Work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory Work items and less the total periodic payments made to date for the Work. Owner shall also deduct from the Substantial Completion estimate an amount equal to the sum of all demands for direct payment filed by Subcontractors and not yet paid to Subcontractors or deposited in joint accounts pursuant to G.L. c. 30, § 39F. [NTD: the foregoing per GL c. 30, s 39G]

10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 At such time as the Contractor has fully performed the Work, including all obligations set forth in the Contract Documents and all Work listed on the Certificate of Substantial Completion, the Contractor shall give notice to the Engineer and the Owner. The Contractor shall also provide a certificate to the Owner regarding completion of the Work in accordance with the Contract Documents, compliance by the Contractor with the Contract Documents, and such other matters within the scope of the Contractor's performance under the



Contract Documents as the Owner may require. Such certificate shall be in form and substance acceptable to the Owner.

10.8.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Engineer and the Owner's Representative will promptly make such inspection. The Engineer shall, within 30 days of its and the Owner's Representative's receipt of the Contractor's written notice, notify Contractor in writing of all particulars in which the inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies. If Engineer and Owner's Representative agree that the Work is complete, the Contractor shall receive a copy of the Engineer's certificate of final inspection within 30 days of the Engineer's and Owner's Representative's receipt of the written notice provided by Contractor under this section 10.8 .

10.8.3 The Engineer's Certificate of Final Completion will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in this Section 10.8, and elsewhere in the Contract Documents, have been fulfilled in accordance with the requirements of the Contract Documents.

10.8.4 Notwithstanding anything to the contrary in this Section 10.8 contained, if the Owner elects to take use or occupancy of the Project in stages, final inspection may be performed, at the request of the Contractor or the Owner, in stages (i.e., in respect of the portion of the Work to be occupied by the Owner and such systems, (e.g., mechanical, sanitary, etc.), as are necessary for the Owner's use or occupancy of such portion of the Project). The provisions of this Section 10.8 shall apply to any staged final inspection, except that in no event shall Final Completion be deemed to have occurred until final inspection has occurred with respect to the entire Work.

10.8.5 Final Completion shall mean the completion of all of the Work in accordance with all of the terms and conditions of the Contract Documents and acceptance thereof after final inspection in accordance with Subsections 10.8.1 through 10.8.4. The date of issuance of the Owner's written notice of acceptance shall be designated as the date of Final Completion. Upon Final Completion, the Owner may take over the Site for permanent use and occupancy. A final Application for Payment may be made at any time after the date of Final Completion.

10.8.6 Prior to, and as a condition precedent to, Final Completion, all of the following matters shall have been resolved and documents and items shall have been received and approved in writing by the Owner:

- (a) final documents of similar nature to those required by the Contract Documents in connection with any Application for Payment hereunder; and
- (b) all final permits, approvals, (including, without limitation, the approval of the Owner's insurance company, if required) certificates and affidavits



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(including, without limitation, certificates in respect of plumbing, electrical systems and life safety systems, required by governmental authorities) and authorizations for use and occupancy of the Project required by any authority having jurisdiction, including an unconditioned permanent and full Certificate of Occupancy and any other necessary occupancy and use permits (unless such Certificate is not issued solely for reasons as to which the Contractor has no responsibility or over which it has no control); and

- (c) full record “as built” Drawings in the Owner’s CADD software approved by the Engineer; records and related data including all field notes and daily reports of all the Work, all in accordance with the requirements of the Contract Documents; and
- (d) satisfactory proof that all claims arising out of the Work have been released or bonded; and
- (e) acknowledgment of prior payments (to the extent permitted by law) from all Subcontractors and the Contractor; and
- (f) the Engineer’s certificate certifying that the Work is complete; and
- (g) a written statement from the Engineer that all practical orientation and operating instructions for all materials, systems, and equipment have been satisfactorily completed, and that all required training of Owner’s personnel has been completed; and
- (h) a satisfactory report by the Contractor which is approved by the Engineer that all mechanical systems have been and are properly balanced; and
- (i) a certificate of insurance for product liability and completed operations insurance coverage for the three year period following Final Completion; and
- (j) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied; and
- (k) consent of surety, if required, to final payment; and
- (l) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts and releases arising out of the Contract, to the extent and in such form as may be designated by the Owner; and
- (m) delivery of all spare parts required to be submitted pursuant to the Contract Documents; and



- (n) delivery of all Contract Documents and other related materials, with the exception of one record contract set, by the Contractor to the Owner or certification by the Contractor that all such documents were lawfully disposed; and
- (o) a general release of the Owner from the Contractor and each Subcontractor.

If the final documentation submitted by the Contractor is determined not to be complete by the Owner or if the Owner deems the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation.

10.8.7 Within 30 days after receipt by Owner of notice from Contractor that the entire Work is complete, Owner shall prepare and forthwith send to Contractor for acceptance a final estimate for the quantity and price of the Work done and all retainage on the Work less all payments made to date, unless Owner's inspection shows that Work items required by the Contract remain incomplete or unsatisfactory, or that documentation required by the Contract has not been completed. [NTD: per GL c. 30, s. 39G].

10.8.8 After Final Completion and receipt by the Owner of a proper final Application for Payment, the Engineer and Owner's Representative shall review the application following the procedures set forth in this Article 10 for progress payments. Thirty days after the presentation to Owner of the Final Application for Payment (as signed by the Engineer) and accompanying documentation as required in this Article 10, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to the amounts withheld

pursuant to Subsection 10.6.1,

the aggregate of all previous payments made by the Owner, and any liquidated and actual damages, will become due and will be paid by Owner to Contractor.

If at any time the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Construction Manger shall reimburse the difference to the Owner.

10.8.9 The acceptance of final payment shall constitute a release and waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final payment.

10.9 STORAGE OF MATERIALS OFF-SITE

10.9.1 The Contractor and its Subcontractors shall obtain prior written approval from the Owner, for permission to store at off-site locations materials or equipment to be incorporated in the Work, for which progress payments will be requested. No out-of-state storage will be permitted by the Owner. Any and all charges for storage, including insurance, shall be borne solely by the Contractor. Before approval, the Owner may require, without



limitation, (i) evidence that the location is properly secure, (ii) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the Site, (iii) proof that Owner will obtain clear title to the materials, and (iv) a certificate from the Contractor stating:

- (a) The name of the Contractor and/or Subcontractor leasing or owning the storage area;
- (b) The location of such storage space, including the storage area; *i.e.*, the entire premises or certain areas of a warehouse giving the number of floors or portions thereof, and a certification that the Contractor has visited such location, verified the storage of such material or equipment therein or thereon, and payment of all current storage charges;
- (c) The date on which the material or equipment is first stored; and
- (d) A description, including quantities and the value of the material or equipment stored.

10.9.2 The Contractor shall furnish to the Owner, not less often than once per month, a current inventory of all materials or equipment being stored at any off-site location.

10.9.3 The Contractor and its Subcontractors shall mark each sealed carton or other item with the name of the Project and the Owner, and all materials or equipment stored off-site shall be segregated to the extent required by the Owner, the Owner's Representative, or the Engineer.

10.9.4 Payment for materials or equipment stored off-site shall be at the sole discretion of the Owner. Title to materials or equipment stored off-site shall be transferred at the time at which the Owner pays for them.

ARTICLE 11 SAFETY AND PROTECTION

11.1 SAFETY PRECAUTIONS AND PROGRAMS

11.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including, but not limited to, compliance by the Contractor and all Subcontractors with all safety precautions and programs and other legal requirements of the Occupational Safety and Health Act, other Applicable Laws, the Contract Documents, and any insurance carrier providing insurance coverage for the Owner or the Contractor in connection with the Project. Without limiting the generality of the foregoing, the Contractor shall, promptly after execution of the Agreement, prepare a written safety program which shall be submitted to the Owner's Representative and the Owner and issued to all Subcontractors and all forces employed on the Work. Such program shall include weekly safety meetings with representatives of all Subcontractors working on the



Site, and the Contractor shall prepare, circulate and maintain on file at the Site minutes of all safety meetings. The Contractor shall ensure that all forces employed on the Work are free of drugs and alcohol and are provided with all necessary personal protective equipment. The Contractor's written safety program shall identify, by trade, tasks for which specific safety planning and precautions are necessary and the steps necessary to implement such precautions. The Contractor shall plan hazardous sequences in advance, shall institute procedures for reporting any injuries and providing for emergency medical care and shall report to the Owner's Representative when such sequences are to commence and when completed.

11.1.2 The Contractor shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor's Project Superintendent unless otherwise designated by the Contractor in writing to the Owner's Representative.

11.2 SAFETY OF PERSONS AND PROPERTY

11.2.1 The Contractor shall take all necessary precautions for the safety of, and shall provide all protection necessary to prevent damage, injury or loss to:

- (a) all employees on the Work and all other persons or other entities who may be affected thereby;
- (b) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site; and
- (c) other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, improvements and utilities not designated for removal, relocation or replacement in the course of construction.

Without limitation, the Contractor shall provide security watch service at all such times as are necessary to protect the interests of the Contractor and the Owner and to provide for the safety and security of the general public, employees and agents of the Owner, the Owner's Representative and the Engineer, and other persons who may be affected by the Work, and to exclude unauthorized persons from the Site.

11.2.2 The Contractor shall give all notices and comply with all Applicable Laws bearing on the safety of persons or property or their protection from damage, injury or loss.

11.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including fencing and posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities and other improvements as more particularly set forth in the Specifications.



11.2.4 The Contractor shall satisfactorily conduct its work at all highway crossings and along all highways, street and other ways in accordance with the permission and requirements of the proper authorities. Vehicular traffic shall be routed over temporary detours during construction when required to maintain proper flow of traffic. The Contractor shall plan and conduct its operations in such a manner that the continuous flow of traffic is uninterrupted and with a minimum of inconvenience to the general public. The Contractor shall prepare a plan for construction and traffic management acceptable to the Owner and the municipal authorities. The Contractor shall arrange for and provide all policemen required by the town or city in which the Project is located to be present at or adjacent to the Site for traffic control purposes. The cost of all policemen so required shall be borne by the Contractor and included in the Contract Sum.

11.2.5 The Contractor shall assume all responsibility for the protection of property of adjacent owners so far as affected by its operations. The Contractor shall provide temporary protection at all openings in the outside fences or walls to prevent unauthorized persons from obtaining access during the night and at other non-working hours. The Contractor acknowledges that there may be Construction projects being undertaken on adjacent properties and will coordinate the Work with such other projects as required.

11.2.6 Blasting operations, if any, shall be specifically approved in advance in writing by the Engineer, shall be conducted by experienced personnel and in strict accordance with the rules and regulations of the Massachusetts Department of Public Safety governing the keeping, storage, use, manufacture, sale, handling, transportation or other disposition of explosives, and such other rules and regulations as may be promulgated from time to time by authorities having jurisdiction, and shall not be commenced until the Contractor provides written evidence to the Owner that XCU coverage is in force and effect as required by Subsection 12.2.3 hereof. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

11.2.7 The Contractor shall promptly remedy all damage or loss (excluding damage or loss insured under the property insurance carried by the Owner, if any, as provided in the insurance requirements contained in the Contract Documents, but including losses within the deductibles of such insurance) to any property referred to in Subsection 11.2.1 caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under this Article 11, except to the extent that the damage or loss is attributable to the acts or omissions of the Owner, the Owner's Representative or the Engineer. The foregoing obligations of the Contractor are in addition to its obligations under Article 5.

11.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.



11.2.9 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment, and shall comply with all recommendations regarding fire protection made by the representatives of the insurance company or companies carrying insurance on the Work or by the local fire chief or fire marshal. The Site shall be kept orderly and clean, and all combustible rubbish shall be removed from the Site daily.

11.2.10 The Contractor shall at all times protect excavations, trenches, structures, materials, equipment and fixtures from damage from rain water and other weather, ground water, back-up or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water at the Project Site. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end. The Contractor shall remove snow and ice which might create a hazard on or about the Site or result in damage or delay.

11.2.11 The Contractor shall take all necessary precautions to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Owner forming part of the Work, or located within those areas of the Project to which the Contractor has access. The Contractor shall have full responsibility for the security of such property of the Owner and shall reimburse the Owner for any such loss, damage or injury resulting from vandalism, theft, burglary, pilferage, unexplained disappearance or any other cause, to the extent that the same is not covered by the Owner's insurance.

11.2.12 In the event the Contractor discovers any active utility line which had not yet been disclosed in any survey, it shall cease all work in the immediate area which may affect such line and shall promptly notify the Owner, Owner's Representative, and the affected utility company. The Contractor shall not restart work without notice from and approval of the Owner's Representative.

11.2.13 The Contractor shall at all times provide and maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

11.2.14 The Contractor shall protect all finished surfaces of the Work, including the jambs and soffits of all openings used as passageways or through which materials are handled, against any possible damage resulting from the conduct of Work by the Contractor or by any separate Contractors.

11.2.15 In the event of temporary suspension of Work and during inclement weather, or whenever further directed by the Owner or Engineer, Work and materials shall be adequately protected against damage. The Contractor shall take special precautions to prevent damage to materials and work installed in cold or freezing weather, by providing adequate temporary heat and suitable enclosures or covering. The ground surfaces under footings and under pipe lines, and all concrete and masonry work, shall be protected against frost and freezing. The minimum measures to be taken shall be in accordance with the requirements for



winter conditions as set forth in the current edition of ACI-318-83 “Building Code Requirements for Reinforced Concrete” published by the American Concrete Institute.

11.2.16The Contractor shall provide ventilation of enclosed areas during construction as required to permit proper curing and drying out, and to prevent excessive humidity, moisture and condensation. Ventilation shall be by natural or artificial means as required by the conditions involved.

11.2.17The Contractor shall control the safe handling and storage of all explosives, welding materials, acetylene and oxygen tanks, and other equipment required for blasting operations, welding and cutting work at the Site. All welding materials and equipment shall be removed promptly from the premises and upon completion of the welding and cutting work. No welding torch or other open flames will be used within any building or temporary structure without a fire watch with an appropriate fire extinguisher or within one hour of quitting time.

11.2.18The Work shall be performed in such a manner as to prevent fire, and during any Work involving a fire hazard the Contractor shall take all necessary precautions against fires starting and spreading on the Site, within buildings and temporary structures. The Contractor shall provide and maintain sand buckets, suitable fire extinguishers and hoses where and as required to provide adequate means of extinguishing fires. Fire prevention requirements may be directed by the Owner’s insurance agents and the local Fire Department. Permanent standpipes shall be made available during construction. Gasoline and other flammable liquids shall not be stored within buildings or temporary structures; shall be stored in and dispensed from U.L. listed safety containers in conformance with N.B.F.U. recommendations and the requirements of all authorities having jurisdiction. The Contractor shall make arrangements for periodic inspection by town/city fire protection authorities and insurance underwriters’ inspectors, cooperate with them and promptly carry out their recommendations.

11.3 EMERGENCIES

11.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss and shall as promptly as conditions permit notify insurance carriers and the Owner’s Representative of the nature of the emergency and circumstances related thereto. Immediately thereafter, the Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 13 for Changes in the Work.



ARTICLE 12 BONDS AND INSURANCE

12.1 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

12.1.1 The Contractor shall furnish a performance bond and a labor and materials payment bond, each for the full amount of the Contract Sum. The performance bond and the labor and materials payment bond shall be in the unmodified form of the AIA A312-2010 performance and payment bonds. The Owner reserves the right to specify any alternative form for the performance or payment bond. Each bond shall name the Owner as obligee and each shall be issued by a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and whose name appears on the United States Treasury Department Circular 570. The bond premiums shall be included in the Contract Sum and shall be paid by the Contractor. If the Agreement provides for the imposition of liquidated or actual damages in the event that the Contractor fails to complete the Work within the Contract Time, then the obligations assumed by the surety under the performance bond shall include the payment of such liquidated or actual damages. These bonds shall remain in effect for the entire Guarantee Period, as defined in Subsection 14.2.2. All bonds shall be executed in the required number of counterparts and shall be submitted to the Owner for insertion into the Contract Documents prior to the execution of the Agreement.

12.2 CONTRACTOR'S LIABILITY INSURANCE

12.2.1 The Contractor shall purchase and maintain such insurance as will protect it and the other parties specified or referred to in Subsection 12.2.10 below from claims referred to below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

12.2.2 The Contractor shall purchase and maintain during the life of the Agreement:

- (a) Insurance sufficient to discharge its obligations under all applicable workers' compensation laws of the Commonwealth of Massachusetts and the United States.
- (b) Employer's liability insurance with minimum limit per accident or disease of \$1,000,000.
- (c) Statutory disability and other employee benefit insurance.

12.2.3 The Contractor shall purchase and maintain commercial general liability insurance, which coverage shall be in a form no less broad than ISO CG 00 01 12 07 or its equivalent and covering the full scope of this contract with limits not less than \$1,000,000 per



occurrence and \$5,000,000 aggregate for personal or bodily injuries and for property damage. A per occurrence limit of not less than \$5,000,000 is acceptable. All policies issued shall include permission for partial or total use and occupancy of the premises by the Owner within the scope of the Contract. Such insurance shall include at least the following:

- (a) Commercial general liability insurance, including all products, premises-operations, completed operations for at least three (3) years following acceptance and final payment, independent contractors, additional interests of employees, sudden and accidental pollution and contamination, and incidental medical malpractice, and including notice of occurrence and knowledge of occurrence endorsements satisfactory to the Owner.
- (b) Blanket contractual liability insurance covering all liabilities assumed under the Contract Documents, including, but not limited to, the Contractor's obligations under Article 5 of the General Conditions.
- (c) Coverage for the so-called "XCU" hazards (explosion, collapse of buildings, blasting, undermining, and damage to underground property). Before any blasting is done, the Contractor shall provide to the Owner written evidence that blasting damage is included in the Contractor's insurance coverage.

12.2.4 The Contractor shall purchase and maintain automobile liability insurance, which coverage shall be in a form no less broad than ISO CA 00 01 03 10 or its equivalent and covering all owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 per accident for bodily injury, including death and property damage.

12.2.5 The Contractor shall also purchase and maintain umbrella form excess liability insurance in the limits specified below and containing coverage no less restrictive than that required under Subsections 12.2.2, 12.2.3, and 12.2.4 above. The required primary insurance shall be listed as underlying coverage in the first layer of the umbrella policy. Nothing contained herein shall be interpreted to restrict or prohibit the Contractor from carrying, or requiring any of its Subcontractors to carry, insurance in addition to that required hereby. The Contractor's umbrella excess policies shall contain a minimum total occurrence and aggregate limit of \$10,000,000.

12.2.6 The Owner shall have the right to require that the coverages and limits of liability set forth in Subsections 12.2.2, 12.2.3, 12.2.4, and 12.2.5 be expanded or raised if required by law or any lender of the Owner, or if in the Owner's judgment economic conditions or other factors so warrant. If additional costs are incurred because of raised limits, the additional cost shall be added to the Contract Sum. The Owner shall also have the right to reduce the coverages and limits of liability set forth in Subsections 12.2.2, 12.2.3, 12.2.4, and 12.2.5 if in the Owner's judgment the degree of risk associated with any portion of the Work warrants reduced coverage and limits of liability.



12.2.7 Insurance coverages similar to those required of the Contractor shall be provided by or on behalf of all Subcontractors to cover their operations performed under the Contract Documents. The Contractor shall be held responsible for compliance with and enforcement of the insurance requirements and for any modifications of these insurance requirements as they apply to Subcontractors. The Contractor shall not permit any Subcontractor to commence work until such Subcontractor has furnished evidence that insurance has been procured and certificates of insurance have been obtained by the Contractor providing that, in the event of non-renewal or cancellation of Subcontractor's policies, thirty (30) days advance written notice will be given to the Contractor by registered mail. Copies of such certificates and, upon Owner's written request, copies of the insurance policies shall be delivered to the Owner, who shall be designated as a certificate holder.

12.2.8 Prior to the commencement of the Work, the Contractor shall cause its insurance company or companies to provide insurance certificates, which shall be attached as **Exhibit G** to the Agreement, and, upon Owner's written request, copies of insurance policies acceptable to the Owner and the other additional insureds specified in Subsection 12.2.10 below evidencing the above coverages to be furnished the Owner and the other additional insureds specified in Subsection 12.2.10 below by the Contractor's insurance company. Such certificates and all insurance policies required by this Article 12 shall contain provisions requiring at least 30 days' prior written notice to the Owner and to other certificate holders of any cancellations or non-renewals of the policies. Certificates shall indicate effective dates and dates of expiration of policies. An additional certificate evidencing continuation of all insurance coverages required to remain in force after final payment shall be submitted with the application for final payment, and neither final payment nor any remaining retainage under this Contract shall be due until such certificate has been submitted to the Owner.

12.2.9 The Owner is to be furnished originals or certified copies of the policy or policies including all endorsements required to provide stated coverage within 10 days after commencement of Work under this Contract.

12.2.10 All insurance policies provided pursuant to Article 12 shall be written by companies licensed to do business in the Commonwealth of Massachusetts and having an A.M. Best rating of A-, VIII or better, or otherwise acceptable to Owner, in its reasonable discretion, and shall be in form satisfactory to the Owner. All such policies shall name as additional insureds, under endorsements no less broad than CG 20/10 (11-85) or both CG 2026 (7/04 version) and CG 2037 (7/04 version), the Owner, affiliates and participants of the Owner, the State University, the Commonwealth of Massachusetts, and any other parties as the Owner may identify by notice to the Contractor from time to time. All such policies shall contain provisions or endorsements necessary to assure coverage of claims by one additional insured against another additional insured. All required insurance policies are to be endorsed to state that the Contractor's policies shall be primary to all other insurance available to the Owner, which insurance shall be excess of all other valid and collectible insurance policies. The Contractor shall bear all costs of any amounts deductible, retained or self-insured under the policies required to be maintained by the Contractor.



12.2.11 The purchase of insurance to satisfy the above requirements, or the furnishing of certificates evidencing same, shall not be a satisfaction of the Contractor's liability under this Contract or in any way modify the Contractor's indemnification of the Owner.

12.2.12 Certificates and policies of insurance shall be filed with the Owner.

12.3 PROPERTY INSURANCE

12.3.1 The Contractor shall purchase and maintain property insurance insuring against the perils of fire and extended coverage and including "all risk" builders' risk insurance for physical loss or damage to the Work, including all labor, materials, supplies, machinery, equipment, fixtures, temporary structures and all other work of whatever nature, used or to be used in or incidental to the construction, fabrication, erection or completion and testing of the Work, until Final Completion. Limits shall be 100% of the replacement value of the Work. Such insurance shall protect the interests of the Owner, the Contractor and all Subcontractors performing work at the Site, and the proceeds in case of loss may be held by the Contractor and applied by it in the manner hereafter set forth. The Contractor shall have power to adjust and settle any loss with the insurers, using due diligence to protect the interests of the Owner, Contractor and Subcontractors, subject to the rights of the Owner. The Contractor's property insurance will not cover any tools, equipment, materials, supplies, temporary structures or other property owned or rented by the Contractor or Subcontractors which is not to be incorporated in the Work. The Contractor and Subcontractors assume these excluded risks, and waive all rights they may have against the Owner for damage to such items, and, further, any policy of insurance covering the Contractor's own tools, equipment, facilities and other property against loss by physical damage shall include an endorsement providing that the underwriters waive their rights of subrogation against the Owner. In accordance with Article 12, the Contractor will furnish the Owner with a certificate of such insurance coverage, which shall be attached as **Exhibit G** to the Agreement. The Contractor will furnish the Owner with originals or certified copies of the policy including endorsements within 10 days after commencement of Work under this Contract. In accordance with Article 12, the Owner shall be listed as an additional named insured on such property insurance policy.

12.3.2 The Contractor, as trustee for the parties in interest, shall receive the proceeds of any insurance upon the occurrence of an insured loss, and shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or in accordance with an award or finding of a court of competent jurisdiction. If after such loss no other agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.

12.3.3 The Contractor shall be completely responsible for the proper care and protection of the Work. The Contractor shall be responsible for all losses within the deductible specified above, and the Contractor shall promptly, and in any event so as not to delay the progress of the Work, replace or reimburse the Owner for any property to the extent loss or damage to such property is within the deductible.



12.3.4 If there is a casualty resulting in a loss of more than 20% of the Contract Sum, as determined by the Owner, then the Owner may elect to terminate the Contract upon seven (7) days' notice to the Contractor and the Engineer, and the Contractor shall be entitled to payment for all Work executed in accordance with the Contract Documents prior to said termination. Contractor shall have no claim for payment for loss of profit on that portion of the Work not executed.

12.3.5 The Owner and the Contractor waive all rights against (i) each other and the Subcontractors, consultants, agents and employees each of the other, and (ii) the Engineer, the Owner's Representative, and separate contractors, if any, and their Subcontractors, sub-Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Section 12.3 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Contractor. The foregoing waiver afforded the Engineer, its agents and employees shall not extend to the liability imposed by Subsection 5.1.4. The Owner or the Contractor, as appropriate, shall require of the Engineer, separate contractors, and Subcontractors by written agreements, similar waivers each in favor of all other parties enumerated in this Subsection 12.3.5.

12.4 PROFESSIONAL LIABILITY INSURANCE

12.4.1 If the Work performed by the Contractor or any Subcontractor requires design and/or other professional services, the Contractor shall purchase and maintain, and shall cause any such Subcontractor to purchase and maintain, professional liability insurance for claims arising out of the negligent performance of such professional services. Professional liability coverage shall be written for minimum limits of \$2,000,000 per claim and annual aggregate with a deductible no greater than \$100,000. Professional liability coverage may be provided on a "claims made" basis if it includes a retroactive date that is no later than the effective date of this Agreement, and such insurance coverage shall be maintained for a period at least six (6) years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of acceptance by the Contractor of final payment under this Agreement; or (4) the date of final completion of the Project and the taking of possession of the Project for use and occupancy by the Owner. Throughout the term of this Agreement and the entire six (6) year period, the Contractor and any such Subcontractor shall provide renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained. Alternatively, the six (6) year maintenance period for this coverage may be satisfied by providing an extended reporting period endorsement.



ARTICLE 13 CHANGES IN THE WORK

13.1 CHANGE ORDERS

13.1.1 The Contract Sum and the Contract Time may be changed only by duly executed Change Order. A Change Order signed by the Contractor indicates its agreement therewith, including the adjustment, if any, in the Contract Sum or the Contract Time.

13.1.2 The Owner, without invalidating the Contract, may order Changes in the Work consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly, if necessary. All such Changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

13.1.3 With respect to Change Orders, upon the request of the Owner or the Engineer, the Contractor shall submit to the Engineer, as soon as reasonably possible but in any event within twenty (20) days of the Contractor's receipt of a request therefor, an accurate written statement setting forth in detail, with a suitable breakdown for each trade and work classification, and including a breakdown of the items set forth in Subsection 13.1.8 below, the net increase in the cost of the Contractor's performance and payment bond premiums attributable to such changes, and any allowable markup for overhead and profit. The Contractor shall state in such proposal any change to the Contract Time required for the completion of the Work if the Change Order is approved. The Contractor shall promptly revise and resubmit such proposal if the Engineer determines that the proposal is not in compliance with the requirements of this Article, or that it contains errors or ambiguities. Once it has been reviewed and approved by the Engineer, the Change Order shall be submitted to the Owner and the Contractor for Execution.

13.1.4 The amount by which the Contract Sum shall be adjusted as a result of a Change Order shall be determined in one or more of the following ways, as the Owner in its sole discretion shall determine:

- (a) by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (b) by unit prices stated in the Contract Documents or subsequently agreed upon;
- (c) by cost to be determined in a manner agreed upon by the parties; or
- (d) by the method provided in Subsection 13.1.5.

13.1.5 If the amount by which the Contract Sum shall be adjusted as a result of a Change in the Work is not agreed upon using one of the methods set forth in Subsection 13.1.4



above, the Contractor, provided it receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be estimated by the Engineer on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change (as set forth in Subsection 13.1.8), and including, in the case of an increase in the Contract Sum, an amount equal to the allowable markup for overhead and profit as provided in the Contract. Such estimate shall be presented by the Engineer to the Owner for approval. In such case, and also in the case of changes with respect to which the cost or credit is determined under one of the methods set forth in Subsection 13.1.4 above, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. The Contractor shall review all quotations from Subcontractors and shall assure that pricing is fair and equitable before forwarding such proposed pricing to the Owner. Pending final determination of cost to the Owner, payments on account, if any, shall be made on the Engineer's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net decrease in the cost of the Work plus the Contractor's allowable markups, as may be permitted by the Agreement, as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead, superintendence and profit, to the extent permitted hereunder, shall be figured on the basis of the net increase, if any, with respect to that change.

13.1.6 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted.

13.1.7 Proposals as provided for in Subsection 13.1.4(a), above, shall be accompanied by a detailed breakdown of estimated costs of labor, materials, equipment and insurance, including a similar breakdown of costs for subcontracted Work. Such proposals shall be subject to the Engineer's review and acceptance by the Owner which will be based upon the Contractor's satisfactory demonstration that all costs and charges included therein are fair and reasonable, consistent with current price indexes for labor, materials and equipment, and do not in any way reflect exorbitant or non-applicable charges. Proposals shall be based on the approved Schedule of Values where applicable. The Contractor shall cooperate fully with the Owner's Representative and the Engineer to whatever extent necessary in providing adequate substantiation of cost and in conducting negotiations pertaining thereto.

13.1.8 Costs of material and labor for Changes in the Work shall be limited to the following:

- (a) The net cost to the Contractor of all necessary materials, including transportation to the Site.



- (b) Cost of all necessary labor, in accordance with established wage rates, as evidenced by payroll records.
- (c) Premium the Contractor has to pay for liability and other insurance and bonds directly required by reason of performance of such Change in the Work.
- (d) Payments required to labor organizations under existing labor agreements, and directly required by reason of performance of such Change in the Work.
- (e) State taxes for unemployment insurance and Federal taxes for Social Security required to be paid and directly required by reason of such Change in the Work.
- (f) Taxes, if any, required to be paid on materials incorporated in such Work (subject, however, to the provisions of Section 4.2).
- (g) Gas, oil, coal, electric current and other forms of energy used, where directly required by reason of such Change in the Work.

13.1.9 The Contractor shall not subcontract any Work under a Change Order unless work under the basic Contract of a similar type was previously subcontracted, or unless the Owner specifically approves and accepts such subcontracting in advance and in writing; and Subcontractors will not be allowed to further subcontract any Work under a Change Order without the prior written approval and acceptance of the Owner, unless Work under the basic Contract of a similar type was previously subcontracted by them. No mark-up shall be allowed on bond premiums of the Contractor or any of the Subcontractors.

13.2 CONSTRUCTION CHANGE DIRECTIVES

13.2.1 The Owner may order the Contractor to proceed with changes in the Work consisting of additions, deletions or other revisions prior to incorporation thereof in the Contract by issuance of a Change Order or in the event of the Owner and the Contractor to agree on an appropriate Change Order. All such changes shall be authorized by Construction Change Directives issued by the Owner through the Engineer.

13.2.2 The Construction Change Directive shall include a description of the work involved and the basis for revision, if any, in the Contract Sum or Contract Time or both.

13.2.3 Within the time period specified in Subsection 13.1.3, the Contractor shall submit to the Engineer and the Owner final costs for work required by the Construction Change Directive in accordance with Subsections 13.1.6 through 13.1.8, and request for change, if any, in the Contract Sum or Contract Time or both, for review by the Engineer and inclusion in a subsequent Change Order.



13.3 DIFFERING SUBSURFACE OR LATENT PHYSICAL CONDITIONS

13.3.1 Pursuant to Section 39N of Chapter 30 of the Massachusetts General Laws, changes in the Work based on concealed subsurface or latent conditions shall be in accordance with the following:

If, during the progress of the Work, the Contractor or the Owner 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 Owner may request an equitable adjustment in the contract price of the Contract applying to the 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 the Contractor, or upon its own initiative, the Owner 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 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 Owner shall make an equitable adjustment in the contract price and the Contract Documents shall be modified in writing accordingly.

13.4 CLAIMS FOR ADDITIONAL COST OR DAMAGES

13.4.1 If the Contractor wishes to make a claim for an increase in the Contract Sum by reason of any work required to be performed or materials furnished by it or by reason of any event, circumstance, occurrence, direction or interpretation, or if it wishes to make a claim for damages by reason of any act or omission of the Owner or the Engineer, including, without limitation, any order by the Owner to stop the Work pursuant to Section 17.1 where the Contractor was not at fault, the Contractor shall give the Owner written notice thereof within seven (7) days after the occurrence of the event giving rise to such claim, otherwise it shall be waived. Such notice shall be given by the Contractor before proceeding to execute the work involved, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Section 11.3. A written report by the Contractor setting forth the facts and reasons for proceeding under Section 11.3 shall be submitted by it in support of its claim for relief under Section 11.3. No such claim for an increase in the Contract Sum or any other matter described above shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment, if any, to the Contract Sum or the Contract Time, it shall be determined by the Engineer, subject to the provisions of Article 19.

13.4.2 The Contractor understands that no director, member, trustee, officer, principal, employee, agent or other representative of the Owner, the Owner's Representative or the Engineer has authority to waive compliance with the notice provisions of this Section 13.4.



13.4.3 The Contractor shall maintain a current listing of unresolved claims under this Section 13.4 and under Section 9.4.

13.5 PENALTIES FOR FALSE CLAIMS

13.5.1 The attention of the Contractor and all Subcontractors is directed to M.G.L. c. 266, § 67B, which provides criminal penalties for false claims by the Contractor or any Subcontractor under this Contract: "Whoever makes or presents to any employee, department, agency or public instrumentality of the commonwealth, or of any political subdivision thereof, any claim upon or against any department, agency, or public instrumentality of the commonwealth, or any political subdivision thereof, knowing such claim to be false, fictitious, or fraudulent, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than five years, or in the house of correction for not more than two and one-half years, or both."

13.6 MINOR CHANGES IN THE WORK

13.6.1 The Engineer will have authority to order minor Changes in the Work not involving an adjustment in the Contract Sum or an adjustment of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Engineer's Supplemental Instructions, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such Engineer's Supplemental Instructions promptly.

ARTICLE 14 CORRECTION OF WORK

14.1 UNCOVERING OF WORK

14.1.1 If any portion of the Work should be covered contrary to the request of the Engineer or the Owner's Representative or contrary to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, the Owner's Representative, or the Owner, be uncovered for observation by the Engineer and replaced at the Contractor's expense.

14.1.2 If any other portion of the Work has been covered which the Engineer has not specifically requested to observe prior to being covered, the Engineer through the Owner's Representative, may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 7, in which event the Owner shall be responsible for the payment of such costs.



14.2 CORRECTION OF WORK

14.2.1 The Contractor shall promptly correct all Work rejected by the Engineer or the Owner as defective or as failing to conform to the Contract Documents, whether observed before or after Substantial Completion or Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Engineer’s additional services made necessary thereby.

14.2.2 Without limiting any other rights which the Owner has hereunder or pursuant to law, if, within one (1) year after the date of Substantial Completion of the Work or portion thereof designated by the Owner or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable guarantee or warranty required by or referred to in the Contract Documents (the “Guarantee Period”), any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct such defective work promptly after receipt of a written notice from the Owner to do so and shall reimburse the Owner for any expenses it shall have incurred in inspecting or testing such portion of the Work. The obligations provided in this Section 14.2 shall survive termination of the Contract and the making of final payment hereunder and may be extended pursuant to the provisions of Subsection 18.1.4.

14.2.3 The Contractor shall remove from the Site all portions of the Work which are defective or nonconforming and which have not been corrected under Article 18 or Subsections 14.2.1 and 14.2.2, unless removal is specifically waived in writing by the Owner.

14.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Article 18 or Subsections 14.2.1 and 14.2.2, the Owner may correct it in accordance with Section 17.2.

14.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming work within a reasonable period of time (fixed by the Owner’s Representative or the Engineer in writing) after receipt of a written notice from the Owner’s Representative or the Engineer to correct such Work, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) additional days’ written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Engineer’s additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.



14.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

14.2.7 Nothing contained in this Section 14.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Article 18 hereof, or under law. The establishment of the Guarantee Period of one year after the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any guarantee or warranty required by or referred to in the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the Work.

14.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

14.3.1 If the Owner prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 15 PARTIAL USE OR OCCUPANCY

15.1 OWNER'S RIGHT TO USE AND OCCUPY

15.1.1 The Owner shall have the right to use and occupy spaces, areas, systems and other portions of the Work prior to completion and acceptance of all the Work or of other portions of the Work, provided that in the opinion of the Engineer such use or occupancy shall not interfere with the Contractor's operations nor delay it in completing the entire Work. If the Owner desires to exercise its right of partial occupancy and use under this Section 15.1, the Owner shall give, through the Owner's Representative, reasonable notice thereof to the Engineer and the Contractor. If the Engineer determines that the proposed use or occupancy would not interfere with the Contractor's operations or delay it in completing the entire Work, the Contractor shall cooperate with the Owner in providing basic services and facilities reasonably required for the proposed use or the health, safety and comfort of the users or occupants and other parties lawfully present on or entering or leaving the Site such as water, lighting, power, fire protection, and telephone services for the space or spaces to be occupied. If the equipment required to furnish such services is not entirely completed at the time the Owner desires to use or occupy the aforesaid space or spaces, the Contractor shall make every reasonable effort to complete the same as soon as possible so that the necessary equipment can be put into operation and use. Mutually acceptable arrangements shall be made between the Owner and the Contractor with regard to procedures, terms, and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Owner. The Owner will assume proportionate and reasonable responsibility for operation



of systems, equipment and/or utilities required to provide such services, in part or in total, including proportionate and reasonable expenses of operation incidental thereto, and mutually acceptable arrangements shall be made as to guarantees and warranties affecting designated portions or elements of the Work associated therewith.

15.2 PARTIAL USE NOT ACCEPTANCE

15.2.1 The Owner's use or occupancy of such designated areas or portions of the Work prior to completion and acceptance of all or portions of the Work pursuant to Section 15.1 shall not constitute acceptance of systems, materials, or elements of the Work which are not in accordance with the requirements of the Contract Documents, nor relieve the Contractor from its obligation to complete the Work, or its responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, systems, materials, equipment, or elements of the Work, nor from other unfulfilled obligations or responsibilities of the Contractor under the Contract. If, however, damage results to such designated areas or portions of the Work, in whole or in part, from any act of the Owner, then the Owner will assume its proportionate responsibility for such damage, to the extent that such damage is not covered by insurance provided in accordance with the terms of the Contract Documents.

15.3 NO CLAIM FOR DELAY

15.3.1 The Contractor shall make no claim for any adjustment to the Contract Sum or the Contract Time or for damages of any kind arising directly or indirectly out of the exercise by the Owner of the rights reserved under this Article 15.

ARTICLE 16 TERMINATION OF THE CONTRACT

16.1 TERMINATION BY THE CONTRACTOR

16.1.1 If the Owner has failed to make a progress payment properly due and payable to the Contractor, then the Contractor, if not in default hereunder, may give the Owner written notice of its intention to terminate the Contract and if, after thirty (30) days after the Owner's receipt of such notice, the default of the Owner shall not have been cured or action by the Owner to effect such cure shall not have been commenced within such thirty (30) day period and diligently pursued, as the case may be, then the Contractor may terminate the Contract and recover from the Owner payment for all Work executed in accordance with the Contract Documents based on the percentage of the Work properly completed as determined by the Engineer.

16.2 TERMINATION BY THE OWNER

16.2.1 If any one (1) or more of the following events set forth in clauses (i) through (xiii) hereof shall occur:



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- (i) a petition is filed by the Contractor, or against the Contractor with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors; or
- (ii) such a petition is filed against the Contractor without its consent; or
- (iii) the Contractor becomes insolvent or is generally not paying its debts as they become due; or
- (iv) the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the Contractor or of all or any substantial portion of its assets; or
- (v) a receiver, trustee, liquidator, custodian or the like is appointed with respect to the Contractor or takes possession of all or any substantial portion of its assets; or
- (vi) the Contractor makes an assignment for the benefit of creditors; or
- (vii) there has been a material adverse change in the financial condition of the Contractor; or
- (viii) the Contractor's bonding or surety company shall refuse to issue a labor or material payment or performance bond or other similar guarantee of performance with respect to the Project; or
- (ix) due to the fault of the Contractor (and not due to causes beyond the Contractor's reasonable control): (a) the Work is unreasonably delayed or discontinued, or (b) the execution of the Work ceases for more than three (3) days, or (c) the Work is delayed so that, in the Owner's judgment, the Work cannot be completed on or prior to the expiration of the Contract Time;
- (x) the Contractor defaults in its obligation to perform the Work in a skilled and expeditious manner or refuses or fails to supply sufficient labor, materials, equipment and facilities to assure the proper progress of the Work; or
- (xi) the Contractor fails to make prompt payment to any Subcontractor(s);
- (xii) the Contractor fails to comply with Applicable Laws; or
- (xiii) the Contractor otherwise violates or fails to comply with any material provision of the Contract Documents;

then, in any such event, the Owner may, without prejudice to any other right or remedy, and after giving the Contractor seven (7) days written notice, terminate the Contract and the employment of the Contractor and hold the Contractor and its sureties liable in damages for



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breach of the Contract Documents, or may direct the Contractor to discontinue the Work or any designated portion thereof and take possession of the Site or any portion thereof and possession and use of any and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work or any portion thereof by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is fully completed. The Owner shall not be liable for any depreciation, loss or damage to such materials, equipment or tools during such use thereof, nor thereafter prior to removal thereof by the Contractor after completion of the Work. The Owner may, at its option, require the Contractor's surety or sureties to complete the Work in accordance with the Contract Documents. If the Owner elects to terminate this Contract pursuant to the provisions of this Section and it is subsequently determined that none of the foregoing events have occurred, then such termination, at Owner's election, may be deemed a termination pursuant to Subsection 16.2.3.

16.2.2 When the Work is fully completed by the Owner, if the costs incurred by the Owner in finishing the Work, including the cost of any additional services of the Engineer or others, when added to the payments made to the Contractor prior to termination, exceed the Contract Sum, the Contractor or its sureties shall pay the amount of such excess to the Owner, together with interest thereon from the date incurred by the Owner until paid by the Contractor at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston. If the sum of such costs and payments is less than the Contract Sum, the Contractor shall be paid for any costs, as certified by the Engineer on the basis of its determination of "cost" under Subsection 13.1.8, incurred by the Contractor but not paid for prior to the termination, to the extent that such payment does not cause the total of payments to the Contractor when added to the cost of finishing the Work to exceed the Contract Sum. In case of such termination of the Contract pursuant to this Article 16, the Owner may, at its election, assume and become liable for obligations, commitments and unsettled claims that the Contractor has previously undertaken or incurred in good faith in connection with the Work. Without limiting the generality of the foregoing, the Owner shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of such assumption or assignment by the Owner, no such Subcontractor shall have any claim against the Owner or such third party for Work performed by such Subcontractor or other matters arising prior to termination of the Contract except as expressly provided by law, and the Owner or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption. Should the Owner so elect, the Contractor shall execute and deliver all such documents and take all such steps, including the legal assignment of its contractual rights, as the Owner may require, for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the Owner for expenses and damages suffered by the Owner as a result of any default, acts or omissions of the Contractor.



16.2.3 Upon fifteen (15) days' written notice, the Owner shall have the right to terminate the Contract at any time and for any reason whether or not any of the events specified in Subsection 16.2.1 shall have occurred, and the Owner shall incur no liability to the Contractor or any other person by reason of such termination. In the event of such termination, the Owner shall pay to the Contractor a sum equivalent to the unpaid Contract Sum attributable to the percentage of Work completed, as determined by the Engineer, pursuant to the Contract Documents and accepted by the Owner.

16.2.4 In the event of a termination of the Contract pursuant to this Article 16, the Owner and the Contractor shall forthwith return to the other all papers, materials and other properties of the other held by each for the purposes of execution and performance of the Contract Documents. In addition, each party will assist the other party in an orderly termination of this Contract.

ARTICLE 17 OWNER'S RIGHT TO STOP THE WORK AND TO CARRY OUT THE WORK

17.1 OWNER'S RIGHT TO STOP THE WORK

17.1.1 If, in the sole judgment of the Owner, the Contractor fails to commence to correct and diligently pursue the correction of defective work as required by Section 14.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner may, by a written order through the Owner's Representative, and without prejudice to any other remedy the Owner may have, order the Contractor to stop the Work or any portion thereof, and the Contractor shall not thereafter incur any further cost or expense therefor without the Owner's prior written approval, until the cause for such order has been eliminated. Notwithstanding the foregoing, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

17.2 OWNER'S RIGHT TO CARRY OUT THE WORK

17.2.1 If the Contractor fails to perform the Work diligently and in a timely manner or defaults or neglects to carry out the Work in accordance with the Contract Documents or otherwise fails to perform its obligations under the Contract Documents, the Owner may, without prejudice to any other remedy it may have, make good such deficiencies, provided, however, that the Owner shall not take any action to perform the Work or to make good such deficiencies, except in the event of an emergency, unless the Contractor shall have failed, within seven (7) business days after receipt of written notice from the Owner of such failure, default or neglect, to commence corrective action and thereafter to promptly and diligently pursue the corrective action to completion. If the Owner undertakes to make good such deficiencies, the Owner may take possession of the Site or any portion thereof and possession and use of any and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor in order to make good such deficiencies by whatever method it may deem expedient. The Owner shall not be liable for any depreciation, loss or damage to such materials,



equipment or tools during such use thereof. Further, if the Owner undertakes to make good such deficiencies, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation additional services of the Engineer and others made necessary by such default, neglect or failure, and the Contract Sum shall be likewise reduced. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, then, as provided in Subsection 16.2.2, the Contractor shall, within thirty (30) days of receipt of an invoice therefor, pay to the Owner the difference with interest thereon. Further, if the Contractor fails, within such seven (7) business day notice period, to commence corrective action and thereafter to promptly and diligently pursue correction of such deficiencies, or fails to carry out the Work in a timely manner in accordance with the Contract Documents, or if the Engineer advises the Owner that the Project cannot reasonably be completed by the Contractor within the Contract Time, then, at the request of the Owner, the Contractor's surety shall promptly complete the Work in accordance with the terms of the Contract Documents.

**ARTICLE 18 POST-COMPLETION
WARRANTY AND CORRECTIVE WORK**

18.1 CONTRACTOR'S WARRANTIES

18.1.1 In addition to the Contractor's obligations under Subsection 14.2.2 hereof, the Contractor guarantees and warrants to the Owner and the Engineer that all materials and equipment furnished under the Contract Documents will be new and of recent manufacture unless otherwise expressly required or permitted by the Contract Documents, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents in all respects. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective or as failing to conform to the Contract Documents.

18.1.2 It is specifically agreed that the Contractor's warranties of materials, equipment and labor under this Article 18 and all other warranties, guarantees, responsibilities and liabilities of the Contractor under the Contract Documents or otherwise provided under law, shall apply to products and equipment, if any, furnished by the Owner as referred to in the Specifications and to the installation thereof by the Contractor or its Subcontractors under this Contract as fully as if such products and equipment had been purchased directly by the Contractor for incorporation in the Work. The Contractor acknowledges that it has received and approved all information and specifications for such Owner-furnished products and equipment sufficient so as to permit the Contractor to make this agreement. Such specifications for Owner-furnished products and equipment shall be considered a part of the Contract Documents, and such Owner-furnished products and equipment, upon delivery to and acceptance by the Contractor, shall become part of the Work. The Owner shall assign to the Contractor all warranties of any materials or equipment furnished by the Owner and installed



by the Contractor or its Subcontractors under the Contract. The Owner and the Contractor agree to cooperate as necessary to facilitate any claims under such warranties.

18.1.3 The Contractor shall obtain and preserve for the benefit of the Owner manufacturer's warranties on materials, fixtures and equipment incorporated into the Work, and the Contractor shall prepare and execute a written guarantee and warranty applicable to all phases of the Work in accordance with the provisions of this Article and all other applicable provisions of the Contract Documents pertaining to warranties and guarantees, and shall also secure and pass through to the Owner written guarantees and warranties prepared in a similar manner from each Subcontractor engaged in the performance of the Work and, prior to Substantial Completion, shall deliver complete sets of all such guarantees and warranties to the Engineer for review and approval in accordance with Subsection 3.7.4.

18.1.4 In the event that any work is performed to correct, repair or remedy any portion of the Work pursuant to any warranty or guarantee provided under the Contract Documents or otherwise available to the Owner, all such work, and all materials, equipment, supplies, appliances, fixtures and specialty devices requiring replacement during any guarantee period specified in the Contract Documents, shall be subject to a supplementary guarantee and warranty extending the guarantee or warranty period to cover all such work and all such items for the full guarantee or warranty period specified, beginning as of the date of acceptance of each such replacement item or element of work.

18.1.5 The warranty and guarantee provisions of this Article 18 shall be in addition to and not in limitation of any other warranties, guarantees, or remedies allowed by law or the Contract Documents.

18.1.6 No additional charge shall be made by the Contractor or by any Subcontractor for attending meetings at the Site to diagnose problems or to instruct the Owner's personnel in the proper operation or maintenance of the Work, or for making initial or seasonal adjustments (not including normal maintenance) of mechanical systems or other movable work during the applicable guarantee or warranty period (as it may be extended with respect to certain items pursuant to Subsection 18.1.4). The Contractor shall provide such service promptly upon notice from the Owner. In case of emergency, service shall be provided as necessary to avoid loss or damage or to maintain normal use of the premises. The Contractor shall furnish to the Engineer and to the Owner a list of names and telephone numbers, with a back-up name and telephone number, covering each area of potential emergency.

ARTICLE 19 DISPUTE RESOLUTION

19.1 GOVERNING LAW; VENUE

19.1.1 The Contract and all modifications, amendments, or alterations thereto, if any, shall be governed by the laws of the Commonwealth of Massachusetts. The Contractor, all Subcontractors, and other persons performing any part of the Work agree that each of them



shall be subject to the jurisdiction of the courts of the Commonwealth of Massachusetts or the federal courts for the District of Massachusetts with respect to any actions or suits at law or in equity arising out of or related to the bidding, award or performance of the Contract, subject to the dispute resolution provisions set forth herein.

19.2 CLAIMS AND DISPUTES

19.2.1 All claims, disputes or other matters in controversy between the Contractor and the Owner relating to the execution and progress of the Work or the interpretation of the Contract Documents, and any claims, disputes, and other matters in question relating to whether the Contractor's performance of the Work complies with the Contract Documents, which cannot be resolved by agreement between them, shall be referred to the Engineer in writing for initial determination, with a copy to the other party. The Engineer shall afford both parties a reasonable opportunity to present written evidence in support of their respective positions. The Engineer shall render its decision in writing to each of the parties within a reasonable time and in no event later than thirty (30) days after the receipt of submissions from the parties.

19.2.2 No such claim, dispute or other matter in question shall constitute grounds for the Contractor to delay progress of the Work, and the Contractor shall carry on the Work and maintain its progress during consideration of any such claim, dispute or other matter by the Engineer. The decision of the Engineer with respect to any and all such claims, disputes or other matters in question shall be final and conclusive, provided that any party having complied with the provisions of Subsection 19.2.3, below, may file an action in a court of competent jurisdiction challenging the decision of the Engineer or otherwise seeking final resolution of the claim, dispute or other matter in question.

19.2.3 The decision of the Engineer on any such claim, dispute or other matter in question shall be final and binding upon the Owner and the Contractor, unless the Owner or the Contractor gives written notice to the other and to the Engineer of its objection to such decision within ten (10) days after receipt by such aggrieved party of the Engineer's decision and commences an action challenging the Engineer's decision in a court of competent jurisdiction within the time permitted by law. If either party fails to give notice of objection to the Engineer's decision within such ten (10) day period, it shall be conclusively deemed to have waived its right to object to such decision. If the Engineer renders a decision after court proceedings have been commenced, such decision may be entered as evidence but will not supersede any such proceedings unless the decision is acceptable to all parties concerned. Nothing contained in this Article 19 shall limit the Owner's right to damages for delays by the Contractor or any other rights or remedies of the Owner under the Contract Documents or otherwise available under Applicable Law.

19.2.4 Prior to commencing litigation as to any claim, dispute or other matter in controversy, the parties shall discuss the possibility of resolution of such claim, dispute or controversy through non-binding mediation or other alternative dispute resolution methods. If



the parties agree to mediation, the fees and expenses of the mediator shall be borne equally by the parties unless otherwise agreed.

19.2.5 Pursuant to M.G.L. c. 30, § 39J, notwithstanding any contrary provision of this Contract, no decision by the Owner or by the Engineer on a dispute, whether of fact or of law, arising under the Contract shall be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

ARTICLE 20 MISCELLANEOUS PROVISIONS

20.1 NOTICE

20.1.1 Whenever written notice is required or permitted pursuant to the Contract Documents, the same shall be deemed to have been properly given if in writing and delivered by hand in person or by registered or certified mail, postage prepaid, or express overnight courier service, return receipt requested; and, in the case of notices to the Owner, to the address set forth at the beginning of the Agreement and, in the case of notices to the Owner's Representative or the Engineer, to the address set forth at the beginning of the Agreement, marked to the attention of the Owner's Representative or Engineer, as the case may be, and, in the case of notices to the Contractor, to the Contractor's Project Executive or Project Manager, addressed to such person at the Contractor's mailing address set forth at the beginning of the Agreement or the Contractor's field office at the Site. Any of the persons or addresses specified above for notice purposes may be changed by notice given in the manner provided herein from the party concerned to each of the other parties. Written notice shall be deemed to be given on the day received, if delivered by hand in person; on the next business day after mailing if sent by express overnight courier service; and three (3) business days after mailing if sent by registered or certified mail.

20.2 CONTRACT DOCUMENTS

20.2.1 The Contract Documents form the comprise the entire Contract between the Owner and the Contractor, and supersede all prior negotiations, representations and agreements, whether written or oral. Subject to the provisions of Article 6, the Contractor may not assign its rights or obligations under all or any portion of the Contract Documents nor shall the Contractor assign any moneys due or to become due under the Contract Documents without the written consent of the Owner, which consent may be withheld or granted in its sole discretion. Any such assignment without the written consent of the Owner shall be void and the assignee in such case shall acquire no rights in the Contract or to receive any moneys. Nothing contained in the Contract Documents shall be construed to modify or affect in any way the rights and obligations of the Owner and the Engineer under any contract or agreement between the Owner and the Engineer.



20.2.2 The Contract shall be governed by the laws of the Commonwealth of Massachusetts. The Contractor, all Subcontractors, and other persons performing any part of the Work agree that each of them shall be subject to the jurisdiction of the courts of Suffolk County in the Commonwealth of Massachusetts or the federal courts for the District of Massachusetts with respect to any actions or suits at law or in equity arising out of or related to the bidding, award or performance of the Contract, and that any such actions or suits commenced by any of such parties shall be commenced in the courts or appropriate administrative tribunals of Suffolk County in the Commonwealth of Massachusetts or the federal courts for the District of Massachusetts and not otherwise.

20.3 RIGHTS AND REMEDIES

20.3.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

20.3.2 No action or failure to act by the Owner, Owner's Representative, Engineer, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

20.3.3 No consent, express or implied, by the Owner, the Owner's Representative, or the Engineer to any breach of any covenant, condition or duty of the Contractor, or waiver, express or implied, by any of same, shall be construed as a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

20.4 DECISIONS AND INTERPRETATIONS

20.4.1 Pursuant to M.G.L. c. 39, § 39P, in every case in which this Contract requires the Owner, any official, the Owner's Representative, or the Engineer to make a decision on interpretation of the Specifications, approval of equipment, material or any other approval, or progress of the Work, the decision shall be made promptly and, in any event, no later than thirty (30) days after the written submission for decision containing all information necessary in the judgment of the Engineer to render such decision; but if such decision requires extended investigation and study, the Owner, the official, the Owner's Representative, or the Engineer shall, within thirty (30) days after the receipt of the submission, give the party making the submission 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.

20.5 ANTI-BOYCOTT COVENANT

20.5.1 The Contractor warrants, represents and agrees that during the time the Contract is in effect, neither it nor any affiliated company, as hereafter defined, shall participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or shall engage in conduct declared to be unlawful



by M.G.L. c. 151E, § 2. If there shall be a breach in the warranty, representation, and agreement contained in this Subsection, then without limiting such other rights as it may have, the Owner shall be entitled to rescind the Agreement. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interest of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor. This provision is included in the Agreement pursuant to Commonwealth of Massachusetts Executive Order No. 130.

20.6 RIGHT OF AUDIT

20.6.1 Without limiting any of the Owner's other rights under the Contract Documents, the Governor of the Commonwealth of Massachusetts or his or her designee, the Secretary of Administration and Finance of the Commonwealth of Massachusetts, and the State Auditor or his or her designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the Contractor and all Subcontractors which pertain to the performance of the provisions and requirements of the Contract. This provision is included in the Contract pursuant to Commonwealth of Massachusetts Executive Order No. 195.

20.7 RECORD KEEPING AND REPORTING

20.7.1 The Contractor shall maintain at the Site or at such other location as shall be approved by the Owner, on a current basis, during the term of the Agreement and shall retain for a period of six (6) years after the date of Final Payment, records of all Subcontracts, material orders, Shop Drawings, Samples, and other Project-related documents and revisions thereto which arise out of the Contract, the Contract Documents or the Work, including, but not limited to, the following:

- (a) A detailed daily log of all events occurring on the Site or connected with progress of the Project. Such log shall include a listing of the Contractor staffing, manpower by Subcontractors, relevant weather information and names and purpose of all visitors to the Site. Copies of such daily logs shall be distributed weekly to the Owner's Representative;
- (b) Copies of the Project Schedule as more specifically set forth in Article 9 of these General Conditions, and Schedules of Values as more specifically set forth in Article 10 of these General Conditions, and all updates thereto to reflect current conditions;
- (c) A set of as-built Drawings and Specifications which records all changes made during construction and actual as-built conditions in accordance with the requirements of the Contract Documents; and



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- (d) Correspondence, meeting notes and minutes, clarifications and interpretations of the Contract Documents issued by the Engineer, progress reports, all other Project related documents.

20.7.2 The Contractor shall furnish to the Owner on a weekly basis, a Progress Report for the preceding week, in form and substance acceptable to the Owner, containing, without limitation, the following information:

- (a) Project Schedule, updated against baseline;
- (b) List and status of outstanding issues, claims or disputes, or information required from the Owner;
- (c) Safety record report.
- (d) Certified payroll reports; and
- (e) Suggestions for solutions to outstanding issues and schedule delays.

20.7.3 The Contractor shall provide a system of Project monitoring and reporting. The Contractor shall assist the Owner in developing and implementing a Change Order control system. Such reports and other information shall be included in the weekly progress reports to be submitted to the Owner in accordance with the Contract Documents, and the provisions of Subsection 20.7.2 hereof.

20.7.4 The Contractor shall establish and implement procedures for preparing and/or reviewing and processing Requests for Information and/or clarifications and interpretations of the Contract Documents, Shop Drawings, Samples and other submittals, requests for Construction Change Directives, requests for Change Orders, proposals for substitutions, Payment Applications, as-built Drawings and maintenance of logs.

20.7.5 The Contractor shall check all materials, equipment and labor entering into the Work and shall keep such full and detailed accounts as may be necessary for proper accounting and financial management under the Contract, utilizing such procedures as shall be satisfactory to the Owner. The Owner shall, upon request, be afforded copies of, and access to, all of the Contractor's records, books, correspondence, subcontracts, instructions, drawings, estimates, budgets, receipts, invoices, vouchers, memoranda, breakdowns, accounting data, bid proposals, cost control information and any other documents relating to the Work, in a form acceptable to the Owner.

20.7.6 Without limitation of the foregoing, the Owner shall have the right, at any time and from time to time, upon notice to the Contractor, to monitor and audit the Contractor's books and records in connection with any aspect of the Agreement or the Contract Documents at the Contractor's offices at the Contractor's sole cost and expense. The Contractor shall facilitate any such audit by making necessary facilities available to the Owner and its



representatives. Further provisions concerning the Contractor's records and the Owner's right to audit such records are set forth in the General Conditions.

20.7.7 If any inspection of the Contractor's books, records or other documents reveals an overcharge with respect to the Contract Sum, the Contractor shall pay the Owner or, at the Owner's election, the Owner may reimburse itself by taking as a credit against future payments due the Contractor, an amount equal to the overcharge plus the administrative and auditing expenses incurred by the Owner in determining the existence and amount of the overcharge. Nothing contained in this provision is intended as a limitation of any other rights or remedies which may be available to the Owner, be they civil or criminal.

20.8 FINANCIAL RECORDS OF CONTRACTOR

20.8.1 The provisions of this Section 20.8 are included in this Contract pursuant to Massachusetts General Laws Chapter 30, § 39R:

- (a) The Contractor shall make, and keep for at least six (6) years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor, and
- (b) until the expiration of six years after final payment, the Office of Inspector General, and the Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the Contractor or of its Subcontractor that directly pertain to, and involve transactions relating to, the Contractor or its Subcontractors, and
- (c) the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the Owner, including in its description the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes, and
- (d) the Contractor has filed a statement of management on internal accounting controls as set forth in Subsection 20.8.2 below prior to the execution of the Contract, and
- (e) the Contractor has filed prior to the execution of the Contract and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Subsection 20.8.4.

20.8.2 Every Contractor awarded a contract shall file with the Owner a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:



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- (a) transactions are executed in accordance with management's general and specific authorization;
- (b) transactions are recorded as necessary
 - i. to permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - ii. to maintain accountability for assets;
- (c) access to assets is permitted only in accordance with management's general or specific authorization; and
- (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

20.8.3 Every Contractor awarded a contract shall also file with the Owner a statement prepared and signed by an independent certified public accountant, stating that s/he has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- (a) whether the representations of management in response to this Section and Subsection 20.8.1 above are consistent with the result of management's evaluation of the system of internal accounting controls and
- (b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial condition.

20.8.4 Every Contractor awarded a contract by the Commonwealth or by any political subdivision thereof shall annually file with Commissioner of Capital Asset Management and Maintenance during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the Owner upon request.

20.8.5 Records and statements required to be made, kept or filed under the provisions of M.G.L. c. 30, § 39R shall not be public records as defined in M.G.L. c. 4, § 7, and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of Subsection 20.8.1(b).

20.8.6 As used in this Section 20.8, the following terms have the meanings set forth below:



- (a) “Contract” means any contract awarded or executed pursuant to sections thirty B through thirty P, inclusive, of chapter seven [now sections 38A½ through 38O] and any contract awarded or executed pursuant to section thirty-nine M of chapter thirty, or sections forty-four A through H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.
- (b) “Records” means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
- (c) “Independent Certified Public Accountant” means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant’s independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
- (d) “Audit”, when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.
- (e) “Accountant’s Report”, when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which s/he has made and sets forth his/her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant’s report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the Contractor.
- (f) “Management”, when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

20.9 FALSE ENTRY



20.9.1 The attention of the Contractor is called to M.G.L. c. 266, § 67C, which provides:

Any person who knowingly and willfully, directly or indirectly makes, or knowingly and willfully causes to be made, a false entry or omission of a true entry in any books, record or account subject to the provisions of section thirty-nine R of chapter thirty shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the state prison for not more than five years, or in the house of correction for not more than two years, or both.

END OF DOCUMENT

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