



**COMMONWEALTH OF MASSACHUSETTS  
STANDARD VERTICAL CONSTRUCTION CONTRACT  
For Projects over \$100,000 Subject to M.G.L. c. 149, s. 44A-F**

**GENERAL CONDITIONS OF THE CONTRACT**

**TABLE OF CONTENTS**

**ARTICLE I: DEFINITION OF TERMS -- p. 5**

**ARTICLE II: EXECUTION OF THE CONTRACT, SCOPE OF WORK,  
INTERPRETATION OF CONTRACT DOCUMENTS -- p. 7**

- 1. Execution -- p. 7**
- 2. Scope of Work -- p. 7**
- 3. Interpretation -- p. 7**
- 4. Distribution of Work -- p. 8**
- 5. Contract Price -- p. 8**

**ARTICLE III: CONTROL OF WORK / ADMINISTRATION OF THE  
CONTRACT -- p. 8**

- 1. Designer -- p. 8**
- 2. Right Of Access to Work -- p. 9**
- 3. Inspection No Waiver -- p. 9**

**ARTICLE IV: GENERAL PERFORMANCE OBLIGATIONS OF THE  
CONTRACTOR -- p. 9**

- 1. Review Of Contract Documents and Field Conditions -- p. 9**
- 2. Supervision and Construction Procedures; Coordination; Cutting, and  
Patching -- p. 9**
- 3. Superintendent -- p. 10**
- 4. Labor -- p. 10**
- 5. Notices and Permits -- p. 11**
- 6. Lines, Marks Etc. -- p. 11**
- 7. Excavation -- p. 11**
- 8. Dewatering/Hoisting/Staging -- p. 11**
- 9. Corrections To The Work; Inspection No Bar To Subsequent  
Corrections -- p. 11**
- 10. Sanitary Facilities -- p. 12**
- 11. Temporary Offices -- p. 12**
- 12. Contract Documents at the Site -- p. 12**
- 13. Telephones -- p. 13**
- 14. Safety Regulations/ Site Protection -- p. 13**
- 15. Debris and Chemical Waste -- p. 15**
- 16. Weather Protection -- p. 15**

17. Furnishings and Equipment -- p. 16
18. Form For Sub-Contract -- p. 16
19. Sales Tax Exemption and Other Taxes -- p. 16
20. Final Cleaning -- p. 16
21. Maintenance Data -- p. 16
22. Closeout Procedures -- p. 17
23. Risk of Loss -- p. 17

**ARTICLE V: MATERIALS AND EQUIPMENT -- p. 17**

1. Materials Generally --p. 17
  2. Shop Drawings, Product Data, And Samples -- p. 17
  3. Tests -- p. 18
  4. "Or Equal" Submissions -- p. 18
  5. Delivery and Storage of Materials; Inspection -- p. 19
  6. Defective, Damaged, Deteriorated Materials and Rejection Thereof --
- p. 20

**ARTICLE VI: PROSECUTION AND PROGRESS -- p. 20**

1. Beginning, Progress Schedule, And Completion of Work -- p. 20
2. Failure To Complete Work On Time - Liquidated Damages -- p. 22
3. Delays; Statutory Provisions -- p. 22
4. Use and Occupancy Prior To Final Acceptance-- p. 23
5. Certificate of Agency Use and Occupancy -- p. 23
6. Final Acceptance of the Work -- p. 24
7. One Year Warranty Repair List and Inspection -- p. 25

**ARTICLE VII: CHANGES IN THE WORK -- p. 25**

1. Change Orders Generally -- p. 25
2. Methods of Computing Equitable Adjustments -- p. 26
3. Work Performed Under Protest -- p. 27
4. False Claims, Statutory Provisions Regarding Changes -- p. 27
5. Mandatory Mediation -- p. 29

**ARTICLE VIII: PAYMENT PROVISIONS -- p. 29**

1. Schedule of Values -- p. 29
2. Payment Liabilities of the Contractor -- p. 29
3. Retention of Moneys by Awarding Authority -- p. 30
4. Applications for Payment -- p. 30
5. Periodic Payments (M.G. L. c. 30, s. 39K) -- p. 31
6. Payment of Subcontractors (M.G.L. c. 30, s. 39F) -- p. 33
7. Contracts For Public Works governed by M.G.L. c. 30, s. 39G -- p. 35
8. Final Payment; Release of Claims by Contractor -- p. 37

**ARTICLE IX: GUARANTEES AND WARRANTIES -- p. 38**

1. General Warranty -- p. 38
2. Special Guarantees and Warrantees -- p. 38

**ARTICLE X: MISCELLANEOUS LEGAL REQUIREMENTS -- p. 38**

1. Contractor to Be Informed -- p. 38
2. Compliance with All Laws -- p. 38

**ARTICLE XI: CONTRACTOR'S ACCOUNTING METHOD REQUIREMENTS (M.G.L. c., s. 39R) -- p. 41**

- 1. Definitions -- p. 41**
- 2. Record Keeping -- p. 42**
- 3. Statement of Management Controls -- p. 42**
- 4. Annual Financial Statement -- p. 43**
- 5. Bid Pricing Materials -- p. 43**

**ARTICLE XII: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM -- p. 43 (See Appendix A)**

**ARTICLE XIII: GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (EXECUTIVE ORDER 390) -- p. 43 (See Appendix B)**

**ARTICLE XIV: INSURANCE REQUIREMENTS -- p. 43**

- 1. Insurance Generally -- p. 43**
- 2. Contractor's Commercial General Liability -- p. 44**
- 3. Vehicle Liability -- p. 45**
- 4. Pollution Liability -- p. 45**
- 5. Worker's Compensation -- p. 45**
- 6. Builder's Risk/ Installation Floater/ Stored Materials -- p. 46**
- 7. Umbrella Coverage -- p. 46**
- 8. Additional Types of Insurance -- p. 47**

**ARTICLE XV: INDEMNIFICATION -- p. 47**

- 1. Generally -- p. 47**
- 2. Designer's Action -- p. 47**
- 3. Survival -- p. 47**

**ARTICLE XVI: PERFORMANCE AND PAYMENT BONDS -- p. 47**

- 1. Contractor Bonds -- p. 47**
- 2. Subcontractor Bonds -- p. 48**

**ARTICLE XVII: TERMINATION OF THE CONTRACT -- p. 48**

- 1. Termination for Cause -- p. 48**
- 2. Termination for Convenience -- p. 49**
- 3. Contractor's Duties Upon Termination for Convenience -- p. 49**

**ARTICLE XVIII: MISCELLANEOUS PROVISIONS -- p. 50**

- 1. No Assignment by Contractor -- p. 50**
- 2. Non-Appropriation -- p. 50**
- 3. Claims by Others Not Valid -- p. 50**
- 4. No Personal Liability by Public Officials -- p. 50**
- 5. Severability -- p. 50**
- 6. Choice of Laws -- p. 50**
- 7. Standard Forms -- p. 50**
- 8. No Waiver of Subsequent Breach -- p. 50**
- 9. Remedies Cumulative -- p. 51**
- 10. Notices -- p. 51**

**APPENDIX A -- EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM -- p. 52**

- 1. Compliance Generally -- p. 52**
- 2. Non-Discrimination and Affirmative Action -- p. 52**
- 3. Liaison Committee, Reports and Records -- p. 53**
- 4. Sanctions -- p. 53**

**APPENDIX B -- GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (EXECUTIVE ORDER 390) -- p. 55**

- 1. Goals -- p. 55**
- 2. MBE/WBE Participation Credit -- p. 55**
- 3. Establishing MBE/WBE Status -- p. 55**
- 4. Subcontractors With MBE/WBEs -- p. 55**
- 5. Performance of Contract Work by MBE/WBEs -- p. 56**
- 6. Notification of Changes in MBE/WBE Work -- p. 56**
- 7. Actions Required If There Is A Reduction in MBE/WBE Participation -- p. 56**
- 8. Suspension of Payment and/or Performance for Noncompliance -- p. 57**
- 9. Liquidated Damages; Termination -- p. 57**
- 10. Reporting Requirements -- p. 58**
- 11. Awarding Authority's Right to Waive Provision of this Article -- p. 58**

**APPENDIX C -- COMMONLY USED FORMS -- p. 59**

**Procedure for Payment to Contractors**  
**Payment Voucher Input Form**  
**Requisition for Payment (DCAMM Form S1b) and Instructions**  
**Monthly Requisition Breakdown (DCAMM Form 55)**  
**Instructions Regarding Change Orders and Contract Modifications (DCAMM Form 13)**  
**Daily Time and Material Report for Change Orders**  
**Request and Agreement for a Change in the Plans, Specifications and/or Contract (DCAMM Form 5)**  
**Notice of Intent**  
**Contractors Weekly Workforce Report**  
**Contractors Workforce Employee Set Up Form**  
**Weekly Payroll Report Form and Statement of Compliance**  
**Quarterly Projected Workforce Table**  
**Certification of Payment by Contractor to MBE/WBE and Instructions**  
**Certificate of Completion by Minority/Women Business Enterprise**  
**Form for Transfer of Title (Work Not Incorporated, DCAMM Form 16)**  
**Certificate of Agency Use and Occupancy -E-1**  
**Certificate of Final Inspection, Release and Acceptance - E-2**

## ARTICLE I: DEFINITION OF TERMS

The following words shall have the following meanings as used in this Contract:

**Advertisement:** The Advertisement or Notice Inviting Bids or Proposals for the Work identified in Article 6 of the Owner - Contractor Agreement.

**Approval:** (or Approved): An approval in writing signed by the authorized signatory of the Awarding Authority.

**Architect:** The architect identified as the Designer in Article 1 of the *Owner - Contractor Agreement*.

**As directed (As permitted, as required, as determined or words of like effect):**

The direction, permission, requirement or determination of the Designer or the Awarding Authority. Similarly, *approved, acceptable, satisfactory* or words of like import shall mean approved by or acceptable or satisfactory to the Designer, except as may be otherwise determined by the Awarding Authority.

**Awarding Authority:** The public agency awarding and administering this Contract identified as the Awarding Authority in the Owner - Contractor Agreement. Where the Awarding Authority is an agency of the Commonwealth, references to the Awarding Authority shall also include the Commonwealth and its agencies.

**Building Code:** All applicable rules and regulations to which the Awarding Authority is subject and which are contained or referenced in the code authorized by M.G.L. c. 143, s. 93 et seq., including all amendments thereto.

**Certificate of Agency Use and Occupancy:** A certificate signed by the Designer and the Awarding Authority pursuant to the requirements of Article VI of these General Conditions of the Contract, indicating that the Awarding Authority has determined that (1) the Work has been completed in accordance with the Contract Documents, except for Punch List items, (2) certificates of inspection, testing and/or approval (including a certificate of occupancy under the Building Code), operating permits for any mechanical apparatus which may be required to permit full use and occupancy of the Work by its intended users (which in a Subcontractor's case may include the Contractor) have been delivered to the Awarding Authority, (3) any applicable written warranties, operating instructions and related materials have been delivered to the Awarding Authority, and (4) the Work may be used for its intended purpose without substantial inconvenience or interference.

**Change Order:** (1) A written order not requiring the consent of the Contractor, signed by the Project Manager and designated as a Change Order, directing the Contractor to make changes in the Work within the general scope of the Contract, or (2) any written or oral order from the Project Manager that causes any change in the Work, provided that the Contractor has given the Awarding Authority written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a Change Order.

**Contract:** The Contract formed by the Contract Documents as defined in Article 6 of the Owner - Contractor Agreement.

**Contract Documents:** The documents listed in Article 6 of the Owner - Contractor Agreement.

**Contract Modification:** Any alteration of the Contract Documents accomplished by a written agreement properly executed by the parties to this Contract.

**Contract Price:** The Contract Price stated in Article 3 of the Owner - Contractor Agreement which is the total sum owed to the Contractor for all of the Work.

**DCAMM or DCAM:** The Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts.

**Designer:** The architect or engineer identified as the Designer in Article 1 of the Owner - Contractor Agreement, subject to the provisions of Article III, Section 1 of these General Conditions of the Contract.

**Dispute Review Board:** A panel of three experienced impartial reviewers organized and agreed upon by the Owner and Contractor. The Board members are provided with plans and specifications, become familiar with project procedures and participants, meet on the job site regularly to encourage the resolution of disputes at the job level and renders non-binding recommendations on the resolution of the dispute.

**Engineer:** The Designer, except that the term "Resident Engineer" shall have the meaning otherwise specified herein.

**Drawings:** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including Plans, elevations, sections, details, schedules, and diagrams.

**Final Acceptance:** The written determination by the Designer and by the Awarding Authority that the Work has been 100% completed, except for the Contractor's indemnification obligations, warranty obligations, obligations to continue to maintain insurance coverage for the time periods provided in the Contract Documents, and any other obligations which are intended to survive Final Acceptance and/or the termination of the Contract.

**General Bid:** The completed bid form submitted by the Contractor in accordance with the requirements of M.G.L. c. 149.

**Laws:** All applicable statutes, regulations, ordinances, codes, laws, orders, decrees, approvals, certificates and requirements of governmental and quasi-governmental authorities.

**Neutral:** An impartial third party not having an interest in the Owner, the Designer, the Contractor or the Project.

**Notice to Proceed:** The written notice provided by the Awarding Authority to the Contractor which authorizes the Contractor to commence the Work as of a date specified therein, from which date the time of completion specified in Article 2 of the Owner - Contractor Agreement is measured.

**Or equal (or words of like import):** Equal in the opinion of the Awarding Authority determined pursuant to the provisions of M.G.L. c.30, s. 39M and the provisions of these General Conditions of the Contract.

**Owner:** The Commonwealth of Massachusetts or political subdivision thereof, authority, or other instrumentality that will own the Work.

**Plan(s):** Drawing(s).

**Product Data:** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor or its Subcontractors and suppliers to illustrate materials or equipment for some portion of the Work. Product data also include any such information or instructions produced by the manufacturer or distributor of such materials or equipment and made readily available by said manufacturer or distributor.

**Progress Schedule:** The progress schedule Approved by the Designer and the Awarding Authority in accordance with Article VI of these General Conditions of the Contract.

**Project:** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

**Project Manager:** The Awarding Authority's representative assigned to the Project.

**Punch List:** A list of items determined by the Awarding Authority to be minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Work for its intended purpose.

**Resident Engineer:** The on-Site representative of the Awarding Authority.

**Samples:** Samples are physical examples, that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

**Schedule of Values:** The schedule Approved by the Awarding Authority pursuant to Article VIII of these General Conditions of the Contract which allocates the Contract Price to the various portions of the Work and is used as a basis for payments to the Contractor.

**Shop Drawings:** Drawings, diagrams, details, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate a portion of the Work.

**Site:** The land and, if any, building(s) or space within any such building(s) on which or in which the Contractor is to perform the Work.

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

**Subcontractor:** Person or entity with whom the Contractor contracts in order to perform the Work, except as otherwise specifically provided or required herein or by Law.

**Substantial Completion:** For work subject to M.G.L. c. 30 s. 39K, "substantial completion" shall occur when (1) the Contractor fully completes the Work or substantially completes the Work so that the value of the Work remaining to be done is, in the estimate of the Awarding Authority, less than one percent of the original contract price, or (2) the Contractor substantially completes the work and the Awarding Authority takes possession for occupancy, whichever occurs first. For work subject to M.G.L. c. 30 s. 39G "substantial completion" shall mean either that the work required by the Contract has been fully completed, completed except for work having a Contract Price of less than one percent of the then adjusted total Contract Price, or 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.

**Superintendent:** The licensed construction supervisor who is an employee of the Contractor designated to be in full-time attendance at the Site throughout the prosecution and progress of the Work and who shall have complete authority to act for the Contractor.

**User Agency:** The department, county, commission, board, agency or other instrumentality of the Commonwealth of Massachusetts or political subdivision thereof which operates or which will operate the facility at which the Work is undertaken or which comprises the completed Work.

**Work:** The Work defined in Article 1 of the Owner - Contractor Agreement, Article II, Section 2 of these General Conditions of the Contract and otherwise in the Contract Documents.

**Working Hours:** 7:00 a.m. to 5:00 p.m., but not more than eight hours per day, Monday through Friday, unless otherwise specified by applicable Laws.

All terms that this Contract defines may be used with or without initial capital letters. Other terms, abbreviations and references are defined as they appear herein. Words and abbreviations that are not defined in the Contract Documents but which have recognized technical or trade meanings are used in accordance with those meanings. For additional definitions of terms, abbreviations and references refer to the *Supplementary General Conditions, or Specifications.*

## **ARTICLE II: EXECUTION OF THE CONTRACT, SCOPE OF WORK, INTERPRETATION OF CONTRACT DOCUMENTS**

### **1. Execution.**

The execution of the Owner – Contractor Agreement by the Contractor is a representation that the Contractor has visited the Site, has become familiar with local conditions under which the Work is to be performed and has correlated personal observations with requirements of the Contract Documents.

### **2. Scope of Work.**

The Work consists of the Work identified in the Contract Documents. The Work comprises the completed construction required by the Contract Documents and includes all labor, tools, materials, supplies, equipment, permits, approvals, paperwork, calculations, submittals, and certificates necessary to develop, construct and complete the Work in accordance with all Laws, and all construction and other services required to be supervised, overseen, performed or furnished by Contractor or that the Contract Documents require the Contractor to cause to be supervised, overseen, performed or furnished. The Contractor shall provide and perform for the Contract Price all of the duties and obligations set forth in the Contract Documents.

### **3. Interpretation.**

**A.** The Plans and Specifications and other Contract Documents are to be considered together and are intended to be mutually complementary, so that any work shown on the Plans though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is to be executed by the Contractor as a part of this Contract.

**B.** All things that in the opinion of the Designer may be reasonably inferred from the Plans, Specifications and other Contract Documents are to be executed by the

Contractor. The Designer shall determine whether the detail Plans conform to the general Plans and Contract Documents, except as may be otherwise determined by the Awarding Authority.

C. The tables of contents, titles, headings and marginal notes or sub-scripts contained herein are solely to facilitate references, are not intended to be construed as provisions of the Contract, and in no way affect the interpretation of the provisions to which they refer.

D. Where reference is made in the Contract Documents to publications, standards, or codes issued by associations or societies, such reference shall be interpreted to mean the current edition of such publications, standards, or codes, including revisions in effect on the date of the Advertisement, notwithstanding any reference to a particular date. The foregoing sentence shall not apply to the dates, if any, specified with respect to insurance policy endorsement forms.

E. In case of any conflict among the Contract Documents, unless the context clearly otherwise requires, the Contract Documents shall be construed according to the following priorities:

- First Priority: Contract Modifications
- Second Priority: Owner - Contractor Agreement
- Third Priority: General Conditions of the Contract
- Fourth Priority: Drawings -- Schedules take precedence over enlarged detail Drawings, and enlarged Detail Drawings take precedence over reduced scale Drawings; figured dimensions shall prevail over scale.
- Fifth Priority: Specifications

#### **4. Distribution of Work.**

The distribution of the Work is intended to be described under the appropriate trades and, except for filed sub-bid work, may be redistributed, except as directed herein, provided that such redistribution shall cause no controversy among the trades and no delay in the progress of the Work.

#### **5. Contract Price.**

The Contract Price constitutes full compensation to the Contractor for everything to be performed and furnished in connection with the Work and for all damages arising out of the performance of the Work and/or the action of the elements, and constitutes the maximum compensation regardless of any difficulty incurred by the Contractor in connection with the Work or in consequence of any suspension or discontinuance of the Work.

### **ARTICLE III: CONTROL OF WORK / ADMINISTRATION OF THE CONTRACT**

#### **1. Designer.**

Notwithstanding anything to the contrary expressed or implied in this Contract, any of the powers, rights, and duties of the Designer may be exercised by the Awarding Authority, provided that the Awarding Authority shall be under no obligation to do so. The Awarding Authority may rely on the Designer for the performance and exercise of its rights and obligations hereunder and shall be presumed to so rely on the Designer in the absence of an explicit written assumption by the Awarding Authority of any such rights and obligations, except that any Approval required to be obtained from the Awarding Authority hereunder shall not be valid without the signature of the Awarding Authority. The Awarding Authority may explicitly overrule in writing any action, determination or decision of the Designer should the Awarding Authority choose to do so, except to the extent that the same would violate applicable law. Subject to the foregoing, the Designer shall be responsible for the general administration of the Contract and shall perform the duties and exercise the rights herein conferred on the Designer. Except as otherwise specifically provided herein, the Designer shall decide all questions which may arise as to the conduct, quantity, quality, equality, acceptability, fitness, and rate of progress of the several kinds of work and materials to be performed and furnished under this Contract, and shall decide all questions which may arise as to the interpretation of the Plans and

Specifications and as to the fulfillment of this Contract on the part of the Contractor. In the case of the death, resignation, inability or refusal of the Designer to act, or the termination of his or her or its employment, the Awarding Authority may appoint another person to act as Designer for the purposes of this Contract. The Awarding Authority shall give written notice to the Contractor of any such appointment.

**2. Right of Access to Work.**

The Awarding Authority, the User Agency and the Designer (and persons designated by them) may for any purpose enter upon the Work, the Site, and premises used by the Contractor, and the Contractor shall provide safe facilities therefor. Other contractors of the Awarding Authority may also enter upon the same for the purposes which may be required by their contracts or work. Any differences or conflicts which may arise between the Contractor and other contractors of the Awarding Authority with respect to their work shall be initially resolved by the Designer.

**3. Inspection No Waiver.**

No inspection by the Awarding Authority or the Designer or employees or agents of either of them, and no order, measurement, certificate, approval, payment order, payment, acceptance or any other action or inaction of any of them, shall operate as a waiver by the Awarding Authority of any provision of this Contract.

**ARTICLE IV: GENERAL PERFORMANCE OBLIGATIONS OF THE CONTRACTOR**

The Contractor shall complete for the Contract Price all of the Work in a proper, thorough, and workmanlike manner in accordance with the Contract Documents. Without limiting the foregoing and without limiting the Contractor's obligations under any other provision of the Contract Documents, the Contractor shall for the Contract Price perform the following general obligations:

**1. Review of Contract Documents and Field Conditions.**

**A.** Before commencing the Work, the Contractor shall carefully study the Contract Documents and carefully compare all Specifications, Plans, Drawings, figures, dimensions, lines, marks, scales, directions of the Designer, and any other information provided by the Awarding Authority and shall at once report to the Designer any questions, errors, inconsistencies, or omissions.

**B.** Before commencing the Work, the Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents and shall at once report to the Designer any questions, errors, inconsistencies, or omissions.

**2. Supervision and Construction Procedures; Coordination; Cutting, and Patching.**

**A.** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and shall have control over, construction means, methods, techniques, sequences and procedures, and shall be responsible for coordinating all portions of the Work under the Contract.

**B.** The Contractor shall be responsible for the proper fitting of all Work and the coordination of the operations of all trades, Subcontractors, and materialmen engaged upon the Work. The Contractor shall guarantee to each of its Subcontractors all dimensions which they may require for the fitting of their work to all surrounding work.

**C.** All necessary cutting, coring, drilling, grouting, and patching required to fit together the several parts of the Work shall be done by the Contractor, except as may be specifically noted otherwise under any particular filed sub-bid section of the Specifications.

**D.** The Contractor shall be responsible to the Awarding Authority for the acts and omissions of the Contractor's employees, agents and Subcontractors, and their agents and respective contractors employees, and other persons performing portions of the Work or supplying materials therefor.

**E.** The Contractor shall be responsible for the inspection of portions of the Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

**F.** The Contractor shall employ a registered land surveyor to perform any engineering required for establishing grades, lines, levels, dimensions, layouts, and reference points for the trades. The Contractor shall be responsible for maintaining benchmarks and other survey marks and shall replace any benchmarks or survey marks that may have become disturbed or destroyed. The Contractor shall verify the materials shown on the Drawings before laying out the Work and shall be responsible for any error resulting from its failure to exercise this precaution.

**G.** Unless otherwise required by the Supplementary General Conditions or the Plans and Specifications, or directed in writing by the Designer, Work shall be performed during regular Working Hours. However, if the Contractor desires to carry on the Work outside of regular Working Hours or on Saturdays, Sundays, or Massachusetts or federal holidays then the Contractor shall allow ample time to allow satisfactory arrangements to be made for inspecting Work in progress and shall bear the costs of such inspection. The Awarding Authority shall bill the Contractor directly for such costs.

**H.** Work performed outside of regular Working Hours without the consent or knowledge of the Designer and/or the Awarding Authority shall be subject to additional inspection and testing as directed by the Designer. The cost of this inspection and testing shall be borne by the Contractor whether the Work is found to be acceptable or not. The Awarding Authority at its election shall be entitled either to issue a credit Change Order to cover such cost or to withhold such cost from any further payments due the Contractor and/or to receive a payment from the Contractor of the amount of such cost.

### **3. Superintendent.**

**A.** The Contractor shall employ a Superintendent whose appointment shall be subject to the Approval of the Awarding Authority. The Superintendent shall be in attendance at the Site full-time during the performance of the Work. The Superintendent shall represent the Contractor. Communications given to and from the Superintendent shall be deemed given to and from the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed upon written request in each case. The Superintendent shall attend each job meeting. The Superintendent shall be responsible for coordinating all of the Work of the Contractor and the Subcontractors.

**B.** The Superintendent shall be a competent employee regularly employed by the Contractor. The Superintendent shall be licensed in accordance with the Building Code and shall have satisfactorily performed similar duties on previous construction projects similar in type, complexity and scale to the Project. The Superintendent's resume shall be submitted to the Awarding Authority prior to commencement of construction together with such other information as the Awarding Authority may reasonably require in order to determine whether or not to Approve of his or her appointment. Any change in the Superintendent shall require the prior consent of the Awarding Authority. The Contractor shall establish an emergency telephone line by which the Awarding Authority, the Designer, or their respective agents may contact the Superintendent during non-working hours.

### **4. Labor.**

**A.** The Contractor shall employ only competent workers. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall certify and insure 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 and each of its subcontractors and others working on the Project shall furnish documentation of successful completion of said course by employees working with the first certified payroll report for each employee. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Whenever the Designer shall notify the Contractor in writing that any worker is, in the Designer's opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee shall be discharged from the Work and shall not again be employed on the Project except with the consent of the Designer.

**B.** The Contractor shall employ a sufficient number of workers to carry on the Work with all proper speed in accordance with Laws, the requirements of the Contract Documents, and the Progress Schedule.

**C.** The Contractor shall procure materials from such sources and shall manage its own forces and the forces of its Subcontractors and any sub-subcontractors in such a manner as will result in harmonious labor relations on the Project Site. If union and nonunion workers are employed to perform any part of the Work, the Contractor shall establish and maintain separate entrances to the Site for the use of union and nonunion workers. The Contractor shall cause persons to be employed in the Work who will work in harmony with others so employed. Should the Work be stopped or materially delayed in the Awarding Authority's reasonable judgment due to a labor dispute, the Awarding Authority shall have the right to require the Contractor to employ substitutes acceptable to the Awarding Authority.

## **5. Notices and Permits.**

**A.** The Contractor at its sole cost shall take out and pay for all approvals, permits, certificates and licenses required by Laws, pay all charges and fees, and pay for (or cause the appropriate Subcontractor to pay for) all utilities required for the proper execution of the Work.

**B.** The Contractor shall comply with all Laws and shall give all notices required thereby.

**C.** Except as otherwise specified in this Contract, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable Laws. However, if the Contractor observes that portions of the Contract Documents are at variance with the requirements of Laws, the Contractor shall promptly notify the Designer and Awarding Authority in writing, and necessary changes shall be accomplished by an appropriate Contract Modification.

**D.** If the Contractor performs Work knowing it to be contrary to Laws without giving such notice to the Designer and Awarding Authority, the Contractor shall bear full responsibility for such Work and all costs attributable thereto, including, without limitation, corrections to the Work.

## **6. Lines, Marks etc.**

The Contractor shall furnish batter boards and stakes and shall cause to be placed and maintained thereon so as to be easily read, such lines, marks and directions relating to the Work as the Designer shall from time to time direct. The Designer shall establish base lines and benchmarks on the Drawings for the locations of the Work but all other lines and grades shall be determined by the Contractor.

## **7. Excavation.**

The Contractor shall prevent by sheeting and shoring or bracing, if necessary, any caving or bulging of the sides of any excavation made by the Contractor, leaving sheeting and shoring in place, or if any is removed, filling solid the spaces left thereby.

## **8. Dewatering/Hoisting/Staging.**

The Contractor shall provide pumping, drainage, and disposal of all water and other flows so that no puddle, nuisance, or damage will be caused by water or flooding. The Contractor shall provide all hoisting equipment and machinery required for the proper execution of the Work. The Contractor shall provide all exterior and interior staging required to be over eight feet in height, except as may be otherwise provided in the Contract Documents.

## **9. Corrections to the Work; Inspection No Bar to Subsequent Corrections.**

The Designer's inspection of the Work shall not relieve the Contractor of its responsibilities to fulfill the Contract obligations. Defective work may be rejected by the Designer whether or not such work and/or materials have been previously overlooked or misjudged by the Designer and accepted for payment. If the Work or any part thereof shall be found defective at any time before the Final Acceptance of the whole Work, the Contractor shall forthwith cease the performance of any defective work in progress and, whether or not such work is still in progress, shall forthwith correct such defect in a manner satisfactory to the Designer. If any material brought upon the Site for use in the

Work, or selected for the same, shall be rejected by the Designer as unsuitable or not in conformity with the Contract Documents, or as damaged by casualty or deteriorated due to improper storage at the Site or to any other factor, the Contractor shall forthwith remove such materials from the Site. The Contractor shall pay for the cost of making good all work or property of other contractors or of the Owner destroyed or damaged by such removal or replacement; repair any injury, defect, omission or mistake in the Work as soon as it is discovered; finish and immediately make good any defect, omission or mistake in the Work; and complete and leave the Work in perfect condition.

#### **10. Sanitary Facilities.**

The Contractor shall provide and maintain sanitary facilities for all persons employed on the Work, beginning with the first worker at the Site. Said facilities shall meet the following requirements unless otherwise specified in the Supplementary General Conditions or Specifications.

**A.** There shall be no fewer facilities than the number required by applicable Laws;

**B.** Facilities shall be kept in a clean sanitary condition at all times and shall be adequately screened to be inaccessible to flies.

(Note: If existing sanitary facilities at the Site are to be used by the Contractor, this requirement will be modified accordingly in the Supplementary General Conditions or Specifications.)

#### **11. Temporary Offices.**

**A.** Except as otherwise specified in the Supplementary General Conditions or Specifications, the Contractor shall erect the following temporary offices near the Site as directed by the Designer and adequately furnish and maintain them in a clean, orderly condition:

(1) A Contractor's field office at which Contractor's authorized representative shall be present at all times while work is in progress. Instructions, notices, and other communications delivered there by the Designer or the Awarding Authority shall be deemed delivered to the Contractor. The Contractor shall provide a separate conference room space with a conference table and chairs sufficient to accommodate 12 persons at one time.

(2) Office for the Resident Engineer, either a separate building or trailer. Such office shall be in close proximity to the Contractor's field office, shall be at least 475 square feet in area, and shall be equipped with partitions to separate it from public access, electric lights, heat, air conditioning, window screens, secure locking devices, and a toilet room with a working chemical toilet. Such office shall be equipped with the following furniture and equipment in good condition: 2 lockable steel desks, word processor, 2 swivel chairs, two stools, 2 metal plan racks, plan table at least 32 by 84 inches, 2 metal filing cabinets with locks, 12 feet of 10 inch deep shelving, one accurate Fahrenheit thermometer, one electric water cooler with disposable cups and water supply service, one hard hat for each project representative and 6 visitor hard hats, one dry plain paper copy machine with a legal and standard paper tray, and one calculator with paper print out, all of which shall become the property of the Contractor at the conclusion of the Work. (Note: If office space can be assigned in existing buildings at the Project Site, this requirement will be modified accordingly in the Supplementary General Conditions or Specifications.)

**B.** The Contractor shall relocate the Resident Engineer's trailer at no additional cost to the Owner if the need for relocation arises as determined by the Designer.

#### **12. Contract Documents and Samples at the Site.**

A reasonable number of sets of Contract Documents will be furnished to the Contractor by the Awarding Authority immediately after signing of the Contract, one of which shall be maintained at the Site for reference by authorized representatives of the Awarding Authority. The Contractor shall maintain at the Site for the use and information of the Awarding Authority one record copy of the Drawings, Specifications, Addenda, Change Orders, Approved Shop Drawings, Product Data, Samples, updated Progress Schedule, and all other submittals, all in good order and marked currently to record changes and selections made during construction. These shall be available to the

Designer and the Awarding Authority and shall be delivered to the Designer for submittal to the Awarding Authority upon completion of the Work.

### **13. Telephones.**

The Contractor shall provide and maintain separate individual telephone service and pay for all calls relating to the Work. Service and equipment shall meet the requirements, if any, of the Supplementary General Conditions and Specifications and shall include provisions for incoming and outgoing calls: (1) in the Contractor's field office for the use of its authorized agents and (2) in the Resident Engineer's office for the use of the Designer and authorized agents of the Owner.

### **14. Health, Safety, and Accident Prevention**

**A.** In performing the Work, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons; and
- (3) Prevent damage to property, materials, supplies, and equipment.

**B.** For these purposes, the Contractor shall:

- (1) Comply with 84 Stat. 1590, the "Occupational Safety and Health Act of 1970" (OSHA) and with regulations and standards issued by the U.S. Secretary of Labor at 29 CFR Part 1926; and
- (2) Comply with the Trench Safety Law set forth in M.G.L. c. 82A and regulations promulgated by the Departments of Public Safety (DPS) and Occupational Safety (DOS) in 520 CMR 14.00 et. seq.; the CM shall execute a Trench Application and Permit form with the execution of its contract.
- (3) Include the terms of this Section 14 in every subcontract so that such terms will be binding on each subcontractor.
- (4) Designate by notice to the Awarding Authority a responsible member of its organization at the Site whose duties shall include ensuring safety, implementation of Contractor's Safety Plan referenced below and preventing accidents.

**C.** The Contractor shall maintain an accurate record of exposure data on all accidents incident to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904. Without limiting the foregoing, the Contractor shall submit to the Awarding Authority without delay verbal and written reports of all accidents involving bodily injury or property damage arising in connection with the Work.

**D.** In any emergency affecting the safety of persons or property the Contractor shall immediately act in the exercise of reasonable judgment to prevent threatened damage, injury, or loss. The Contractor shall immediately notify the Awarding Authority of such emergency.

**E.** The Contractor shall be responsible for its Subcontractors' compliance with the provisions of this Section 14.

**F.** Before commencing any portion of the Work the Contractor shall submit a written Project-specific plan for implementing this Section 14. The plan shall include an analysis of the significant hazards to life, limb and property inherent in the performance of the Work and a plan for controlling these hazards..

**G.** Without limiting the foregoing provisions of this Section 14, the Contractor shall comply with all health and safety Laws applicable to the Work. Without limitation,

- (1) If the Contractor uses, stores or encounters toxic or hazardous substances it shall comply with M.G.L. c. 111F, s. 2, the "Right to Know" law and regulations promulgated by the Department of Public Health, 105 CMR 670, the Department of Environmental Protection, 310 CMR 33, and the Department of Labor and Workforce Development, 441 CMR 21; and shall post a Workplace Notice obtainable from the Department of Labor and Workforce Development.
- (2) The Contractor shall comply with the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response,

Compensation and Liability Act, M.G.L. c. 21C, M.G. L. c. 21E, and any other Laws affecting toxic or hazardous materials, solid, special or hazardous waste (collectively "Hazardous Materials Laws). Should the Contractor discover unforeseen materials subject to Hazardous Materials Laws at the Site, the Contractor shall immediately comply with any and all requirements for dealing with such materials and notify all required governmental authorities and the Awarding Authority of such discovery.

(3) The Contractor shall be responsible for the location of all utilities in connection with the Work. Without limiting the foregoing, the Contractor shall comply with Dig-Safe Laws. Dig-Safe is the Utility Underground Plant Damage Prevention System, 331 Montvale Road, Woburn, MA, 01801, 1-888-344-7233. The Contractor shall notify Dig-Safe of contemplated excavation, demolition, or explosive work in public or private ways, and in any utility company right of way or easement, by certified mail, with a copy to Department of Environmental Protection (DEP). This notice shall be given at least 72 hours prior to the work, but not more than sixty days before the work is to be done. Such notice shall state the name of the street or the route number of the way and shall include an accurate description of the location and nature of the proposed work. Dig-Safe is required to respond to the notice within 72 hours of receipt by designating the location of pipes, mains, wires or conduits at the Site. The Contractor shall not commence work until Dig-Safe has responded. The work shall be performed in such manner and with reasonable precautions taken to avoid damage to utilities under the surface at the work location. The Contractor shall provide the Superintendent with current Dig-Safe regulations, and a copy of M.G.L. c. 82, s. 40. Any costs related to the services performed by Dig-Safe shall be borne by the Contractor.

(4) The Contractor shall comply with M.G.L. c. 149, s. 129A, relative to shoring and bracing of trenches.

**H.** Without limiting the Contractor's responsibilities described above, the Contractor shall take all reasonable precautions for the safety of, and the prevention of injury or damage to (1) all agents and employees and contractors on the Work and all other persons who may be affected thereby including the general public, (2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care custody or control of the Contractor or any of its Subcontractors or any contractors directly or indirectly contracting through any of them, and (3) other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work. The Contractor shall promptly remedy all damage or loss to any such property caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly contracted or employed by any of them or by anyone for whose acts any of them may be liable. Without limiting the foregoing, the Contractor shall:

- (1) post and maintain adequate danger signs and other warnings against hazards;
- (2) promulgate safety regulations and give appropriate notices to the Awarding Authority and users of adjacent utilities and property;
- (3) insure the adequate strength and safety of all scaffolding, staging and hoisting equipment, temporary shoring, bracing and tying;
- (4) protect adjoining private or public property;
- (5) provide barricades, temporary fences, and covered walkways required by prudent construction practices, Laws and/or the Contract Documents;
- (6) furnish approved hard hats and other personal protective equipment, furnish approved first aid supplies, furnish the name of the first aid attendant, and maintain a posted list of emergency facilities;
- (7) provide proper means of access to property where the existing access is cut off by the Contractor;
- (8) maintain from the beginning of any darkness or twilight through the whole of every night sufficient lights on or near any obstruction so as to guard and protect travelers from injury from such obstruction;
- (9) maintain adequate security at the Site so as not to expose the Work and surrounding property to vandalism or malicious mischief;

(10) provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumbers' torches and other flame and spark producing apparatus;

(11) take prompt action to correct any dangerous or hazardous conditions.

**I.** The Contractor shall not use or store explosives in the performance of the Work unless the Contractor first obtains the Awarding Authority's prior written specific Approval. If the Awarding Authority Approves the use or storage of explosives during the performance of the Work, the Contractor shall first comply with all Laws and obtain all permits, approvals, and certificates required in connection with the same and shall exercise best efforts, including but not limited to the employment and supervision of properly qualified personnel, to prevent damage, injuries, and accidents involving said explosives.

**J.** The Contractor shall not permit cutting or welding in or immediately adjacent to existing property of the Owner, Awarding Authority or of anyone else without the Awarding Authority's prior Approval in each instance.

### **15. Debris and Chemical Waste.**

**A.** The Contractor shall not permit the accumulation of interior or exterior debris. The Contractor shall keep the Work area clean at all times. Without limitation, garbage shall be removed daily.

**B.** The Contractor shall properly classify and remove debris and waste from the Site and transport and dispose of it, all in accordance with Laws, employing a qualified and properly licensed transporter, at any landfill, disposal or recycling facility licensed under applicable Laws, including without limitation, hazardous materials laws. The Contractor shall make all arrangements and give and obtain all notices, communications, documentation, permits, certificates, and approvals necessary for said 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, disposal and storage. The Contractor shall not permit any storage of debris or waste except in accordance with Laws.

**C.** The Contractor shall not permit any open fire on the Site.

**D. Chemical Waste:** Chemical waste shall be stored in corrosion resistant containers, removed from the Site, and disposed of not less frequently than monthly unless more frequently required by Laws, including without limitation hazardous materials laws, or by the Supplementary General Conditions or Specifications. 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). Fueling and lubricating of vehicles and equipment shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants shall be disposed of in accordance with procedures meeting all applicable Laws. The Contractor shall immediately notify the Designer 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 Laws any oil or hazardous materials releases resulting from its operations. Any costs incurred in cleaning up any such releases shall be borne by the Contractor.

### **16. Weather Protection (M.G.L. c. 149, s. 44G and 44F(1)).**

The Contractor shall furnish and install "weather protection," which means temporary protection of that Work adversely affected by moisture, wind and cold. Weather protection shall be achieved by covering, enclosing and/or heating working areas such that a minimum temperature of 40 degrees Fahrenheit is maintained at the working surface during the months of November through March in order to permit construction to be carried on during such period in accordance with the Progress Schedule. After the building or portion thereof is completely enclosed by either permanent construction or substantial temporary materials having a resistance comparable to the specified permanent construction, the Contractor shall provide heat therein of not less than 55 degrees F. nor more than 75 degrees F. The foregoing provisions do not supersede any specific requirements for methods of construction, curing of materials and the like. Such weather protection shall be consistent with the Progress Schedule, shall permit the continuous progress of the Work necessary to maintain an orderly and efficient sequence of construction operations, shall include one thermometer for every 2,000 square feet of floor space or fraction thereof, shall be subject to the Approval of the Awarding Authority, and shall meet such additional requirements as

may be specified by DCAMM and by the Supplementary General Conditions or the Specifications.

**17. Furnishings and Equipment.**

When, in the opinion of the Designer, any portion of the Work is in a reasonable condition to receive fittings, furniture, or other property of the Owner not covered by this Contract, the Contractor shall allow the Awarding Authority to bring such fittings, furniture, and/or other property into such portions of the Work and shall provide all reasonable facilities and protection thereof. No such occupancy shall be construed as interfering with the provisions relating to time of completion, or as constituting an acceptance of the whole or any part of the Work. Any furniture or fittings so installed shall be placed in the Work at the risk of the Awarding Authority except that the Contractor shall be liable for damages or losses to such furniture or fittings to the extent such damages or losses arise in whole or in part from the negligence or intentional misconduct of Contractor, Subcontractors, their agents and/or employees, or anyone for whose acts Contractor is responsible.

**18. Form for Sub-contract.**

The Contractor when subcontracting with sub-bidders filed pursuant to M.G.L. c. 149, s.44F shall use the form for sub-Contract in M.G.L. c. 149, s. 44F(4) (c). The Contractor shall not interpret paragraph 3 of the statutory form of Subcontract to require such sub-bidders to provide insurance with limits higher than the limits that are required by Article XIV of these General Conditions of the Contract assuming that the term "Contractor" refers to the sub-bidder and that the term "Contract Price" refers to the sub-bidder's price stated in paragraph 1 of the statutory form of Subcontract.

**19. Sales Tax Exemption and Other Taxes.**

All building materials and supplies as well as the rental charges for construction vehicles, equipment and machinery rented exclusively for use on the Site, or while being used exclusively for the transportation of materials for the Work are entitled to an exemption from sales taxes under M.G.L. c. 64H, s. 6(f). The Contractor shall take all action required to obtain the benefit of such sales tax exemption. The Contractor shall bear the cost of any sales taxes that Contractor incurs in connection with the Work and the Awarding Authority shall not reimburse the Contractor for any such taxes. The exemption number assigned to the Contractor as an exempt purchaser shall be provided to the Contractor by the Awarding Authority upon the written request of the Contractor.

**20. Final Cleaning.**

At the completion of the Work, the Contractor shall remove all waste materials, rubbish, tools, equipment, machinery and surplus materials, and professionally clean all sight-exposed surfaces so that the Work is clean and ready for occupancy. Subsequent to installation of User Agency furniture, telephones, and equipment, the Contractor shall provide such additional cleaning as may be necessary to remove any soil resulting from installation of such furniture, telephones and equipment.

**21. Maintenance Data.**

Subject to such additional requirements as may be provided in the Supplementary General Conditions or Specifications, the Contractor shall compile 3 complete and identical binders of operating and maintenance data for the entire Work. The Contractor shall submit record maintenance data to the Designer for approval, shall submit approved maintenance data to the Awarding Authority, and shall instruct and train the User Agency's personnel in proper inspection and maintenance procedures.

**22. Closeout Procedures.**

The Contractor shall take all actions and submit all items required for the issuance of the Certificate of Agency Use and Occupancy and Final Acceptance as specified in the Contract Documents.

**23. Risk of Loss.**

The Contractor shall bear all risk of loss to the Work during the term of the Contract except for any portion of the Work as to which the Certificate of Agency Use and Occupancy has been issued pursuant to Article VI of these General Conditions of the Contract. Nothing herein shall limit the Contractor's responsibilities under Article IX or XV of these General Conditions of the Contract.

#### **24. LEED Requirements**

Contractor understands that, pursuant to Executive Order No. 484, all new construction and renovation projects over 20,000 square feet must, at a minimum, meet a Massachusetts LEED Plus building standard, and that smaller projects must meet the minimum energy performance standards for advanced buildings established by the Commonwealth of Massachusetts Sustainable Design Roundtable. Furthermore, Contractor understands that the Massachusetts LEED Plus standard or a higher LEED standard applies to all projects overseen by the Massachusetts Division of Capital Asset Management and Maintenance, as well as all projects built on state land for use by state agencies. Contractor must document compliance with this executive order and Project LEED certification standards as described in the project specifications.

### **ARTICLE V: MATERIALS AND EQUIPMENT**

#### **1. Materials Generally.**

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

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

#### **2. Shop Drawings, Product Data, and Samples.**

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

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

**C.** The Contractor shall review, approve, and submit to the Designer, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Awarding Authority or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents

or which do not comply with the Contract Documents may be returned without action. The Contractor's attention is directed to the provisions of Section 4 of this Article V and to the Specifications.

**D.** The Contractor shall prepare and keep current for the Designer's approval a schedule of submittals which is coordinated with the Progress Schedule and allows the Designer reasonable time to review submittals.

**E.** The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Designer. Such Work shall be in accordance with Approved submittals.

**F.** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements, and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

**H.** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Designer on previous submittals.

**I.** Informational submittals upon which the Designer is not expected to take responsive action may be so identified in the Contract Documents.

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

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

### **3. Tests.**

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

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

### **4. "Or Equal" Submissions.**

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

issued a written statement to the Contractor to the effect that the item is, in the Awarding Authority's opinion, equal within the meaning of this paragraph to that prescribed in the Contract Documents.

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

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

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

##### **5. Delivery and Storage of Materials; Inspection.**

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

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

**C.** Expenses for inspection of material by the Designer and/or the Awarding Authority personnel including travel, quarters, and subsistence shall be borne by the Contractor requesting the inspection of material stored outside the Commonwealth of Massachusetts as part of the Contract Price. The policy of the Awarding Authority precludes the payment for material stored outside the boundaries of Massachusetts except in extremely limited circumstances with the express written consent of the Awarding Authority. If the Contractor requests an inspection of material stored outside the Commonwealth of Massachusetts, the Awarding Authority will initially pay for all expenses of inspecting the material incurred by the Designer and/or

Awarding Authority's personnel including travel, quarters, and subsistence. The Awarding Authority will then give Contractor an invoice for those costs and the Contractor shall submit a credit Change Order for the amount of those expenses.

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

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

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

#### **6. Defective, Damaged, or Deteriorated Materials and Rejection Thereof.**

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

### **ARTICLE VI: PROSECUTION AND PROGRESS**

#### **1. Beginning, Progress Schedule, and Completion of Work.**

**A.** The Contract time shall commence upon the date specified in the Notice to Proceed. The Contractor shall begin Work at the Site within ten days of said date unless otherwise ordered in writing by the Awarding Authority.

**B.** Within ten days after the Work has commenced, the Contractor shall submit to the Designer and to the Awarding Authority, a progress schedule for the term of the Contract as required by the Contract Documents, showing in detail his proposed progress for the construction of the various parts of the Work and the proposed times for receiving required materials. Upon Approval by the Awarding Authority, said schedule shall constitute the Progress Schedule. The Contractor shall at the end of each month, or more often if required, furnish to the Designer and to the Awarding Authority a schedule meeting the requirements of the Specifications showing the actual progress of the parts of the Work in comparison with the Progress Schedule.

**C.** Time is of the essence of this Contract. The Work shall be completed within the time specified in Article 2 of the Owner - Contractor Agreement. Should the Contractor require additional time to complete the Work, the Contractor shall document the reasons therefor and submit a written request for an extension of time within 20 days of the occurrence of the event alleged to be the cause of the delay, as provided in this Article and in Article VII of these General Conditions of the Contract. Failure to submit said written request within the time required by the preceding

sentence shall preclude the Contractor from subsequently claiming any time extension due to said delay.

**D.** If, in the opinion of the Designer or the Awarding Authority, the Contractor fails to comply with the Progress Schedule, the Awarding Authority may give the Contractor a notice specifying the time limits and performance standards that the Contractor is failing to meet whereupon (1) the Contractor shall, if the notice requires, discontinue all or any portion of the Work (which discontinuance shall neither terminate the Contract nor give the Contractor any claim for an increase in the Contract Price, damages, or an extension of any completion deadlines); or (2) at Contractor's sole cost increase the work force, equipment and plant, or any of them, employed on the whole or any part of the Work, to the extent required by such notice, and employ the same from day to day until the completion of the Work or such part thereof, or until the failure regarding the rate of progress, in the opinion of the Designer or the Awarding Authority, shall have been sufficiently corrected.

**E.** If, in the opinion of the Awarding Authority, the Contractor fails to comply with the Progress Schedule, and whether or not the Awarding Authority shall have given the Contractor a notice described in D above, the Awarding Authority may (but shall not be required to) give the Contractor notice of such failure and five days to cure the same. Unless the Contractor shall within that five days take all necessary steps to do so (including, if the Awarding Authority requires, increasing its forces, equipment and plant) and continue to do so until in the opinion of the Awarding Authority the failure is corrected, the Awarding Authority may at the Contractor's expense and without terminating this Contract take exclusive or joint possession of all or a portion of the Site and employ and direct the labors of existing or such additional forces, equipment and plant as may in the Designer's or Awarding Authority's opinion be necessary to insure the completion of the Work or such part thereof within the time specified in the Contract Documents or at the earliest possible date thereafter. The Awarding Authority may exercise its rights under this Article at any time and from time to time without waiving any of its rights under this Contract, at law or in equity, including, without limitation, the right to deem this Contract terminated or to order the Contractor to discontinue the Work at any time thereafter. The Contractor shall continue to perform the remaining Work under this Contract even if the Awarding Authority elects to have another contractor perform a portion of the Work under this Article.

**F.** The Awarding Authority shall deduct the cost of any actions the Awarding Authority takes under this Article from any amount then due or which might have become due to the Contractor under this Contract had the Contractor performed as required. On demand, the Contractor shall pay the Awarding Authority any amount by which the cost of completing all or any portion of the Work exceeds the amount attributable to that Work under the Contract Documents. The Awarding Authority's sole goal will be to complete the Work that it elects to complete within the time limits stated in the Contract or at the earliest possible date thereafter. Consequently, the Awarding Authority shall have no obligation to obtain competitive bids or the lowest cost for completing the Work or any part thereof. The Awarding Authority's election to complete all or part of the Work shall not release the Contractor from any liability for failure to complete the Work as the Contract Documents require, and shall not entitle the Contractor to a claim for an increase in the Contract Price or an extension of the time for completing the Work. If the cost that the Awarding Authority incurs in completing all or any portion of the Work is less than the amount that the Contract Documents attribute to that Work, the Awarding Authority will pay or credit the difference to the Contractor, less any other costs and expenses that the Awarding Authority incurs, including the cost of supervision, and the Designer's and attorneys' fees and costs.

## **2. Failure to Complete Work on Time - Liquidated Damages.**

**A.** If liquidated damages are specified in the Owner - Contractor Agreement, the Awarding Authority has determined that its damages as a result of Contractor's failure to complete the Work to the point at which it qualifies for the issuance of a Certificate of Agency Use and Occupancy will be difficult or impracticable to ascertain. Accordingly, if the Work is not completed to such point by the date specified in this Contract, the Contractor shall pay to the Awarding Authority the sum designated as liquidated damages in the Contract for each and every calendar day that the Contractor

is in default in completing the Work to such point. Such moneys shall be paid as liquidated damages, not as a penalty, to cover losses and expenses to the Awarding Authority and/or the User Agency resulting solely from the fact that the Work is not completed on time.

**B.** Similarly, if the Contract states that by a specified date a designated portion of the Work shall be prosecuted to the point at which it qualifies for the issuance of a Certificate of Agency Use and Occupancy, and if such portion has not been prosecuted to such point by said date, the Contractor shall pay to the Awarding Authority the sum designated in the Contract for each calendar day that the Contractor is in default in completing such portion of the Work to such point. Such moneys shall also be paid as liquidated damages not as a penalty, to cover losses and expenses to the Owner resulting solely from the fact that the Work is not completed on time.

**C.** The Awarding Authority may recover such liquidated damages by deducting the amount thereof from any moneys due or that might become due the Contractor, and if such moneys shall be insufficient to cover the liquidated damages, then the Contractor or the Surety shall pay to the Awarding Authority the amount due.

**D.** Permitting the Contractor to continue and finish the Work or any portion of it after the time fixed in the Contract for its completion shall not be deemed as a waiver of any of the Owner's rights hereunder, at law or in equity.

**E.** Liquidated damages or a portion thereof may be waived by the Awarding Authority if the Contractor submits evidence satisfactory to the Awarding Authority that the delay was caused solely by conditions beyond the control of the Contractor and that the Awarding Authority has not suffered any damages as a result of said delay.

**F.** Failure by the Awarding Authority to specify a sum as liquidated damages in the Owner - Contractor Agreement, or the insertion of "N/A" or "none" in the space provided therein for liquidated damages, shall not be deemed a waiver of the Awarding Authority's right to recover actual damages arising from the Contractor's failure to complete the Work on time.

### **3. Delays; Statutory Provisions (M.G.L. c. 30, s. 39O).**

**A.** Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by law as set forth in paragraph B below, the Contractor shall not be entitled to increase the Contract Price or to receive damages on account of any hindrances or delays, avoidable or unavoidable; but if any delay is caused in the opinion of the Designer by the Awarding Authority, the Contractor shall be entitled to an extension of time. The length of the extension shall be sufficient in the opinion of the Designer for the Contractor to complete the Work. Although no delay shall increase the Contract Price, the Awarding Authority may require that any change in the date by which the Contractor must complete all or any part of the Work be processed on a standard Change Order form.

**B.** If a suspension, delay, interruption or failure to act of the Awarding Authority increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the Contractor with respect to such increase as the Contractor shall have against the Awarding Authority by virtue of (a) and (b) of M.G.L. c. 30, s. 39O set forth below, but nothing in provisions (a) and (b) shall alter any other rights which the Contractor or the subcontractor may have against each other. As used in the statutory language of (a) and (b) below, "contract" means this Contract, "general contractor" means the Contractor and "awarding authority" means the Awarding Authority:

*"(a) The awarding authority may order the general 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 awarding authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.*

*(b) The general contractor must submit the amount of a claim under provision (a) to the awarding authority 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 final payment under this contract and except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the awarding authority in writing of the act or failure to act involved in the claim."*

#### **4. Use and Occupancy Prior to Final Acceptance.**

**A.** The Contractor agrees to the use and occupancy of the Project or any portion thereof before Final Acceptance of the Work by the Awarding Authority.

**B.** The Awarding Authority and the User Agency will cooperate with the Contractor with respect to the completion of the Work by taking such reasonable steps as may be possible to avoid interference with the Contractor's Work provided that they do not interfere with the proper functioning of the facility.

**C.** The Contractor shall not be responsible for wear and tear or damage resulting solely from temporary occupancy.

**D.** Use and occupancy of any part of the Work prior to Final Acceptance by the Awarding Authority shall not relieve the Contractor from maintaining the required payment and performance bonds and insurance (to the extent that insurance is required to be maintained after Substantial Completion) required by this Contract.

#### **5. Certificate of Agency Use and Occupancy.**

**A.** When the Work, or portion thereof which the Awarding Authority agrees to accept separately has reached the state of Substantial Completion as shown on Approved payment request, the Contractor shall develop, with the participation of the Designer and the Awarding Authority, the Punch List identifying those items of unfinished or unacceptable Work that remain to be performed or corrected under the Contract.

**B.** Before the Work shall be deemed completed to the point where it is ready for the issuance of a Certificate of Agency Use and Occupancy, the Contractor shall:

- (1) Provide Contractor's proposed Punch List containing a statement of the reason for each item listed thereon;
- (2) Advise the Awarding Authority of proposed changes in insurance in accordance with the provisions of this Contract, and provide to the Awarding Authority evidence of Contractor's Completed Operations insurance coverage to the extent required by the Contract Documents;
- (3) Execute and submit a notarized warranty on a form provided by the Awarding Authority meeting the requirements of Article IX of these General Conditions of the Contract, to commence upon the date of the issuance of the Certificate of Agency Use and Occupancy for the Work or the designated portion thereof, unless otherwise provided in the Certificate of Agency Use and Occupancy;
- (4) Submit signed special warranties and warranties of longer than one year as required by the Contract Documents;
- (5) Submit signed maintenance agreements for all portions of the Work specified to receive maintenance after the issuance of the Certificate of Agency Use and Occupancy;
- (6) Submit all preliminary record Drawings the Awarding Authority and Designer written acknowledgements from appropriate User and documents and framed data in the forms required by the Contract Documents;
- (7) Complete all items required to be completed by the Department of Public Safety and obtain a Certificate of Occupancy from the Department of Public Safety (or, if the Awarding Authority is a municipality, the building department having jurisdiction) and similar releases which permit the User Agency and the Awarding Authority full and unrestricted use of the areas claimed to be ready for occupancy;
- (8) Deliver specified maintenance stocks of materials, required spare parts, and all special tools furnished by manufacturers to persons designated by the Awarding Authority and obtain written receipts for same;
- (9) Make final changes of lock cylinders or cores and advise the Awarding Authority of the change of project security responsibility;

- (10) Complete start-up of systems and instruct User Agency personnel on proper operation and routine maintenance of all systems and equipment; obtain and submit to Agency personnel that start-up and instruction have been completed;
- (11) Remove all remaining temporary facilities that are no longer needed, surplus materials, and debris; (the Contractor shall not remove construction offices and trailers without the prior Approval of the Awarding Authority);
- (12) Submit final utility meter readings and similar information and advise the User Agency and the Awarding Authority of the change of responsibility for utility charges and payments upon the issuance of the Certificate of Agency Use and Occupancy;
- (13) Complete final clean-up of all Work, restoration of damaged finishes, and replacement of all damaged and broken glass not listed on the Contractor's Punch List.
- (14) Complete such other items as may be called for in the Supplementary General Conditions, if any, or in the Specifications.

C. After completing the items specified in subsection A above, the Contractor shall make a written request for the Designer's inspection for a Certificate of Agency Use and Occupancy in accordance with the Contract Documents. The Designer shall review the submittals and the Work and shall either 1) sign a Certificate of Agency Use and Occupancy or 2) notify the Contractor of incomplete and/or incorrect Work that must be completed and corrected prior to the issuance of the Certificate of Agency Use and Occupancy. The Designer shall notify the Contractor of any additions to the Punch List. In connection with the execution of the Certificate of Agency Use and Occupancy the Designer shall assign dollar values to each item on the Punch List. Failure to include any incomplete or defective item on the Punch List shall not relieve the Contractor of the obligation to complete all Work in accordance with the Contract Documents.

## **6. Final Acceptance of the Work.**

A. Prerequisites for Final Acceptance. After the issuance of a Certificate of Agency Use and Occupancy for the entire Work, and after the Contractor has completed all of the Work required by this Contract, including Change Orders and Punch List Items, the Contractor shall submit the following completed items to the Awarding Authority together with such additional items as may be specified in the Contract Documents:

- (1) A completed Final Application for Payment showing a final accounting of all changes in the Work, on the form provided by the Awarding Authority.
- (2) Certification and satisfactory evidence that all taxes, fees, and similar obligations have been paid.
- (3) Consent of the Surety to Final Payment executed by applicable bonding companies.
- (4) Certified copy of the Punch List stating that the Contractor has completed or corrected every item listed.
- (5) Evidence of Contractor's continuing Completed Operations Insurance coverage to the extent required by the Contract Documents.
- (6) All final record Drawings and documents in the forms specified by the Contract Documents.
- (7) A notarized certification that all purchases made under the tax exemption certificate were legitimate and entitled to exemption.
- (8) Written certifications from the Department of Public Safety (or if the Awarding Authority is a municipality, the building department having jurisdiction) and the Designer to the effect that: a) the Work has been inspected for compliance with the Contract Documents and has satisfied the Department of Public Safety; b) all equipment and systems included in the Work have been tested in the presence of the Designer and are operational and satisfactory; c) the Work is completed and ready for final inspection.
- (9) Such other items as may be required by the Contract Documents.

B. Reinspection; Final Acceptance. After notification from the Contractor that all remaining contract exceptions, omissions and incompletions have been completed (with the exception of Contractor's continuing warranty, insurance, indemnification, and such other obligations as are intended by the terms of the Contract Documents to extend beyond the date of Final Acceptance), the Awarding Authority and the Designer shall inspect the Work to verify the completion of the same. If the Work is

satisfactory, the Awarding Authority shall prepare a Certificate of Final Acceptance or shall notify Contractor of items which remain to be completed prior to Final Acceptance.

### **7. One-Year Warranty Repair List and Inspection.**

Approximately 30 days prior to the expiration of the comprehensive one-year warranty period, the Contractor shall schedule an appointment with the Awarding Authority for a re-inspection of the Work with the Awarding Authority, and shall thereafter inspect the work at the time scheduled. Based on this inspection and on prior inspections, the Awarding Authority shall issue a "Warranty Repair List" of items to be corrected by the Contractor. The Contractor shall make the repairs and/or replacements listed within 30 days of the issuance of the Warranty Repair List unless otherwise agreed by the Awarding Authority in writing.

## **ARTICLE VII: CHANGES IN THE WORK**

### **1. Change Orders Generally.**

**A.** No changes in the Work shall be made in absence of a Change Order (sometimes called a "Notice to Proceed") defined in Article I of these General Conditions of the Contract, directing the Contractor to perform such changes. A request for a change in the provisions of this Contract may be submitted to the Awarding Authority by the Contractor, Designer, Project Manager, Resident Engineer or User Agency. The request must be made in writing and in accordance with the provisions of this Contract, Laws, and the procedures of the Awarding Authority.

**B.** A Change Order may be issued by the Awarding Authority for changes in the Work within the scope of the Contract, including but not limited to, changes in: (1) the Plans and Specifications; (2) the method or manner of performance of the Work; (3) the Owner-furnished facilities, equipment, materials, services or Site; (4) the schedule for performance of the Work.

**C.** The Contractor shall immediately perform any Change Order work that is ordered by the Awarding Authority.

**D.** Whenever a Change Order is issued and said Change Order will cause a change in the Contractor's cost, the Contractor or the Awarding Authority may request an equitable adjustment in the Contract Price. A request for such an adjustment shall be in writing and shall be submitted by the party making such claim to the other party before commencement of the pertinent work or as soon thereafter as possible.

**E.** The Awarding Authority and the Contractor shall negotiate in good faith an agreement on an equitable adjustment in the Contract Price, and/or time if appropriate, before commencement of the pertinent work or as soon thereafter as is possible. In the absence of an agreement for an equitable adjustment, the Awarding Authority shall unilaterally determine the costs attributable to the change and provide the Contractor with a written notice to that effect. The Contractor may appeal the decision of the Awarding Authority within thirty days of receipt of said notice, to the chief executive official of the Awarding Authority or his designee, and the Contractor shall have the right to such further appeal as is provided in M.G.L. c.30, s. 39Q set forth in Section 4.D of this Article VII. However, if the Contractor shall exercise its rights to appeal the decision of the Awarding Authority as aforesaid, the Contractor shall be required to engage in the mandatory mediation procedures set forth in Section 5 of this Article VII.

**F.** During the negotiation of an equitable adjustment in the Contract Price, the Contractor shall, if requested, provide the Awarding Authority with all cost and pricing data used by him in computing the amount of the equitable adjustment, and the Contractor shall certify that the pricing data used was accurate, complete and current. If the Awarding Authority subsequently determines that the data submitted by the Contractor was incomplete, incorrect or not current, the Awarding Authority may exclude such data from consideration under the equitable adjustment request.

### **2. Methods of Computing Equitable Adjustments.**

**A.** Equitable adjustments in the Contract Price shall be determined according to one of the following methods, or a combination thereof, as determined by the Awarding Authority:

- (1) fixed price basis, provided that the fixed price shall be inclusive of items (a) through (e) below and shall be computed in accordance with those provisions;
- (2) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all costs related to such equitable adjustment;
- (3) time and materials basis to be subsequently adjusted on the basis of actual costs (but subject to a predetermined "not to exceed limit") calculated as follows:
  - (a) the direct cost (or credit) for labor at the minimum wage rates established for this Contract pursuant to M.G.L. c. 149, s 26-27H, and the direct cost for material and use of equipment;
  - (b) plus (or minus) the cost of Workmen's Compensation Insurance, Liability Insurance, Federal Social Security and Massachusetts Unemployment Compensation, or as an alternative the Contractor may elect to use a flat 30% of the total labor rate computed in accordance with subparagraph (a) above;
  - (c) plus an allowance equal to 20% of the amount of (a) above for overhead, superintendence and profit; (In the case of Item 1 work, which is the work of the Contractor and all his non-filed Subcontractors, said 20% allowance shall be paid to the Contractor and the Contractor and said non-filed Subcontractors shall agree upon the distribution of this amount as a matter of contract between them. In the case of Item 2 work, which is work performed by a Subcontractor filed pursuant to M.G.L. c. 149, s. 44F, said 20% allowance shall be paid to the filed Subcontractor, it being understood that this provision does not apply to other Subcontractors including sub-Subcontractors listed under paragraph E of the form for sub-Bid);
  - (d) plus, for work performed by a Subcontractor filed pursuant to M.G.L. c. 149, s. 44F, an additional allowance equal to 7% of the sum of (a) through (c) above as full compensation to the Contractor for processing forms and assuming full responsibility for the faithful performance of such work by said filed Subcontractor(s), provided that there shall be no additional allowance to a General Contractor if the General Contractor self performs the subcontract work pursuant to M.G.L. c. 149, s. 44F(5).
  - (e) plus (or minus) the actual direct additional premium costs and expenses incurred as a result of collective bargaining agreements or other agreements between organized labor and employers, and plus (or minus) the actual direct premium cost of payment and performance bonds required of Contractor and filed Subcontractors for this Contract.
- (4) Contractor and Subcontractors are required to anticipate annual updated prevailing wage schedules in accordance with G.L. c149, §27 and shall not be entitled to claim additional compensation for base bid contract work due to updated prevailing wage schedules.

**B.** If the net change is an addition to the Contract Price, it shall include the Contractor's overhead, superintendence and profit. On any change that involves a net credit, no allowance for overhead, superintendence and profits shall be included. For any change that does not include labor performed or materials installed in the project, there will be no markup for the Contractor's overhead, superintendence, and profit, even though there may be a net increase in the Contract Price. Charges for small tools known as "tools of the trade" are not to be computed in the amount of any change in the Contract Price.

**C.** Statutory Contract adjustments made under the provisions of M.G.L. c. 149, s.44F shall not be considered Change Orders and shall not entitle the Contractor to any adjustments for overhead, profit, and superintendence, although the Awarding Authority may require that such Contract adjustments be processed on standard Change Order and equitable adjustment forms.

### **3. Work Performed Under Protest.**

The Contractor agrees to perform all Work as directed by the Awarding Authority, and if the Project Manager determines that certain Work that the Contractor believes to be or to warrant a Change Order under this Article does not represent a change in the Work, the Contractor shall perform said Work. The Contractor shall be deemed to have concurred with the Project Manager's determination as aforesaid unless the Contractor shall perform Work under protest in compliance with the following subparagraphs (1) and (2) below:

(1) If the Contractor claims compensation for a change in the Work that is not deemed by the Project Manager to be a change or to warrant additional compensation as claimed by the Contractor, the Contractor shall on or before the first working day following the commencement of any such work or the sustaining of any such damage submit to the Designer, Resident Engineer and the Awarding Authority a written statement of the nature of such work or claim.

The Contractor shall not be entitled to additional compensation for any work performed or damage sustained for which written notice is not given within the time limit specified in the preceding sentence, even though similar in character to work or damage with respect to which notice is timely given.

(2) On or before the second working day after the commencement of such work or the sustaining of such damage, and daily thereafter, the Contractor shall file to the extent possible with the Resident Engineer, the Designer, and the Awarding Authority, itemized statements of the details and costs of such work performed or damage sustained. The Contractor shall use the DCAMM Daily Time and Materials Report found in DCAMM Form 13 to record all labor and material used. If the Contractor shall fail to make such statements to the extent possible, then the Contractor shall not be entitled to additional compensation for any such work or damages.

#### **4. False Claims, Statutory Provisions Regarding Changes.**

**A. Criminal Penalties:** The Contractor's attention is directed to M.G.L. c. 30, s. 39I which provides criminal penalties for unauthorized deviations from the Plans and Specifications, and to M.G.L. c. 30, s. 39J and M.G.L. c. 7C, s. 17-21. The Contractor's attention is also directed to M.G.L. 266, s. 67B which provides criminal penalties for false claims by Contractor 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."*

**B. Differing Site Conditions (M.G.L. c. 30, s. 39N):** *"If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing Site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly."*

**C. Timely Decision By Awarding Authority( M.G.L. c. 30, s. 39P):** *"Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the awarding authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty 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."

**D. Change Order / Contract Interpretation Appeal Procedure (M.G.L. c. 30, s. 39Q):**  
The following provisions apply to every contract awarded by any state agency as defined by M.G.L. c. 7C, s. 1 for the construction, reconstruction, alteration, remodeling, repair or demolition of any capital facility as defined by the aforesaid section 39A:

*"(a) Disputes regarding changes in and interpretations of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures, which shall constitute the exclusive method for resolving such disputes. Written notice of the matter in dispute shall be submitted promptly by the claimant to the chief executive official of the state agency which awarded the contract or his designee. No person or business entity having a contract with a state agency shall delay, suspend, or curtail performance under that contract as a result of any dispute subject to this section. Any disputed order, decision or action by the agency or its authorized representative shall be fully performed or complied with pending resolution of the dispute.*

*"(b) Within thirty days of submission of the dispute to the chief executive official of the state agency or his designee, he shall issue a written decision stating the reasons therefore, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within thirty days, he shall notify the parties to the dispute in writing of the reasons why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a decision within the thirty-day period or within the additional time period specified in such written notice shall be deemed to constitute a denial of the claim and shall authorize resort to the appeal procedure described below. The decision of the chief executive official or his/her designee shall be final and conclusive unless an appeal is taken as provided below.*

*"(c) Within twenty-one calendar days of the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises his option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The hearing officer shall issue a final decision as expeditiously as possible, but in no event more than one hundred and twenty calendar days after conclusion of the adjudicatory hearing, unless the decision is delayed by a request for extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, s/he shall notify all parties of the reasons for the delay and the date when the decision will issue. Failure to issue a decision within the one hundred and twenty-day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay.*

*"(d) When the amount in dispute is less than ten thousand dollars, a contractor who is party to the dispute may elect to submit the appeal to a hearing officer experienced in construction law for expedited hearing in accordance with the informal rules of practice and procedure of the division of hearing officers. An expedited hearing under this subparagraph shall be available at the sole option of the contractor. The hearing officer shall issue a decision no later than sixty days following the conclusion of any hearing conducted pursuant to this subparagraph. The hearing officer's decision shall be final and conclusive, and shall not be set aside except in cases of fraud."*

## **5. Mandatory Mediation.**

In the case of every dispute where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$50,000 or more and the Contractor appeals the decision of the chief executive officer of the Awarding Authority or his designee described in Section 4.B above, the Awarding Authority and the Contractor shall engage in good faith in a non-binding mediation process, which process shall be concluded within sixty days from the date that the Contractor files an appeal from said decision as provided in Section 4.B above. In the case of such disputes where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$500,000 or more, the parties shall, if the mediation process fails, submit the dispute to a third-party Neutral or Dispute Review Board which shall within sixty days render a non-binding advisory opinion. Unless the parties have previously agreed in writing to a process for submitting disputes to mediation or a Dispute Review Board, the Awarding Authority shall determine in its reasonable discretion the procedures to be followed and shall give the Contractor notice of the same in writing within 7 days of the date that the Awarding Authority receives notice of the Contractor's appeal from the decision of the chief executive officer of the Awarding Authority or his designee. The cost of the services of any mediator selected by one party to this Contract shall be borne by the party making the selection. The cost of the services of any mediator selected jointly by the parties to this Contract or jointly by mediators selected by the parties to this Contract shall be borne equally by the Contractor and the Awarding Authority.

## **ARTICLE VIII: PAYMENT PROVISIONS**

### **1. Schedule of Values.**

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

### **2. Payment Liabilities of Contractor.**

**A.** The Contractor shall pay to the Owner all expenses, losses and damages, as determined by the Awarding Authority or the Designer, incurred in consequence of any default, defect, omission or mistake of the Contractor or his employees or Subcontractors or the making good thereof.

**B.** If the Work (or a portion thereof) is not completed to Substantial Completion and the Contractor has not satisfied the requirements for the issuance of a Certificate of Agency Use and Occupancy by the date specified in Article 2 of the Owner - Contractor Agreement, the Contractor shall pay to the Owner liquidated damages as provided in Article VI, Section 2 of these General Conditions of the Contract.

### **3. Retention of Moneys by Awarding Authority.**

**A.** The Awarding Authority may keep any moneys which would otherwise be payable at any time hereunder, and apply the same, or so much as may be necessary therefor, to (1) the Owner's expenditures for the Contractor's account, (2) to secure the Awarding Authority's remedies against the Contractor for the Contractor's breach of its obligations under this Contract or the breach of any person performing any part of the Work and (3) the payment of any expenses, losses or damages incurred by the Awarding Authority or any agency of the Commonwealth as a result of the failure of the Contractor to perform its obligations hereunder. The Awarding Authority may retain, until all claims are settled, such moneys as the Awarding Authority estimates to be the fair value of the Awarding Authority's claims against the Contractor, and of all claims for labor performed or furnished and for materials used or employed in or in connection with the Work and for the rental of vehicles, appliances and equipment

employed and for the employment of substitute contractors and labor in connection with the Work filed in accordance with M.G.L. c. 30, s. 39A and s. 39F. The Awarding Authority may make such settlements and apply thereto any moneys retained under this Contract.

**B.** The Contractor shall each week examine all claims so filed, and if the same are in any respect incorrect or do not correctly show the amount due from the Contractor to the claimant for such labor and materials, the Contractor shall forthwith file with the Awarding Authority a separate written statement of all inaccuracies in each claim and of the correct amount due from the Contractor to each claimant therefor, and shall immediately file a statement of all payments thereafter made to such claimants. Each such statement shall be sworn to and contain a detailed breakdown required by M.G.L. c. 30 s. 39F (d) and (e). Unless such statements are so filed by the Contractor the amount shown by the claims filed shall at the option of the Awarding Authority be conclusively deemed to be the accurate amount due from the Contractor therefor in all accounting with the Awarding Authority. If the moneys retained under this Contract are insufficient to pay the sums found by the Awarding Authority to be due under the claims for labor and materials filed as aforesaid, the Awarding Authority may, at its discretion, pay the same, and the Contractor shall repay to the Awarding Authority all sums paid out. The Awarding Authority may also at its discretion use any moneys retained, due or to become due under this Contract, for the purpose of paying for both labor and materials used or employed in the Work for which claims have not been filed with the Awarding Authority.

**C.** No moneys retained under the provisions of this Article shall be held to be statutory security for the payment of claims filed in accordance with the provisions of M.G.L. c. 149, s. 29, as amended, for which security is provided by bond.

#### **4. Applications for Payment.**

**A.** The Contractor shall, once in each month on the day of the month corresponding to the day of the month specified in the Notice to Proceed referenced in Article 2 of the Owner - Contractor Agreement, on forms provided and in the manner prescribed by the Awarding Authority, submit to the Awarding Authority a statement showing the total amount of Work done to the time of such estimate and the value thereof as approved by the Resident Engineer and the Designer. It shall be the sole responsibility of the Contractor to deliver or cause to be delivered to the Resident Engineer (the "designee" as provided by M.G.L. c. 30, s. 39K), said periodic estimate in proper form, approved as provided above and arithmetically correct. All periodic estimates shall contain such certifications and other evidence supporting the Contractor's right to payment as the Awarding Authority may require, including without limitation, lien waivers and other evidence, on such forms as the Awarding Authority may require, establishing that title to the equipment or materials is unencumbered and has been transferred to the Owner. If there is no Resident Engineer assigned to the Contract, the Designer shall be the designee. If there is neither a Resident Engineer nor a Designer the designee shall be a person designated by the Awarding Authority at the project field office or alternatively the home office of the Awarding Authority. The Contractor shall include in such periodic estimate only such materials as are incorporated in the Work, except as provided in paragraph C below. The Awarding Authority shall retain five percent of such estimated value as part security for the completion of the Work and shall pay to the Contractor while carrying on the Work the balance not retained as aforesaid, subject to the Approval of the Awarding Authority after deducting therefrom all previous payments and all sums to be kept under the provisions of this Contract.

**B.** Each periodic estimate shall constitute the Contractor's representation that (1) the payment then requested to be disbursed has been incurred by the Contractor on account of the Work and is justly due to Subcontractors or, to the Contractor in the case of other Work performed by the Contractor on account thereof, (2) the materials, supplies and equipment for which Application for Payment is being submitted have been installed or incorporated into the Work or have been stored at the Site or at such off Site storage locations as the Awarding Authority shall have Approved, (3) the materials, supplies and equipment are insured in accordance with the provisions of this Contract, (4) the materials, supplies and equipment are owned by the Owner and are not subject to any liens or encumbrances, (5) the Work which is the subject of such periodic estimate has been performed in accordance with the Contract Documents and (6) that all due and

payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of such periodic estimate. The Contractor's attention is directed to the criminal penalties for false claims referenced in paragraph A above.

C. The Contractor may include in a periodic estimate the value of materials or equipment delivered at the Site (or at some location agreed to in writing) only upon delivery to the Awarding Authority of: (1) an acceptable transfer of title on the form provided by the Awarding Authority; (2) written certification by the Contractor (or applicable subcontractor) on the form provided by the Awarding Authority that the Contractor (or the Subcontractor which executed the transfer of title) is the lawful owner and that the materials or equipment are free from all encumbrances, accompanied by receipted invoices or other acceptable proof of prior payment for such materials; (3) a stored materials insurance binder that covers the materials for which payment is requested, that names the Owner as an insured party should the stored materials be subjected to any casualty, loss, or theft prior to their inclusion in the Work. The material(s) or equipment must, in the judgment of the Designer (1) meet the requirements of the Contract, including prior shop drawing, product data, and sample approval, (2) be ready for use, and (3) be properly stored by the Contractor and be adequately protected until incorporated into the Work. See also Article V.5.C of these General Conditions of the Contract concerning the cost of inspections.

D. The Awarding Authority may make changes in any periodic estimate submitted by the Contractor in accordance with M.G.L. c.30, s. 39K (see below) and the payment due shall be computed in accordance with the changes so made. The provisions of said section 39K shall govern payments on which the Awarding Authority has made changes.

E. No certificate for payment and no progress payment shall constitute acceptance of Work that is not in accordance with the Contract Documents.

F. The Contractor and all Subcontractors furnishing labor on this Contract agree to furnish certified payroll reports if requested to do so, at no additional expense to the Awarding Authority. The Awarding Authority may at all reasonable times audit such reports.

#### **5. Periodic Payments ( M.G. L. c. 30, s. 39K).**

The Awarding Authority shall make payment to the Contractor in accordance with M.G.L. c. 30, s. 39K, which provides as follows:

*"Within fifteen days (30 days in the case of the commonwealth, including local housing authorities) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances, but less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five percent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one percent of the original contract price, or (b) the contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the Contract less (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points*

*above the rediscount rate then charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such periodic estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.*

*The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the change so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.*

*All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and column listing the amount paid to each filed subcontractor as of the date of the periodic estimate is filed. The person making payment for the awarding authority shall add the daily interest provided for herein to each payment for each day beyond the due date of receipt marked on the estimate.*

*A certificate of the architect to the effect that the contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.*

*Notwithstanding the provisions of this section, at any time after the value of the work remaining to be done is, in the estimation of the awarding authority, less than 1 per cent of the adjusted contract price, or the awarding authority has determined that the contractor has substantially completed the work and the awarding authority has taken possession for occupancy, the awarding authority may send to the general contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The general contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the general contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the awarding authority or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the general contractor by certified mail, return receipt requested, the awarding authority may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the general contractor and such termination shall be without prejudice to any other rights or remedies the awarding authority may have under the contract. The awarding authority shall note any such termination in the evaluation form to be filed by the awarding authority pursuant to the provisions of section 44D of chapter 149."*

## **6. Payment of Subcontractors (M.G.L. c. 30, s. 39F).**

The Contractor shall make payments to Subcontractors in accordance with M.G.L c.30, s. 39F which is quoted in this section below. For the purposes of this Contract, the word "forthwith" appearing in paragraph (1)(a) of the quoted provision shall be deemed to mean "within five (5) business days."

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

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

*(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (1) and (2) the awarding authority shall act upon the demand as provided in this section.*

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

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

removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (5) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to subparagraph (6) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the General contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a General contractor amounts which, together with the deposits in interest bearing accounts pursuant to subparagraph (6) are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

(i) If the subcontractor does not receive payment as provided in subparagraph (1) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (1), the subcontractor may demand direct payment by following the procedure in subparagraph (4) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g) and (h)."

(2) Any assignment by a subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of section twenty-nine of chapter one hundred forty-nine shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the awarding authority or which are on deposit pursuant to subparagraph (6) shall be subordinate to the rights of all subcontractors who are entitled to be paid under this section and who have not been paid in full.

(3) "subcontractor" as used in this section (I) for contracts awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall mean a person who files a sub-bid and received a subcontract as a result of that filed sub-bid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, (ii) for contracts awarded as provided in paragraph (1) of section thirty-nine M of chapter thirty shall mean a person approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the commonwealth not awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall also mean a person contracting with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.

(4) A general contractor or a subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposit as provided in subparagraph (6) by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in subparagraph (6) by a petition in equity in the

superior court against the awarding authority and the general contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. Sections fifty-nine and fifty-nine B of chapter two hundred thirty-one shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to sections fifty-nine and fifty-nine B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any subcontractor with the petition of one or more subcontractors or the same general Contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a subcontractor filing a demand for direct payment for which no funds due the general contractor are available for direct payment shall have a right to file a petition in court of equity against the awarding authority claiming a demand for direct payment is premature and such subcontractor must file the petition before the awarding authority has made a direct payment to the subcontractor and has made a deposit of the disputed portion as provided in part (iii) of subparagraph (5) and in subparagraph (6).

(5) In any petition to collect any claim for which a subcontractor has filed a demand for direct payment the court shall, upon motion of the general contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority as provided in part (iii) of subparagraph (5) and in subparagraph (6) any amount held under a trustee writ or pursuant to a restraining order or injunction.”

#### **7. Contracts for Public Works Governed by M.G.L. c. 30, s. 39G:**

The following statutory provision applies only to contracts for public works governed by M.G.L. c. 30, s. 39G: "Upon substantial completion of the work required by a Contract with the Owner, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges, and other highway structures, sewers and water mains, airports and other public works, the contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty-one days thereafter, the awarding authority shall present to the 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. The awarding authority may include with such a list a notice setting forth a reasonable time, which shall not in any event be prior to the Contract completion date, within which the contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the contractor's certification within the twenty-one day period, the contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.

Within sixty-five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one percent retainage of that 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. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payments filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to section thirty-nine F, but no Contract subject to said section thirty-nine F shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the Contract by subcontractors, material suppliers or others.

*If the awarding authority fails to prepare and send to the contractor any substantial completion estimate required by this section on or before the date herein above set forth, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston from such date to the date on which the awarding authority sends that substantial completion estimate to the contractor for acceptance or to the date of payment therefor, whichever occurs first. The awarding authority shall include the amount of such interest in the substantial completion estimate.*

*Within fifteen days after the effective date of the declaration of substantial completion, the awarding authority shall send to the contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond his control, the contractor shall complete all such work items within forty-five days after the receipt of such list or before the then Contract completion date, whichever is later. If the contractor fails to complete such work within such time, the awarding authority may, subsequent to seven days' written notice to the 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 the contractor.*

*Within thirty days after receipt by the awarding authority of a notice from the contractor stating that all of the work required by the Contract has been completed, the awarding authority shall prepare and forthwith send to the contractor for acceptance a final estimate for the quantity and price of the work done and all retainage on that work less all payments made to date, unless the awarding authority'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. If the awarding authority fails to prepare and send to the contractor the final estimate within thirty days after receipt of notice of completion, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such final estimate at the rate hereinabove provided from the thirtieth day after such completion until the date on which the awarding authority sends the final estimate to the contractor for acceptance or the date of payment therefore, whichever occurs first, provided that the awarding authority's inspection shows that no work items required by the Contract remain incomplete or unsatisfactory. Interest shall not be paid hereunder on amounts for which interest is required to be paid in connection with the substantial completion estimate as hereinabove provided. The awarding authority shall include the amount of the interest required to be paid hereunder in the final estimate.*

*The awarding authority shall pay the amount due pursuant to any substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the date of payment. Within 15 days, 30 days in the case of the commonwealth, after receipt from the contractor, at the place designated by the awarding authority, if such place is designated, of a periodic estimate requesting payment of the amount due for the preceding periodic estimate period, the awarding authority shall make a periodic payment to the contractor for the work performed during the preceding periodic estimate period and for the materials not incorporated in the work but delivered and suitably stored at the Site, or at some location agreed upon in writing, to which the contractor has title or to which a subcontractor has title and authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances. The awarding authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the contracting authority may deduct from its payment a retention based on the estimate of the fair value of its claims against the contractor, a retention for direct payments to*

*subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and a retention to secure satisfactory performance of the contractual work not exceeding five per cent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided that a five per cent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.*

*No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar a contractor from reserving all rights to dispute the quantity and amount of, or the failure of the awarding authority to approve a quantity and amount of, all or part of any work item or extra work item.*

*Substantial completion, for the purposes of this section, shall mean either that the work required by the Contract has been completed except for work having a Contract Price of less than one percent of the then adjusted total Contract Price, or 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”*

#### **8. Final Payment; Release of Claims by Contractor.**

Upon Final Acceptance of the Work the Contractor shall be entitled to payment of the balance of the Contract Price. Final payment shall be as provided in this Article above and in accordance with any process set forth in the *Supplementary General Conditions*. The Contractor agrees to execute a Certificate of Final Inspection, Release (with Contractor’s own exceptions listed thereon) and Acceptance as a condition precedent to Final Payment. The acceptance by the Contractor of the Final Payment made as aforesaid, or the execution of the Certificate of Final Acceptance by the Contractor, shall constitute a release of the Owner, the Awarding Authority, the Designer, and every member and agent of any of them, from all claims of and liability to the Contractor for anything done or furnished for or relating to the Work, or for any act or neglect of the Owner, the Designer, or of any person relating to or affecting the Work, except the claim against the Owner or the Designer for the remainder, if any there be, of the amounts set forth by the Contractor in the Certificate of Final Inspection, Release and Acceptance. Final Acceptance shall not relieve Contractor of the requirements of Articles IX, XIV, and XV of these General Conditions of the Contract, or of other provisions of this Contract, to the extent that the same are intended to survive Final Acceptance.

### **ARTICLE IX. GUARANTEES AND WARRANTIES**

#### **1. General Warranty.**

If at any time during the period of one (1) year from the date of the issuance of the Certificate of Agency Use and Occupancy by the Awarding Authority or the date of Final Acceptance, whichever occurs first, any part of such Work shall in the reasonable opinion of the Awarding Authority be defective or require replacing or repairing, or damage to other property of the Owner is caused by any defect in the Work, the Awarding Authority shall notify the Contractor in writing to make the required repairs or replacements and repair such damage. If the Contractor shall neglect to commence such repairs or replacements to the satisfaction to the Awarding Authority within ten (10) days from the date of the giving of such notice, then the Awarding Authority may employ other persons to make the same. The Contractor agrees, upon demand, to pay to the Awarding Authority all amounts which it expends for such repairs, replacements, and/or damages. During this one-year guarantee period any corrective work shall be performed under all the applicable terms of this Contract, and if Change Orders are issued in accordance with the terms of this Contract, the Contractor shall be entitled to compensation for special insurance, as required. This one-year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract.

#### **2. Special Guarantees and Warrantees.**

**A.** The Contractor's obligation to correct Work as set forth in paragraph 1 above is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various sections of the Specifications.

**B.** Guarantees and warranties required in the various sections of the Specifications must be delivered to the Designer before final payment to the Contractor may be made, or in the case of guarantees and warranties which originate with a subcontractor's section of the Work, before final payment for the amount of that subtrade or for the phase of Work to which the guarantee or warranty relates.

**C.** The failure to deliver a required guarantee or warranty shall constitute a failure to fully complete the Work in accordance with the Contract Documents.

## **ARTICLE X: MISCELLANEOUS LEGAL REQUIREMENTS.**

### **1. Contractor to be Informed.**

The Contractor shall inform itself of all existing and future Laws in any manner affecting those engaged or employed in 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 applicable jurisdiction or authority over the Work.

### **2. Compliance with all Laws.**

The Contractor shall cause all persons employed in the performance of the Work to comply with, all existing and future Laws, including but not limited to those set forth below:

**A. Corporate Disclosures.** The Contractor, if a foreign corporation, shall comply with M.G.L. c. 181, s.3 and s. 5, and M.G.L. c. 30, s.39L.

**A ½. Workforce Certification: Certification of Compliance with Workforce Related Legal Requirements.** The Contractor shall comply with the following legal requirements for any and all employees to be employed in the Project who are required to be listed in the certified payroll reports for the Project: 1) Federal Department of Homeland Security Requirements in hiring such employees including, but not limited to, the faithful completion of the Federal Department of Homeland Security Form I-9 process by CM; 2) proper classification of individuals employed on the project; 3) all laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes, and income taxes; and 4) all laws concerning hospitalization and medical benefits that meet the minimum requirements of the Connector Board established in Chapter 176Q of the General Laws. The Contractor shall execute a Workforce Certification form with the execution of its contract. The Contractor shall require each Subcontractor and sub subcontractor working on the Project to execute and provide to Contractor such Workforce Certification form with the execution of each subcontract, and Contractor shall immediately provide a copy to DCAMM. Contractor acknowledges that with the weekly workforce reports that must be submitted on a weekly basis, in the form and format required by DCAMM, including but not limited to, by electronic reporting, Contractor and all subcontractors on the project are required to certify that the Form I-9 process was faithfully completed and that all other legal requirements related to its workforce referenced above were followed for all employees listed on each certified payroll report when submitted. The Contractor and all subcontractors must: comply with the legal requirements of this section; must not knowingly use undocumented workers in connection with the performance of this contract; pursuant to federal requirements must verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and must not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. Breach of any of the terms of the Workforce Certification legal requirements during the period of the Contract may be regarded as a material breach, subjecting the Contractor and subcontractors to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination. Contractor must require each subcontractor working on the Project to execute and provide to Contractor a

Workforce Certification form with the execution of each subcontract, and Contractor must require each subcontractor to forward a copy of each such Workforce Certification to the Contractor for filing with DCAMM.

**B. Veterans Preference.** In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the performance of Work in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined in M.G.L. c.4, s.7 (34), and who are qualified to perform the work to which the employment relates and, within such preference, preference shall be given to service-disabled veterans; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.

The Awarding Authority encourages the participation of Service-Disabled Veteran- Owned Business Enterprises (“SDVOBE”) in its construction and design projects pursuant to Chapter 108 of the Acts of 2012 and Executive Order 546. The benchmark for SDVOBE participation on the Project is 3% of the Contract Price. A SDVOBE for purposes of the Commonwealth’s program, is a Service-Disabled Veteran-Owned Small Business (“SDVOSB”) as designated by the federal government pursuant to 15 USC §632, whose status as a SDVOSB can be verified on the U.S. VetBiz Vendor Information Page located at [www.VetBiz.gov](http://www.VetBiz.gov). SDVOBE’s shall be provided opportunities to participate in the Project and Contractor shall within 30 days of contract execution submit it’s Anticipated Service-Disabled Veteran-Owned Business Enterprise Participation plan to the Awarding Authority’s Compliance Office. Contractor shall report on the amount of SDVOBE participation on the Project on a regular basis, in the form, format and frequency requested by the Awarding Authority, including, but not limited to, by electronic reporting.

**C. Prevailing Wages.** The Contractor shall comply with M.G.L. c. 149, s. 26-27H. The prevailing wage schedule is found in Exhibit A to the Instructions to Bidders, listing the prevailing minimum wage rates that must be paid to all workers employed in the Work. The Awarding Authority is not responsible for any errors, omissions, or misprints in the said schedule. Such Schedule shall continue to be the minimum rate wages payable to workers employed in the Work throughout the term of this Contract, subject to the exceptions provided in M.G.L. c.149, s. 26-27H. The Contractor shall not have any claim for extra compensation from the Owner if the actual wages paid to workers employed in the Work exceeds the rates listed on the schedule or as otherwise provided by law. The Contractor shall cause a copy of said Schedule to be kept in a conspicuous place at the Site during the term of the Contract. If reserve police officers are employed by the Contractor, they shall be paid the prevailing wage of regular police officers. (See M.G.L. c.149, s.34B). Mass General Laws c. 149, §27, as amended on August 8, 2008 requires annual updates to prevailing wage schedules for all public construction projects lasting longer than one year. The Contractor is required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. The Contractor and all Subcontractors are required to anticipate such annual updated prevailing wage schedules and neither the Contractor nor any Subcontractors shall be entitled to claim additional compensation for base contract work due to updated prevailing wage schedules.

**D. Payroll Records and Statement of Compliance.** The Contractor shall comply and shall cause its Subcontractors to comply with Massachusetts General Law c. 149, s. 27B, which 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 Awarding Authority. 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 Awarding Authority.

**E. Vehicle operators.** If the Director of the Department of Labor and Workforce Development has established a Schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for the Work, the Contractor shall be obligated to pay such operators at least the minimum wage rate contained on such Schedule. (See M.G.L. c.149, s.26-27H).

**F. Eight Hour Day.** The Contractor shall comply with M.G.L. c. 149, s. 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.

**G. Timely Payment of Wages.** The Contractor shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, s. 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.

**H. Lodging, etc.** The Contractor shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, s. 25 which provides that every employee under this Contract shall lodge, board and trade where and with whom he elects, and neither the Contractor nor his 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.

**I. Truck Rates.** The use by the Contractor of trucks or other motor vehicles hired from either common or contract motor carriers in the course of performance of this Contract is subject to such minimum rates and charges, and rules and regulations as may from time to time be promulgated by the Department of Public Utilities of the Commonwealth of Massachusetts or other agency of the State of Federal government which may be authorized by law to set rates or otherwise regulate the use of such vehicles. The Contractor expressly assumes the risk of any additional expense that may arise by reason of any change in such minimum rates and charges, and rules and regulations, and shall be entitled to no additional compensation or reimbursement by reason thereof.

**J. Anti-Boycott Covenant (Executive Order #130).** The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. c. 151E, s. 2. If there shall be a breach in the warranty, representation or agreement contained in this paragraph, then without limiting such other rights as it may have the Awarding Authority shall be entitled to rescind this contract. 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 interests of the Contractor; or which directly or indirectly owns at least 51% of the Ownership interests of the Contractor.

**K. Contractor's Agreements with Suppliers--Anti-Boycott Provisions.**

(1) The Contractor shall not purchase or rent any materials, equipment, machinery, vehicles, or supplies for or in connection with the Work from any person or entity who does not sign, under pains and penalties of perjury, a certificate that recites: "The undersigned warrants, represents and agrees that during the time its agreement with {insert contractor's name} is in effect for materials, supplies or equipment to be used in connection with the {insert the name of the Awarding Authority} Project No. {insert project number}, neither the undersigned or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws. 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 undersigned or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the

undersigned; or which directly or indirectly owns at least 51% of the ownership interests of the undersigned."

(2) The Awarding Authority shall not be obligated to pay the Contractor for the cost of any materials, supplies, or equipment purchased or rented from any individual or entity from whom the Contractor has not previously obtained and delivered to the Awarding Authority the certificate that the previous paragraph requires. The Contractor will immediately terminate its contract with any supplier who breaches the warranty, representation and agreement contained in the previous paragraph.

(3) The Contractor shall include in the Contractor's agreement with any person or entity from whom the Contractor intends to purchase or rent any materials, equipment, machinery, vehicles or supplies for or in connection with the Work, (a) a notice that this Contract obligates the Contractor to terminate the supply contract upon discovery of such breach of the sworn certificate delivered under subparagraph (1) and such termination shall be without liability to the Contractor or the Awarding Authority and (b) a provision which states: "The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of the undersigned vendor which pertain to the performance and requirements of this agreement to provide materials of any nature to the undersigned contractor in connection with State Project No. (insert project number)."

**L. Access to Contractor's Records (Executive Order #195).** The Governor or his designee, the secretary of administration and finance, and the state auditor or his 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 which pertain to the performance and requirements of this Contract.

**M. Northern Ireland - M.G.L. c. 7 § 22C.** Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

## **ARTICLE XI: CONTRACTOR'S ACCOUNTING METHOD REQUIREMENTS (M.G.L. c. 30, s. 39R)**

### **1. Definitions.**

The words defined herein shall have the meaning stated below whenever they appear in this Article XI:

--"Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a Contract pursuant to M.G.L. c. 30, s. 39M, M.G.L. c. 149, s. 44A-J, and M.G.L. c. 7, s. 30B-P.

--"Contract" means any Contract awarded or executed pursuant to M.G.L. c. 30, s. 39M, M.G.L. c. 149, s.44A-J, and M.G.L. c. 7, s. 30B-P, which is for an amount or estimated amount greater than one hundred thousand dollars.

--"Independent Certified Public Account" 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 aspect 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.

--"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.

--"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.

or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

## **2. Record Keeping.**

**A.** The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts that in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor.

**B.** Until the expiration of six years after final payment, the Inspector General, DCAMM, and the Awarding Authority shall have the right to examine any books, documents, papers or records of the Contractor and Subcontractors that directly pertain to, and involve transactions relating to the Contractor and Subcontractors.

**C.** The Contractor shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Awarding Authority including 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.

**D.** The Contractor represents that it has, prior to the execution of the Contract, filed a statement of management on internal accounting controls as set forth in Section 3 below.

**E.** The Contractor represents that it has, prior to the execution of the Contract, filed an audited financial statement for the most recent completed fiscal year as set forth in section 4 below and will continue to file such statement annually during the term of the Contract.

## **3. Statement of Management Controls.**

**A.** The Contractor shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:

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

**B.** The Contractor shall file with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- (1) whether the representations of management in response to subparagraph 3 above are consistent with the results of management's evaluation of the system of internal accounting controls; and
- (2) whether such representations of management are reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statement.

#### **4. Annual Financial Statement.**

**A.** Every Contractor awarded a contract shall annually file with DCAMM 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.

**B.** The office of Inspector General and DCAMM shall have the right to enforce the provisions of this Article. A Contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to M.G.L. c. 149, s. 44C.

#### **5. Bid Pricing Materials.**

The Contractor shall save the written calculations, pricing information, and other data that the Contractor used to calculate the bid that induced the Awarding Authority to enter into this Contract (the "Bid Pricing Materials") for at least six years after the Awarding Authority makes final payment under this Contract.

### **ARTICLE XII: EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.**

This Contract includes the provisions of the Awarding Authority's "Equal Employment Opportunity, Non-Discrimination, and Affirmative Action Program" attached as Appendix A to these General Conditions of the Contract and incorporated herein by reference.

### **ARTICLE XIII: GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES**

This Contract includes the provisions of the Awarding Authority's program relating to Goals for Participation by Minority Business Enterprises and Women Business Enterprises attached as Appendix B to these General Conditions of the Contract and incorporated herein by reference.

### **ARTICLE XIV: INSURANCE REQUIREMENTS**

#### **1. Insurance Generally.**

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

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

**C.** Contractor shall submit three originals of each certificate of insurance, acceptable to the Awarding Authority, simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles and/or self-insured retentions, and policy effective and expiration dates. Certificates shall show the Awarding Authority, the Owner and anyone else the Awarding Authority requests as an additional insured as to all policies of liability insurance. Certificates shall specifically note the following:

- that the automobile liability, umbrella liability and pollution liability policies include the Awarding Authority as an additional insured;
- that all policies include the coverage and endorsements in accordance with the terms and conditions as required by this construction contract;
- that the Builders' Risk or Installation Floater is on an all risk basis including earthquake and flood, and includes the Awarding Authority as a named insured or loss payee as their interests may appear; and

- that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the Awarding Authority. Contractor shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Awarding Authority shall at all times possess certificates indicating current coverage.

**D.** The Contractor shall file one certified complete copy of all policies and endorsements with the Awarding Authority within sixty days after Contract award. If the Awarding Authority is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall be responsible for all costs and damages to the Awarding Authority attributable thereto.

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

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

## **2. Contractor's Commercial General Liability.**

**A.** The Contractor shall purchase and maintain general liability coverage on the ISO form CG 00 01 or equivalent, including products and completed operations, on an occurrence basis. The form must be amended to state that the aggregate limit applies on a per location/project basis. The policy shall provide the following minimum coverage to protect the Contractor from claims with respect to the operations performed by Contractor and any employee, subcontractor, or supplier, or by anyone for whose acts they may be liable unless a higher coverage is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the additional coverage:

Bodily Injury & Property Damage	\$1,000,000 each occurrence
Products & Completed Operations	\$2,000,000 general aggregate per project
Personal & Advertising Injury	\$1,000,000 annual aggregate
Medical Expenses	\$1,000,000 each occurrence
	\$5,000

**B.** This policy shall include coverage relating to explosion, collapse, and underground property damage.

**C.** This policy shall include contractual liability coverage.

**D.** The completed operations coverage shall be maintained for a period of three (3) years after Substantial Completion and acceptance by the Awarding Authority. The Contractor shall provide renewal certificates of insurance to the Awarding Authority as evidence that this coverage is being maintained.

**E.** If the Work includes work to be performed within 50 feet of a railroad, any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted.

**F.** This policy shall include the Awarding Authority, the Owner and anyone else requested by the Awarding Authority as an additional insured via endorsements CG 20 10 for ongoing operations and CG 20 37 for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.

**G.** The policy shall include endorsement CG 24 04, a Waiver of Subrogation in favor of the Awarding Authority and Owner.

## **3. Automobile Liability.**

**A.** The Contractor shall purchase and maintain the following minimum coverage with respect to the operations of any owned, non-owned, and hired vehicles including trailers used in the performance of the work, unless a higher coverage is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the additional coverage:

Bodily Injury & Property Damage	\$1,000,000 combined single limit
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**B.** The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in Exhibit A to the Owner – Contractor Agreement, the Contractor, if hauling contaminants and/or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.

**C.** The policy shall name the Awarding Authority and Owner as additional insureds.

**D.** The policy shall contain a Waiver of Subrogation in favor of the Awarding Authority and Owner.

**4. Contractor’s Pollution Liability.**

The Contractor shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The insurance policy shall cover the liability of the Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-Site and off-Site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. The Awarding Authority and Owner shall be named as an additional insureds and coverage must be on an occurrence basis. The amount of coverage shall be as follows unless a higher amount is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the additional coverage:

Limit of liability	\$1,000,000 per occurrence
	\$3,000,000 aggregate

**5. Worker's Compensation.**

**A.** The Contractor shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended, unless a higher coverage is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the higher coverage:

Worker's Compensation	Statutory limits
Employer's Liability	\$ 500,000 each accident
	\$ 500,000 disease per employee
	\$ 500,000 disease policy aggregate

**B.** If specified in Exhibit A to the Owner - Contractor Agreement the policy must be endorsed to cover United States Longshoremen & Harborworkers Act (USLHW), or Maritime Liability.

**C.** The policy shall contain a Waiver of Subrogation in favor of the Awarding Authority and Owner.

**6. Builder's Risk/ Installation Floater/Stored Materials.**

**A.** The Contractor shall purchase and maintain coverage against loss or damage on all Work included in this Contract in an amount equal to the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism (“certified” and “non-certified”), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Unless otherwise specified in this Contract, the limits for earthquake and flood shall be the lesser of the Contract Price or \$10,000,000. This policy and/or installation floater shall

include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in C. below.

**B.** When Work will be completed on existing buildings owned by the Owner, the Contractor shall provide an installation floater, in the full amount of the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Unless otherwise specified in this Contract, the limits for earthquake and flood shall be the lesser of the Contract Price or \$10,000,000. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in C. below.

**C.** The Contractor shall maintain insurance on delivered and/or stored material designated to be incorporated in the Work against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at an off Site location shall be forthwith replaced by the Contractor at no expense to the Awarding Authority.

**D.** The policy or policies shall specifically state that they are for the benefit of and payable to the Awarding Authority, the Owner, the Contractor, and all persons furnishing labor or labor and materials for the Contract Work, as their interests may appear. The policy or policies shall list the Awarding Authority, the Owner, the Contractor, and Subcontractors of any tier as named insureds.

**E.** Coverage shall include any costs for work performed by the Designer or any consultant as the result of a loss experienced during the term of this Contract.

**F.** Coverage shall include permission for temporary occupancy and a Waiver of Subrogation in favor of the Awarding Authority and Owner

**G.** Coverage shall be maintained until final acceptance by the Awarding Authority and Owner of the Contract and final payment has been made.

**H.** A loss under the property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds. The Contractor shall pay the subcontractors their just shares of insurance proceeds received by the Contractor and shall require subcontractors to make payments to their sub-subcontractors in similar manner.

## **7. Umbrella Coverage.**

The Contractor shall provide Umbrella Coverage in a form at least as broad as primary coverages required by Sections 2, 3 and 5 of this Article in the following amount unless a higher amount is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the higher amount:

<u>Contract Price:</u>	<u>Limit of Liability:</u>
Under \$1,000,000	\$2,000,000 per occurrence
\$1,000,001 -- \$5,000,000	\$5,000,000 per occurrence
\$5,000,001-- \$10,000,000	\$10,000,000 per occurrence
\$10,000,001 and over	\$25,000,000 per occurrence

## **8. Additional Types of Insurance.**

The Contractor shall provide such other types of insurance as may be required by Exhibit A to the Owner - Contractor Agreement.

# **ARTICLE XV: INDEMNIFICATION**

## **1. Generally.**

To the fullest extent permitted by law, the Contractor shall indemnify, defend (with counsel subject to the supervision of the Attorney General of the Commonwealth of Massachusetts as required by M.G.L. c. 12, s. 3) and hold harmless the Owner, Awarding Authority and Designer and their officers, agents, divisions, agencies, employees, representatives, successors and assigns from and against all claims,

damages, losses and expenses, including but not limited to court costs and attorneys' fees, arising out of or resulting from the performance of the Work, including but not limited to those arising or resulting from:

- labor performed or furnished and/or materials used or employed in the performance of the Work;
- violations by Contractor, any Subcontractor, or by any person directly or indirectly employed or used by any of them in the performance of the Work or anyone for whose acts any of them may be liable (Contractor, subcontractor and all such persons herein collectively called "Contractor's Personnel") of any Laws;
- violations of any provision of this Contract by any of Contractor's Personnel;
- injuries to any persons or damage to any property in connection with the Work;
- any act, omission, or neglect of Contractor's Personnel.

The Contractor shall be obligated as provided above, regardless of whether or not such claims, damages, losses and/or expenses, are caused in whole or in part by the actions or inactions of a party indemnified hereunder. In any and all claims by Contractor's Personnel against parties indemnified hereunder, the Contractor's indemnification obligation set forth above 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 workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article XV.

## **2. Designer's Actions.**

The obligations of the Contractor under Section 1 above shall not extend to the liability of the Designer, its agents or employees, arising out of (i) the preparation or approval of maps, Drawings, opinions, reports, surveys Change Orders, designs or specifications, or (ii) the giving of or the failure to give directions or instructions by the Designer, its agents to employees provided such giving or failure to give is the primary cause of the injury or damage.

## **3. Survival.**

The provisions of this Article XV are intended to survive Final Acceptance and/or any termination of this Contract.

# **ARTICLE XVI: PERFORMANCE AND PAYMENT BONDS**

## **1. Contractor Bonds.**

**A.** The Contractor shall provide performance and payment (labor and materials) bonds in the form provided by the Awarding Authority, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance. Each such bond shall be in the amount of the Contract Price.

**B.** If at any time prior to final payment to the Contractor, the Surety:

-is adjudged bankrupt or has made a general assignment for the benefit of its creditors;

-has liquidated all assets and/or has made a general assignment for the benefit of its creditors;

-is placed in receivership;

-otherwise petitions a state or federal court for protection from its creditors; or

-allows its license to do business in Massachusetts to lapse or be revoked;

then the Contractor shall, within 21 days of any such action listed above, provide the Awarding Authority with new performance and payment bonds as described in Paragraph A above. Such bonds shall be provided solely at the Contractor's expense.

## **2. Subcontractor Bonds.**

**A.** If the Contractor provided in its General Bid that any or all filed subcontractors shall provide the Contractor with payment and performance bonds for the full amount of their respective Subcontracts, then the costs for said bonds shall be the responsibility of the Contractor.

**B.** If the Contractor provided in its General Bid that filed Subcontractors shall provide bonds, and subsequently waives the requirement, the Contractor shall give the Awarding Authority a written certification that the Contractor understands that if the filed Subcontractor defaults or is terminated, the Contractor shall have full responsibility for all costs and expenses related to said default or termination but shall be entitled to a credit adjustment to the Contract Price in an amount equal to the bond premium Contractor would have paid had Contractor required the filed Subcontractor to provide such bonds.

## **ARTICLE XVII: TERMINATION OF CONTRACT**

### **1. Termination for Cause.**

**A.** The Awarding Authority may without prejudice to any other right or remedy deem this Contract terminated for cause if any of the following defaults shall occur and not be cured within three (3) days after the giving of notice thereof by the Awarding Authority to the Contractor and any surety that has given bonds in connection with this Contract:

- (1) The Contractor has filed a petition, or a petition has been filed against the Contractor with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the Contractor without its consent and is not dismissed within sixty (60) days; or if the Contractor is generally not paying its debts as they become due; or if the Contractor becomes insolvent; or if the Contractor consents to the appointment of a receiver, trustee, liquidate, custodian or the like of the Contractor or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Contractor makes an assignment for the benefit of creditors;
- (2) The Contractor refuses or fails, except in cases for which extension of time is provided under this Contract's express terms, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or the Designer has determined that the rate of progress required for the timely completion of the Work is not being met;
- (3) The Contractor fails to make prompt payment to Subcontractors or for materials, equipment, or labor;
- (4) All or a part of the Work has been abandoned;
- (5) The Contractor has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the Owner, except as expressly permitted in this Contract;
- (6) The Contractor has failed to comply with Laws;
- (7) The Contractor fails to maintain, or provide to the Awarding Authority evidence of the insurance or bonds required by this Contract, or
- (8) The Contractor has failed to prosecute the Work or any portion thereof to the standards required under this Contract or has otherwise breached any material provision of this Contract.

**B.** The Awarding Authority shall give the Contractor and any surety notice of such termination for cause, but the giving of notice of such termination shall not be a condition precedent or subsequent to the termination's effectiveness. In the event of such termination, and without limiting any other available remedies, the Awarding Authority may, at its option:

- (1) hold the Contractor and its sureties liable in damages for a breach of Contract;
- (2) notify the Contractor to discontinue all work, or any part thereof, and the Contractor shall discontinue all work, or any part thereof, as the Owner may designate;
- (3) complete the Work, or any part thereof, and charge the expense of completing the Work or part thereof, to the Contractor;
- (4) require the surety or sureties to complete the Work and perform all of the Contractor's obligations under this Contract.

If the Awarding Authority elects to complete all or any portion of the Work as specified in (3) above, it may take possession of all materials, equipment, tools, machinery, implements at or near the Site owned by the Contractor and finish the Work at the Contractor's expense by whatever means the Awarding Authority may deem expedient; and the Contractor shall cooperate at its expense in the orderly transfer of the same to a new contractor or to the Awarding Authority as directed by the Awarding Authority. In such case the Awarding Authority shall not make any further payments to the Contractor

until the Work is completely finished. The Owner shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the Contractor shall be solely responsible for their removal from the Site after the Owner has no further use for them. Unless so removed within fifteen days after notice to the Contractor to do so, they may be sold at public auction, after publication of notice thereof at least twice in any newspaper published in the county where the Work is being performed, and the proceeds credited to the Contractor's account; or they may, at the option of the Awarding Authority, be stored at the Contractor's expense subject to a lien for the storage charges.

C. Damages and expenses incurred under paragraph B above shall include, but not be limited to, costs for the Designer's extra services and Project Representative services required, in the opinion of the Awarding Authority, to successfully inspect and administer the construction contract through final completion of the Work.

D. Expenses charged under paragraph B above may be deducted and paid by the Awarding Authority out of any moneys then due or to become due the Contractor under this Contract.

E. All sums damages, and expenses incurred by the Owner to complete the Work shall be charged to the Contractor. In case the damages and expenses charged are less than the sum that would have been payable under this Contract if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference. In case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Owner.

## **2. Termination For Convenience.**

A. The Awarding Authority may terminate this Contract for convenience even though the Contractor is not in default by giving notice to the Contractor specifying in said notice the date of termination.

B. In case of such termination without cause, the Contractor shall be paid: (1) all sums due and owing under this Contract through the date of termination, including any retainage withheld to the date of termination, less any amount which the Awarding Authority determines is necessary to correct or complete the Work performed to the date of termination; plus (2) a reasonable sum to cover the expenses which Contractor would not have incurred but for the early termination of the Contract, such as demobilization of the work force, restocking charges, termination fees payable to Subcontractors.

C. The payment provided in paragraph B above shall be considered to fully compensate the Contractor for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination, including any claims for lost profits.

## **3. Contractor's Duties Upon Termination For Convenience.**

Upon termination of this Contract for convenience as provided in Section 2 of this Article, the Contractor shall: (1) stop the Work; (2) stop placing orders and Subcontracts in connection with this Contract; (3) cancel all existing orders and Subcontracts; (4) surrender the Site to the Awarding Authority in a safe condition; (5) transfer to the Awarding Authority all materials, supplies, work in process, appliances, facilities, equipment and machinery of this Contract, and all plans, Drawings, specifications and other information and documents used in connection with this Contract.

# **ARTICLE XVIII: MISCELLANEOUS PROVISIONS**

## **1. No Assignment by Contractor.**

The Contractor shall not assign by power of attorney or otherwise, or sublet or subcontract, the Work or any part thereof, without the previous written consent of the Awarding Authority and shall not, either legally or equitably, assign any of the moneys payable under this Contract, or Contractor's claims hereunder, unless with the like consent of the Awarding Authority, whether said assignment is made before, at the time of, or after the execution of the Contract. The Contractor shall remain responsible for satisfactory performance of all Work sublet or assigned. Consent of the Awarding Authority shall not be deemed to constitute a representation or waiver of

any right hereunder by the Awarding Authority as to the qualifications or the responsibility of the Contractor or Subcontractor(s).

**2. Non-Appropriation.**

If the Awarding Authority is unable to obtain an appropriation of funds sufficient to discharge the Commonwealth's obligations under this Agreement for any fiscal year during the term of this Agreement, the Commonwealth shall not be obligated to make any further payments, and this Agreement may be terminated immediately by either the Commonwealth or the Contractor, provided that the Commonwealth shall make payment to the Contractor for obligations incurred during the period for which funding was included in an annual or supplemental appropriation. Delay by the General Court in enacting an annual or supplemental appropriation bill shall not be grounds for termination of this Agreement pursuant to this Section, unless such annual or supplemental appropriation bill as enacted and signed by the Governor contains insufficient funding for obligations pursuant to this Agreement.

**3. Claims by Others Not Valid.**

No person other than the Contractor shall acquire any interest in this Contract or claim against the Awarding Authority or Owner hereunder, and no claim by any other person shall be valid except as provided in M.G.L. c. 30, s. 39F of the General Laws.

**4. No Personal Liability of Public Officials.**

No public official, employee, or agent of the Awarding Authority or Owner shall have any personal liability for the obligations of the Awarding Authority or Owner set forth in this Contract.

**5. Severability.**

The provisions of this Contract 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 other provisions of this Contract.

**6. Choice of Laws.**

This Contract shall be governed by the laws of the Commonwealth of Massachusetts for all purposes, without regard to its laws on choice of law. All proceedings under this Contract or related to the Project shall be brought in the courts of the Commonwealth of Massachusetts.

**7. Standard Forms.**

Unless directed otherwise in writing by the Awarding Authority, Contractor shall use the standard forms in use by the Division of Capital Asset Management and Maintenance appearing in Appendix C to these General Conditions of the Contract.

**8. No Waiver of Subsequent Breach.**

No waiver of any breach or obligation of this Contract shall constitute a waiver of any other or subsequent breach or obligation.

**9. Remedies Cumulative.**

All remedies of the Awarding Authority provided in this Contract shall be construed as cumulative and may be exercised simultaneously or in any order as determined by the Awarding Authority in its sole discretion. The Awarding Authority shall also be entitled as of right to specific performance and equitable relief including the right to an injunction against any breach of any of the provisions of this Contract

**10. Notices.**

Notices to the Contractor shall be deemed given when hand delivered to the Contractor's temporary field office at or near the Site, or when deposited in the U.S. mail addressed to the Contractor at the Contractor's address specified in the Owner - Contractor Agreement, or when delivered by courier to either location. Unless otherwise specified in writing by the Awarding Authority, notices and deliveries to the Awarding Authority shall be effective only when delivered to the Awarding Authority at the address specified in the Owner - Contractor Agreement and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by the Awarding Authority to receive official notices.



## **APPENDIX A to General Conditions of the Contract**

The following provisions form Article XII of the General Conditions of the Contract where DCAMM is the Awarding Authority.

### **EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM.**

#### **1. Compliance Generally.**

For purpose of this Article, "minority" refers to Asians, Blacks, Western Hemisphere Hispanics, Native Americans, and Cape Verdeans; "Commission" refers to the Massachusetts Commission Against Discrimination. During the performance of this Contract, the Contractor and all of its Subcontractors (hereinafter collectively referred to as the Contractor) shall comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

#### **2. Non-Discrimination and Affirmative Action.**

**A.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, handicap, sexual orientation, 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 comply with the provisions of M.G.L. c. 151B and all other applicable anti-discrimination and equal opportunity laws.

**B.** The Contractor shall comply with the provisions of Executive Order 478, entitled Order Regarding Nondiscrimination, Diversity, Equal Opportunity and Affirmative Action, which prohibits unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Executive Order 478 is herein incorporated by reference and made a part of this Contract.

Pursuant to Executive Order 478 the Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor must certify that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and commit to purchasing supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of Contract that may subject Contractor to appropriate sanctions. The Contractor shall comply with the provisions of Executive Order No. 246 entitled Revoking and Superseding Executive Orders Numbers 143 and 150, with respect to affirmative action programs for handicapped individuals, which is herein incorporated by reference and made a part of this Contract.

**C.** In connection with the performance of the Work, 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, sexual orientation, 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, sexual orientation, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for future public construction projects.

**D.** If the Contractor shall use any subcontractor on any work performed under this Contract, the Contractor shall take affirmative steps to negotiate with qualified minority and women subcontractors. These affirmative steps shall cover both pre-bid

and post-bid periods. It shall include notification to the State Office of Minority and Women Business Assistance or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids. 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 subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract relative to non-discrimination and affirmative action.

**E.** As part of its obligation of remedial action under this Article, the Contractor shall maintain on this project not less than the percent ratio set forth in the Owner - Contractor Agreement of minority employee worker hours to total worker hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in M.G. L. c. 149, s. 44F.

**G.** In the hiring of minority journeypersons, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the Awarding Authority.

### **3. Liaison Committee, Reports and Records.**

**A.** At the option of the Awarding Authority, there may be established for the term of this Contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the Awarding Authority, the Commission and such other representatives as may be designated by the Commission in conjunction with the Awarding Authority. The Contractor (or his agent, if any, designated by him as the on-Site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

**B.** The Contractor shall prepare projected staffing tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Awarding Authority and Liaison Committee. The Contractor shall prepare weekly reports in a form approved by the Awarding Authority of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Awarding Authority and to the Liaison Committee.

**C.** Records of employment referral orders, prepared by the Contractor, shall be made available to the Awarding Authority and to the Liaison Committee on request.

**D.** A designee of the Awarding Authority and a designee of the Liaison Committee shall each have right to access to the Site.

**E.** The Contractor shall comply with the provisions of M.G.L. c. 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this Contract.

**F.** The Contractor shall provide all information and reports required by the Awarding Authority or the Commission on forms and in accordance with instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Awarding Authority or the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Owner's supplementary affirmative action Contract requirements. 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 Awarding Authority or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.

### **4. Sanctions.**

**A.** Whenever the Awarding Authority, the Commission, or the Liaison Committee believes the Contractor or any Subcontractor may not be operating in compliance with the terms of this Article, the Commission shall directly, or through its designated agent, conduct an appropriate investigation, and may confer with the parties, to

determine if such Contractor is operating in compliance with the terms of this Article. If the Commission or its agent finds the Contractor or any Subcontractor not in compliance, it may make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission **may** make a final report of non-compliance, and recommend to the Awarding Authority the imposition of one or more of the sanctions listed below. If, however, the Commission believes the Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the Awarding Authority shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

(1) The recovery by the Awarding Authority from the Contractor of 1/100 of 1% of the Contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the Awarding Authority from the Contractor, to be assessed by the Contractor as a back charge against the subcontractor, of 1/10 of 1% of the sub-Contract Price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;

(2) The suspension of any payment or part thereof due under the Contract until such time as the Contractor or any subcontractor is able to demonstrate his compliance with the terms of the Contract;

(3) The termination or cancellation of the Contract, in whole, or in part, unless the Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;

(4) The denial to the Contractor or any subcontractor of the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three years.

**B.** If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that it is in compliance with this Article, the Contractor may request the Awarding Authority, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the Awarding Authority, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

**C.** Sanctions recommended by the Commission and enumerated under Section 4 above shall not be imposed by the Awarding Authority except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor. **D.** Notwithstanding the provisions of 4A-4C above, if the Awarding Authority determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of this Article, it may suspend any payment or portion thereof due under the Contract until the contractor demonstrates to the satisfaction of the Awarding Authority compliance with the terms of this Article. This temporary suspension of payments by the Awarding Authority is separate from the sanctions set forth in Section 4A-4C of this Article above, which are determined by MCAD and recommend to the Awarding Authority. Payment may be suspended only after the Contractor and any other interested party shall have been given the opportunity to present evidence in support of its position at an informal hearing held by the Awarding Authority, and the Awarding Authority has concluded upon review of all the evidence that such penalty is justified. Payment shall not be suspended if the Awarding Authority finds that the Contractor made its best efforts to comply with this Article, or that some other justifiable reason exists for waiving the provisions of this Article in whole or in part.

## **APPENDIX B to General Conditions of the Contract**

The following provisions form Article XIII of the General Conditions of the Contract where DCAMM is the Awarding Authority.

### **GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (EXECUTIVE ORDER 390, EXECUTIVE ORDER 478, M.G.L. c. 7C, s. 6)**

#### **1. Goals.**

**A.** The goals for minority business enterprise and woman business enterprise participation established for this Contract are as set forth in the Owner - Contractor Agreement.

**B.** The Contractor and all Subcontractors, sub-subcontractors, and materials suppliers shall comply with all of the terms and conditions of this Article, which include the provisions pertaining to MBE/WBE participation set forth in the Owner - Contractor Agreement in order to meet the MBE/WBE participation goals established for this Contract.

#### **2. MBE/WBE Participation Credit.**

**A.** If the Contractor is itself an MBE or WBE, MBE/WBE participation credit shall be given in an amount equal to the entire Contract Price. If the Contractor is not an MBE or WBE, then MBE/WBE participation credit will be given for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

**B.** If the Contractor is a joint venture with one or more MBE/WBE joint venturers, MBE/WBE participation credit shall be given to the joint venture as follows:  
(1) If the joint venture is certified by SOMBWA as an MBE or WBE, MBE/WBE participation credit shall be given in an amount equal to the entire Contract Price.  
(2) If the joint venture is not certified as an MBE or WBE by the Supplier Diversity Office (SDO), MBE/WBE participation credit shall be given to the joint venture for the value of the Work that is performed by the MBE/WBE joint venturer(s), and for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

**C.** If an MBE/WBE supplies but does not install equipment or materials, MBE/WBE participation credit shall be given only if the MBE/WBE supplier is regularly engaged in sales of equipment or supplies to the construction industry from an established place of business. MBE/WBE participation credit shall be given the full amount of the purchase order only if the MBE/WBE supplier manufactures the goods or substantially alters them before resale. In all other cases, MBE/WBE participation credit shall be given for 10% of the purchase order.

**D.** MBE participation credit shall be given for the work performed by MBEs only, and WBE participation credit shall be given for the work performed by WBEs only. MBE participation may not be substituted for WBE participation, nor may WBE participation be substituted for MBE participation.

#### **3. Establishing MBE/WBE Status.**

**A.** A minority owned business shall be considered an MBE only if it has been certified as a minority business enterprise by the Supplier Diversity Office ("SDO" formerly SOMWBA).

**B.** A woman owned business shall be considered a WBE only if it has been certified as a woman business enterprise by SDO.

**C.** Certification as a disadvantaged business enterprise ("DBE"), certification as an MBE/WBE by any agency other than SDO, or submission of an application to SDO for certification as an MBE/WBE shall not confer MBE/WBE status on a firm for the purposes of this Contract.

#### **4. Subcontracts With MBE/WBEs.**

Within thirty (30) days after the award of this Contract, the Contractor shall (i) execute a subcontract with each MBE/WBE Subcontractor which has executed a Letter of Intent Approved by the Awarding Authority, (ii) cause its Subcontractors to

execute a sub-subcontract with each MBE/WBE sub-subcontractor, and (iii) furnish the Awarding Authority with a signed copy of each such subcontract and sub-subcontract.

#### **5. Performance of Contract Work by MBE/WBEs.**

**A.** The Contractor shall not perform with its own organization, or subcontract or assign to any other firm, work designated to be performed by any MBE/WBE in the Letters of Intent or Schedule for MBE/WBE Participation without the prior written Approval of the Awarding Authority, nor shall any MBE/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its MBE/WBE Work without the prior written Approval of the Awarding Authority. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of BE/WBE Work by others shall be a change in the MBE/WBE Work for the purposes of this Contract. The Awarding Authority WILL NOT APPLY TO THE MBE/WBE PARTICIPATION GOAL(S) ANY SUMS ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB-CONTRACTS, SUB-SUBCONTRACTS, OR PERFORMANCE OF MBE/WBE WORK BY OTHERS.

**B.** The Contractor shall be responsible for monitoring the performance of MBE/WBE Work to ensure that each scheduled MBE/WBE performs its own MBE/WBE Work with its own workforce.

**C.** The Contractor and each MBE/WBE shall provide the Awarding Authority with all information and documentation that the Awarding Authority determines is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work. At the discretion of the Awarding Authority, failure to submit such documentation to the Awarding Authority shall establish conclusively for the purpose of giving MBE/WBE participation credit under this Contract that such MBE/WBE did not perform such work.

#### **6. Notification of Changes in MBE/WBE Work.**

**A.** If at any time during the performance of the Contract the Contractor determines or has reason to believe that a scheduled MBE/WMBE is unable or unwilling to perform its MBE/WBE Work, or that there has been or will be a change in any MBE/WBE Work, or that the Contractor will be unable to meet the MBE/WBE participation goal(s) for this Contract for any reason, the Contractor shall immediately notify the Awarding Authority Contract Compliance Office in writing of such circumstances.

**B.** Any notice of a change in MBE/WBE Work pursuant to subparagraph "A" above shall include a revised Schedule for MBE/WBE Participation, and additional or amended Letters of Intent and subcontracts, as the case may be.

#### **7. Actions Required If There is a Reduction in MBE/WBE Participation.**

**A.** In the event there is a change or reduction in any MBE/WBE Work which will result in the Contractor failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a Change Order initiated by the Awarding Authority, then the Contractor shall immediately undertake a diligent, good faith effort to make up the shortfall in MBE/WBE participation as follows:

(1) The Contractor shall identify all items of the Work remaining to be performed under the Contract that may be made available for subcontracting to MBE/WBEs. The Contractor shall send a list of such items of work to the Awarding Authority, together with a list of the remaining items of the Work that were not made available to MBE/WBEs and the reason for not making such work available for subcontracting to MBE/WBEs.

(2) The Contractor shall send written notices soliciting proposals to perform the items of the Work that may be made available for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The Contractor shall advise the Awarding Authority of (i) each MBE/WBE solicited, and (ii) each MBE/WBE listed in the SDO directory under the applicable trade category who was not solicited and the reasons therefor. The Contractor shall also advise the Awarding Authority of the dates notices were mailed and provide a copy of the written notice(s) sent.

(3) The Contractor shall make reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with

certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to the Awarding Authority evidencing this effort.

(4) The Contractor shall make reasonable efforts to assist MBE/WBEs that need assistance in obtaining insurance, bonds, or lines of credit in order to perform work under the Contract, and shall provide the Awarding Authority with evidence that such efforts were made.

(5) The Contractor shall provide the Awarding Authority with a statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a proposal, if applicable.

(6) The Contractor shall take any additional measures reasonably requested by the Awarding Authority to meet the MBE/WBE participation goal(s) established for this Contract, including, without limitation, placing advertisements in appropriate media and trade association publications announcing the Contractor's interest in obtaining proposals from MBE/WBEs, and/or sending written notification to MBE/WBE economic development assistance agencies, trade groups and other organizations notifying them of the project and of the work available to be subcontracted by the Contractor to MBE/WBEs.

**B.** If the Contractor is unable to meet the MBE/WBE participation goals for this Contract after complying fully with each of the requirements of paragraph "A" above, and the Contractor is otherwise in full compliance with the terms of this Article, the Awarding Authority may reduce the MBE/WBE participation goals for this Contract to the extent that such goals cannot be achieved.

## **8. Suspension of Payment and/or Performance for Noncompliance.**

**A.** If at any time during the performance of this Contract, the Awarding Authority determines or has reason to believe that (1) there has been a change or reduction in any MBE/WBE Work which will result in the Contractor failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a change in the Contract work ordered by the Awarding Authority, and (2) the Contractor has failed to comply fully with all of the terms and conditions of paragraphs 1 through 7 above, the Awarding Authority may: (1) suspend payment to the Contractor of an amount up to the full value of the work which was to have been performed by an MBE/WBE pursuant to the Contractor's Schedule for MBE/WBE Participation but which was not so performed, in order to ensure that sufficient Contract funds will be available if liquidated damages are assessed pursuant to paragraph 9, and/or

(2) suspend the Contractor's performance of this Contract in whole or in part.

**B.** The Awarding Authority shall give the Contractor prompt written notice of any action taken pursuant to paragraph A above and shall give the Contractor and any other interested party, including any MBE/WBEs, an opportunity to present evidence to the Awarding Authority that the Contractor is in compliance with the requirements of this Article, or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. The Awarding Authority may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken pursuant to this paragraph.

**C.** Upon a showing that the Contractor is in full compliance with the requirements of this Article, or that the Contractor has met or will meet the MBE/WBE participation goals for this Contract, the Awarding Authority shall release any funds withheld pursuant to clause A(1) above, and lift any suspension of the Contractor's performance under clause A(2) above.

## **9. Liquidated Damages; Termination.**

**A.** If payment by the Awarding Authority or performance by the Contractor is suspended by the Awarding Authority as provided in paragraph 8 above, the Awarding Authority shall have the following rights and remedies if the Contractor thereafter fails to take all action necessary to bring the Contractor into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of the Contractor is no longer susceptible to cure, if the Contractor fails to take such other action as may be required by the Awarding Authority to meet the MBE/WBE participation goals set forth in this Contract:

(1) the Awarding Authority may terminate this Contract, and/or

(2) the Awarding Authority may retain from final payment to the Contractor, as liquidated damages, an amount equal to the difference between (x) the total of the MBE/WBE participation goals set forth in this Contract, and (y) the amount of MBE/WBE participation credit given to the Contractor for MBE/WBE Work performed under this Contract as determined by the Awarding Authority, the parties agreeing that the damages for failure to meet the M/BE/WBE participation goals are difficult to determine and that the foregoing amount to be retained by the Awarding Authority represents the parties' best estimate of such damages. Any liquidated damages will be assessed separately for MBE and WBE participation.

**B.** Before exercising its rights and remedies hereunder, the Awarding Authority may, but the Awarding Authority shall not be obligated to, give the Contractor and any other interested party another opportunity to present evidence to the Awarding Authority that the Contractor is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. The Awarding Authority may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

#### **10. Reporting Requirements.**

The Contractor shall submit to the Awarding Authority all information or documentation that is necessary in the judgment of the Awarding Authority to ascertain whether or not the Contractor has complied with any of the provisions of this Article.

#### **11. Awarding Authority's Right to Waive Provisions of this Article in Whole or In Part.**

The Awarding Authority reserves the right to waive any provision or requirement of this Article if the Awarding Authority determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by a representative of the Awarding Authority's Compliance Office or the Office of its General Counsel. No other action or inaction by the Awarding Authority shall be construed as a waiver of any provision of this Article.

## **APPENDIX C to the General Conditions of the Contract**

### **INDEX OF COMMONLY-USED FORMS**

**(Forms used during bidding are located in Attachment B to the Instructions to Bidders)**

**Form of Subcontract – MGL c 149, s. 44F**

**Procedure for Payment to Contractors**

**Payment Voucher Input Form**

**Requisition for Payment (DCAMM Form S1b) and Instructions**

**Instructions Regarding Change Orders and Contract Modifications  
(DCAMM Form 13)**

**Daily Time and Material Report for Change Orders**

**Request and Agreement for a Change in the Plans,  
Specifications and/or Contract (DCAMM Form 5)**

**Notice of Intent**

**Contractors Weekly Workforce Report**

**Contractors Workforce Employee Set Up Form**

**Weekly Payroll Report Form and Statement of Compliance**

**Quarterly Projected Workforce Table**

**Certification of Payment by Contractor to MBE/WBE and Instructions**

**Certificate of Completion by Minority/Women Business Enterprise**

**Form for Transfer of Title (Work Not Incorporated, DCAMM Form 16)**

**Certificate of Agency Use and Occupancy -E-1**

**Certificate of Final Inspection, Release and Acceptance - E-2**