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**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**  
**c.149 \$150,000 – \$10 Million**

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# GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

## ARTICLE 1 GENERAL PROVISIONS

### 1.1 BASIC DEFINITIONS

#### 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Specifications, Drawings, EOHLC publication known as the Construction Handbook, all addenda issued prior to execution of the Contract, and other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

#### 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification.

#### 1.1.3 THE WORK

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

#### 1.1.4 THE 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.

#### 1.1.5 THE 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.

#### 1.1.6 THE 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.

#### 1.1.7 THE CONSTRUCTION HANDBOOK

The Construction Handbook is published by and available free of charge, from the EOHLC. It outlines the procedures that the Contractor, Owner, Architect, and EOHLC shall follow during the construction of the Work. The most recent version, at the time of bid opening, of the Construction Handbook is incorporated by reference into the Contract Documents.

### 1.2 EXECUTION, CORRELATION, AND INTENT

**1.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**1.2.2** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. In case of inconsistent requirements in the Contract Documents, the requirement for the greater quantity or higher quality shall take precedence and shall be the Contract requirement.

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

**1.2.4.** Where reference is made to standards or trade association publications, it shall be considered to refer to the latest edition and revision thereof, if any, in effect on the date the Contract Documents were advertised for bid.

### **1.3 USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS**

The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Subsubcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, the Architect, and the EOHLc-.

## **ARTICLE 2 OWNER**

### **2.1 DEFINITION**

The term "Owner", sometimes also referred to as the "Awarding Authority" or "Authority", means the Housing Authority identified in the Owner-Contractor Agreement, organized and existing under the provisions of M.G.L. c.121B.

### **2.2 INFORMATION AND SERVICES TO BE PROVIDED BY THE OWNER**

**2.2.1** The Owner will furnish to the Contractor, free of charge, a reasonable number of copies of the Contract Documents for the execution of the Work, including a set for record purposes. In addition, the Owner, through the Architect, will furnish to the Contractor a reproducible transparency and one black line print of detail and clarification drawings issued after the Contract has been awarded. The Contractor shall provide and distribute such number of prints of these transparencies as required for the Contractor's and Subcontractors' use.

**2.2.2** The Owner shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

### **2.3 OWNER'S RIGHT TO STOP THE WORK**

**2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner by written order signed personally or by its authorized agent, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

**2.3.2** Stop work orders require the Administrators' prior approval. (See Subparagraph 3.1.2)

### **2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Architect at the Owner's direction to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, hire one or more contractors to correct such deficiencies.

**2.4.2** In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 EOHLC**

### **3.1 DEFINITIONS**

**3.1.1** The term "EOHLC" means the Massachusetts Executive Office of Housing and Livable Communities, 100 Cambridge St. Suite 300, Boston, MA 02114.

**3.1.2** The term "Administrator" means the person appointed by the EOHLC to administer the terms of the Contract for Financial Assistance between the Owner and the EOHLC, who is also empowered to take certain actions under this Agreement. Contractor should address mail to the Administrator c/o the Construction Management Unit.

**3.1.3** The term "Construction Advisor" means the person designated by the Administrator to assist the Administrator. The duties, responsibilities and limitations of the Construction Advisor's authority are described in the Construction Handbook.

### **3.2 PROJECT FUNDING**

The Work under this Contract is funded by the Commonwealth of Massachusetts through the EOHLC pursuant to a contract for financial assistance between the EOHLC and the Owner.

### **3.3 EOHLC'S RESPONSIBILITIES**

**3.3.1** The Contractor is advised that various actions taken or decisions made by the Owner and/or the Architect under this Contract, require the prior approval and counter-signature of the Administrator. Those actions or decisions include, but are not limited to, the following:

- .1** Approval, substitutions, and final selection of Sub-Bidders pursuant to M.G.L. c.149 §44F
- .2** Change Orders and Construction Change Directives, whether or not they affect a change in the Contract Sum or in the Contract Time.
- .3** Written orders, notices, and approvals given by the Owner pursuant to the Contract Documents or pursuant to any Laws applicable to this Contract, including approval of the Contractor's payment requests.
- .4** Approval of "or equal" submissions and substitutions pursuant to Subparagraph 4.6.3.
- .5** Stop Work order.
- .6** Certificate of Substantial Completion.
- .7** Final payment.
- .8** Termination of Contract.

**3.3.2** In any instance where the Contractor requires clarification as to whose approval is required, the Architect shall provide such clarification.

**3.3.3** Work undertaken by the Contractor or a Subcontractor at the Owner's or other person's order without the Administrator's countersignature prior to the start of such work shall be considered unauthorized work and shall not be considered cause for extra payment. The Contractor or Subcontractor shall be responsible for performing, at their own expense, corrective measures required by the Architect due to any failure to obtain the prior approval of the Administrator pursuant to Subparagraph 3.3.1.

**3.3.4** The EOHLC and its authorized representatives and agents shall at all times have access to, and be permitted to observe and review all Work, materials, payrolls, records of personnel, conditions of employment, invoices of materials, and other relevant data and records maintained by the Contractor on the Project.

## **ARTICLE 4 CONTRACTOR**

### **4.1 DEFINITION**

The Contractor, sometimes referred to as the General Contractor, is the person or entity identified as such throughout the Contract Documents as if singular in number. The term Contractor means the Contractor or its authorized representative.

### **4.2 REVIEW OF CONTRACT DOCUMENTS & FIELD CONDITIONS BY CONTRACTOR**

**4.2.1** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency, or omission and knowingly failed to notify the Architect. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall assume responsibility for such performance and shall bear the attributable costs for correction.

**4.2.2** 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 before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Architect at once.

**4.2.3** The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 4.7.

### **4.3 SUPERVISION AND CONSTRUCTION PROCEDURES, COORDINATION, AND CUTTING AND PATCHING**

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

**4.3.2** The Contractor shall be responsible for the proper fitting of all Work and the coordination of the operations of all trades, Subcontractors, or material men engaged upon the Work.

**4.3.3** 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.

**4.3.4** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons performing portions of the Work.

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

**4.3.6** The Contractor shall do engineering required for establishing grades, lines, levels, dimensions, layouts, and reference points for the trades; shall be responsible for maintaining bench marks and other survey marks; and shall replace any bench marks or survey marks which have been disturbed or destroyed.

**4.3.7** Unless otherwise required by the Contract Documents, or directed in writing by the Architect, Work shall be done 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 holidays it shall allow ample time to enable satisfactory arrangements to be made for inspecting Work in progress and shall bear the costs of such inspection. The Owner shall bill the Contractor directly for such costs.

**4.3.8** Work done outside of regular working hours without the consent or knowledge of the Architect shall be subject to additional inspection and testing as directed by the Architect. The cost of this inspection and testing shall be paid by the Contractor whether the Work is found to be acceptable or not.

#### **4.4 SUPERINTENDENT**

**4.4.1** The Contractor shall employ a Superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Superintendent shall attend each job meeting.

**4.4.2** The Superintendent shall be a competent and responsible employee, satisfactory to the Owner, who is regularly employed by the Contractor and is designated by the Contractor as its representative to be in full time attendance at the Project site throughout the construction of the Work. The Superintendent shall be responsible for coordinating all the Work of the Contractor and the Subcontractors. The Superintendent shall be licensed consistent with the Massachusetts Building Code. The Superintendent's resume shall be submitted to the Owner prior to commencement of construction and must demonstrate to the Owner's reasonable satisfaction that the Superintendent has performed similar duties on previous construction projects similar to the Project.

#### **4.5 LABOR**

The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them, and whenever the Owner shall notify the Contractor, in writing, that any worker is, in its 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 Owner.

#### **4.6 MATERIALS AND EQUIPMENT**

**4.6.1** Unless otherwise 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.

**4.6.2** Materials and Equipment to be installed as part of the Contract (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.

##### **4.6.3 "OR EQUAL" SUBMISSIONS/SUBSTITUTIONS**

**4.6.3.1** Except where a product has been specified as a proprietary material, the words "or equal" are understood to follow the name of any maker, vendor, or product specified to be used in the Contract Documents. To determine if the materials or articles proposed by the Contractor are equal to those specified, the Architect, with the concurrence of the EOHL, shall determine whether the materials or articles proposed are at least equal in quality, durability, appearance, strength and design to the material or articles named or described, and will perform at least equally the functions imposed by the design. See M.G.L. c.30 §39M.

**4.6.3.2** The Contractor shall be responsible for providing the Architect with any information and test results the Architect reasonably requires to determine if a material is equal to a material named or described in the Contract Documents.

**4.6.3.3** Whenever the Contractor submits a material for approval as a substitute for a material named or described in the Contract Documents, such submission shall be made at least one hundred and twenty (120) days prior to the date the materials will be used on the Project but in no event later than ninety (90) days after the award of the Contract. In no event shall the Contractor maintain a claim for delays based upon the Architect's review of such substituted materials if the Contractor has failed to comply with the one hundred and twenty (120) days submission requirement.

#### **4.7 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

**4.7.1** Shop Drawings are drawings, diagrams, 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.

**4.7.2** 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.

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

**4.7.4** 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. Review by the Architect is subject to the limitations of Subparagraph 4.7.9.

**4.7.5** The Contractor shall review, approve, and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action. The Contractor's attention is directed to the provisions of Subparagraph 4.6.3 entitled "Or Equal" Submissions/Substitutions and Section 01.25.13 of the Specifications.

**4.7.6** The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule submitted pursuant to Paragraph 9.4, and allows the Architect reasonable time to review submittals.

**4.7.7** 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 Architect. Such Work shall be in accordance with approved submittals.

**4.7.8** By approving and 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, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**4.7.9** The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the EOHLC 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 Architect's actions.

**4.7.10** 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 Architect on previous submittals.

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

**4.7.12** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

#### **4.8 SAMPLES AND TESTS**

**4.8.1** Materials to be used in the Work may be tested or inspected after reasonable notice by the Architect and may be rejected if they fail the specified tests. Except as otherwise provided in the Contract, all testing of material specifically requested by the Architect will be paid for by the Owner, except that the cost of testing of materials that fail the testing criteria shall be borne by the Contractor. If the Contractor requests permission to use a material that was not specified in the Contract Documents and the Architect requires testing of such material before approving its use, the Contractor shall pay for such testing.

**4.8.2** The source of material proposed by the Contractor shall be designated 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 for delays due to testing if it fails to designate the proposed source or to order the material in time to provide for adequate testing and inspection. Necessary arrangements shall be made to permit the Architect 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 of the Work.

**4.8.3** The Contractor shall furnish the Architect with samples of the materials it proposes to use in the execution of the work in sufficient time to afford the Architect the opportunity to adequately review and, if necessary, arrange for testing of such materials.

#### **4.9 DELIVERY AND STORAGE OF MATERIALS**

**4.9.1** Materials and equipment shall be progressively delivered to the site so that there will be neither delay in the progress of the Work nor an undue accumulation of materials that are not to be used within a reasonable time.

**4.9.2** Materials stored off-site shall be stored at the expense of the Contractor in a manner that preserves their quality and fitness for the Work. Material shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be properly protected.

**4.9.3** If the Contractor requests the Architect's inspection of materials stored off-site, the Contractor shall assume the Architect's reasonable costs for travel, room, and meals associated with such inspection.

**4.9.4** Materials stored either at the site or at some other location agreed upon in writing shall be located so as to facilitate prompt inspection and may again be inspected prior to their use in the work.

**4.9.5** The Contractor shall take charge of and be liable for any loss of or injury to the materials delivered at or in the vicinity of the place where the Work is being done and shall notify the Architect as soon as any such materials are so delivered and allow them to be examined by the Architect.

**4.9.6** Payment for stored materials shall be made in accordance with Paragraph 10.4.

#### **4.10 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### **4.11 REJECTION OF DEFECTIVE MATERIALS**

The Architect may reject materials if the Architect reasonably determines that such materials do not conform to the Contract Documents. No rejected materials, the defects of which have been subsequently corrected, shall be used in the Work except with the written permission of the Architect. No extra time shall be allowed for completion of the Work due to the rejection of non-conforming materials.

#### **4.12 REJECTION OF DEFECTIVE WORK**

The Architect's inspection of the Work shall not relieve the Contractor of any of its responsibilities to fulfill the Contract obligations, and defective work shall be corrected. Unsuitable work may be rejected by the Architect, notwithstanding that such work and materials have been previously overlooked or misjudged by the Architect 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 correct such defect in a manner satisfactory to the Architect, and if any material brought upon the site for use in the Work, or selected for the same, shall be rejected by the Architect as unsuitable or not in conformity with the Contract requirements, the Contractor shall forthwith remove such materials from the vicinity of the Work.

#### **4.13 MATERIALS ATTACHED OR AFFIXED TO THE WORK**

Nothing in this Contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the Work or the soil; but all such materials shall, upon being so attached or affixed, become the property of the Owner.

#### **4.14 SALES TAX EXEMPTION AND OTHER TAXES**

**4.14.1** To the extent that materials and supplies are used or incorporated in the performance of this Contract, the Contractor is considered an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966.

**4.14.2** The Contractor shall be responsible for paying all other taxes and tariffs of any sort, related to the work.



#### **4.15 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the use and information of the Owner, one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Contract Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples, updated construction schedule, and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

#### **4.16 PERMITS, FEES, AND NOTICES**

**4.16.1** The Contractor (and the appropriate licensed subcontractor when applicable) shall secure and the Owner shall pay for any and all permits. The Contractor (and licensed subcontractor when applicable) shall secure and pay for all licenses, and other fees required for the proper execution of the Work. The Contractor shall coordinate all efforts required to obtain these permits including having the permit issued in the name of the Contractor or appropriate subcontractor.

**4.16.2** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.

**4.16.3** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**4.16.4** If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

#### **4.17 DEBRIS, CHEMICAL WASTE**

**4.17.1** The Contractor shall not permit the accumulation of debris, both exterior and interior, and the work area shall at all times be kept satisfactorily clean.

**4.17.2** The Contractor shall remove debris from the site of the work and legally dispose of it at any private or public dump that the Contractor may choose. The Contractor shall make all arrangements and obtain any approvals necessary for said disposal from the owners or officials in charge of such dumps and shall bear all cost, including fees resulting from such disposal. Garbage shall be removed daily.

**4.17.3** No open fire shall be permitted on site.

**4.17.4** Chemical Waste: Chemical waste shall be stored in corrosion resistant containers, removed from the Project site, and disposed of not less frequently than monthly unless directed otherwise. Disposal of chemical waste shall be in accordance with requirements of the U.S. Environmental Protection Agency (EPA) and the Massachusetts EOHLC 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 to be discarded or burned shall be disposed of in accordance with approved procedures meeting all applicable Federal, State and local regulations. In the event of an oil or hazardous materials spill large enough to violate Federal, State, or applicable local regulations, the Architect shall be notified immediately. The Contractor shall be responsible for immediately cleaning up any oil or hazardous waste spills resulting from its operations. Any costs incurred in cleaning up any such spills shall be borne by the Contractor.

#### **4.18 SITE AND WEATHER PROTECTION**

**4.18.1** The Contractor shall take precaution during the execution of work involving demolition not to disturb or damage any existing structures, landscaping, walks, roads, or other items scheduled to remain. The Contractor shall restore any damaged items to original condition and as directed by the Architect. The Contractor shall provide and erect acceptable barricades, fences, signs, and other traffic devices to protect the work from traffic and the public as reasonably necessary and as required by the Massachusetts Building Code.

**4.18.2** The Contractor shall install weather protection and provide adequate heat in the protected area from November 1 to March 31 as required by M.G.L. c.149 §44G.

#### **4.19 ARCHAEOLOGICAL AND HISTORICAL RESOURCES**

All items having any apparent historical or archaeological interest which are discovered in the course of any construction activities shall be carefully preserved and reported immediately to the Architect for determination of appropriate actions to be taken.

#### **4.20 SAFETY REQUIREMENTS**

**4.20.1** The Contractor must comply with all Federal, State, and Local safety laws and regulations of the applicable to work performed under this Contract.

**4.20.2** If the Contractor uses or stores toxic or hazardous substances it is subject to M.G.L. c.111F §2, the "Right to Know" law and regulations promulgated by the EOHLC of Public Health, 105 CMR 670, the EOHLC of Environmental Protection, 310 CMR 33, and the EOHLC of Labor and Workforce Development, 441 CMR 21; and must post a Workplace Notice obtainable from the EOHLC of Labor and Workforce Development.

**4.20.3** The Contractor must comply with Dig-Safe Laws. Dig-Safe is the Utility Underground Plant Damage Prevention System, 331 Montvale Ave., Woburn, MA 01801, 1.888.344.7233. The Contractor must 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 EOHLC of Environmental Protection (DEP). This notice must 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 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 §40. Any costs related to the services performed by Dig-Safe shall be borne by the Contractor.

**4.20.4** This project is subject to compliance with Public Law 92-596 "Occupational Safety and Health Act of 1970" (OSHA), with respect to all rules and regulations pertaining to construction, U.S. Code Title 29, sections 651 et seq. including Volume 36, numbers 75 and 105, of the Federal Register as amended, and as published by the U.S. EOHLC of Labor.

**4.20.5** If this Project requires the containment or removal of asbestos or material containing asbestos, lead or waste containing lead based paint, the Contractor shall ensure that the person or company performing the asbestos or lead related services is licensed pursuant to applicable State laws and regulations.

#### **4.21 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work at all times and shall cooperate with the Owner whenever the Owner invites visitors to the site.

### **ARTICLE 5 ADMINISTRATION OF THE CONTRACT**

#### **5.1 ARCHITECT**

The Architect is the person or entity licensed to practice architecture or engineering, who is responsible for performing the duties assigned to the Architect by the Contract Documents.

#### **5.2 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

#### **5.3 ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

**5.3.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the guaranty period described in Article 11. The Architect will advise and consult with the Owner.

**5.3.2** The Architect will regularly visit the site, conduct job meetings, and keep the Owner informed of the progress and quality of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work. The Architect's minutes of meetings shall be the official minutes kept on the Project.

**5.3.3** Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will submit to the Owner and the EOHLC for their consideration Certificates for Payment in such amounts as the Architect determines appropriate.

**5.3.4** The Architect shall reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to achieve the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with Paragraph 4.8.

**5.3.5** The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking such submittals for conformance with the information given and the design concept expressed in the Contract Documents. This review shall be in accordance with the

provisions of Subparagraph 4.6.3 and the procedures described in Section 01.33.00 of the Specifications, and shall not relieve the Contractor from compliance with the requirements of the Contract Documents.

**5.3.6** The Architect will prepare Change Orders and Construction Change Directives, and may authorize Minor Changes in the Work as provided in Paragraph 8.1.

**5.3.7** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

**5.3.8** If the Owner, Architect, and EOHL agree, the Owner may provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities, and limitations of authority of such project representatives shall be as described in the Construction Handbook and explained at the pre-construction conference.

**5.3.9** The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's written response to such requests will be made within the thirty day time limit prescribed in Paragraph 8.6.3.

**5.3.10** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

#### **5.4 PROCEDURES AND PRACTICES**

The EOHL's procedures, forms, and practices which must be employed on the Project are described in the Construction Handbook, and will be explained at the pre-construction conference.

#### **5.5 PRECONSTRUCTION CONFERENCE**

Prior to commencement of the Work, the Contractor shall meet in conference with representatives of the Owner, EOHL, and Architect to discuss and develop mutual understandings relative to administration of the quality assurance program, safety program, labor provisions, the schedule of work, and other Contract procedures.

### **ARTICLE 6 SUBCONTRACTORS**

#### **6.1 DEFINITION**

**6.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the work at the site.

**6.1.2** The Contractor shall require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor assumes toward the Owner and the Architect.**6.1.3** Subcontracts between the Contractor and a filed sub-bidder shall be in the form required by M.G.L c.149 §44F.

#### **6.2 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- .1** assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 19.1 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- .2** assignment is subject to the prior rights of the surety obligated under bond relating to the Contract.

### **ARTICLE 7 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **7.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**7.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

**7.1.2** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing and coordinating their construction schedules with one another when directed to do so.

## **7.2 MUTUAL RESPONSIBILITY**

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

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

**7.2.3** The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors

## **ARTICLE 8 CHANGES IN THE WORK**

### **8.1 CHANGES - DEFINITIONS**

**8.1.1** All changes in the work, including any increase, decrease, or other equitable adjustment in the Contract Sum or in the time for performing the Contract, shall be authorized in the form of one, or a combination of, the following written instruments: Change Order, Construction Change Directive, or a Minor Change in the Work. The term "equitable adjustment" as used in this paragraph shall include all adjustments to the Contract Sum or time to which the Contractor is entitled pursuant to M.G.L. c.30 §§39N and 39O and such equitable adjustment shall be made in accordance with the provisions of this Article.

**8.1.2** A Minor Change is a written order binding on the Owner and Contractor issued by the Architect, with the concurrence of the Construction Advisor, not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. The Contractor shall carry out such written orders promptly.

**8.1.3** A Change Order is a written instrument prepared by the Architect and signed by the Owner, EOHL, Contractor, and Architect, stating their agreement regarding a change in the work, including a change in the Contract Sum or Contract Time.

**8.1.4** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner, Architect, and EOHL, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum, or Contract Time, or both. The Owner may, by Construction Change Directive, and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**8.1.5** A Change Order shall be based upon agreement among the Owner, Contractor, Architect, and EOHL; a Construction Change Directive requires agreement by the Owner, Architect, and the EOHL, and may or may not be agreed to by the Contractor; an order for a Minor Change in the Work may be issued by the Architect with the concurrence of the Construction Advisor.

**8.1.6** Change Orders and Construction Change Directives must be counter-signed by the Administrator in accordance with Subparagraph 3.3.1, to be effective.

### **8.2 REQUEST FOR A CHANGE IN THE WORK**

A change order request shall be in writing and may originate with the Owner, the EOHL, the Architect, or the Contractor. If such a request would cause a change in the Contract Sum, the Contractor shall promptly submit to the Architect its cost and pricing data for such proposed change. Such data shall be accurate, current and complete at the time of submission and shall be computed in accordance with Subparagraph 8.3.1.

### **8.3 METHOD FOR DETERMINING AMOUNT OF CHANGE**

**8.3.1** Changes in the Contract Sum shall be calculated in accordance with one or a combination of the following methods, as determined by the Architect:

- .1** Lump sum basis, provided the lump sum amount shall include the estimated cost of the change, broken down by Items a through i in the following Subparagraph **.3**.
- .2** Unit price 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, on a not-to-exceed predetermined upset amount determined by the Architect, to be subsequently adjusted on the basis of the Contractor's actual costs based on the following items **a** through **i**:
- a.** Cost of labor at the rates found elsewhere in this document, including foremen;
  - b.** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
  - c.** Rental cost of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others.
  - d.** A percent of the net increase or decrease of Item **a** to cover Worker's Compensation, F.I.C.A., and unemployment contributions.
  - e.** The percentage for Worker's Compensation in Item **d** above shall not exceed the standard manual rate for the involved trade, as set by the Worker's Compensation Rating and Inspection Bureau of Massachusetts. This rate shall not include any surcharges such as experience modifications and all risk factor adjustment programs, etc.
  - f.** For work performed by the Contractor's own forces, there shall be added an amount of 15% of items **a - d** for overhead, superintendence, and profit.
  - g.** For work performed by any Subcontractor, there shall be added an amount of 15% of the Subcontractor's costs for Items **a - d** for the Subcontractor's overhead, superintendence and profit. The Contractor shall be entitled to an additional 10% mark-up on the total amount of the Subcontractor's price as compensation for assuming full responsibility and supervision for the Subcontractor's work.
  - h.** Actual increases in the premium costs for performance and payment bonds required of the Contractor and filed Subcontractors, provided there will be an appropriate credit for reduced premiums for a credit change order.
  - i.** On any change in the Contract Sum that involves a credit, the amount of the credit will not include an overhead and profit factor, however, the credit will include an amount for item **d**. which shall not be less than 25% of item **a**.

**8.3.2** The method provided in Subparagraph 8.3.1, for compensating the Contractor and Subcontractors for changes in the Work, shall be considered to adequately compensate the Contractor and Subcontractors for any and all costs directly, indirectly, or consequentially related to, or caused by, such change in the work.

#### **8.4 WORK PERFORMED UNDER PROTEST**

The Contractor shall perform all work as directed by the Architect, and if the Architect determines that certain work for which the Contractor has requested a change order does not represent a change in the Contract, or if the Contractor and the Architect cannot agree to the amount of compensation for a change order, the Contractor shall perform said work under protest and must follow the notice requirements and maintain the records required by Subparagraph 8.7.3.

#### **8.5 STATUTORY CHANGE ORDER PROVISIONS**

The Contractor's attention is directed to the Massachusetts General Laws Chapter 30, §§ 39I, 39J, 39N, 39O and 39P, the provisions of which apply to this Contract.

#### **8.6 DIFFERING SITE CONDITIONS, M.G.L. c.30 §39N**

**8.6.1** If, during the progress of the Work, the Contractor or the Owner discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the Owner may request an appropriate time extension and an equitable adjustment in the Contract Sum 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.

**8.6.2** Upon receipt of such a claim from a Contractor, or upon its own initiative, the Owner shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents 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 nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the Owner shall upon submission by the Contractor of a properly submitted Change Order request, make an equitable adjustment in the Contract Sum and the Contract shall be modified in writing accordingly.

#### **8.6.3 TIMELY DECISION BY OWNER. M.G.L. c.30 §39P**

Whenever this Contract requires the Owner or its Architect to make a decision during construction of the Project, on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, that decision shall be made promptly and, in any event, no later than thirty days after receipt of a written submission for such decision by the Contractor; but if such decision requires extended investigation and study, the Owner or the Architect shall, within thirty days after the receipt of the submission, give the Contractor 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.

## **8.7 CLAIMS**

**8.7.1** If the Contractor has any claim or dispute of any nature arising under this Contract, including a claim based on the Owner's failure or refusal to approve a change order request of the Contractor, in full or in part, the Contractor shall submit such claim or dispute to the Architect, in the form of a change order request, for initial review and consideration, subject to further appeal to the Administrator. If the Contractor is not satisfied with the Architect's decision or, if the Architect fails to render a decision within thirty days after receiving written notice of such claim or dispute from the Contractor, the Contractor may file a written request for a decision with the EOHLC pursuant to Subparagraph 8.7.2.

**8.7.2** Appeal of an Architect's decision under Subparagraph 8.7.1 must be made directly to the Administrator by certified mail, copy to the Architect and Owner, within twenty-one (21) calendar days after the date on which the party making the appeal receives the Architect's written decision or within twenty-one (21) days after the thirty (30) day non-decision period noted in 8.7.1. Failure to appeal within this period will result in the Architect's decision becoming final and binding upon the Owner and the Contractor.

**8.7.3** Pending resolution of the claim or dispute, the Contractor must proceed with the disputed Work, as directed by the Architect. The Contractor must give written notice to the EOHLC and the Architect stating that it is proceeding with the disputed work under protest. Accurate records of the nature and extent of the disputed Work and of the time spent and equipment used on the disputed Work shall be maintained by the superintendent and verified daily by the Project Representative, or the Owner's designee. Failure of the Contractor to maintain such records shall cause the Contractor to forfeit its claim to additional compensation for such disputed work.

**8.7.4** Meetings or administrative conferences held by the EOHLC to review the basis of the claim or dispute are conducted in accordance with the procedure described in the Construction Handbook. Such conferences are not subject to the State Administrative Procedures Act.

**8.7.5** At the conclusion of these proceedings, the EOHLC shall issue a decision which shall be final under the Contract. The matter may then be appealed to a court of competent jurisdiction.

**8.7.6** Requests for administrative conferences by subcontractors must be made by the Contractor; subcontractors cannot make such requests directly.

## **ARTICLE 9 TIME, SCHEDULES, AND COMPLETION**

### **9.1 DEFINITIONS**

**9.1.1** Unless otherwise provided, Contract Time is the period of time, as extended by approved Change Order, allotted in the Contract Documents for Substantial Completion of the Work.

**9.1.2** The date of commencement of the Work is the date established in the Notice to Proceed from the Owner. The commencement date shall not be postponed by the failure to act by the Contractor or by persons or entities for whom the Contractor is responsible.

**9.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Subparagraph 9.6.7.

**9.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### **9.2. PROGRESS AND COMPLETION**

**9.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**9.2.2** The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

### **9.3 DELAYS AND EXTENSIONS OF TIME**

**9.3.1** The Contractor shall be entitled to an extension of time for completion of the Work because of;

- .1** acts of God;
- .2** labor disputes;
- .3** abnormal weather conditions; or
- .4** acts of neglect of the Owner, Architect, or EOHLC as described in Subparagraph 8.6.3.

**9.3.1.5** Except in unusual circumstances, delays caused by suppliers, Subcontractors and sub-subcontractors shall be considered to be within the control of the Contractor.

**9.3.1.6** Should the Contractor require additional time to complete the Work, the Contractor shall document the reasons therefor and request an extension of time at the time the alleged delay occurs, as provided in this Article and Article 8.

**9.3.1.7** Failure to notify the Architect of any delay as provided in this Article shall preclude the Contractor from subsequently claiming any damages due to said delay.

**9.3.1.8** Requests for extensions of time shall be submitted as a change order request to the Architect under Article 8 for the Owner's consideration.

### **9.3.2 CONTRACTOR'S LIABILITY FOR DELAYS**

The Contractor shall be liable for, and shall pay, to the Owner, all of the Owner's Project related costs incurred after the time stipulated for Substantial Completion, as extended by Change Order. Such costs shall include: fees paid to the Architect as extra services for inspection services and administration of the Contract, at the rate stipulated in the Contract for Architectural Services between the Owner and the Architect; the costs of the Project Representative at the current salary rate; lost rental income based on the average rent collected by the Owner, and/or increased rental subsidies and any other direct expenses. The Owner may retain from moneys otherwise due the Contractor whatever sums accrue to the Owner pursuant to this provision. The Contractor shall not be liable for costs for delay in performance for any period for which an extension of the Contract Time has been granted pursuant to the provisions of Subparagraph 9.3.

### **9.3.3 OWNER DELAYS**

**9.3.3.1** The Owner may delay the commencement of the Work, or any part thereof, due to unforeseen circumstances or conditions which have a bearing on the Work required under this Contract or for any other reason if it is deemed to be in the best interest of the Owner to do so. Except as expressly provided in the following Subparagraphs 9.3.3.2, 9.3.3.3, and 9.3.3.4, the Contractor shall have no claim for additional compensation on account of such delay, but shall be entitled to an extension of Contract Time as determined reasonable by the Architect.

**9.3.3.2** The Contractor and the Owner agree that the following Subparagraphs provide the Contractor with the right to request additional compensation for Owner caused delays only in the following two circumstances:

- .1** When the Owner provides the Contractor with a written order to suspend or delay the Work, or a portion thereof, for a period of fifteen days or more.
- .2** When the Owner or its Architect fails to make a decision within the thirty day period described in Subparagraph 8.6.3 and such failure delays the Work, or a portion thereof, for fifteen days or more.

**9.3.3.3** The Owner may, for its convenience, order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine appropriate, provided however, that if there is a suspension, delay, or interruption for fifteen days or more, or there is a failure of the Owner to act within the time specified in this Contract, the Owner shall make an adjustment in the Contract Sum for any increase in the cost of performance of this Contract, but shall not include any profit to the Contractor on account of such increase; and provided further, that the Owner shall not make any adjustment in the Contract Sum under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Contract Sum under any other Contract provisions. M.G.L. c.30 §390 (a).

**9.3.3.4** The Contractor must submit the amount of a claim under Subparagraph 9.3.3.3 to the Owner in writing as soon as practicable after the end of the suspension, delay, interruption, or failure to act and, in any event, not later than the date of final payment under this Contract and except for costs due to a suspension order, the Owner shall not approve any costs in the claim incurred more than twenty days before the Contractor notified the Owner in writing of the act or failure to act involved in the claim. M.G.L. c.30 §390 (b).

**9.3.3.5** The Owner and the Contractor agree that the preceding Subparagraph 9.3.3.4 places a burden on the Contractor to inform the Owner, whenever the Contractor considers that an action or inaction of the Owner or its Architect could result or has resulted in a delay in the Project, thereby providing the Owner with the opportunity to take action to avoid or lessen the time extensions or damages that might be associated with such action or inaction.

### **9.4 CONSTRUCTION AND PAYMENT SCHEDULES**

**9.4.1** Prior to commencement of the Work the Contractor shall submit to the Architect a construction schedule in bar graph form, satisfactory to the Architect, showing in detail the proposed progress for the construction of the various parts of the Work, the proposed times for receiving materials required, and the interrelationship between the various construction operations and the percentage of completion and the dollar value of the completed work on the first day of each month for each section of the specifications and the entire Work. Submission of said schedule shall be a condition precedent to approval of the Contractor's first application for payment.

**9.4.2** At the end of each month, or more often if required, the Contractor shall furnish the Architect an updated schedule showing actual progress of the various parts of the Work in comparison with the originally proposed progress and payment schedules. If the Architect raises any objections to progress or payment schedules submitted by the Contractor, the Contractor shall immediately address and resolve such objections to the reasonable satisfaction of the Architect.

**9.4.3** If the Contractor **submits** a construction schedule that anticipates Substantial Completion before the date established in the Owner's Notice to Proceed, the Contractor shall have no claim for additional compensation on account of any delays that prevent Substantial Completion before the date set in said Owner's Notice to Proceed.

## **9.5 USE AND OCCUPANCY**

**9.5.1** Prior to the date of Substantial Completion of the entire Project stipulated in the Notice to Proceed, the Owner shall have the right, from time to time, to occupy and use any portion of the Project as the Work in connection therewith is substantially completed, provided such use and occupancy does not unduly interfere with the Contractor's operations.

**9.5.2** The Architect will, prior to any such use and occupancy, give written notice to the Contractor, indicating the areas intended to be occupied and used, and the intended commencement date of such use and occupancy. Occupancy and use shall not commence prior to a time mutually agreed to by the Owner and the Contractor.

**9.5.3** Upon receipt of such notice of intent, the Contractor shall promptly secure and submit to the Architect endorsement from the insurance carrier permitting use and occupancy of the Work, or any designated portion thereof, by the Owner prior to Substantial Completion of the entire Project. The Contractor shall be permitted to cancel its special perils insurance for that portion of the Project used and/or occupied by the Owner.

**9.5.4** Partial or entire use and occupancy by the Owner shall not constitute an acceptance of Work not completed in accordance with the Contract Documents nor relieve the Contractor from the obligation of performing any Work required by the Contract but not completed at the time of use and occupancy. Before such use and occupancy, the Architect will give the Contractor a list of items to be completed prior to Final Completion occurring in the areas to be occupied.

**9.5.5** The Contractor shall be relieved of all maintenance costs of the portion of the Project occupied under the provisions of this Article.

**9.5.6** The Contractor shall not be responsible for wear and tear or damage resulting solely from such use and occupancy.

**9.5.7** The Contract Sum will be adjusted by mutually acceptable arrangements between the Owner and the Contractor with respect to heat, electricity, and water furnished by the Contractor to the portion of the Work so occupied.

**9.5.8** When any portion of the building is in condition to receive fittings, appliances, furniture, or other property to be furnished and installed by the Owner under separate contracts, the Contractor shall allow the Owner to bring such items into the building and shall provide all reasonable facilities and protection therefor.

## **9.6 SUBSTANTIAL COMPLETION**

**9.6.1** Substantial Completion is the stage in the progress of the Work when, in the opinion of the Architect, the Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**9.6.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**9.6.3** Upon receipt of the Contractor's list of items to be completed or corrected, the Architect will promptly make a thorough inspection and prepare a "punch list", setting forth in accurate detail any items on the Contractor's list and additional items that are not acceptable or are incomplete.

**9.6.4** If, after receipt of the Contractor's list, the Architect determines that the Work is not substantially complete, the Architect shall inform the Contractor of those items that must be completed before the Architect will prepare a punch list. Upon completion of those items, the Contractor shall again request the Architect to prepare the punch list.

**9.6.5** When the punch list has been prepared, the Contractor will arrange a meeting with the Architect and Subcontractors to identify and explain all punch list items and address questions on the work which must be done before final acceptance.

**9.6.6** The Architect may revise the punch list, from time to time, to ensure that all items of the Work are properly completed.

**9.6.7** The Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate within the provisions of Subparagraph 9.7.2.



**9.6.8** Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate and shall be subject to the approval of the EOHL.

## **9.7 FINAL COMPLETION**

**9.7.1** After the Architect has certified that the Work is substantially complete, the Contractor shall immediately proceed to complete all the remaining items of Work as determined by the Architect, including items authorized by Change Orders, Construction Change Directives, or items disputed by the Contractor.

**9.7.2** The Contractor shall complete all the remaining items of Work described in Subparagraph 9.7.1, as soon as possible, and in any event within one hundred and twenty days after Substantial Completion, unless the Architect determines that a shorter time period for completion is appropriate, in which event the Contractor must complete the Contract work within such period. The Architect may extend such one hundred and twenty day period if the Architect determines that such extension is justified.

**9.7.3** If the Contractor fails to complete the remaining items of Work within the time period provided in Subparagraph 9.7.2, the Owner may arrange for other contractors to complete such items and the direct and indirect costs of such completion shall be charged against the balance due the Contractor or, if no such balance remains, the Contractor shall pay the Owner the costs of such completion.

**9.7.4** As an alternative to the procedure described in Subparagraph 9.7.3, the Owner may invoke the performance bond of the Contractor and demand that the surety shall complete the remaining items of work in a timely manner.

**9.7.5** The Architect will conduct up to three (3) inspections of completed punch list items. The Contractor shall be responsible for the costs of additional inspections required to verify successful completion of the punch list.

## **ARTICLE 10 PAYMENTS**

### **10.1 CONTRACT SUM**

The Contract Sum is stated in the Owner Contractor- Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **10.2 SCHEDULE OF VALUES**

**10.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**10.2.2** The schedule of values shall contain a separate item for each Section of the Specifications broken down in such form as the Architect may require. Each item in the schedule of values shall include its proper share of overhead and profit.

### **10.3 APPLICATIONS FOR PAYMENT**

Once each month, on a date established at the beginning of the Work, the Contractor shall deliver to the Architect by hand or by registered or certified mail with return receipt, an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Architect may require, and reflecting retainage as provided in Subparagraph 10.6.1.

Such Application for Payment shall be submitted on a form available from the EOHL, (a copy can be found in the Construction Handbook). The form shall show separately:

- .1** The value of labor and materials incorporated in the Work.
- .2** The value, kind, and quantity of each item of material or equipment not incorporated in the Work but delivered and suitably stored at the site, during the current pay period.
- .3** The value, kind, and quantity of each item of material or equipment not incorporated in the Work but suitably stored at some other location agreed upon in writing, during the current pay period.
- .4** All Change Orders approved up to the date of the Application for Payment.
- .5** The amounts approved for payment for each item on previous applications.

### **10.4 PAYMENT FOR STORED MATERIALS**

**10.4.1** The Contractor shall include in such Application for Payment only such materials as are incorporated in the Work. Except however, the Contractor may include the value of materials or equipment delivered at the site of the Work (or at some location agreed to in writing) upon delivery to the Owner of:

- .1 an acceptable Transfer of Title (see the Construction Handbook); and
  - .2 receipted invoices or other acceptable proof of prior payment by the Contractor for such materials; and
  - .3 a stored materials insurance binder (see subparagraph 16.5.2) that covers the materials for which payment is requested, that names the Owner and the EOHLC as an insured party should the stored materials be subjected to any casualty, loss, or theft prior to their inclusion in the Work.
- 10.4.2** This material(s) or equipment must, in the judgment of the Architect:
- .1 meet the requirements of the Contract, including prior shop drawing, product data, and sample approval; and
  - .2 be ready for use; and
  - .3 be properly stored by the Contractor and adequately protected until incorporated into the Work.
- 10.4.3** Failure to comply with subparagraphs 10.4.1 and 10.4.2 may result in Certificates being changed in accordance with M.G.L. c.30 §39K.

## **10.5. CERTIFICATES FOR PAYMENT**

- 10.5.1** The Architect shall mark the date of receipt on the Contractor's Application for Payment. The Architect will, within seven days after receipt of the Contractor's Application for Payment either,
- .1 issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or
  - .2 return the application to the Contractor if it is not in proper form or contains computations not arithmetically correct; or
  - .3 make changes to the application as provided in subparagraph 10.5.2.
- 10.5.2** The Architect shall notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in subparagraphs 10.6.1.2 and 10.6.1.3.
- 10.5.3** The Owner may make changes in any Application for Payment submitted by the Contractor in accordance with M.G.L. c.30 §39K, and the payment due on said Application for Payment shall be computed in accordance with the changes so made. The provisions of said Section 39K shall govern payments pursuant to Applications for Payment on which the Owner has made changes.
- 10.5.4** No certificate for payment nor any progress payment shall constitute acceptance of Work not in accordance with the Contract Documents.

## **10.6 STATUTORY PAYMENT PROVISIONS**

- 10.6.1** After the Architect has issued a Certificate for Payment the Owner shall make payment to the Contractor in accordance with M.G.L. c.30 §39K which provides as follows:
- .1 Within thirty 30 days after receipt from the Contractor, at the place designated by the Owner if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the Owner 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 Owner, 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 39F, and less (3) a retention not exceeding five percent (5%) of the approved amount of the periodic payment.
  - .2 After the receipt of a periodic estimate requesting final payment and within 65 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 Owner, less than one percent (1%) of the original Contract Sum, or (b) the Contractor substantially completes the Work and the Owner takes possession for occupancy, whichever occurs first, the Owner 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 less (2) a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of Section 39F, 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 39F.
  - .3 If the Owner 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 thirty days after receipt of such a periodic estimate from the Contractor, at the place designated by the Owner 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.

## **10.6.2 DIRECT PAYMENT TO SUBCONTRACTORS**

**10.6.2.1** The Contractor shall make payments to filed Subcontractors in accordance with M.G.L c.30 §39F which provides as follows:

- .1** Forthwith after the Contractor receives payment on account of a periodic estimate, the Contractor shall pay to each Subcontractor the amount paid for the labor performed and the materials furnished by the Subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.
- .2** Not later than the 65th day after each Subcontractor substantially completes the Work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of Work, shall be due the Subcontractor and the Owner shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the Owner less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.
- .3** Each payment made by the Owner to the Contractor pursuant to Subparagraphs .1 and .2 of this paragraph for the labor performed and the materials furnished by a Subcontractor shall be made to the Contractor for the account of that Subcontractor and the Owner shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the Owner has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in Subparagraphs .1 and .2, the Owner shall act upon the demand as provided in this section.
- .4** If, within 70 days after the Subcontractor has substantially completed the Subcontract Work, the Subcontractor has not received from the Contractor the balance due under the Subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of Work, the Subcontractor may demand direct payment of that balance from the Owner. The demand shall be by a sworn statement delivered to or sent by certified mail to the Owner, and a copy shall be 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 a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Owner, and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the Subcontract including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.
- .5** Within 15 days after receipt of the demand by the Owner but in no event prior to the 70th day after substantial completion of the Subcontract Work, the Owner shall make direct payment to the Subcontractor of the balance due under the Subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount (i) retained by the Owner as the estimated cost of completing the incomplete or unsatisfactory items of Work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided, that the Owner shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by Subparagraph .4. The Owner shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in part (i) and (ii) of this Subparagraph.
- .6** The Owner 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 Contractor and the Subcontractor in a bank in Massachusetts selected by the Owner or agreed upon by the Contractor and the Subcontractor and shall notify the Contractor and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the Subcontractor or as determined by decree of a court of competent jurisdiction-.
- .7** 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 or out of amounts which later become payable to the Contractor and in order of receipt of such demands from Subcontractors. All direct payments shall discharge the obligation of the Owner to the Contractor to the extent of such payment.
- .8** The Owner shall deduct from payments to the 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 to such deductions prior to any claims against such amounts by creditors of the Contractor.
- .9** If the Subcontractor does not receive payment as provided in Subparagraph .1 or if the Contractor does not submit a periodic estimate for the value of the labor and 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 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 Contractor. Thereafter the Owner shall proceed as provided in Subparagraphs .5, .6, .7, and .8.

## **10.7 FINAL PAYMENT**

**10.7.1** Upon completion of the Work, the Contractor shall be entitled to payment of the Contract balance, in accordance with Subparagraph 10.6.1.2 and per the process described in Division 1 of the Specifications.

**10.7.2** The acceptance by the Contractor of the last payment due under this Contract or the execution of the Final Certificate of Completion, shall operate as a release to the Owner, EOHLC, and the Architect from all claims and liability related to this Contract.

## **10.8 PAYMENT LIABILITIES OF CONTRACTOR**

**10.8.1** The Contractor shall be responsible to the Owner for all expenses, losses, and damages incurred in consequence of any defect, omission, or mistake of the Contractor or any of its employees, Subcontractors, or suppliers.

**10.8.2** The Owner may retain any moneys which would otherwise be payable under this Contract and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses, or damages incurred by the Owner as a direct result of the Contractor's failure to perform its obligations hereunder.

# **ARTICLE 11 GUARANTEES AND WARRANTIES**

## **11.1 GENERAL GUARANTY**

If at any time during the period of one (1) year from the date of Substantial Completion as defined in Paragraph 9.6, any part of the Work shall, in the reasonable determination of the Architect or Owner, require replacing or repairing due to the fact that it is broken, defective, or otherwise does not conform to the Contract Documents, the Owner will notify the Contractor to make the required repairs or replacement.

**11.2** If the Contractor shall neglect to commence such repairs or replacement to the satisfaction of the Owner within ten (10) days from the date of giving or mailing such notice, then the Owner may employ other persons to make the same.

**11.3** The Contractor agrees, upon demand, to pay to the Owner all amounts which the Owner expends for such repairs or replacements.

**11.4** During this one year guarantee period any corrective work shall be performed in accordance with the applicable terms of this Contract. For items of work completed after use and occupancy has been taken, the one year guarantee shall commence at the time the Owner accepts such items.

**11.5** This one year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract.

## **11.2 SPECIAL GUARANTEES AND WARRANTIES**

**11.2.1** Guarantees and warranties required in the various sections of the Specifications must be delivered to the Architect 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.

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

**11.2.3** The Contractor's obligation to correct Work as set forth in Paragraph 4.12 is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications.

# **ARTICLE 12 MISCELLANEOUS LEGAL REQUIREMENTS**

## **12.1 GENERAL**

The Contractor shall stay fully informed of all existing and future state and national laws and municipal ordinances and regulations 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 such orders and decrees of bodies or tribunals having any jurisdiction or

authority over the Contract Work. All provisions of law that apply to this Contract are hereby made a part of this Contract. If any discrepancy or inconsistency is discovered in the Contract Documents in relation to any such law, ordinance, regulation, order or decree, the Contractor shall forthwith report the same to the Owner in writing.

**12.1.1** The Contractor shall cause all of its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees.

## **12.2 CORPORATE DISCLOSURES**

The Contractor, if a foreign corporation, shall comply with M.G.L. c.181 §3 and §5, and M.G.L. c.30 §39L.

## **12.3 VETERANS PREFERENCE**

In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the construction of public works 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 M.G.L. c.4 §7 (34), and who are qualified to perform the work to which the employment relates; 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

## **12.4 PREVAILING WAGE RATES**

The Commissioner of the EOHLC of Labor, Division of Occupational Safety has established the Schedule found in Division One of the Specifications, listing the prevailing minimum wage rates that must be paid to all workers employed on the Contract. Such Schedule shall continue to be the minimum rate of wages payable to workers on this Contract throughout the term of the Contract. The Contractor shall not have any claim for extra compensation from the Owner if the actual wages paid to employees on the Contract exceeds the rates listed on the Schedule. The Contractor shall cause a copy of said Schedule to be kept in a conspicuous place at the Project site during the term of the Contract. (See M.G.L c.149 §26-27H.) 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 §34B).

## **12.5 VEHICLE AND EQUIPMENT OPERATORS**

If the Commissioner of the EOHLC of Labor, Division of Occupational Safety has established a Schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for this Project, 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 §26-27H).

## **12.6 EIGHT HOUR DAY AND LODGING**

**12.6.1** No laborer, workman, mechanic, foreman or inspector working in the employment 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 any more than eight hours in any one day, or more than 48 hours in any one week, or more than six days in any one week, except in cases of emergency.

## **12.7 EXECUTIVE ORDERS**

The Contractor shall comply with the provisions of M.G.L. c.151B; Executive Order No. 524 Establishing the Massachusetts Supplier Diversity Program (SDP), Executive Order 526, Order regarding Non-Discrimination, Diversity, Equal Opportunity, and Affirmative Action; pertaining to minority and women owned business enterprises; Executive Order 527 establishing the Office of Access and Opportunity and Executive Order 481, prohibiting the use of undocumented workers on state contracts and all regulations promulgated pursuant thereto. The aforementioned law, executive orders, regulations and any amendments are incorporated herein by reference and made a part of this Contract.

## **12.8 CONFLICT OF INTEREST**

The Contractor covenants, that (1) presently, there is no financial interest and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement or which would violate M.G.L. c.268A, as amended; (2) in the performance of this Contract, no person having any such interest shall be employed by the Contractor or engaged as a subcontractor by the contractor; and (3) no partner or employee of the firm is related by blood or marriage to any Board Member or employee of the Awarding Authority.

## **ARTICLE 13**

### **CONTRACTOR'S ACCOUNTING REQUIREMENTS**

#### **13.1 DEFINITIONS**

**13.1.1** "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded this Contract.

**13.1.2** "Contract" means any contract awarded or executed pursuant to M.G.L. c.30 §39M or M.G.L. c.149 §44A-J, which is for an amount greater than one hundred thousand dollars (\$100,000).

**13.1.3** "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.

**13.1.4** "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent.

**13.1.5** "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.

**13.1.6** "Accountant's Report," when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he/she has made and sets forth his/her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the Contractor.

**13.1.7** "Management," when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

**13.1.8** Accounting terms, unless otherwise defined herein shall mean, in accordance with generally accepted accounting principles and auditing standards.

#### **13.2 RECORD KEEPING**

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

**13.2.2** Until the expiration of six years after final payment, the Inspector General, the Owner, and the EOHLC 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.

**13.2.3** The Contractor shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Owner 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.

**13.2.4** Prior to the execution of the Contract, the Contractor shall file a statement of management on internal accounting controls as set forth in Paragraph 13.3 below.

**13.2.5** Prior to the execution of the Contract, the Contractor shall file an audited financial statement for the most recent completed fiscal year as set forth in Paragraph 13.4 below and will continue to file such statement annually during the term of the Contract.

#### **13.3 STATEMENT OF MANAGEMENT CONTROLS**

**13.3.1** Prior to execution of the Contract, the Contractor shall file with the Owner a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:

- .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.

**13.3.2** Prior to execution of the Contract, the Contractor shall also file with the Owner 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 13.3.1 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.

#### **13.4 ANNUAL FINANCIAL STATEMENT**

Every Contractor awarded a contract shall annually file with the Owner 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.

### **ARTICLE 14 EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

**14.1** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, handicap, or sex. The aforesaid provision shall include, but not be limited to, the following employment upgrading, demotion or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship.

**14.2** The Contractor must provide information as is necessary, in the judgment of the Owner or the EOHLC, to ascertain compliance with the terms of Specification Section 00.73.36.

### **ARTICLE 15 MINORITY OR WOMAN OWNED ENTERPRISES - SUPPLIER DIVERSITY PROGRAM**

#### **15.1 COMPLIANCE**

**15.1** The Contractor must provide information as is necessary, in the judgment of the Owner and the EOHLC, to ascertain compliance with the terms of Specification Section 00.73.39.

### **ARTICLE 16 INSURANCE**

#### **16.1 INSURANCE REQUIREMENTS**

**16.1.1** The Contractor shall take out and maintain insurance coverage as listed in subparagraphs 16.2 - 16.8 with respect to the operations as well as the completed operations for two years after substantial completion 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.

**16.1.2** All policies shall be issued by companies authorized to write that type of insurance under the laws of this Commonwealth of Massachusetts.

#### **16.2 CONTRACTOR'S COMMERCIAL GENERAL LIABILITY**

**16.2.1** Contractor shall provide proof of commercial general liability coverage with respect to the operations performed by any employee, Subcontractor, or supplier with limits of no less than:

Each Occurrence \$1,000,000

General Aggregate \$2,000,000

Products-Completed Operations Aggregate \$2,000,000

**16.2.2** The completed operations coverage shall be maintained for a period of two (2) years after Substantial Completion as defined in subparagraph 9.6.1.

**16.2.3** [This Section Intentionally Blank]

#### **16.3 AUTOMOBILE LIABILITY**

Contractor shall provide proof of automobile liability coverage, for either business-owned or personally owned vehicles, with limits of no less than:

Combined Single Limit \$1,000,000

#### **16.4 WORKER'S COMPENSATION**

Workers' Compensation: Coverage A

Per M.G.L. c149 §34 and c152, as amended.

Employer's liability: Coverage B

Bodily Injury by Accident each accident \$500,000

Bodily Injury by Disease each employee \$500,000

Bodily Injury by Disease policy limit \$500,000

#### **16.5 PROPERTY COVERAGE (only required for new construction)**

**16.5.1** Provide Builder's Risk (Special Perils) coverage against loss or damage by fire and against loss or damage covered by the special perils insurance endorsement on all work included in this contract in an amount equal to at least 80% of Contract Amount.

#### **16.6 OWNER AS ADDITIONAL INSURED**

The Owner and Department shall be named as additional insureds on the Contractor's Commercial Liability Policies.

#### **16.7 CERTIFICATES OF INSURANCE, POLICIES**

**16.7.1** Certificates of insurance, acceptable to the Owner, shall be submitted to the Owner simultaneously with the execution of the Contract.

**16.7.2** If the Owner is damaged by the Contractor's failure to maintain such insurance and to so notify the Owner, then the Contractor shall be responsible for all reasonable costs attributable thereto.

#### **16.8 CANCELLATION**

Cancellation of any insurance required by this contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and Owner at least ten (10) days prior to the effective date thereof, which shall be expressed in said notice.

#### **16.9 USE OF UMBRELLA / EXCESS INSURANCE**

If the Contractor's existing insurance coverages do not provide coverage limits that satisfy the minimums set forth in Sections 16.2 – 16.5 above, the Contractor may use Umbrella / Excess Liability insurance to attain those minimum coverages.

### **ARTICLE 17 INDEMNIFICATION**

The Contractor shall take all responsibility for the Work and take all precautions for preventing injuries to persons and property in or about the Work; shall bear all losses resulting from or on account of the amount or character of the Work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all materials used or employed in carrying out this Contract. The Contractor shall assume the defense of, and indemnify and save harmless, the Architect, the Owner, the EOHLC and their officers and agents from all claims relating to: labor performed or furnished and materials used or employed for the Work; inventions, patents and patent rights used in and in doing the Work unless such patent infringement is due to a product or process specified by the Owner; injuries to any person or corporation received or sustained by or from the Contractor and any employees, and Subcontractors and employees, in doing the work, or in consequence of any improper materials, implements or labor used or employed therein; and any act, omission, or neglect of the Contractor and any employees.

### **ARTICLE 18 PERFORMANCE AND PAYMENT BONDS**

#### **18.1 CONTRACTOR BONDS**



**18.1.1** The Contractor shall provide the Owner with performance and payment (labor and materials) bonds in the form provided by the EOHL, (Forms 00.61.13.13 and 00.61.13.16) executed by a surety licensed by the Commonwealth's Division of Insurance. Each such bond shall be in the amount of the Contract Sum.

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

- .1** is adjudged bankrupt or has made a general assignment for the benefit of its creditors;
- .2** has liquidated all assets and has made a general assignment for the benefit of its creditors;
- .3** is placed in receivership;
- .4** otherwise petitions a state or federal court for protection from its creditors; or
- .5** allows its license to do business in Massachusetts to lapse or be revoked;

the Contractor shall, within 21 days of any such action listed above, provide the Owner with new performance and payment bonds as described in Paragraph 18.1.1. Such bonds shall be provided solely at the Contractor's expense.

## **18.2 SUBCONTRACTOR BONDS**

**18.2.1** The Contractor may list in its bid that any or all filed Subcontractors provide the Contractor with payment and performance bonds for the full amount of the Subcontract. The costs for said bonds shall be the responsibility of the Contractor.

**18.2.2** In the event the Contractor lists in its bid that filed Subcontractors provide bonds, and subsequently waives the requirement, the Contractor shall provide the Owner with a certification that they understand if the filed subcontractor defaults or is terminated, the Contractor accepts full responsibility and costs related to said default or termination with a credit change order in an amount equal to the bond premium it would have paid had it required the filed Subcontractor to provide such bonds.

## **ARTICLE 19 TERMINATION**

### **19.1 TERMINATION FOR CAUSE**

**19.1.1** The Owner may terminate this contract for cause if it determines that any of the following circumstances have occurred:

- .1** The Contractor is adjudged bankrupt or has made a general assignment for the benefit of its creditors;
- .2** A receiver has been appointed of the Contractor's property;
- .3** All or a part of the Work has been abandoned;
- .4** 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 provided in the Contract;
- .5** The Architect has determined that the rate of progress required on the project is not being met, or
- .6** The Contractor has substantially violated any provisions of this Contract.

**19.1.2** In the event of such termination, the Owner may hold the Contractor and its sureties liable in damages as for a breach of contract, or the Owner may 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.

**19.1.3** The Owner may complete the work, or any part thereof, and charge the expense of completing the Work or part thereof, to the Contractor.

**19.1.4** The Owner may take possession of and use any materials, machinery, implements and tools found upon the site of said Work. 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 Project site after the Owner has no further use for them.

**19.1.5** The Owner may, at its option, require the surety or sureties to complete the Contract.

### **19.2 TERMINATION LIABILITIES**

**19.2.1** All expenses charged under Paragraph 19.1 shall be deducted and paid by the Owner out of any moneys then due or to become due the Contractor under this Contract; and in such accounting the Owner shall not be held to obtain the lowest figures, by competitive bid or otherwise, for the completion of the Work or any part thereof.

**19.2.2** All sums actually paid by the Owner to complete the Work shall be charged to the Contractor. In case the expenses charged are less than the sum which 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.

**19.2.3** Expenses incurred under subparagraph 19.1 shall also include, but not be limited to, costs for Architectural extra services and Project Representative services required, in the opinion of the Owner, to successfully inspect and administer the construction contract through final completion, as described in Paragraph 9.7.

### **19.3 TERMINATION - NO FAULT**

**19.3.1** In the event that this Contract is terminated by the Owner, and termination is not based on a reason listed in Paragraph 19.1, the Contractor shall be compensated for its costs incurred on the Project, including reasonable costs of de-mobilization, calculated on a percent completion basis as provided in Article 10, covering the period of time between the last periodic payment and the date of termination.

**19.3.2** Payment by the Owner pursuant to Subparagraph 19.3.1 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.

### **19.4 ADMINISTRATOR'S APPROVAL**

Termination of the Contract requires the prior written approval of the Administrator.