

TOWN OF BELMONT
CONSTRUCTION MANAGER AT RISK CONTRACT
GENERAL CONDITIONS OF THE CONTRACT

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ARTICLE I
DEFINITION OF TERMS

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

Advertisement:

The Advertisement or Notice Inviting Bids or Proposals for the Work.

Approval (or Approved):

An approval in writing signed by the authorized signatory of the Owner.

Architect:

The architect identified as the Designer in Article 1 of the Owner-CM Agreement.

As directed (As permitted, as required, as determined or words of like effect): The direction, permission, requirement or determination of the Owner unless otherwise stated in the Contract Documents. Similarly, *approved*, *acceptable*, *satisfactory* or words of like import shall mean approved by or acceptable or satisfactory to the Designer and the Owner, except as may be otherwise determined by the Owner.

Building Code:

All applicable rules and regulations to which the Owner is subject and which are contained or referenced in the code authorized by M.G.L. c. 143, § 93 et seq., including all amendments thereto.

Certificate of Agency Use and Occupancy:

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

Change Order:

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

Construction Manager, Contractor, CM and General Contractor:

The person, corporation or other entity with whom the Owner has executed the CM Agreement.

Construction Manager's Key Personnel:

The personnel listed in the Construction Manager's Proposal and Sections B.1, C.1, and C.2 of Exhibit GC of the Owner-CM Agreement, all of whom shall be dedicated to the Project on a full time basis, and which personnel shall include at a minimum the Project Executive, the Project Manager, the Superintendent (who shall be a properly licensed construction supervisor), and the

Project Scheduler. Unless otherwise designated by the CM, the Project Executive shall have complete authority to act for the CM.

Contract:

The Contract formed by the Contract Documents.

Contract Documents:

The documents listed in Article 2 of the Owner-CM Agreement.

Contract Modification:

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

Contract Price:

The Contract Price constitutes full compensation to the CM for everything to be performed and furnished in connection with the Work and for all damages arising out of the performance of the Work for which CM is responsible, and constitutes the maximum compensation regardless of any difficulty incurred by the CM in connection with the Work or in consequence of any suspension or discontinuance of the Work. See also definition of Guaranteed Maximum Price.

Designer:

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

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.

Engineer:

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

Final Acceptance:

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

Guaranteed Maximum Price:

Guaranteed maximum price", or "GMP", is the agreed total dollar amount for the construction management at risk services, including the cost of the work, the general conditions and the fees charged by the construction management at risk firm; also known as the Contract Price.

Laws:

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

Neutral:

An impartial third party, not having an interest in the Owner, the Designer, the Program Manager, the CM, or the Project.

Notice to Proceed (NTP):

The written notice provided by the Owner to the CM which authorizes the CM to commence the Work as of a date specified therein, from which date the times specified in Article 4 of the Owner-CM Agreement is measured. The Owner may issue more than one NTP, including but not limited to separate NTPs for Preconstruction and Construction Services, in which case the date from which the time for completion of construction is measured shall be as stated in the appropriate NTP.

Or equal (or words of like import):

Equal in the opinion of the Owner determined pursuant to the provisions of M.G.L. c.30, § 39M, and the provisions of these General Conditions of the Contract.

Owner:

The Town of Belmont, acting by and through the Belmont High School Building Committee.. This term may also be used interchangeably with "Awarding Authority."

Owner's Project Manager:

The Owner's representative assigned to the Project.

Plan(s): Drawing(s). Product Data:

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

Progress Schedule:

The progress schedule submitted by the CM and approved by the Owner in accordance with the Contract Documents.

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 separate contractors.

Punch List:

A list of items determined by the Owner to be minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Work for its intended purpose.

Resident Engineer:

The on-Site representative of the Owner, if one is appointed.

Samples:

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

Schedule of Values:

The schedule approved by the Owner pursuant to Article VIII of these General Conditions of the Contract which allocates the Contract Price to the various portions of the Work and is used as a basis for payments to the CM.

Shop Drawings:

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

Site:

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

Specifications:

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

Subcontractor:

Person or entity with whom the CM or a subcontractor contracts in order to perform the Work, except as otherwise specifically provided or required herein or by Law. "Subcontractor" when used also means "Trade Contractor" except when otherwise specified.

Substantial Completion:

"Substantial completion" is defined in Section 4.2 of the Owner-CM Agreement and shall occur when all requirements set forth in that section are properly satisfied.

Superintendent:

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

Trade Contractor:

Subcontractors under Contract with the CM to perform the work of the trades listed in paragraph 1.1 of the Procedures for Award of Subcontracts at Appendix C, and selected under the process authorized in M.G.L. c. 149A and Section I of the aforementioned Procedures by the CM. Sometimes referred to as "Filed Subcontractor" or "Filed Subbidder."

User Agency:

The Town of Belmont School District.

Work:

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

Working Hours:

The hours during which construction work may be performed on the Project, 7:00 a.m. to 5:00 p.m., unless otherwise specified by applicable Laws and subject to Article X, 2.F. of these General Conditions.

ARTICLE II

EXECUTION OF THE CONTRACT, SCOPE OF WORK, INTERPRETATION OF CONTRACT DOCUMENTS, DISTRIBUTION OF WORK, SUBCONTRACTS

1. Execution

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

2. Scope of Work

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

3. Interpretation

A. The Plans and Specifications and other Contract Documents are to be considered together and are intended to be mutually complementary, so that any work shown on the Plans though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is to be executed by the CM as a part of this Contract. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity shall govern, unless the Owner directs otherwise. Figured dimensions shall take precedence over scaled dimensions.

B. All things that in the opinion of the Owner may be reasonably inferred from the Plans, Specifications and other Contract Documents are to be executed by the CM. The Designer shall determine whether the detail Plans conform to the general Plans and Contract Documents, except as may be otherwise determined by the Owner.

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

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

E. In case of any conflict among the Contract Documents, unless the context clearly otherwise requires, the Contract Documents shall be construed according to the following priorities:
First Priority: Contract Modifications and Change Orders
Second Priority: Owner-CM Agreement as amended
Third Priority: General and Supplementary Conditions of the Contract as amended

- Fourth Priority: Drawings as amended -- Schedules take precedence over enlarged detail Drawings, and enlarged Detail Drawings take precedence over reduced scale Drawings; figured dimensions shall prevail over scale.
- Fifth Priority: Specifications as amended
- Sixth Priority: Request for Proposals as amended
- Seventh Priority: CM's Proposal as amended

F. The CM shall refer to all of the Drawings, and to all of the sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. Neither the Owner nor the Designer assumes any liability arising out of jurisdictional issues raised or claims advanced by Subcontractors, trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings. In the event of any claim arising out of any duplication, conflict, inconsistency or discrepancy within the Specifications or on the Drawings as to the allocation of the Work among the Subcontractors the CM shall be solely responsible for resolving the claim and shall be responsible for ensuring that all of the Work is completed, regardless of where it appears in the Specifications or on the Drawings.

4. Distribution of Work

Other than as required by M.G.L. c. 149A and any other applicable provisions of the Massachusetts General Laws and these Contract Documents, the CM shall be responsible for distributing the Work in the best interests of the Project.

5. Subcontracts

Procedures for the award of contracts by the CM for the furnishing of labor, materials and equipment in the performance of the Work ("Subcontracts") shall be as specified in the procedures attached hereto as Appendix "C". The CM shall make no substitution for any Subcontractor previously selected without the prior written approval of the Owner. The term Subcontractor also means Trade Contractor except when otherwise specified. The CM shall maintain and periodically update and distribute to the Owner, the Program Manager and the Designer a Project Directory listing the names, addresses and telephone numbers of the principal members of the staff of each Subcontractor. The principal contact and a back-up for each Subcontractor and each of their home telephone numbers, mobile telephone numbers and pager numbers, if available, shall be indicated in the Project Directory so that such persons can be reached in emergency situations occurring beyond regular business hours.

All work shall be performed pursuant to written subcontracts. The CM shall use the Subcontract forms attached hereto in Appendix "D", for all Subcontractors. One form of Subcontract is to be used for all Trade Contractors selected for the trades listed in section 1.1 of the above referenced Procedures, and the other form is to be used for all Other Subcontractors. All subcontracts shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM by the terms of the Contract Documents, and to assume toward the CM all the obligations and responsibilities which the CM, by the Contract Documents, assumes toward THE Owner. Each Subcontract shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The CM shall require each Subcontractor to enter into similar agreements with its Subcontractors. The CM shall provide to each proposed Subcontractor, prior to the execution of a Subcontract with such Subcontractor, copies of the

Contract Documents to which the Subcontractor will be bound by this Paragraph. Each Subcontractor shall provide copies of such Contract Documents to its Subcontractors.

Each Subcontract shall provide that in the event of termination of the Contract due to the default of the CM or for any other reason, the Owner shall have the right (but shall have no obligation) to assume, and/or accept assignment of and further assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CM under the Subcontract with such Subcontractor. In the event of such assumption or assignment by the Owner, the Subcontractor shall have no claim against the Owner or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the Owner or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment. No Subcontract and nothing contained herein or in any Subcontract, shall be construed to create any contractual relationship between any Subcontractor and the Owner.

6. Contract Price

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

ARTICLE III

CONTROL OF WORK/ADMINISTRATION OF THE CONTRACT

1. Designer

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

2. Right of Access to Work

The Owner, the User Agency and the Designer (and persons designated by them) may for any purpose enter upon the Work, the Site, and premises used by the CM, and the CM shall provide safe facilities therefor. Other contractors of the Owner may also enter upon the same for the purposes which may be required by their contracts or work. Any differences or conflicts which may arise

between the CM and other contractors of the Owner with respect to their work shall be initially resolved by the Designer.

3. Inspection No Waiver

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

ARTICLE IV **GENERAL PERFORMANCE OBLIGATIONS OF THE CM**

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

1. Review of Contract Documents and Field Conditions

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

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

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

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

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

C. All necessary cutting, coring, drilling, grouting, and patching required to fit together the several parts of the Work shall be coordinated by the CM.

D. The CM shall be responsible to the Owner for the acts and omissions of the CM's employees, agents and Subcontractors of all tiers, and their agents and respective contractors employees, and other persons performing portions of the Work or supplying materials therefor.

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

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

G. Unless otherwise required by the Contract Documents, or directed in writing by the Designer or the Owner, Work shall be performed during regular Working Hours which, unless prescribed otherwise by applicable law, shall be 7:00 a.m. to 5:00 p.m. However, if the CM desires to carry on the Work outside of regular working hours or on Saturdays, Sundays, or Massachusetts or federal holidays then the CM shall provide 48 hours notice to allow satisfactory arrangements to be made for inspecting Work in progress and shall bear the costs of such inspection. The Owner shall bill the CM directly for such costs.

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

3. Key Personnel

The CM shall employ the Key Personnel as defined in Article I of the General Conditions unless otherwise agreed to by the Owner. The Project Executive shall be the CM's senior person on Site and shall have full authority to accept communications to, make decisions for, and otherwise fully represent the CM in connection with all matters relevant to the Project. The CM's Project Manager(s) shall be responsible for one or more portions of the Work as assigned by the Project Executive. A Project Manager may be the designee of the Project Executive to exercise the Project Executive's responsibilities in the CM's Project Executive's absence. The Superintendent shall be properly licensed in accordance with the Building Code.

4. Labor

A. The CM shall employ only competent workers. The CM shall enforce strict discipline and good order among the CM's employees and other persons carrying out the Work. The CM shall certify and insure that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and the Contractor and each of its subcontractors and others working on the Project shall furnish documentation of successful completion of said course by employees working with the first certified payroll report for each employee. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Whenever the Designer shall notify the Contractor in writing that any worker is, in the Designer's opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee shall be discharged from the Work and shall not again be employed on the Project except with the consent of the Designer.

B. The CM shall employ a sufficient number of workers and shall ensure that all its Subcontractors employ a sufficient number of workers to carry on the Work with all proper

speed in accordance with Laws, the requirements of the Contract Documents, and the Progress Schedule.

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

5. Notices and Permits

A. The CM at no additional expense to the Owner shall take out and pay for all approvals, permits, user fees, certificates and licenses required by Laws, pay all charges and fees, and pay for (or cause the appropriate Subcontractor to pay for all utilities required for the proper execution of the Work.

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

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

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

6. Lines, Marks, etc.

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

7. Excavation

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

8. Corrections to the Work; Inspection No Bar to Subsequent Corrections

The inspection of the Work by the Designer, the OPM, the Owner or its consultants shall not relieve the CM of its responsibilities to fulfill the Contract obligations. Defective work may be rejected by the Designer, the Owner or its consultants whether or not such work and/or materials have been previously overlooked or misjudged by the Designer, the Owner or its consultants 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 CM shall forthwith correct such defect in a manner satisfactory to the Designer, the Owner or its consultants. If any material brought upon the Site for use in the Work, or selected for the same, shall be rejected by the Designer, the Owner or its consultants as unsuitable or not in conformity with the Contract Documents, or as damaged by casualty or deteriorated due to improper storage at the Site or to any other factor, the CM shall forthwith remove such materials from

the Site. The CM shall pay for the cost of making good all work or property of other contractors or of the Owner destroyed or damaged by such removal or replacement; repair any injury, defect, omission or mistake in the Work as soon as it is discovered, finish and immediately make good any defect, omission or mistake in the Work and complete and leave the Work in perfect condition.

9. Intentionally Omitted

10. Sanitary Facilities

The CM shall provide and maintain sanitary facilities for all persons employed on the Work, beginning with the first worker at the Site. Said facilities shall meet the following requirements unless otherwise specified in the Supplementary Contract Documents.

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

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

11. Temporary Offices

A. Except as otherwise specified in the Contract Documents, the CM shall erect the following temporary offices near the Site as directed by the Designer and adequately furnish and maintain them in a clean, orderly condition:

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

Office Trailer for the Resident Engineer. Such trailer shall be in close proximity to the CM's field office, shall be at least 1,440 square feet in area, and shall be equipped with partitions to separate it from public access, electric lights, heat, air conditioning, window screens, secure locking devices, and a toilet room with a working chemical toilet. Such office shall be equipped with at least the following furniture and equipment in good condition: 4 lockable steel desks, computer, 4 swivel chairs, 4 stools, 4 metal plan racks, plan table at least 32 by 84 inches, 6 metal filing cabinets with locks, 24 feet of 10 inch deep shelving, one accurate Fahrenheit thermometer, one electric water cooler with disposable cups and water supply service, one hard hat for each project representative and 6 visitor hard hats, one dry plain paper copy machine with a ledger, legal and standard paper tray, and one calculator with paper print out, all of which shall become the property of the CM at the conclusion of the Work.

B. The CM shall relocate the Resident Engineer's trailer, as well as all services connected with said trailer, at no additional cost to the Owner if the need for relocation arises as determined by the Designer.

12. Contract Documents and Samples at the Site

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

CM, are for use solely with respect to this Project. The CM shall not permit their release to other parties except as may be necessary in dealing with governmental authorities in the ordinary course of permitting and constructing the Project. Further, they are not to be used by the CM or any Subcontractor or Supplier on other projects without the specific written consent of the Owner and the Designer.

13. Telephones

The CM shall provide and maintain separate individual telephone service and pay for all calls relating to the Work. Service and equipment shall meet the requirements, if any, of the Contract Documents and shall include provisions for incoming and outgoing calls: (1) in the CM's field office for the use of its authorized agents and (2) in the Project Manager's office for the use of the OPM, Designer and authorized agents of the Owner.

14. Health, Safety, and Accident Prevention

A. In performing the Work, the Contractor shall:

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

B. For these purposes, the Contractor shall:

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

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

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

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

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

controlling these hazards.

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

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

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

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

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

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

them or by anyone for whose acts any of them may be liable. Without limiting the foregoing, the Contractor shall:

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

- I.** The Contractor shall not use or store explosives in the performance of the Work unless the Contractor first obtains the Awarding Authority's prior written specific Approval. If the Awarding Authority Approves the use or storage of explosives during the performance of the Work, the Contractor shall first comply with all Laws and obtain all permits, approvals, and certificates required in connection with the same and shall exercise best efforts, including but not limited to the employment and supervision of properly qualified personnel, to prevent damage, injuries, and accidents involving said explosives.
- J.** The Contractor shall not permit cutting or welding in or immediately adjacent to existing property of the Owner, Awarding Authority or of anyone else without the Awarding Authority's prior Approval in each instance.
- K.** The Contractor shall comply with the Trench Safety Law provisions of M.G.L. c. 82A & 520 CMR 14, which effective January 1, 2009, require at a minimum that: 1) all excavators obtain a permit for all trenches as defined; 2) all excavators must provide protections when trenches are unattended; and 3) authorizes fines for violations.

15. Debris and Chemical Waste

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

B. The CM shall properly classify and remove debris and waste from the Site and transport and dispose of it, all in accordance with Laws, employing a qualified and properly licensed transporter, at any landfill, disposal or recycling facility licensed under applicable Laws, including

without limitation, hazardous materials laws. The CM shall make all arrangements and give and obtain all notices, communications, documentation, permits, certificates, and approvals necessary for said disposal from the owner or officials in charge of such landfills, disposal or recycling facilities. The CM shall bear all fees and costs in connection with such classification, removal, transportation, disposal and storage. The CM shall not permit any storage of debris or waste except in accordance with Laws.

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

D. Chemical Waste: Chemical waste shall be stored in corrosion resistant containers, removed from the Site, and disposed of not less frequently than monthly unless more frequently required by Laws, including without limitation hazardous materials laws, or by the Contract Documents. Disposal of chemical waste shall be performed in accordance with requirements of the U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (DEP). Fueling and lubricating of vehicles and equipment shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants shall be disposed of in accordance with procedures meeting all applicable Laws. The CM shall immediately notify the Designer of any hazardous materials release large enough to require reporting under applicable Laws. The CM shall be responsible for immediately cleaning up in accordance with Laws any oil or hazardous materials releases resulting from its operations. Any costs incurred in cleaning up any such releases shall be borne by the CM, at no additional cost to the Owner.

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

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

17. Furnishings and Equipment

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

18. Intentionally Omitted

19. Sales Tax Exemption and Other Taxes

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

20. Final Cleaning

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

21. Maintenance Data

Subject to such additional requirements as may be provided in the Contract Documents, the CM shall compile four complete and identical binders of operating and maintenance data for the entire Work. The CM shall submit record maintenance data to the Designer for approval, shall submit approved maintenance data to the Owner, and shall instruct and train the User Agency's personnel in proper inspection and maintenance procedures.

22. Closeout Procedures

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

23. Risk of Loss

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

ARTICLE V
MATERIALS AND EQUIPMENT

1. Materials Generally

A. Unless otherwise specifically provided in the Contract Documents, the CM 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.

The CM shall obtain prior written approval from the Owner for permission to store materials or equipment to be incorporated in the Work, for which progress payments will be requested, at off-site locations. Any and all charges for storage, inspection and verification by the Designer and the Owner, including insurance, shall be borne solely by the CM at no additional cost to the Owner. Before approval, the Owner may require, without limitation (i) evidence that the off-site location is properly secure, (ii) proper proof of insurance and proof of

satisfactory contractual arrangements for transportation to the site, and (iii) a certificate from the CM stating:

- (1) The name of the member of the CM or Subcontractor that leases or owns the warehouse or other storage facility;
- (2) The location of such storage facility, including the storage space; *i.e.*, the entire premises or certain areas of a warehouse giving the number of floors or portions thereof, and a certification that the CM has visited such location, verified the storage of such material or equipment therein or thereon (including confirmation that the materials or equipment are marked and segregated as provided below), and verified payment of all current storage charges;
- (3) The date(s) on which the material or equipment is first stored at such facility; and
- (4) A description of the materials or equipment stored, including quantities, types, manufacturers and other identification information, such as serial numbers.

The CM shall furnish to the Owner, not less often than once per month, a current inventory of all materials or equipment being stored at any off-site location. The CM shall mark each sealed carton or other item with the name of the Project and the Owner, and all materials or equipment stored off-site shall be segregated to the extent required by the Owner or the Designer. Payment for materials or equipment stored off-site shall be at the reasonable discretion of the Owner, taking into account the schedule requirements of the Work. Title to materials or equipment stored off-site shall be transferred at the time at which the Owner pays for them, free of any lien or other interest of the Supplier or any other lien or encumbrance. Notwithstanding such transfer of title, the CM shall retain sole care, custody and control of, and shall have complete responsibility for the security and protection of, all materials or equipment included in any Application for Payment which are stored at locations other than the site, and the CM assumes all risk of loss or damage to such materials or equipment, and the CM shall hold harmless the Owner from and against all liabilities arising out of or resulting from loss or damage, from any cause, to such materials or equipment for which payment is requested, including liens, security interests or other claims of any kind by Suppliers or other third parties relating to such materials or equipment.

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

2. Shop Drawings, Product Data, and Samples

A. The CM shall furnish to the Designer all samples of the materials to be used in the execution of the Work as required by the Contract Documents. The CM shall furnish to the Designer in a timely manner all coordination Drawings, shop details, Shop Drawings, and setting diagrams which may be necessary for acquiring and installing materials. These shall be reviewed as required by the Designer. A minimum of four (4) copies shall be submitted for final approval, one of which shall be returned to the CM, one to the Resident Engineer, one to the Owner and one filed with the Designer. The inspection and approval by the Designer of Shop Drawings, etc. shall be general and shall in no way relieve the CM from responsibility for

proper fitting, coordinating, construction, and construction sequencing. The CM shall furnish to the Owner and the Designer such information and vouchers relative to the Work, the materials therefor, and the persons employed thereon, as the Designer shall from time to time request.

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

C. The CM shall review, approve, and submit to the Designer, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals made by the CM which are not required by the Contract Documents or which do not comply with the Contract Documents may be returned without action. The CM's attention is directed to the provisions of Section 4 of this Article V and to the Specifications.

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

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

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

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

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

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

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

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

3. Tests

A. Any material to be used in the Work may be tested or inspected at any time by the Designer with an independent testing company with the prior Approval of the Owner and may be rejected if it fails to comply with specified tests. In such cases the Owner shall pay for all testing of specified material. If the CM requests permission to use a material that was not specified, then the CM shall pay for such testing. The cost of testing of any non-specified materials that fail the testing criteria shall be borne by the CM at no additional cost to the Owner.

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

4. "Or Equal" Submissions

A. Where products or materials are prescribed by manufacturer name, trade name, or catalog reference, the words "or Approved equal" shall be understood to follow. An item shall be considered equal to the item so named or described if in the opinion of the Designer and the Owner (a) it is at least equal in quality, durability, appearance, strength and design, (b) it performs at least equally the function imposed in the general design for the Work, and (c) it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Specifications. Any changes in the work made necessary to accommodate products or materials substituted as an "or equal" shall be at the expense of the CM and at no additional cost to the Owner. "Approved equal" shall mean an item with respect to which the Owner shall have issued a written statement to the CM to the effect that the item is, in the Owner's opinion, equal within the meaning of this paragraph to that prescribed in the Contract Documents.

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

C. Whenever the CM submits a material for approval as a substitute for a material named or described in the Contract Documents, such submission shall be made no later than one hundred twenty (120) days prior to the date the materials will be used in the Work or thirty (30) days after CM has executed subcontracts with the Subcontractors who are installing the materials, whichever occurs first. In no event shall the CM maintain a claim for delays based upon the Designer's review of such substituted materials if the CM has failed to comply with the one hundred twenty (120) day submission requirement or the (30) day subcontract execution requirement.

5. Delivery and Storage of Materials; Inspection

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

B. Materials stored off Site shall be insured and stored at the expense of the CM (and at no additional cost to the Owner) so as to guarantee the preservation of their security, quality and fitness for the Work. Without derogating from the CM's responsibilities in the previous sentence, when necessary to avoid deterioration or damage, material (on or off Site) shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be properly protected.

C. Expenses for inspection of material by the Designer and/or the Owner personnel including travel, quarters, and subsistence shall be borne by the contractor (at no additional expense to the Owner) requesting the inspection of material stored outside the Commonwealth of Massachusetts as part of the Contract Price. The policy of the Owner precludes the payment for material stored outside the boundaries of Massachusetts except in extremely limited circumstances with the express written consent of the Owner. If the CM requests an inspection

of material stored outside the Commonwealth of Massachusetts, the Owner will initially pay for all expenses of inspecting the material incurred by the Designer and/or the Owner's personnel including travel, quarters, and subsistence. The Owner will then give CM an invoice for those costs and the CM shall submit a credit Change Order for the amount of those expenses.

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

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

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

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

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

ARTICLE VI **PROSECUTION AND PROGRESS**

1. Beginning, Progress Schedule, and Completion of Work

A. The Contract time shall commence upon the date specified and in accordance with any conditions in the Notice to Proceed.

B. Prior to the commencement of the Work, the CM shall prepare and submit to the Owner for approval a Baseline CPM Schedule, which shall properly account for the impacts (if any) of anticipated phasing requirements on Project milestones, including but not limited to seasonal/weather conditions, building occupancy, etc.

C. Prior to the submission of the first progress payment, the CM shall submit to the Owner for approval a progress schedule which complies with the requirements of specification section 013200. Upon Approval by the Owner, said schedule shall constitute the Progress

Schedule. The CM shall comply with all requirements of said section 013200.

D. Time is of the essence of this Contract. The Work shall be completed within the time specified in the Owner-CM Agreement. Should the CM require additional time to complete the Work, the CM shall document the reasons therefor and submit a written request for an extension of time within 20 days of the occurrence of the event alleged to be the cause of the delay, as provided in this Article and in Article VII of these General Conditions of the Contract. Failure to submit said written request within the time required by the preceding sentence shall be a condition precedent to the CM's right, if any, to obtain an extension to the Contract Time due to the alleged delay in question, which right shall be deemed waived in the event CM fails to strictly comply with the requirements of this paragraph.

E. If, in the opinion of the Designer or the Owner, the CM fails to comply with the Progress Schedule, the Owner may give the CM a written notice to that effect whereupon (1) the CM shall, if the notice requires, discontinue all or any portion of the Work (which discontinuance shall neither terminate the Contract nor give the CM any claim for an increase in the Contract Price, damages, or an extension of any completion deadlines); or (2) at CM's sole cost (and at no additional cost to the Owner) increase the work force, equipment and plant, or any of them, employed on the whole or any part of the Work, to the extent required by such notice, and employ the same from day to day until the completion of the Work or such part thereof, or until the failure regarding the rate of progress, in the opinion of the Designer or the Owner, shall have been sufficiently corrected.

F. If, in the opinion of the Owner the CM fails to comply with the Progress Schedule, and whether or not the Owner shall have given the CM a notice described in D. above, the Owner may (but shall not be required to) give the CM written notice of such failure and five days to cure the same. Unless the CM shall within that five days take all necessary steps to do so (including, if the Owner requires, increasing its forces, equipment and plant) and continue to do so until in the opinion of the Owner the failure is corrected, the Owner may at the CM's expense (and at no additional cost to the Owner) and without terminating this Contract take exclusive or joint possession of all or a portion of the Site and employ and direct the labors of existing or such additional forces, equipment and plant as may in the Designer's or the Owner's opinion be necessary to insure the completion of the Work or such part thereof within the time specified in the Contract Documents or at the earliest possible date thereafter. The Owner may exercise its rights under this Article at any time and from time to time without waiving any of its rights under this Contract, at law or in equity, including, without limitation, the right to deem this Contract terminated or to order the CM to discontinue the Work at any time thereafter. The CM shall continue to perform the remaining Work under this Contract even if the Owner elects to have another contractor perform a portion of the Work under this Article.

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

including the cost of supervision, and the Designer's and attorneys' fees and costs.

2. Failure to Complete Work on Time - Liquidated Damages

A. The Owner has determined that its damages as a result of CM's failure to complete the Work to the point at which it qualifies for the issuance of a Certificate of Occupancy as provided in Section 4.2 of the Owner-CM Agreement will be difficult or impracticable to ascertain. Accordingly, if the Work is not completed to such point by the date specified in this Contract, the CM shall pay to the Owner the sum designated as liquidated damages in the Contract for each and every calendar day that the CM is in default in completing the Work to such point. Such moneys shall be paid as liquidated damages, not as a penalty, to cover losses and expenses to the Owner and/or the User Agency resulting solely from the fact that the Work is not completed on time, provided that the amount of liquidated damages that Owner may recover shall not exceed 50% of the total dollar amount of the CM Fee.

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

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

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

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

F. Failure by the Owner to specify a sum as liquidated damages in the Owner-CM Agreement, or the insertion of "N/A" or "none" in the space provided therein for liquidated damages, shall not be deemed a waiver of the Owner's right to recover actual damages arising from the CM's failure to complete the Work on time. The Owner's right to recover liquidated damages shall be in addition to its rights under law to recover actual/compensatory damages, at the election of the Owner.

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

A. Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by law as set forth in paragraph B. below, the CM shall not be entitled to increase the Contract Price or to receive damages on account of any hindrances, interruption, interference, or delays, avoidable or unavoidable, including damages for compression or acceleration of work, or loss of productivity (whether or not the Project is behind schedule as a result); but if any such delay (including compression, acceleration, and lost productivity) is caused in the reasonable opinion of the Owner, by the Owner or Architect, or an employee of either; or a separate contractor employed by the Owner for whose work the CM is not responsible (with respect to coordination obligations or otherwise); or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, acts of god, terrorism, sabotage, war, embargo, explosion, storm, flood, accident or delay in transportation, court order or injunction, delays by acts or orders of any governmental body or changes in laws or government

regulations or the implementation or application thereof, or other causes beyond the Construction Manager's reasonable control; or by delay authorized by the Owner pending mediation and arbitration, the CM shall be entitled to an extension of time, which shall be its sole remedy. The length of the extension shall be sufficient in the opinion of the Owner for the CM to complete the Work. Although no delay shall increase the Contract Price, any change in the date by which the CM must complete all or any part of the Work must be processed on a standard Change Order form. Any right of the CM to obtain an increase in the Contract Time pursuant to this paragraph is subject to the conditions and requirements set forth in Paragraph 1. C. of this article.

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

"(a) The Awarding Authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Awarding Authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the Awarding Authority to act within the time specified in this contract, the Awarding Authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the Awarding Authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The general contractor must submit the amount of a claim under provision (a) to the Awarding Authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and except for costs due to a suspension order, the Awarding Authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the Awarding Authority in writing of the act or failure to act involved in the claim."

4. Use and Occupancy Prior to Final Acceptance

A. The CM agrees to the use and occupancy of the Project or any portion thereof before Final Acceptance of the Work by the Owner.

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

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

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

5. Certificate of Agency Use and Occupancy

A. When the Work, or portion thereof which the Owner agrees to accept separately has

reached the state of Substantial Completion as shown on an Approved payment request, the CM shall develop, with the participation of the Designer and the Owner, the Punch List identifying those items of unfinished or unacceptable Work that remain to be performed or corrected under the Contract.

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

(1) Provide CM's proposed Punch List containing a statement of the reason for each item listed thereon;

(2) Advise the Owner of proposed changes in insurance in accordance with the provisions of this Contract, and provide to the Owner evidence of CM's Completed Operations insurance coverage to the extent required by the Contract Documents;

(3) Execute and submit a notarized warranty on a form provided by the Owner meeting the requirements of Article IX of these General Conditions of the Contract, to commence upon the date of the issuance of the Certificate of Agency Use and Occupancy for the Work or the designated portion thereof, unless otherwise provided in the Certificate of Agency Use and Occupancy;

(4) Submit signed special warranties and warranties of longer than one year as required by the Contract Documents;

(5) Submit signed maintenance agreements for all portions of the Work specified to receive maintenance after the issuance of the Certificate of Agency Use and Occupancy;

(6) Submit all preliminary record Drawings and documents and framed data in the forms required by the Contract Documents;

(7) Complete all items required to be completed by the Department of Public Safety and obtain a Certificate of Occupancy from the Department of Public Safety and similar releases which permit the User Agency and the Owner full and unrestricted use of the areas claimed to be ready for occupancy;

(8) Deliver specified maintenance stocks of materials, required spare parts, and all special tools furnished by manufacturers to persons designated by the Owner and obtain written receipts for same;

(9) Make final changes of lock cylinders or cores and advise the Owner of the change of project security responsibility;

(10) Complete start-up of systems and instruct User Agency personnel on proper operation and routine maintenance of all systems and equipment; obtain and submit to Agency personnel that start-up and instruction have been completed;

(11) Remove all remaining temporary facilities that are no longer needed, surplus materials, and debris; (the CM shall not remove construction offices and trailers without the prior Approval of the Owner);

(12) Submit final utility meter readings and similar information and advise the User Agency and the Owner of the change of responsibility for utility charges and payments upon the issuance of the Certificate of Agency Use and Occupancy;

(13) Complete final clean-up of all Work, restoration of damaged finishes, and replacement of all damaged and broken glass not listed on the CM's Punch List.

(14) Complete such other items as may be called for in the Contract Documents, if any, or in the Specifications.

C. After completing the items specified in subsection B above, the CM shall make a written request for the Designer's inspection for a Certificate of Agency Use and Occupancy in accordance with the Contract Documents. The Designer shall review the submittals and the Work and shall either 1) sign a Certificate of Agency Use and Occupancy or 2) notify the CM of incomplete and/or incorrect Work that must be completed and corrected prior to the issuance of the Certificate of Agency Use and Occupancy. The Designer shall notify the CM of any

additions to the Punch List. In connection with the execution of the Certificate of Agency Use and Occupancy the Designer shall assign dollar values to each item on the Punch List. Failure to include any incomplete or defective item on the Punch List shall not relieve the CM of the obligation to complete all Work in accordance with the Contract Documents.

6. Final Acceptance of the Work

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

(1) A completed Final Application for Payment showing a final accounting of all changes in the Work, on the form provided by the Owner;

(2) Certification and satisfactory evidence that all taxes, fees, and similar obligations have been paid;

(3) Consent of the Surety to Final Payment executed by applicable bonding companies.

Certified copy of the Punch List stating that the CM has completed or corrected every item listed.

(4) Evidence of CM's continuing Completed Operations Insurance coverage to the extent required by the Contract Documents.

(5) All final record Drawings and documents in the forms specified by the Contract Documents.

(6) A notarized certification that all purchases made under the tax exemption certificate were legitimate and entitled to exemption.

(7) Written certifications from the Department of Public Safety and the Designer to the effect that: a) the Work has been inspected for compliance with the Contract Documents and has satisfied the Department of Public Safety; b) all equipment and systems included in the Work have been tested in the presence of the Designer and are operational and satisfactory; c) the Work is completed and ready for final inspection.

(8) Such other items as may be required by the Contract Documents.

B. Re-inspection; Final Acceptance. After notification from the CM that all remaining contract exceptions, omissions and incompletions have been completed (with the exception of CM's continuing warranty, insurance, indemnification, and such other obligations as are intended by the terms of the Contract Documents to extend beyond the date of Final Acceptance), the Owner and the Designer shall inspect the Work to verify the completion of the same. If the Work is satisfactory, the Owner shall prepare a Certificate of Final Acceptance or shall notify CM of items which remain to be completed prior to Final Acceptance.

7. One-Year Warranty Repair List and Inspection

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

ARTICLE VII
CHANGES IN THE WORK

1. Change Orders Generally

A. No changes in the Work, the Contract Price, the Substantial and Final Completion dates, or any other provision of an Approval by the Owner of the Contract Documents shall be made in absence of a Change Order as defined in Article I of these General Conditions of the Contract, directing the CM to perform such changes. Any request for a change in the provisions of this Contract submitted by the CM must be made in writing and in accordance with the provisions of this Contract, including the procedures of the Owner.

B. A request for a change in the provisions of this Contract may be submitted to the Owner by the CM, Designer, Resident Engineer or User Agency. The request must be made in writing and in accordance with the provisions of this Contract, Laws, and the procedures of the Owner. When the CM believes that an event or circumstance gives rise to an adjustment in the Contract Price and/or the Contract Time it shall submit a request for a change order in accordance with the forms and procedures required by the Owner.

C. A written directive may be issued by the Owner instructing the CM to make changes in the Work within the general scope of the Contract, including but not limited to, changes in: (1) the Plans and Specifications; (2) the method or manner of performance of the Work; (3) the Owner-furnished facilities, equipment, materials, services or Site; (4) the schedule for performance of the Work.

D. Whenever a Change Order or written directive will cause a change in the CM cost, the CM or the Owner may request an adjustment in the Contract Price. Such request shall be in writing and shall be submitted by the party making such claim to the other party before commencement of the pertinent work.

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

F. During the negotiation of an adjustment in the Contract Price, the CM shall provide the Owner with all cost, pricing data and any other information or documentation used by it in computing the amount of the adjustment, and the CM shall certify that the pricing data used was accurate, complete, and current. If the Owner subsequently determines that the data submitted by the CM was inaccurate, incomplete, or not current, the Owner may exclude such data from consideration under the adjustment request.

G. Whenever the CM is entitled or believes it is entitled to a Change Order adjusting the Contract Price, the CM shall maintain separate accounts (by job order or other suitable accounting procedure) of all costs incurred and attributable to such work and schedule. The CM shall maintain a computerized accounting system, acceptable to the Owner, in which current information as to the status of all such work and schedule is maintained. The CM shall maintain such contemporaneous records as are necessary to provide a clear distinction between the costs of all Change Order Work and proposed Change Order Work, and the costs of other

Work and schedule.

H. Whenever the CM is entitled or believes it is entitled to a Change Order adjusting the Contract Time, the CM shall submit, within the timeframes and subject to the conditions set forth in Article VI. 1. C., all data, information and documentation relied on by the CM to calculate the length of the extension requested, included but not limited to CPM schedule analyses, update schedules, and other data. Failure of the CM to comply with this provision is grounds for rejection of the CM's request for an extension of the Contract Time.

I. Notwithstanding any provisions in the Contract Documents to the contrary, no additional General Conditions Cost shall be due for any Change Order or portion of a Change Order resulting from or attributable to:

- Increases in the cost of Allowance items;
- Substitutions of equipment or materials which are functionally similar to equipment or materials specified in the Contract Documents; or
- Sales and use taxes.

J. The CM shall reasonably investigate the validity of subcontractor and supplier change order requests before agreeing to pass them through to the Owner. For all change order requests submitted, the CM shall certify in writing that: the change request is made in good faith; the validity of the CM's and any subcontractor and supplier change requests have been verified; the supporting data is accurate and complete to the best of the CM's knowledge and belief; and the CM believes the Owner to be liable for the add amount, or entitled to the deduct amount of the change request, whichever is applicable.

2. Methods of Computing Change Order Adjustments

A. Adjustments in the Contract Price that are warranted due to approved Change Orders shall be determined according to one of the following methods, or a combination thereof, as determined by the Owner:

(1) fixed price basis, provided that the fixed price shall be inclusive of items (a) through (g) below and shall be computed in accordance with those provisions;

(2) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all costs related to such adjustment;

(3) time and materials basis to be subsequently adjusted on the basis of actual costs (but subject to a predetermined "not to exceed limit") calculated as follows:

- a) the direct prevailing wage cost (or credit) for labor at the minimum wage rates established for this Contract pursuant to M.G.L. c. 149, § 26-27H;
- b) plus (or minus) the cost of Workmen's Compensation Insurance, Liability Insurance, Federal Social Security and Massachusetts Unemployment Compensation, which are to be calculated using an allowance equal to 30% applied to said rate. The rate of (30) percent is inclusive of all insurances, taxes, general conditions, overhead, superintendence, fee, and profit. No other expenses are allowed, for example, sick time, vacation time, etc. are included in the all-inclusive rate. Documentation must be provided if a higher percentage is requested and will only be accepted for Workmen's

Compensation over 12.5%.

- c) plus (or minus) the actual direct additional premium costs and expenses incurred as a result of collective bargaining agreements or other agreements between organized labor. No allowance for markups is allowed on these costs.
- d) Plus the direct cost of materials and use of equipment; an allowance equal to 15% of the amount of materials and equipment for General Conditions, overhead, superintendence, and profit can be applied.
- e) Certain miscellaneous services provided and approved by the Owner (e.g. police details, utilities, etc.) may be included and are subject to a 5% markup.
- f) plus (or minus) the actual direct premium cost of payment and performance bonds required of the CM and certain subcontractors for this Contract.
- g) The CM shall receive an allowance equal to 5% of the sum of items (a) through (e) above for overhead, superintendence, and profit when the work is performed by Subcontractors. Subcontractors can also apply an allowance equal to 5% of the sum of items (a) through (e) above for overhead, superintendence, and profit when the work is performed by Sub-tier Subcontractors,
- h) The aggregate amount of all mark-ups for General Conditions, overhead, superintendence and profit, for the Contractor and all Subcontractors, regardless of the number of tiers of Subcontractors involved or the amount of the Change Order, shall not exceed twenty-five percent (25%).

B. The CM and its subcontractors are required to anticipate annual updated minimum wage schedules in accordance with G.L. c. 149, § 27 and shall not be entitled to claim additional compensation for base bid contract work due to updated minimum wage schedules.

C. If the net change is an addition to the Contract Price it shall include the CM's overhead, superintendence, and profit. The CM is not entitled to apply the CM Fee (as defined in Section 6.4 of the Owner-Contractor Agreement) to any portion of such increases to the Contract Price, which increases shall provide all compensation due to the CM by virtue of the provisions in this section.

D. On any change that involves a net credit, no allowance for overhead, superintendence and profits shall be included. Charges for small tools known as "tools of the trade" are not to be computed in the amount of any change in the Contract Price.

E. Adjustments in Subcontractors made under the provisions of the Procedure for Award of Subcontracts shall not be considered Change Orders and shall not entitle the CM to any adjustments for overhead, profit, and superintendence, although the Owner may require that such Contract adjustments be processed on standard Change Order and adjustment forms.

3. Work Performed under Protest

The CM agrees to perform all Work as directed by the Owner, and if the Owner determines that certain Work that the CM believes to be or to warrant a Change Order under this Article does not represent a change in the Work, the CM shall perform said Work. The CM shall be deemed to have concurred with the Owner's determination as aforesaid unless the CM shall perform Work under protest in compliance with the following sub-paragraphs (1) and (2) below. Any disputed order, decision or action by the Owner or its authorized representative shall be fully performed or complied with pending resolution of the dispute.

- (1) If the CM claims compensation for a change in the Work that is not deemed by the Owner to be a change or to warrant additional compensation as claimed by the CM, the CM shall on or before the first working day following the commencement of any such work or the sustaining of any such damage submit to the Owner a written statement of the nature of such work or claim. The CM shall not be entitled to additional compensation for any work performed or damage sustained for which written notice is not given within the time limit specified in the preceding sentence, even though similar in character to work or damage with respect to which notice is timely given.
- (2) On or before the second working day after the commencement of such work or the sustaining of such damage, for each day upon which work occurs or damage is sustained, the CM shall file to the extent possible with the Resident Engineer, the Designer, and the Owner, itemized statements of the details and costs of such work performed or damage sustained. The CM shall use the Owner Daily Time and Materials Report form found in the Owner Form 13 to record all labor and material used. If the Contractor shall fail to make such statements, then the Contractor shall not be entitled to additional compensation for any such work or damages.

4. False Claims, Statutory Provisions Regarding Changes

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

"Whoever makes or presents to any employee, department, agency or public instrumentality of the commonwealth, or of any political subdivision thereof, any claim upon or against any department, agency, or public instrumentality of the commonwealth, or any political subdivision thereof, knowing such claim to be false, fictitious, or fraudulent, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than five years, or in the house of correction for not more than two and one-half years, or both."

B. Differing Site Conditions (M.G.L. c. 30, § 39N):

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

in the contract price and the contract shall be modified in writing accordingly."

C. Timely Decision By the Owner(M.G.L. c. 30, § 39P): *"Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the Awarding Authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the Awarding Authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made."*

D. Change Order / Contract Interpretation Appeal Procedure (M.G.L. c. 30, § 39Q):
The following provisions apply to every contract awarded by any state agency as defined by M.G.L.

c. 7C, § 1 for the construction, reconstruction, alteration, remodeling, repair or demolition of any capital facility as defined by the aforesaid section 1:

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

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

"(c) Within twenty-one calendar days of the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises his option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The

hearing officer shall issue a final decision as expeditiously as possible, but in no event more than one hundred and twenty calendar days after conclusion of the adjudicatory hearing, unless the decision is delayed by a request for extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, s/he shall notify all parties of the reasons for the delay and the date when the decision will issue. Failure to issue a decision within the one hundred and twenty-day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay.

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

5. Mandatory Mediation

In the case of every dispute where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$50,000 or more and the CM appeals the decision of the chief executive official of the Owner or his designee as required by M.G.L. c.30, § 39Q, quoted in Section 4.D.(b) above, the Owner and the CM shall engage in good faith in a non-binding mediation process, which process shall be concluded within sixty days from the date that the CM files an appeal from said decision as provided in M.G.L. c.30, § 39Q. In the case of such disputes where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$500,000 or more, the parties shall, if the mediation process fails, submit the dispute to a third-party neutral or dispute review board which shall within sixty days render a non-binding advisory opinion. Unless the parties have previously agreed in writing to a process for submitting disputes to mediation or a dispute review board, the Owner shall determine in its reasonable discretion the procedures to be followed and shall give the CM notice of the same in writing within 7 days of the date that the Owner receives notice of the CM's appeal from the decision of the chief executive officer of the Owner or his designee. The cost of the services of any mediator selected by one party to this Contract shall be borne by the party making the selection. The cost of the services of any mediator selected jointly by the parties to this Contract or jointly by mediators selected by the parties to this Contract shall be borne equally by the CM and the Owner.

ARTICLE VIII **PAYMENT PROVISIONS**

1. Schedule of Values

Before submission of the first request for payment under this Contract the CM shall prepare and submit to the Owner for its approval a separate schedule of values ("SOV") for each of the following portions of the CM's services: (1) Schematic Preconstruction, (2) Preconstruction, and (3) Construction. Each SOV shall be in sufficient detail to reflect the various preconstruction activities and the major components of each construction trade (with relevant Subcontractors as well as MBE/WBEs noted), including quantities when requested, aggregating the GMP with

detail for the Contingency and divided so as to facilitate payments for work under each section of the Specifications. Each SOV shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. When approved by the Owner, each SOV shall be used only as a basis for the CM's requests for payments and credits for the pertinent portion of the CM's services, the first of which payments shall not be made until such SOV is approved by the Owner.

2. Payment Liabilities of CM

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

b. If the Work (or a portion thereof) is not completed to Substantial Completion and the CM has not satisfied the requirements for the issuance of a Certificate of Agency Use and Occupancy in accordance with Article VI, Section 5 of these General Conditions, by the date specified in the Owner-CM Agreement, the CM shall pay to the Owner liquidated damages as provided in Article VI, Section 2 of these General Conditions of the Contract.

3. Retention of Monies by the Owner

a. The Owner may keep any moneys which would otherwise be payable at any time hereunder, and apply the same, or so much as may be necessary therefor, to (1) the Owner's expenditures for the CM's account, (2) to secure the Owner's remedies against the CM for the CM's breach of its obligations under this Contract or the breach of any person performing any part of the Work and (3) the payment of any expenses, losses or damages incurred by the Owner or any agency of the Commonwealth as a result of the failure of the CM to perform its obligations hereunder. The Owner may retain, until all claims are settled, such moneys as the Owner estimates to be the fair value of the Owner's claims against the CM, and of all claims for labor performed or furnished and for materials used or employed in or in connection with the Work and for the rental of vehicles, appliances and equipment employed and for the employment of substitute contractors and labor in connection with the Work filed in accordance with M.G.L. c. 30, § 39A and § 39F. The Owner may make such settlements and apply thereto any moneys retained under this Contract.

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

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

4. Applications for Payment

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

b. Each periodic estimate shall constitute the CM's representation that (1) the payment then requested to be disbursed has been incurred by the CM on account of the Work and is justly due to Subcontractors or, to the CM in the case of other Work performed by the CM on account thereof,

(2) the materials, supplies and equipment for which Application for Payment is being submitted have been installed or incorporated into the Work or have been stored at the Site or at such off Site storage locations as the Awarding Authority shall have Approved, (3) the materials, supplies and equipment are insured in accordance with the provisions of this Contract, (4) the materials, supplies and equipment are owned by the Owner and are not subject to any liens or encumbrances, (5) the Work which is the subject of such periodic estimate has been performed in accordance with the Contract Documents and (6) that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of such periodic estimate. The CM's attention is directed to the criminal penalties for false claims referenced in paragraph A above.

c. The CM may include in a periodic estimate the value of materials or equipment delivered at the Site (or at some location agreed to in writing) only upon delivery to the Awarding Authority of:

(1) an acceptable transfer of title on the form provided by the Awarding Authority; (2) written certification by the CM (or applicable subcontractor) on the form provided by the Awarding Authority that the CM (or the Subcontractor which executed the transfer of title) is the lawful owner and that the materials or equipment are free from all encumbrances, accompanied by receipted invoices or other acceptable proof of prior payment for such materials; (3) a stored materials insurance binder that covers the materials for which payment is requested, that names the Owner as an insured party should the stored materials be subjected to any casualty, loss, or theft prior to their inclusion in the Work. The material(s) or equipment must, in the judgment of the Designer (1) meet the requirements of the Contract, including prior shop drawing, product data, and sample approval, (2) be ready for use, and (3) be properly stored by the CM and be adequately

protected until incorporated into the Work. See also Article V.5.C of these General Conditions of the Contract concerning the cost of inspections.

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

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

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

5. Periodic Payments (M.G.L. c. 30, § 39K)

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

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

The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the change so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies. All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and column listing the amount paid to each filed subcontractor as of the date of the periodic estimate is filed. The person making payment for the awarding authority shall add the daily interest provided for herein to each payment for each day beyond the due date of receipt marked on the estimate.

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

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

6. Payment of Subcontractors (M.G.L. c. 30, § 39F)

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

"1 (a) Forthwith after the general contractor receives payment on account of a periodic

estimate, the general Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

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

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

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

(e) Within fifteen days after receipt of the demand by the Awarding Authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Awarding Authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the Awarding Authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in

the sworn reply; provided that the Awarding Authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The Awarding Authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this subparagraph.

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

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

(h) The Awarding Authority shall deduct from payments to a General contractor amounts which, together with the deposits in interest bearing accounts pursuant to

(6) are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

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

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

(3) "subcontractor" as used in this section (1) for contracts awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall mean a person who files a sub-bid and received a subcontract as a result of that filed sub-bid or who is

approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, (ii) for contracts awarded as provided in paragraph (1) of section thirty-nine M of chapter thirty shall mean a person approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the commonwealth not awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall also mean a person contracting with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.

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

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

7. Final Payment; Release of Claims by CM

Upon Final Acceptance of the Work the CM shall be entitled to payment of the balance of the Contract Price. Final payment shall be as provided in this Article above and in accordance with any process set forth in the Contract Documents. The CM agrees to execute a Certificate of Final Inspection, Release (with CM’s own exceptions listed thereon) and Acceptance as a condition precedent to Final Payment. The acceptance by the CM of the Final Payment made as aforesaid, or the execution of the Certificate of Final Acceptance by the CM, shall constitute a release of the Owner, the Owner, the OPM, the Designer, and every member and agent of any

of them, from all claims of and liability to the CM for anything done or furnished for or relating to the Work, or for any act or neglect of the Owner, the OPM, the Designer, or of any person relating to or affecting the Work, except the claim against the Owner or the Designer for the remainder, if any there be, of the amounts set forth by the CM in the Certificate of Final Inspection, Release and Acceptance.

Final Acceptance shall not relieve CM of the requirements of Articles IX, XIV, and XV of these General Conditions of the Contract, or of other provisions of this Contract, to the extent that the same are intended to survive Final Acceptance.

8. Method of Payment – Fraud Avoidance

The parties shall agree on a specified method of payment before the submission of CM's first requisition and both parties (CM and Owner) shall each designate a contact person who will be responsible for addressing issues related to processing applications for payment. No changes to the agreed upon method of payment shall be made at any time during the course of the Work, and any communication from either party (e.g., an e-mail) purporting to authorize such a change in the method of payment shall be invalid and shall not be honored by the receiving party. In such instance, no payment will be made until the parties' designated representatives have communicated orally to confirm the status of the pending payment, and even then such payment will be made according to the originally agreed-upon method.

ARTICLE IX **GUARANTEES AND WARRANTIES**

1. General Warranty

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

2. Special Guarantees and Warranties

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

B. The CM hereby assigns to the Owner, effective at the time of Substantial Completion of the Work, any and all manufacturer's warranties required by the Contract Documents relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such manufacturer's warranties.

C. Guarantees and warranties required in the various sections of the Specifications must be delivered to the Designer before final payment to the CM may be made, or in the case of guarantees and warranties which originate with a sub-contractor'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.

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

ARTICLE X **MISCELLANEOUS LEGAL REQUIREMENTS**

1. CM to be Informed

The CM shall inform itself of all existing and future Laws in any manner affecting those engaged or employed in the Work, or the materials used or employed in the Work, or in a any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any applicable jurisdiction or authority over the Work.

2. Compliance with all Laws

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

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

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

of its subcontractors to execute and provide to CM a Workforce Certification form with the execution of each subcontract, and CM must require each subcontractor to forward a copy of each such Workforce Certification to the Construction Manager for filing with the Owner.

B. Veterans Preference. In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the performance of Work in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined M.G.L. c.4, § 7 (34), and who are qualified to perform the work to which the employment relates and, within such preference, preference shall be given to service-disabled veterans; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States. The Awarding Authority encourages the participation of Service-Disabled Veteran- Owned Business Enterprises (“SDVOBE”) in its construction and design projects pursuant to Chapter 108 of the Acts of 2012 and Executive Order 546. The benchmark for SDVOBE participation on the Project is 3% of the Contract Price. A SDVOBE for purposes of the Commonwealth’s program, is a Service-Disabled Veteran-Owned Small Business (“SDVOSB”) as designated by the federal government pursuant to 15 USC §632, whose status as a SDVOSB can be verified on the U.S. VetBiz Vendor Information Page located at www.VetBiz.gov. SDVOBE’s shall be provided opportunities to participate in the Project and Contractor shall within 30 days of contract execution submit its Anticipated Service-Disabled Veteran-Owned Business Enterprise Participation plan to the Awarding Authority’s Compliance Office. Contractor shall report on the amount of SDVOBE participation on the Project on a regular basis, in the form, format and frequency requested by the Awarding Authority, including, but not limited to, by electronic reporting.

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

D. Payroll Records and Statement of Compliance. The CM shall comply and shall cause its Subcontractors to comply with Massachusetts General Law c. 149, § 27B, which requires that a true and accurate record be kept of all persons employed on the project for which the prevailing wage rates have been provided. The CM and all Subcontractors shall keep these records and preserve them for a period of three years from the date of completion of the Contract. Such records shall be open to inspection by any authorized representative of the Owner at any reasonable time, and as often as may be necessary. The CM shall, and shall cause its Subcontractors to, submit weekly copies of their weekly payroll records to THE Owner. In addition, the CM and each Subcontractor shall furnish to the Executive Department of Labor within fifteen days after completion of its portion of the Work a signed statement in the form

required by the Owner.

E. Vehicle Operators. If the Director of the Department of Labor and Workforce Development has established a Schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for the Work, the CM 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).

F. Eight Hour Day. The CM shall comply with M.G.L. c. 149, § 30, 34 and 34A which provide that no laborer, workman, mechanic, foreman or inspector working within the Commonwealth in the employ of the CM, subcontractor or other person doing or contracting to do the whole or part of the Work shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in cases of extraordinary emergency.

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

H. Lodging, etc. The CM shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, § 25 which provides that every employee under this Contract shall lodge, board and trade where and with whom he elects, and neither the CM nor his agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.

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

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

K. CM's Agreements with Suppliers--Anti-Boycott Provisions. (1)The CM shall not purchase or rent any materials, equipment, machinery, vehicles, or supplies for or in connection with the Work from any person or entity who does not sign, under pains and penalties of perjury, a certificate that recites: "The undersigned warrants, represents and agrees that during the time its agreement with {insert CM's name} is in effect for materials, supplies or equipment to be used in connection with the {insert the name of the Awarding Authority} Project No. {insert project number}, neither the undersigned or any affiliated company, as hereafter

defined, participates in or cooperates with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the undersigned or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the undersigned; or which directly or indirectly owns at least 51% of the ownership interests of the undersigned."

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

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

L. Access to CM's Records (Executive Order #195). The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the CM which pertain to the performance and requirements of this Contract.

M. Executive Order 484 (Apr. 18, 2007) - Clean Energy & Efficient Buildings
Contractor understands that, pursuant to Executive Order No. 484, all new construction and renovation projects over \$20,000 must meet a Massachusetts LEED Plus building standard, and that smaller projects must meet the minimum energy performance standards established by the Commonwealth of Massachusetts Sustainable Design Roundtable. Furthermore, Contractor understands that the Massachusetts LEED Plus standard applies to all projects overseen by the Massachusetts Division of Capital Asset Management and Maintenance, as well as all projects built on state land for use by state agencies.

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

O. Executive Order 504 – Protection of Personal Information
For all Contracts involving the Contractor's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, owned or controlled by

Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth of Massachusetts Information Technology Division's Security Policies available at www.mass.gov/ITD under Policies and Standards.

ARTICLE XI

CM'S ACCOUNTING METHOD REQUIREMENTS (M.G.L. c. 30, § 39R)

1. Definitions

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

Contractor means the CM.

Contract means any Contract awarded, which is for an amount or estimated amount greater than one hundred thousand dollars.

Independent Certified Public Accountant means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with aspect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the Owner.

Records means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

Audit, when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons, or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

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

2. Record Keeping

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

B. Until the expiration of six years after final payment, the Inspector General, the Owner, and the Owner 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. Any request for a change in the provisions of this Contract submitted by the CM must be made in writing and in accordance with the provisions of this Contract, including the procedures of the Owner.

C. 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.

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

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

3. Statement of Management Controls

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

transactions are executed in accordance with management's general and specific authorization; 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;

access to assets is permitted only in accordance with management's general or specific authorization; and

the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

B. The Contractor shall file with the 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:

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

4. Annual Financial Statement

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

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

5. Bid Pricing Materials

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

ARTICLE XII **EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM** [EXECUTIVE ORDERS 524 & 526] (See Appendix A)

This Contract includes all provisions of the Commonwealths "Equal Employment Opportunity, Non- Discrimination, and Affirmative Action Program" appearing in Appendix A to these General Conditions of the Contract attached hereto and incorporated herein by reference.

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

[M.G.L. c .7C, § 6 & EXECUTIVE ORDERS 524 & 526]

This Contract includes all provisions of the Commonwealth's program relating to Goals for Participation by Minority Business Enterprises and Women Business Enterprises attached appearing in Appendix B to these General Conditions of the Contract attached hereto and incorporated herein by reference.

ARTICLE XIV
INSURANCE REQUIREMENTS

1. Insurance Generally

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

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

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

- that the General Liability policy includes contractual liability
- that the General Liability policy includes the Owner and the MSBA as additional primary insureds on a non-contributory basis for ongoing operations (CG 20 10) and for completed operations (CG 37 10) or equivalent endorsements.
- that the automobile liability, umbrella liability and pollution liability policies include the Owner, the MSBA and the Awarding Authority as additional primary insureds on a non-contributory basis
- that the General Liability policy includes endorsement CG 24 04 or equivalent, a Waiver of Subrogation in favor of the Owner and the MSBA
- that the Builders' Risk (if purchased by CM) or Installation Floater is on an all risk basis including earthquake and flood, and includes the Owner and the MSBA, CM, subcontractors and suppliers of any tier as named primary insureds on a non-contributory basis or loss payees as their interests may appear.
- that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the Owner.

CM shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage.

D. Upon Owner's reasonable request, the CM shall permit full access or otherwise make available to Owner CM's policy information as may be appropriate to confirm the existence and sufficiency of applicable coverage. If the Owner is damaged by the CM's failure to maintain such insurance and to comply with the terms of this Article, then the CM shall be responsible for all costs and damages to the Owner attributable thereto.

E. Termination, cancellation, or material modification of any insurance required by this

Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

F. The CM is responsible for the payment of any and all deductibles under all of the insurance required below unless the Owner specifically provides a written waiver to the CM.

2. CM's Commercial General Liability

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

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$5,000,000 each occurrence, \$10,000,000 aggregate
Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$10,000

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

C. This policy shall include contractual liability coverage.

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

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

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

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

3. Vehicle Liability

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

Bodily Injury & Property Damage \$1,000,000 combined single limit

B. The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in Exhibit A to the Owner - CM Agreement the CM, if hauling contaminants and/or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall contain coverage Form MCS-90.

- C. The policy shall name the Owner and the MSBA as Additional Insureds.
- D. The policy shall contain a Waiver of Subrogation in favor of the MSBA and the Owner.

4. Contractor's Pollution Liability

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

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

5. Worker's Compensation

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

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

B. If specified in Exhibit A to the Owner-CM Agreement the policy must be endorsed to cover United States Longshoremen & Harborworkers Act (USLHW), Maritime Liability for \$1,000,000/\$1,000,000, or Federal Employer's Liability Act liability.

C. The policy shall contain a Waiver of Subrogation in favor of the Owner and the MSBA.

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

A. If required by the Owner, the CM shall purchase and maintain coverage against loss or damage on all Work included in this Contract in an amount equal to the GMP. The Owner reserves the right to purchase Builder's Risk coverage in lieu of such purchase by the CM . If purchases by the CM, such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism ("certified" and "non-certified"), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and CM's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in C. below.

B. When Work will be completed on existing buildings owned by the Owner, the CM

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

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

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

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

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

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

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

7. Umbrella Coverage

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

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

8. Additional types of Insurance and Deductibles

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

9. Contractor's Professional Liability

The CM shall purchase and maintain insurance errors and omissions liability insurance appropriate to the contractor's profession, including without limitation CM at Risk services performed under M.G.L. c. 149A whether performed by a Design Professional that the Insured is legally responsible for, or by the Insured in their capacity as a Design Professional, or other professional services that the Insured performs for others in their capacity as a Construction

Manager. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the CM's services as defined in this contract. Coverage shall be written subject to limits of not less than \$5,000,000 per loss. If coverage as required above is written on a claims-made basis, the CM warrants that any retroactive date is no later than the effective date of this contract; and that continuous coverage will be maintained or an extended coverage period will be exercised for a period of 6 (six) years beginning from the time of substantial completion of the Work.

ARTICLE XV

INDEMNIFICATION

1. Generally

To the fullest extent permitted by law, the CM shall indemnify, defend (with counsel subject to the supervision of the Attorney General of the Commonwealth of Massachusetts as required by M.G.L. c. 12, § 3) and hold harmless the MSBA, the Owner and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner and/or the MSBA arising out of or resulting from the performance or non-performance of the work performed by the CM and its subcontractors, provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are alleged to be caused in whole, or in part, by an act or omission of any of the CM, its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

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

2. Designer's Actions

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

3. Survival

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

ARTICLE XVI

PERFORMANCE AND PAYMENT BONDS

1. CM Bonds

A. The CM shall provide performance and payment (labor and materials) bonds in the form provided by the Owner, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance and whose name appears on United States Treasury

Department Circular 570. Each such bond shall be in the amount of the GMP.

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

is adjudged bankrupt or has made a general assignment for the benefit of its creditors; has liquidated all assets and/or has made a general assignment for the benefit of its creditors; is placed in receivership; otherwise petitions a state or federal court for protection from its creditors; or allows its license to do business in Massachusetts to lapse or be revoked; then the CM shall, within 21 days of any such action listed above, provide the Owner with new performance and payment bonds as described in Paragraph A above. Such bonds shall be provided solely at the CM's expense.

2. Subcontractor Bonds

A. If the CM provided in its Guaranteed Maximum Price or other Proposal that any or all subcontractors shall provide the CM with payment and performance bonds for the full amount of their respective Subcontracts, then the costs for said bonds shall be the responsibility of the CM. Irrespective of whether the CM requests payment and performance bonds from their respective Subcontractors, the CM understands that if the Subcontractor defaults or is terminated, the CM shall have full responsibility for all costs and expenses related to said default or termination.

B. If the CM, provided in its General Bid, that Subcontractors shall provide bonds, and subsequently waives the requirement, the CM shall give the Owner a written certification that the CM understands that if the Subcontractor defaults or is terminated, the CM shall have full responsibility for all costs and expenses related to said default or termination.

ARTICLE XVII **TERMINATION OF CONTRACT**

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

(1) The CM has filed a petition, or a petition has been filed against the CM with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the CM without its consent and is not dismissed within sixty (60) days; or if the CM is generally not paying its debts as they become due; or if the CM becomes insolvent; or if the CM consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the CM or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the CM makes an assignment for the benefit of creditors;

(2) The CM refuses or fails, except in cases for which extension of time is provided under this Contract's express terms, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or the Owner has determined that the rate of progress required for the timely completion of the Work is not being met; The CM fails to make prompt payment to Subcontractors or for materials, equipment, or labor;

(3) All or a part of the Work has been abandoned;

(4) The CM has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the Owner, except as expressly permitted in this Contract;

(5) The CM has failed to comply with Laws;

(6) The CM fails to maintain, or provide to the Owner evidence of the insurance or bonds required by this Contract; or

(7) The CM has failed to perform the Work or any portion thereof as required by this Contract or has otherwise breached any material provision of this Contract.

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

- (1) Hold the CM and its sureties liable in damages for a breach of Contract;
- (2) Notify the CM to discontinue all work, or any part thereof, and the CM shall discontinue all work, or any part thereof, as the Owner may designate;
- (3) Complete the Work, or any part thereof, and charge the expense of completing the Work or part thereof, to the CM;
- (4) Require the surety or sureties to complete the Work and perform all of the CM's obligations under this Contract;
- (5) Take such other lawful action as is deemed by the Owner to be in the best interest of the Commonwealth.

If the Owner elects to complete all or any portion of the Work as specified in (3) above, it may take possession of all materials, equipment, tools, machinery, implements at or near the Site owned by the CM and finish the Work at the CM's expense by whatever means the Owner may deem expedient; and the CM shall cooperate at its expense in the orderly transfer of the same to a new contractor or to the Owner as directed by the Owner. In such case the Owner shall not make any further payments to the CM until the Work is completely finished. The Owner shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the CM shall be solely responsible for their removal from the Site after the Owner has no further use for them. Unless so removed within fifteen days after notice to the CM to do so, they may be sold at public auction, after publication of notice thereof at least twice in any newspaper published in the county where the Work is being performed, and the proceeds credited to the CM's account; or they may, at the option of the Owner, be stored at the CM's expense subject to a lien for the storage charges.

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

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

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

2. Termination for Convenience

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

B. In case of such termination without cause, the CM shall be paid:

- (1) all sums due and owing under this Contract through the date of termination, including any retainage withheld to the date of termination, less any amount which the Owner determines is necessary to correct or complete the Work performed to the date of termination; plus (2) a reasonable sum to cover the expenses which CM would not have incurred but for the early termination of the Contract, such as demobilization of the work force, restocking charges,

termination fees payable to Subcontractors.

C. Lost profits shall not be payable. The payment provided in paragraph B above shall be considered to fully compensate the CM for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination.

3. CM's Duties upon Termination for Convenience

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

ARTICLE XVIII **MISCELLANEOUS PROVISIONS**

1. No Assignment by CM

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

2. Non-Appropriation

The Commonwealth certifies that at the time of the execution of this Contract, sufficient appropriations exist and shall be encumbered to fund the Contract Price. Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The CM shall not be obligated to perform, and shall not perform, work outside the scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional work. The Commonwealth may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract. Such termination shall be deemed a termination for convenience subject to the provisions of paragraph 2 of Article XVII of this Contract.

3. Claims by Others Not Valid

No person other than the CM and the surety on any bond given pursuant to the terms of this Contract shall acquire any interest in this Contract or any claim against the Owner hereunder, and no claim by any other person shall be valid except as provided in M.G.L. c. 30, § 39F of the General Laws.

4. No Personal Liability of Public Officials

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

5. Severability

The provisions of this Contract are severable, and if any of these provisions shall be held unconstitutional

or unenforceable by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this Contract.

6. Choice of Laws

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

7. Standard Forms

Unless directed otherwise in writing by the Owner, CM shall use the standard forms in use by the Division of Capital Asset Management and Maintenance appearing in Appendix E to these General Conditions of the Contract.

8. No Waiver of Subsequent Breach

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

9. Remedies Cumulative

All remedies of the Owner provided in this Contract shall be construed as cumulative and may be exercised simultaneously or in any order as determined by the Owner in its sole discretion.

the Owner shall also be entitled as of right to specific performance and equitable relief including the right to an injunction against any breach of any of the provisions of this Contract

10. Notices

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

APPENDIX A

The following provisions form Article XII of the General Conditions of the Contract between the Owner and the Construction Manager.

EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

1. Compliance Generally

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

2. Non-Discrimination and Affirmative Action

A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, handicap, sexual orientation, or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall comply with the provisions of M.G.L. c. 151B and all other applicable anti-discrimination and equal opportunity laws.

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

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

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

D. If the Contractor shall use any subcontractor on any work performed under this Contract, the Contractor shall take affirmative steps to negotiate with qualified minority and women subcontractors. These affirmative steps shall cover both pre-bid and post-bid periods. It shall include notification to the State Office of Supplier Diversity or its designee,

while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids. In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract relative to non-discrimination and affirmative action.

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

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

3. Liaison Committee, Reports and Records

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

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

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

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

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

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

4. Sanctions

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

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

- (1) The recovery by the Awarding Authority from the Contractor of 1/100 of 1% of the Contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the Awarding Authority from the Contractor, to be assessed by the Contractor as a back charge against the subcontractor, of 1/10 of 1% of the sub-Contract Price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
- (2) The suspension of any payment or part thereof due under the Contract until such time as the Contractor or any subcontractor is able to demonstrate his compliance with the terms of the Contract;
- (3) The termination, or cancellation, of the Contract, in whole or in part, unless the Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;
- (4) The denial to the Contractor or any subcontractor of the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three years.

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

C. Sanctions recommended by the Commission and enumerated under Section A above shall not be imposed by the Awarding Authority except after an adjudicatory proceeding, as that term is used in M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

D. Notwithstanding the provisions of 4A-4C above, if the Awarding Authority determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of this Article, it may suspend any payment or portion thereof due under the Contract until the contractor demonstrates to the satisfaction of the Awarding Authority compliance with the terms of this Article. This temporary suspension of payments by the Awarding Authority is separate from the sanctions set forth in Section 4A-4C of this Article above, which are determined by MCAD and recommend to the Awarding Authority. Payment may be suspended only after the Contractor and any other interested party shall have been given the opportunity to present evidence in support of its position at an informal hearing held by the Awarding Authority, and the Awarding Authority has concluded upon review of all the evidence that such penalty is justified. Payment shall not be suspended if the Awarding Authority finds that the Contractor made its best efforts to comply with this Article, or that some other justifiable reason exists for waiving the provisions of this Article in whole or in part.

APPENDIX B

The following provisions form Article XIII of the General Conditions of the Contract between the Owner and the Construction Manager.

GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (EXECUTIVE ORDERS 524 & 478, M.G.L. c. 7C, § 6)

1. Goals.

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

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

2. M/WBE Participation Credit.

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

B. If the CM is a joint venture with one or more M/WBE joint venturers, M/WBE participation credit shall be given to the joint venture as follows:

(1) If the joint venture is certified by the Supplier Diversity Office (SDO) (formerly known as SOMBWA) as an MBE or WBE, M/WBE participation credit shall be given in an amount equal to the entire Contract Price.

(2) If the joint venture is not certified as an MBE or WBE by SDO, M/WBE participation credit shall be given to the joint venture for the value of the Work that is performed by the M/WBE joint venturer(s), and for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

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

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

3. Establishing M/WBE Status.

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

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

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

4. Subcontracts With M/WBEs.

Within thirty (30) days after the award of this Contract, the CM shall (i) execute a subcontract with each M/WBE Subcontractor which has executed a Letter of Intent Approved by the Owner, (ii) cause its Subcontractors to execute a sub-subcontract with each M/WBE sub-subcontractor, and (iii) furnish the Owner with a signed copy of each such subcontract and sub-subcontract.

5. Performance of Contract Work by M/WBEs.

A. The CM shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any W/MBE in the Letters of Intent or Schedule of M/WBE Participation without the prior Approval of the Owner, nor shall any

M/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its M/WBE Work without the prior Approval of the Owner. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of M/WBE Work by others shall be a change in the M/WBE Work for the purposes of this Contract. The Owner WILL NOT APPLY TO THE M/WBE PARTICIPATION GOAL(S) ANY SUMS ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB-CONTRACTS, SUB- SUBCONTRACTS, OR PERFORMANCE OF M/WBE WORK BY OTHERS.

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

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

6. Notification of Changes in M/WBE Work.

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

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

7. Actions Required If There is a Reduction in M/WBE Participation.

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

(1) The CM shall identify all items of the Work remaining to be performed under the Contract that may be made available for subcontracting to W/MBEs. The CM shall send a list of such items of work to the Owner, together with a list of the remaining items of the Work that was not made available to M/WBEs and the reason for not making such work available for subcontracting to M/WBEs.

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

(3) The CM shall make reasonable efforts to follow up the written notices sent to M/WBEs with telephone calls or personal visits in order to determine with certainty whether the M/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to the Owner evidencing this effort.

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

(5) The CM shall provide the Owner with a statement of the response received from each M/WBE solicited, including the reason for rejecting any M/WBE who submitted a proposal.

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

B. If the CM is unable to meet the M/WBE participation goals for this Contract after complying fully with each of the requirements of paragraph "A" above, and the CM is otherwise in full compliance with the terms of this Article, the Owner may reduce the M/WBE

participation goals for this Contract to the extent that such goals cannot be achieved.

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

A. If at any time during the performance of this Contract, the Owner determines or has reason to believe that (1) there has been a change or reduction in any M/WBE Work which will result in the CM failing to meet the M/WBE participation goal(s) for this Contract, other than a reduction in M/WBE Work resulting from a change in the Contract work ordered by the Owner, and (2) the CM has failed to comply fully with all of the terms and conditions of paragraphs 1 through 7 above, the Owner may:

- (1) suspend payment to the CM of an amount equal to the value of the work which was to have been performed by an M/WBE pursuant to the CM's Schedule of M/WBE Participation but which was not so performed, in order to ensure that sufficient Contract funds will be available if liquidated damages are assessed pursuant to paragraph 9, and/or
- (2) suspend the CM's performance of this Contract in whole or in part.

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

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

9. Liquidated Damages; Termination.

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

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

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

10. Reporting Requirements.

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

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

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

APPENDIX C
PROCEDURES FOR AWARD OF SUBCONTRACTS

Pursuant to M.G.L. c.149A, as contained in Chapter 193 of the Acts of 2004, the Division of Capital Asset Management (“the Owner”) is required to develop a process consistent with legal requirements for the selection of subcontractors for construction manager at risk projects. This process is described in these Procedures for Award of Subcontracts (the “Procedures”). The Procedures are divided into three parts. The first part describes the prequalification and procurement of “Trade Contractors”, which, for the purposes of the Procedures, shall mean the subcontractors performing work in trade categories covered by Section 44F of Chapter 149. The second part describes the prequalification and procurement of all subcontractors that are not Trade Contractors. The third part addresses additional procurement matters.

For the purposes of the Procedures, the term Project shall mean the specific construction project to which the Procedures are being applied; the term CM shall mean the construction manager at risk selected by the Owner to construct the Project; the term Designer shall mean the firm (and its sub-consultants) selected by the Owner to design; the term Project Manager shall refer to the Owner staff serving as Project Manager on the project; and the term Applicant shall mean any firm that submits a response pursuant to the Procedures.

I. TRADE CONTRACTORS

A. Applicability of Procedures

1. Subcontracts Subject to Trade Contract Procedures. The procedures set forth in Sections 2 and 3 below shall govern the award of subcontracts by the CM for the furnishing of labor, materials, and equipment in the performance of the categories of work listed below whenever the estimated construction cost of such category of work exceeds \$25,000:

Roofing and Flashing	Glass and Glazing
Metal windows	Painting
Waterproofing, Damp-proofing	Plumbing
Miscellaneous and Ornamental	Heating, Ventilating, and Air
Lathing and Plastering;	Electrical
Acoustical Tile	Elevators
Marble	Masonry
Tile	Fire Protection Sprinkler System
Terrazzo Resilient Floors	Any other categories of work selected by the Owner for designation as Trade Contract

The subcontractors performing these trades are referred to throughout the Contract Documents as “Trade Contractor(s).” Contracts for work in these categories of work where the estimated cost of such work exceeds \$25,000 are referred to as “trade contracts.”

B. Qualification of Trade Contractors

1. Prequalification Committee. The Owner shall establish a prequalification committee (“the Prequalification Committee”) consisting of four members. The members shall include two employees of the Owner with management roles in the construction of large buildings, a representative of the Designer, and a representative of the CM. The Commissioner shall designate the Chairperson of the Prequalification Committee. An alternate may be appointed for each member of the Prequalification Committee to serve on occasions when the regular member cannot be available. Both the representative of the Designer and CM serving on the Prequalification Committee, and the alternates representing the Designer and CM shall be subject to the Owner approval. The Prequalification Committee shall conduct the prequalification of trade contractors as set forth in Sections 2 and 3 of the Procedures. The CM will provide assistance to the Prequalification Committee in the exercise of its responsibilities under the Procedures, including assistance from CM staff. Three members of the Prequalification Committee shall constitute a quorum for the purposes of conducting the Prequalification Committee’s official business. The Commissioner or his designee may join any meeting of the Prequalification Committee as a voting member in order to achieve a quorum, if in the Commissioner’s judgment the action scheduled for such meeting cannot be postponed without adverse consequences to the Project.

Request for Qualifications. The Owner shall issue a request for qualifications (“RFQ”) for each category of work listed in Section 1.1 if such work is required on the Project. The RFQ shall be placed on the COMMBUYS web site; advertised in a newspaper of general circulation in the area of the Project and in the *Central Register* established under Massachusetts General Laws, Chapter 9, Section 20, and in such additional media as the Owner and the Prequalification Committee may deem appropriate at least fourteen (14) calendar days before the deadline for Applicants to submit a response to the RFQ by submission of a Statement of Qualifications (“SOQ”). All interested Trade Contractors shall be eligible to respond to the RFQ and participate in the prequalification process. The CM firm may submit its qualifications to bid on trade contract work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. The RFQ shall be prepared by the Owner in a form consistent with the requirements of M.G.L. c. 149A and in consultation with the Prequalification Committee and the CM. The RFQ shall contain a form or forms (individually or collectively, the Owner “Statement of Qualifications” or “SOQ”) requiring the information necessary for the Prequalification Committee to determine if the Applicant is qualified to perform the category of work for which it seeks prequalification on the Project. the Owner’s Standard form RFQ and SOQ will be provided by the Owner and must be utilized as the RFQ and SOQ for the Project. The RFQ shall include, at a minimum:

- a. the date, time, and place for submission;
- b. relevant information about the project and the bidding process;
- c. the specific criteria for trade contractor prequalification and selection;
- d. a statement indicating that the RFQ will be used to prequalify trade contractors that will be invited to submit a bid; and
- e. that the responders’ names are to be posted, but that there shall be no public opening of responses.

Prequalification Criteria. The Prequalification Committee shall evaluate the information submitted by each Applicant on its the Owner Statement of Qualifications, the results of reference checks performed by the Owner and/or the CM, and any other information required or obtained by the Prequalification Committee. The following subparagraphs enumerate the legally required categories to be used by the Prequalification Committee in evaluating the Applicants,

the subcategories of information within each category, and the specific point allocation required for prequalification within each category. Applicants must achieve an overall score of 70 or greater and must also achieve the minimum required points within each category in order to be deemed prequalified.

Applicants that do not achieve both the minimum scores within each category and do not achieve an overall score of 70 or above shall not be deemed prequalified.

- a. Management Experience (50 points, minimum of 25 required for approval)
 - i) Business owners - The name, title, years with firm of the owner(s) of the business
 - ii) Management personnel - The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel.
 - iii) Similar project experience - The project name(s), description, description of scope, original trade contract sum, final trade contract sum with explanation, and date completed of similar projects.
 - iv) Terminations – A list of any projects on which the trade contractor was terminated or failed to complete the work.
 - v) Lawsuits – A list of commercial lawsuits in which the trade contractor is a defendant or defendant-in-counterclaim with regard to construction contracts within the last 3 years. The lawsuits shall not include any actions that primarily involve personal injury or workers’ compensation claims, or where the sole cause of action involves the trade contractor’s exercise of its rights for direct payment under the law.
 - vi) Safety record – The three-year history of the trade contractor’s workers’ compensation experience modifier.
- b. References (30 points; minimum of 15 required for approval)
 - i) Client references - for all projects listed in clause (iii) of Management experience above, including the project name, client’s name, address, telephone and fax number, and contact person.
 - ii) Credit references - .A minimum of five credit references, including telephone and fax number of contact person from key suppliers, vendors and banks.
 - iii) Public project record – A list of all completed public building construction projects as defined in section 44A of chapter 149 during the past three years with client’s name, address, telephone and fax number and contact person.
- c. Capacity to Complete Projects – (20 points; minimum of 10 required for approval)
 - i) Annual revenue for prior three fiscal years. There shall be no requirement for submission of financial statements.
 - ii) Revenue under contract for next three fiscal years.
- d. Commitment Letter – (mandatory no points assigned)

Mandatory commitment letters from surety companies or authorized agents stating that payment and performance bonds at 110% of the estimated trade contract value will be provided to the applicant if it is the successful bidder. The surety company providing the commitment letter must be licensed to do business in the Commonwealth and appear on the United States Treasury Department Circular 570.
- e. Certificate of Eligibility – (mandatory, no points assigned)

All SOQs submitted after January 1, 2006 must include a the Owner issued certificate of eligibility listing the Applicant as currently certified as a subcontractor in the scope of work for which the Applicant is submitting its SOQ.
- f. Update Statement – (mandatory, no points assigned)

All SOQs submitted after January 1, 2006 must include a fully completed and current Update Statement prepared by the Applicant.

Applicants that are certified by the Massachusetts Supplier Diversity Office (“SDO”) as either a

Minority Business Enterprise, a Women Business Enterprise or a Minority/Women Business Enterprise and provide documentation of current SDO certification with their SOQ will have an additional 5 points added to their overall score.

If the Applicant is a joint venture, the Applicant must submit a copy of the joint venture agreement, signed by each member, and the joint venture agreement must clearly identify, for each member of the joint venture, such member's proportionate share or interest in the financial or other benefits, risks or liabilities of the venture ("joint venture interest"). One member of the joint venture must have a joint venture interest greater than fifty (50) percent ("the Lead Venturer"). The requirements for prequalification in 2.3 a-f above shall be met by each member of the joint venture; and the bonding requirements of 2.3 d above shall be met by the Lead Venturer or by the joint venture as an entity. A joint venture prequalified by the Prequalification Committee must obtain a Certificate of Eligibility from the Owner prior to the time bids are filed and must submit the Joint Venture's Certificate of Eligibility with its bid.

Joint ventures must be submitted for consideration by the Prequalification Committee. Following the deadline for submission of SOQs for a specific category of work, joint ventures for that category of work which were not submitted to the Prequalification Committee may not bid on that category of work, except that two firms both of whom were independently prequalified by the Prequalification Committee for that category of work, may form a joint venture to bid that category of work without further consideration by the Prequalification Committee provided the Joint Venture has been the Owner Certified prior to submitting its bid and submits the Joint Venture's Certificate of Eligibility with its bid.

Deliberations of the Prequalification Committee. The Prequalification Committee shall consider each SOQ submitted based on the criteria set forth in Paragraph 2.3 above. The Prequalification Committee shall require that all mandatory submissions are submitted by the Applicant and apply a numerical scoring system, with both the minimum point scores for each category, and a score of 70 out of a possible 100 overall points, required to be prequalified. The Prequalification Committee shall prepare a written record of the evaluation of each Applicant. The scoring system shall provide for the assigning of scores as follows. The Prequalification Committee shall first consider whether the Applicant has met the requirements of Subparagraphs d, e and f, bonding commitment letter, certificate of eligibility and update statement. If the Applicant has satisfied the criterion, it shall be awarded up to 100 points using the criteria listed above. Applicants that do not meet the requirements of Subparagraphs d, e and f shall not be presented to the Prequalification Committee for consideration.

Any Applicant that fails to achieve either an overall score of at least 70 or that fails to achieve the minimum required points within each category shall be deemed not to be prequalified for the category of work for which the Applicant sought prequalification. If it is determined at any time during the evaluation process, that an Applicant has willfully supplied materially false or misleading information in its application or otherwise, the Applicant may be eliminated from further consideration for prequalification for the Project and, in the discretion of the Commissioner, for any other projects requiring prequalification under these Procedures.

The decision of the Prequalification Committee shall be final and not subject to appeal except on the grounds of fraud or collusion. An Applicant firm's prequalification score shall be made available to that Applicant firm only and only upon request. An Applicant firm's score shall not be a public record as defined in M.G.L. c. 4, §7 and shall not be open to public inspection to the fullest extent possible under the law.

A list of the Applicants that have been determined by the Prequalification Committee to be prequalified and therefore eligible to bid shall be posted at the offices of the Owner listing the firms by trade categories. Applicants shall also be notified of the Prequalification Committee's determination on prequalification by mail at the address furnished by each Applicant.

The Prequalification Committee reserves the right to reopen the prequalification process for any category of work before it has completed its evaluation of firms that previously submitted the Owner SOQs and/or to hold multiple rounds of prequalification for any given category of work. In either case, any Applicant that has submitted a complete the Owner SOQ shall not be required to submit another one, although any Applicant not prequalified may elect to amend its SOQ prior to the latest deadline for submitting information for the trade contract for which the Applicant seeks to be prequalified.

No person or firm suspended or debarred pursuant to Massachusetts General Laws Chapter 29, Section 29F, or Chapter 149, Section 44C, or disqualified pursuant to Chapter 7C, Section 51, or which has been debarred by the Federal Government shall be determined to be qualified to compete for a trade contract or any other contract or subcontract to be issued on the Project. If any Applicant determined to be qualified to perform one or more trade contracts is subsequently suspended or debarred pursuant to such laws, the qualification of such Applicant shall be rescinded and such Applicant shall be notified of such action and eliminated from the list of prequalified bidders.

Determinations to Remain in Effect. The Prequalification Committee's determinations as to which Applicants are prequalified shall remain in effect, subject to the following provisions of this Section 2.5, for the duration of the Project. Upon receipt at any time of additional information deemed material and significant by the Prequalification Committee regarding a previously prequalified Applicant's qualifications or responsibility, including, but not limited to, compliance with any minimum prequalification requirements, the Prequalification Committee may determine, in consultation with the Owner and the CM, that the Applicant is not qualified to perform the applicable trade contract(s) for the Project. In such event, the Prequalification Committee shall notify the Applicant of its determination, and inform the Applicant of any information on which the Prequalification Committee's determination is based that was not furnished by the Applicant.

C. Bidding

1. Requests for Bids. A request for bids ("RFB") will be issued for each trade contract subject to Sections 2 and 3 of these Procedures. The RFB will only be issued to the Trade Contractors appearing on the list of prequalified Applicants for the applicable trade contract determined pursuant to Section 2 above. The RFB shall include at least the following attachments:
 - a. the date, time and place for submission of responses to the request for bids. All Trade Contractor bids for the Owner projects will be submitted and opened at the Owner's Bid Room;
 - b. fully detailed drawings and specifications by class of work in accordance with paragraph (a) of Subsection 1 of Section 44F of Chapter 149 of the Massachusetts General Laws (i.e., separate specification sections for the trades listed in Paragraph 1.1 above) which shall provide for full competition for each item of material to be furnished under the contract as set forth under subsection (b) of M.G.L. c.30, §39M;
 - c. drawings and specifications that provide for full competition for each item of material to be furnished under the contract as set forth under Subsection (b) of Section 39M of Chapter 30 of

- the Massachusetts General Laws;
- d. a detailed definition of the Trade Contractor's scope of work, including alternates and unit price items, if any, within that scope of work;
 - e. a project schedule indicating the planned sequence and duration of each trade contractor's work;
 - f. list of the Trade Contractors prequalified for the work covered by the RFB; a Trade Contractor bid form, in a format provided by the Owner, that shall require, without limitation, a listing of price, addenda, alternates and unit price items, if any, for the trade work; certification that the trade contractor will perform the complete trade work with employees on his own payroll, except for work customarily performed by sub-trade subcontractors within the trade; and the names of all sub-trade subcontractors to be used if awarded the trade contract and each sub-trade contract sum; to the extent applicable, an identification by the Trade Contractor that it is a MBE or WBE or a list of the MBEs and/or WBEs proposed to be used by the Trade Contractor;
 - g. an affidavit that must be executed by all bidders confirming that all sub-trade subcontractors named on the bid form have been prequalified by the Trade Contractor using criteria similar to the criteria for the prequalification of Trade Contractors;
 - h. an affidavit of tax compliance that must be executed by all bidders;
 - i. an affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, §§ 26 and 27 that must be executed by all bidders;
 - j. a non-collusion affidavit that must be executed by all bidders;
 - k. a requirement that a bidder post a 5% bid bond from a surety company licensed to do business in the Commonwealth and whose names appears on U.S. Treasury Department Circular 570; but the bid bond shall be returned to the bidder if the bidder is not selected as the Trade Contractor;
 - l. a budget for the project, and the budget amount for the trade contract scope of work as provided in the project guaranteed maximum price, if available, or as provided in the most recent budget for the project;
 - m. a requirement that a bidder submit a current Certificate of Eligibility issued by the Owner to the Trade Contractor showing that the Trade Contractor is certified for the trade category for which the bid is submitted.
 - n. a requirement that a bidder submit a completed Update Statement with its bid; and
 - o. a Trade Contractor agreement form as set forth in M.G.L. c. 149A, §8 (k). The prequalified Trade Contractors shall submit bids in compliance with the requirements of the Request for Bids package.

2. Bid Opening, Award, Rejection and Negotiation of Bids. Bids shall be opened publicly by the Owner. Bids for each trade shall be: a) accepted only from firms appearing on the list of prequalified firms described in Paragraph 2.4 for such trade; b) submitted as set forth in the RFP, and c) opened publicly. Any bid which does not include the bid bond or affidavits required pursuant to law or any response in which the information requested is incomplete, conditional, or obscure or which contains any additions not required in the request for bids package shall be rejected. The trade contract for each trade shall be awarded to the lowest prequalified bidder except that the Owner reserves the right to reject the bids of any and all Trade Contractors if: a Trade Contractor is not eligible to submit a bid; if the bid does not represent the bid of a person competent to perform the work specified; or if less than three such bids were received and the prices are not reasonable for acceptance without further negotiation or competition. In addition if fewer than three responsive bids are received for any trade category and the lowest bid exceeds the estimated cost for the work, the CM shall attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the construction manager shall terminate negotiations with the lowest prequalified bidder and shall

initiate negotiations with the trade contractor who was the second lowest prequalified bidder. If the CM is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the construction manager, on behalf of and with the consent of the public agency, shall solicit additional bids utilizing the procedures for selection of subcontractors who are not trade contractors, set out below and in M.G.L. c. 149A, § 8 (j).

3. Trade Contract Execution. Each trade contractor selected to perform work on the Project shall return an executed trade contract including the required performance and payment bonds and insurance certificate to the CM within 10 business days of receipt of the trade contract from the CM. The trade contract shall be the trade contract agreement required by law and in a form provided by the Owner.

II. OTHER SUBCONTRACTS

A. Applicability of Procedures

- Subcontracts Subject to Procedures For Other Subcontracts. The process set forth in these Sections A. and B. of the Procedures shall apply to the procurement of subcontracts and subcontractors that are not subject to the provisions of Sections 2 and 3 above, specifically subcontractors that are not Trade Contractors, and where the subcontract scope of work has an estimated value that is equal to or exceeds \$25,000.

B. Prequalification and Procurement

1. Subcontracts in With an Estimate Cost equal to or greater than \$25,000. For Subcontracts that are not trade contracts with an estimated cost equal to or greater than \$25,000, the CM shall submit to the Owner for its approval the qualifications which it believes a subcontractor must have to perform the work of the subcontract and a list of a minimum of three (3) subcontracting firms, and preferably at least five (5) subcontracting firms, which the CM believes meet the qualifications. The CM shall submit information in a form and content satisfactory to the Owner concerning the qualifications and responsibility of the proposed subcontractors and, when relevant, how the selection will further the CM's compliance with its Project MBE and WBE participation goals. The CM firm may submit its qualifications to bid on subcontract work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. The Owner may eliminate firms from the list of firms submitted by the CM, and the Owner may add firms to the list submitted by the CM. The CM must add the firms requested by the Owner to the list if the firms are acceptable to the CM. If the firms the Owner requested be added are not acceptable to the CM based upon qualifications, ability or for any other reason the CM must advise the Owner of its objections and the basis for the objections in writing. If the Owner determines that the CM's objections to the Owner requested firm(s) are valid then the requested firms will not be added to the list otherwise the firm(s) requested by the Owner will be added.

The CM will invite all subcontractors on the approved list to submit bids for the subcontract work, using forms and procedures approved by the Owner. The bids shall be based on detailed bidding information developed by the CM for the subcontract work. The CM will submit to the Owner a list of bids submitted for each subcontract and with the list will indicate the bidder it recommends be selected to be awarded a subcontract. The CM shall along with its submission provide a written explanation as to the reasons for its selection and recommendation. The CM's recommendation will be based on relevant factors including, but not limited to, price, quality of work, and MBE and/or WBE participation. the Owner approval is required before a subcontract can be awarded by the CM to a subcontractor, which approval shall not be unreasonably

withheld provided the selection will not have an adverse effect on meeting project goals including, but not limited to, price, quality of work and/or MBE/WBE participation. In no event will the selection of a subcontractor affect the GMP agreed to by the CM.

The CM may, with the approval of the Owner, reject the proposals for a subcontract and either resolicit that scope of work or negotiate with one or more of the firms that submitted the rejected proposals. Such rejection may be based on the proposal being too high compared to the amount carried in the GMP for that scope of work or upon any other basis approved by the Owner.

2. Subcontracts With An Estimated Cost Less Than \$25,000. Subcontracts with an estimated cost less than \$25,000, and subcontracts for the supply of materials or equipment not including performance of labor in construction at the Project site, regardless of the estimated cost, may be awarded by the CM using any method selected by the CM with the approval of the Owner.

III. OTHER PROCUREMENT PROVISIONS

A. Emergencies

In case of an emergency, the Owner or the CM, with the prior approval of the Owner, may award a contract for such work as is necessary to preserve or protect the health or safety of persons or property on the basis of such competitive bids or proposals as it can reasonably obtain in time to respond to the emergency and without public advertisement or opening of bids or proposals; or the CM may perform such work with its own forces.

B. Termination of Contracts

Termination of Trade Contracts and Other Subcontracts. If a trade contract, or other subcontract, is terminated in whole or in part by the CM **after** the subcontractor commences work but prior to completion of the work covered by such trade contract or other subcontract on account of breach or default by the trade contractor or other subcontractor, or for other reasons in the public interest approved by the Owner, the CM may engage a replacement subcontractor using any method selected by the CM and approved by the Owner, or may perform the affected work with its own forces, as necessary to preserve, protect, or complete the work without following these procedures and without public advertisement or opening of bids or proposals. The termination of a trade or other subcontractor prior to completion of its work shall not be the basis for an increase in the GMP.

C. Miscellaneous Provisions

1. Procurement Records. The Prequalification Committee and the CM shall ensure that the Owner has a complete set of the following records:
 - a. All RFQs issued pursuant to Section 2 of these Procedures, including all addenda.
 - b. All the Owner SOQs and other information furnished to or otherwise obtained by the Prequalification Committee and the CM concerning qualification of each Applicant responding to an RFQ including any references or scoring obtained or generated in connection with the SOQs.
 - c. All RFBs issued by the CM to prequalified Trade Contractors pursuant to Section 3 of these Procedures.
 - d. All bids received from such Trade Contractors in response to such RFBs.
 - e. All solicitations for bids or proposals issued by the CM to firms other than Trade Contractors.
 - f. All bids and proposals received by the CM from such firms in response to such solicitations.
 - g. All contracts awarded pursuant to these procedures.
 - h. All other written documents required pursuant to the terms of these Procedures.
 - i. All other documents referring or relating to the evaluation of qualifications, proposals or bids, including but not limited to, all notes (to the extent included in Project files),

memoranda, correspondence and meeting minutes, whether formal or informal, in either electronic media or hard copy, the Owner shall retain copies of such records for a period of six (6) years from the date of final payment under the contract to which such records relate. The Secretary of Administration and Finance and the Inspector General of the Commonwealth shall have access to all such records at any time upon reasonable notice.

2. Severability. If any provision of these Procedures shall be determined to be invalid or unenforceable, the remaining provisions of the Procedures shall remain in full force and effect.
3. Time. The periods of time within which any party is required to act under the terms of these procedures when described in terms of "days" shall, unless otherwise specified, mean calendar days (and not business days), except that if the last day of any such time period falls on a Saturday, Sunday, or legal holiday in Massachusetts, the period of time during which the required action must be taken will be extended to the next following business day.

APPENDIX D

- Form for Subcontract between Construction Manager and Trade Contractor
- Form for Subcontract between Construction Manager and Subcontractor (other than Trade Contractor as set forth in the Contract Documents)



**COMMONWEALTH OF MASSACHUSETTS
FORM FOR SUBCONTRACT BETWEEN CONSTRUCTION MANAGER AND TRADE
CONTRACTOR AS SET FORTH IN THE CONTRACT DOCUMENTS**

THIS AGREEMENT MADE THIS _____ DAY OF _____, 20_____, by and between _____ a corporation organized and existing under the laws of _____ a partnership consisting of _____ an individual doing business as _____ hereinafter called the "Construction Management At Risk Firm" and _____ a corporation organized and existing under the laws of _____ an individual doing business as _____ hereinafter called the "Trade Contractor".

WITNESSETH that the Construction Management at Risk Firm and the Trade Contractor for the considerations hereafter named, agree as follows:

(1) The Trade Contractor agrees to furnish all labor and materials required for the completion of all work specified in Section No(s). _____ of the specifications for _____ (name of Sub-trade(s)) and the plans referred to therein and addenda No. _____ for the _____ (project) all as prepared by _____ designer. All work shall be in accordance with the contract documents listed on Exhibit A; and the detailed Scope of Work listed on Exhibit B. The Construction Management at Risk Firm agrees to pay the Trade Contractor as full payment for all the work in Exhibit B the sum of \$ _____. This price includes the following alternates: Nos. _____, _____, _____.

(A) The Trade Contractor agrees to be bound to the Construction Management At Risk Firm by the terms of the hereinbefore described plans; specifications (including the Owner-Construction Manager Agreement and all General Conditions) dated _____ (date of Owner-CM Agreement) and addenda No. _____, and _____, and _____, and to assume to the Construction Management At Risk Firm all the obligations and responsibilities that the Construction Management At Risk Firm by those documents assumes to the _____ (Public Agency) hereinafter called the "Public Agency," except to the extent that provisions contained therein are by their terms or by law applicable only to the Construction Management At Risk Firm. As it pertains to subcontractors, the Indemnification in Article XV of the Owner Construction Manager Agreement, which is incorporated by reference into this Subcontract, is intended to and shall be interpreted to be consistent with M.G.L. c. 149, Section 29C, and nothing contained herein is intended to require a subcontractor to indemnify any party for

personal injuries or property damage not caused by the subcontractor, its agents, employees or subcontractors.

MGL c 149 § 29C provides:

Section 29C. Any provision for or in connection with a contract for construction, reconstruction, installation, alteration, remodeling, repair, demolition or maintenance work, including without limitation, excavation, backfilling or grading, on any building or structure, whether underground or above ground, or on any real property, including without limitation any road, bridge, tunnel, sewer, water or other utility line, which requires a subcontractor to indemnify any party for injury to persons or damage to property not caused by the subcontractor or its employees, agents or subcontractors, shall be void.

(B) The Construction Management At Risk Firm agrees to be bound to the Trade Contractor by the terms of the hereinbefore described documents and to assume to the Trade Contractor all the obligations and responsibilities that the Public Agency by the terms of the hereinbefore described documents assumes to the Construction Management At Risk Firm, except to the extent that provisions contained therein are by their terms or by law applicable only to the Public Agency.

(2) The Construction Management At Risk Firm agrees to begin, prosecute and complete the entire work specified by the Public Agency in an orderly manner so that the Trade Contractor will be able to begin, prosecute, and complete the work described in this Trade Contract; and, in consideration thereof, upon notice from the Construction Management At Risk Firm, either oral or in writing, the Trade Contractor agrees to begin, prosecute and complete the work described in this Trade Contract in an orderly manner and in accordance with the Project Schedule attached as Exhibit C as it may be reasonably modified from time to time by agreement of the Construction Management At Risk Firm and the Trade Contractor.

(3) The Trade Contractor agrees to furnish to the Construction Management At Risk Firm, on execution of this Trade Contractor Agreement and prior to commencing the work, evidence of workers' compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Public Agency by the Construction Management At Risk Firm.

(4) The Construction Management At Risk Firm agrees that no claim for services rendered or materials furnished by the Construction Management At Risk Firm to the Trade Contractor shall be valid unless written notice thereof is given by the Construction Management At Risk Firm to the Trade Contractor during the first ten (10) days of the calendar month following that in which the claim originated.

(5) This Trade Contractor Agreement is contingent upon the execution of an amendment to the contract between the Construction Management at Risk Firm and the Public Agency for the work of the Trade Contractor.

(6) If the trade contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to sub-trade subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Construction Management At Risk Firm, or otherwise be guilty of a substantial violation of any provision of the contract, then the Construction Management At Risk Firm may, without prejudice to any other right or remedy and after giving the Trade Contractor and his surety seven

days' written notice, terminate the employment of the Trade Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Trade Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the trade contract price shall exceed the expense of finishing the work including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Trade Contractor. If such expense shall exceed such unpaid balance, the Trade Contractor shall pay the difference to the Construction Management At Risk Firm. The Construction Management at Risk Firm and Trade Contractor shall have the right to seek damages for breach of this Trade Contract without terminating this Trade Contract or ceasing performance hereunder.

(7) Trade Contractor is directed to the following executive orders, which are incorporated herein from the general conditions of the Construction Manager At Risk Contract: Order 481, regarding undocumented workers; Order 478, regarding nondiscrimination and affirmative action; Order 130, regarding anti-boycott agreement; Order 484, regarding clean energy and efficient buildings; Order 390, regarding affirmative market programs; and Order 195, regarding access to records. Trade Contractor is further directed to M.G.L. c. 7 § 22C, which restricts the investment of state funds in companies doing business in Northern Ireland.

(8) The following exhibits are incorporated into their subcontract: Exhibit A:

Contract Documents

Exhibit B: Detailed Scope of Work Exhibit C: Project Schedule

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date and year first above-written.

SEAL ATTEST _____

Trade Contractor

SEAL ATTEST _____

Construction Management At Risk Firm

THIS FORM MAY BE REPRODUCED



**COMMONWEALTH OF MASSACHUSETTS
FORM FOR SUBCONTRACT BETWEEN CONSTRUCTION MANAGER AND
SUBCONTRACTOR OTHER THAN TRADE CONTRACTOR AS SET FORTH
IN THE CONTRACT DOCUMENTS**

THIS AGREEMENT made this _____ day of _____ 20____, by and between

_____ a corporation organized and existing under the law of _____
a partnership consisting of _____
an individual doing business as _____
hereinafter called the "Construction Manager or CM" and

_____ a corporation organized and existing under the laws of _____
a partnership consisting of _____
an individual doing business _____
hereinafter called the "Subcontractor",

WITNESSETH that the CM and the Subcontractor for the considerations hereafter named, agree as follows:

1. The Subcontractor agrees to furnish all labor and materials required for the completion of all work as follows: _____

(attach additional sheets as necessary)
according to the Specifications and Plans referred to therein and addenda No. _____,
_____, _____ and _____ for the

(complete title of project and project no. taken from the title page of the Specifications)
all as prepared by _____

(Name of Designer or Engineer)

for the sum of _____ (\$ _____)
and the CM agrees to pay the Subcontractor said sum for said work. This price includes the following alternates (and other items set forth in the sub-bid):

Alternate No(s) _____, _____, _____,
_____, _____, _____.

(a) The Subcontractor agrees to be bound to the CM by the terms of the hereinbefore described Plans, Specifications (including all general conditions stated herein) and addenda No. _____, and _____, and _____, and to assume to the CM all the obligations and responsibilities that the CM by those documents assumes to the _____ hereinafter

(Awarding Authority)

called the "Awarding Authority", except to the extent that provisions contained herein are by their terms or by law applicable only to the CM.

(b) The CM agrees to be bound to the Subcontractor by the terms of the hereinbefore described documents and to assume to the Subcontractor all the obligations and responsibilities that the Awarding Authority by the terms of the hereinbefore described documents assumes to the CM, except to the extent that provisions contained therein are by their terms or by law applicable only to the Awarding Authority. The Subcontractor shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall be subject to the Record Retention requirements as set forth in the Contract Documents.

2. The CM agrees to begin, prosecute and complete the entire work specified by the Awarding Authority in an orderly manner so that the Subcontractor will be able to begin, prosecute and complete the work described in this subcontract; and, in consideration thereof, upon notice from the CM, either oral or in writing, the Subcontractor agrees to begin, prosecute and complete the work described in this Subcontract in an orderly manner and with due consideration to the date or time specified by the Awarding Authority for the completion of the entire work.

3. The Subcontractor agrees to furnish to the CM within a reasonable time after the execution of this subcontract, evidence of workmen's compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Awarding Authority by the CM.

4. The CM agrees that no claim for services rendered or materials furnished by the CM to the Subcontractor shall be valid unless written notice thereof is given by the CM to the Subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

5. The Subcontractor agrees that it shall enter into similar agreements, as this, with its Subcontractors, except to the extent that provisions contained herein are by their terms or by law applicable only to the CM and/or Contractor.

6. The CM agrees that it has provided to the Subcontractor, prior to the execution of this Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Subcontract. The Subcontractor agrees that it shall similarly make copies of such Contract Documents available to its Subcontractors.

7. In the event of termination of the Contract due to the default of the CM or for any other reason, the Owner shall have the right (but shall have no obligation) to assume, and/or accept assignment of and further assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CM under the Subcontract with such Subcontractor. In the event of such assumption or assignment by the Owner, the Subcontractor shall have no claim against the Owner or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the Owner or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment.

8. Subcontractor is directed to the following executive orders, which are

incorporated in the general conditions of the Construction Manager At Risk Contract: Order 481, regarding undocumented workers; Order 478, regarding nondiscrimination and affirmative action; Order 130, regarding anti-boycott agreement; Order 484, regarding clean energy and efficient buildings; Order 390, regarding affirmative market programs; and Order 195, regarding access to records. Subcontractor is further directed to M.G.L. c. 7 § 22C, which restricts the investment of state funds in companies doing business in Northern Ireland.

9. Nothing contained herein, shall be construed to create any contractual relationship between the Subcontractor and the Owner.

10. This agreement is contingent upon the execution of a Contract for Construction Management Services between the CM and the Awarding Authority for the complete work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above-written.

SEAL ATTEST

_____ (Name of Subcontractor)

By: _____

SEAL ATTEST

_____ (Name of CM)

By: _____

_____ (City and State)

THIS FORM MAY BE REPRODUCED