

# TOWN OF BARNSTABLE

## DEPARTMENT OF PUBLIC WORKS

### FY26 Downtown Hyannis Great Streets Project



CONSULTING ENGINEER: Stantec Consulting Services, Inc.  
Anna Jahn, P.E, Associate

PROJECT MANAGER: Paul Graves, P.E., Sr. Project Manager

DATE ISSUED: 4/23/2026 12:00pm Noon

BIDS DUE: 5/28/2026 1:00pm

Virtual Bid Opening Via Zoom: <https://townofbarnstable-us.zoom.us/j/82985577211>

Non-Mandatory Pre-Bid Meeting Date: 4/29/2026 10:00am

Pre-Bid Meeting Location: Department of Public Works  
382 Falmouth Road  
Hyannis, MA 02601

Last Day To Submit Questions: 5/14/2026 12:00pm Noon

**DIRECT BIDS TO: The Town's Bonfire Online Procurement Portal:**  
<https://townofbarnstable.bonfirehub.com>

**THIS PROJECT IS AVAILABLE ONLINE ONLY AND HARD COPY BIDS WILL NOT BE ACCEPTED. IT IS THE BIDDERS SOLE RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE BONFIRE ONLINE BID SUBMISSION PLATFORM AND BID SUBMISSION PROCESS AND REQUIREMENTS.**

Contact: Danielle Lamminen, Purchasing Agent, MCPPO  
Danielle.lamminen@barnstable.gov

All potential bidders are required to register on the Town of Barnstable Bonfire Online Procurement Portal: <https://townofbarnstable.bonfirehub.com>. This document and any addenda thereto are issued electronically only. It is the responsibility of every bidder who receives this bid document and all associated documents to check the Town of Barnstable Bonfire Bid Submission portal above for any addenda or modification to this solicitation, if they intend to respond. The Town of Barnstable accepts no liability to provide accommodation to bidders who submit a response based upon an out of date solicitation document or documents obtained from a source other than the Town. Bidders may not alter (manually or electronically) the bid language or any bid documents. Unauthorized modifications to the body of the bid, specifications, terms, or conditions, or which change the intent of this bid are prohibited and may disqualify a response.

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Project Estimate:                   \$ 6,400,000

Prevailing Wages Apply dated: 4/15/2026

**All bid documents are posted online on the Town of Barnstable Bonfire Procurement Portal. It is the bidders' responsibility to ensure that you have downloaded all posted documents for this bid. All Addendums are also issued in the Bonfire system.**

**Please be sure to register as a user on the Town's Bonfire Procurement Portal:  
<https://townofbarnstable.bonfirehub.com> and login to view project obtain documents, submit bids  
and receive updates.**

## SECTION 1 – INVITATION FOR BID

### TOWN OF BARNSTABLE INVITATION FOR BID

The Procurement Office on behalf of the Department of Public Works is requesting bids for the following:

#### **FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**

Bid specifications and Bid documents are available online only on the Town's Bonfire Procurement Portal: <https://townofbarnstable.bonfirehub.com> where they are publicly available as of 4/23/2026 at 12:00pm noon. Questions are due by Noon on 5/14/2026 in the Vendor Discussion section of the online Procurement Portal.

A non-mandatory, pre-bid meeting will take place at the DPW Conference room on 4/29/2026 at 10:00am at the Department of Public Works, 382 Falmouth Road, Hyannis, MA 02601.

**BIDS are due on or before 1:00pm on 5/28/2026. ONLY BIDS SUBMITTED THROUGH THE TOWN'S BONFIRE ONLINE PROCUREMENT PORTAL WILL BE ACCEPTED.** It is the Bidders' sole responsibility to familiarize themselves with the Bonfire Online Procurement Portal requirements and submission process. **Virtual Bid Opening Via ZOOM:** <https://townofbarnstable-us.zoom.us/j/82985577211>

This Project involves intersection alignment modifications at the intersections of Main Street and South Street, South Street and Ocean Street/Old Colony Road (Six-Points), and South Street and Lewis Bay Road; intersection control modifications at the intersections of Main street and Sea Street, Main Street and High School Road, and Main Street and Ocean Street/Barnstable Road; signalization and timing changes at the intersection of Main Street and Old Colony Road/Center Street; directional traffic conversions of Main Street and South Street into two-way travel; improvements to multimodal traffic including bicycle lanes and shared use paths; and accessibility improvements along Main Street; all within the Historic Downtown Hyannis village in the Town of Barnstable, MA.

Work to be performed under this contract shall include, but is not limited to furnishing all labor,

materials, and equipment necessary to perform the scope of work outlined below:

- Furnishing and installing new light poles and pedestrian signals;
- Constructing cement concrete pedestrian curb ramps, bump-outs, median islands and installation of detectable warning panels;
- Installing and connecting new drainage structures to existing drainage system;
- Mill and overlay, and full depth pavement reconstruction;
- Installing signs and pavement markings; and
- All other associated and incidental work stipulated in the construction plans and specifications.

To receive consideration, Bids shall be submitted no later than the above date and time for the opening.

The successful bidder will be required to furnish a Labor and Materials Payment Bond and a Performance Bond each in the amount of one hundred percent (100%) of the contract amount.

To receive consideration, Bids shall be submitted on the appropriate forms no later than the above date and time schedule for the opening. Bids must be accompanied by a bid security in the amount of five percent (5%) of the Bid Price in the form of a bid bond or certified, treasurer's or cashier's check issued by a responsible bank or trust company. If submitting cashier's checks they must be received in the Procurement Office Lockbox before the bid close date. If, upon acceptance of the bid, a Bidder fails to enter into a Contract with the Town of Barnstable, the bid security shall be forfeited to and become the property of the Town.

**LIQUIDATED DAMAGES:** Contractor and Owner recognize that time is of the essence and that Owner will suffer financial loss if the Work is not completed within the times specified in the Contract, plus any extensions thereof allowed in accordance the General Conditions and this contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner **\$1,500.00** for each day that expires after the time specified in the Contract for Substantial Completion until the Work is substantially complete unless otherwise extended per an agreed and approved change order for work that was not included in the original bid. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **\$1,500.00** for each day that expires after the time specified in the Contract for completion and readiness for final payment until the Work is completed and ready for final payment.

Full compliance with Federal, State and Municipal Wage Laws is required of all work done for the Town of Barnstable. Minimum Wage Rates as determined by the Commissioner of Department of Labor and Industries under the provision of the Massachusetts General Laws, Chapter 149, Section 26 to 27D, as amended, apply to this project. It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Minimum Wage Rates for those trades people who may be employed for the proposed work under this contract. Prevailing Wage Rates dated 4/15/2026 are applicable to this project.

All bidders shall be required to provide Certification of Occupational Safety and Health Administration (OSHA) Training in accordance with Massachusetts General Law 30: Section 39S, as amended by Chapter 306 of the Acts of 2004, effective 7/1/06.

Bidders are not to include in their Bid sales and compensating use taxes on materials and supplies purchased for this project. All materials used are tax exempt.

Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) policies of the Town of Barnstable are applicable. The "Fair Share" construction **requirement** for this project is a minimum of **10.4%** combined MBE/WBE participation by state certified MBEs and WBEs. Within five days after the Bid Opening, the Bidder shall submit a "Schedule for Participation by Minority Business Enterprises" with accompanying Letters of Intent by each minority subcontractor proposed to be used by the Bidder. See Town Policy and Section 6 of this document for details of required submittals.

Contractors shall be required to comply with all applicable Massachusetts General Laws, Chapter 30 S.39M, and other applicable Massachusetts General Laws.

A weekly certified payroll submittal shall be required of the successful bidder in accordance with MGL C149, S27B. No payments will be made by the Town until all payroll information necessary for the Town to determine compliance with prevailing wage law requirements for the time period of the payment request have been submitted.

The Contractor shall not discriminate with regard to the personnel employed on this project on the basis of race, color, and national origin.

The Town of Barnstable reserves the right to reject any or all Bids or waive any formalities that appear to be in the best interest of the Town. A Bid which includes, for any item, a bid that is abnormally low or high may be rejected as unbalanced. The right is also reserved to accept any Bid deemed to be best for the Town of Barnstable. In any event, bids to be deemed acceptable shall comply in each and every way with all applicable Massachusetts General Laws.

All inquiries with respect to this Invitation to Bid and the Contract Documents, including the Plans and Specifications, must be in writing through the Bonfire online procurement portal by the time and date listed above.

Please contact Bonfire at [Support@goBonfire.com](mailto:Support@goBonfire.com) for technical questions related to your submission or visit Bonfire's help forum at <https://bonfirehub.zendesk.com/hc>.

END OF SECTION

## SECTION 2 – INSTRUCTIONS TO BIDDERS

### INSTRUCTIONS TO BIDDERS

#### Subsection 1. SECURING DOCUMENTS

- A. The Invitation for Bid, Instructions to Bidders, General Conditions, Special Conditions, Bid Drawings and Specifications, all Addenda issued prior to the execution of the Owner-Contractor Contract, Performance and Labor and Materials Payment Bonds, all amendments, Change Orders and written interpretations of the Contract Documents issued by the Town, Labor Rates, completed Bid and supporting forms signed and submitted by the Contractor, Applications and Certification for Payment, Owner-Contractor Contract and all other documents in these Project Specifications and Drawings referenced in the Contract compose the Contract Documents.
- B. All questions regarding this invitation to bid should be made in writing and submitted through the Town's Bonfire online procurement portal in the Vendor Discussion section in the **FY26 Downtown Hyannis Great Streets Project** project file. All bid documents are available on the Town of Barnstable's Bonfire procurement portal at: <https://townofbarnstable.bonfirehub.com>.

#### Subsection 2. BID FORMS

- A. All bid responses will be received on the Town's Bonfire online procurement portal: <https://townofbarnstable.bonfirehub.com> prior to the date and time specified in this Invitation to Bid. All required documents must be submitted in the format as specified, all fields must be completed as specified and the documents must be submitted the correct project folder in order for the bid response to be complete. Hard copy bid responses will not be accepted.
- B. All bids must be submitted per the above instructions. It is the responsibility of the bidder to ensure that bids are delivered to the specified location prior to the time and date designated.
- C. The Town may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids, except as limited under the General Laws, Chapters 30 and 149, applicable sections, as amended to date.
- D. Any bid received after the time and date designated will not be considered. A bid will not be considered delivered unless the bid has been received online by the Town's Bonfire Online Procurement Portal (in the correct project) prior to the date and time specified in this document. The official date and time shall be the date and time showing online at <https://townofbarnstable.bonfirehub.com>.
- E. All bidders must note the maximum upload file size 1000MB. Do not embed any documents within uploaded files, as they will not be accessible or evaluated.
- F. Bid Table response templates can be obtained at <https://townofbarnstable.bonfirehub.com>. NOTE THAT BID TABLES MAY TAKE A SIGNIFICANT AMOUNT OF TIME TO PREPARE.
- G. Bids must upload submissions at <https://townofbarnstable.bonfirehub.com>. Bidder's submissions must be uploaded, submitted and finalized prior to the Closing Time and Due date posted in the portal. The Town strongly recommends that bidders give themselves sufficient time and at least one (1) day before the Due Date to begin the uploading process and to finalize its submission

- H. Bidders will receive an email confirmation receipt from the Bonfire portal with a unique confirmation number once its submission is finalized.
- I. Minimum system requirements: Internet Explorer 11, Microsoft Edge, Google Chrome, or Mozilla Firefox. JavaScript must be enabled, Browser cookies must be enabled.

### **Subsection 3.BID SECURITY**

- A. Bid Security in the amount of FIVE PERCENT (5%) of the bid dollars (this includes all alternates, if any included in this bid) shall accompany each bid submittal. At the option of the Bidder, the security may be a bid bond issued by a surety authorized to do business in the Commonwealth, certified check, or treasurer's or cashier's check issued by a responsible bank or trust company, payable to the Town of Barnstable. A copy of the BID Security needs to be uploaded to the procurement portal in the correct project file. If submitting a check the original check needs to be received in the Procurement Office Lockbox, 367 Main Street, Hyannis, MA 02601 prior to bid closing. Personal or business checks will not be accepted.
- B. The bid security shall secure the execution of the Contract.
- C. Should any bidder to whom an award is made fail to enter into a Contract therefore within ten (10) days, Saturdays, Sundays, and legal holidays excluded, after notice of award has been mailed to him or fail within such time to furnish Performance and Payment Bonds as required, the amount so received from such bidder through their bond, certified check, treasurer's or cashier's check as bid deposit shall become the property of the Town of Barnstable, as liquidated damages; provided that the amount of the bid deposit which becomes the property of the Town of Barnstable shall not, in any event, exceed the difference between their bid price and the bid price of the next lowest responsible and eligible bidder; and that provided further that in the case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other unforeseen circumstances affecting the bidder, their deposit shall be returned to them.
- D. Bid deposits of the three lowest responsible and eligible bidders will be held by the Awarding Authority during the time stipulated for the execution of the contracts and the submission of the performance bonds, and may be disposed of in such a manner as will accomplish the purpose for which they are submitted. After expiration of such period, bid guarantees not disposed, or the amounts thereof, will be returned within five (5) days, Saturdays, Sundays and legal holidays excluded.

### **Subsection 4.DEFINITIONS**

- A. All definitions set forth in the General Conditions are applicable to all bidding documents, which include the Advertisement, Instructions to Bidders, Addenda issued prior to receipt of general bids.
- B. Addenda are written or graphic instruments issued prior to the execution of the contract which modify or interpret the bidding documents, including drawings and specifications, by additions, deletions, clarifications or corrections. Addenda will become part of the Contract Documents upon execution of the Contract.

### **Subsection 5.BIDDER'S REPRESENTATION**

- A. Each bidder, in submitting their Bid, represents that they have read and understand the bidding documents, reports, test results, drawings, or other such documents provided by the Town pursuant to this bid.

- B. Each bidder represents that they have visited the site, familiarized themselves with the local conditions under which the work is to be performed, compared the site with the drawings and specifications, satisfied themselves of the conditions of delivery, handling and storage of materials, and all other matters that may be incidental to the work that may affect: 1) the cost, progress or performance of the work; 2) the means, methods, techniques, sequences and procedures of construction; and 3) the bidder's safety precautions and programs, before submitting their Bid.
- C. Each bidder agrees at the time of submitting its bid that 1) the bidding documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the work; and 2) no further examinations, investigations, explorations, tests, studies or data are necessary for the determination of its bid for performance of the work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the bidding documents.
- D. Each bidder is familiar with all federal, state and local laws and regulations that may affect cost, progress or performance of the work.
- E. Each bidder represents that their bid is based upon the materials and equipment described in the bidding documents, including any addenda issued thereto.
- F. The submission of a bid will constitute an incontrovertible representation by the bidder that: 1) the bidder has complied with every requirement of this Section; 2) without exception, the bid submitted is premised upon performing and furnishing the work required by the bidding documents and applying any specific means, methods, techniques, sequences and procedures of construction that may be shown or indicated or expressly required by the bidding documents; 3) the bidder has given the Town written notice of all conflicts, errors, ambiguities and discrepancies that the bidder has discovered in the bidding documents and the written resolutions thereof by the Town are acceptable to the bidder; and 4) the bidding documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work. No allowance will subsequently be made to the successful bidder by reason of any error or omission on his part, due to his neglect in complying with the requirements of this article, except with respect to conflicts with the General Laws.

#### **Subsection 6.EXAMINATION OF BIDDING DOCUMENTS**

Each bidder shall examine the bidding documents carefully and, not later than date stated in IFB shall make a written request through the Vendor Discussion section in the project file on the Town's Bonfire Procurement Portal for interpretation or correction of any ambiguity, inconsistency or error therein which they may discover. Any interpretation or correction will be issued as an addendum and posted in the procurement portal. Only interpretations or correction by addendum shall be binding. No bidder shall rely upon any interpretation or correction given by any other method.

#### **Subsection 7.ADDENDA**

- A. Prior to the receipt of the bids, addenda will be available for inspection on the Town's procurement portal.
- B. Addenda issued during the time of bidding shall be listed on Bid forms in the space provided. Failure of a bidder to receive any addendum shall not release the bidder from any obligations under their bid, provided said addendum was sent by e-mail. Bidders shall check the Town's Bonfire Online Procurement Portal at <https://townofbarnstable.bonfirehub.com> to verify number of addendums prior to submitting bid.

### **Subsection 8. REJECTION OF BIDS**

The bidder acknowledges the right of the Town of Barnstable to reject any or all bids and to waive any informality or irregularity in any bid received. In addition, the bidder recognizes the right of the Town of Barnstable to reject a bid if the bidder fails to furnish any required bid security, or fails to submit the data required by the bidding documents, or if the bid is in any way incomplete or irregular.

### **Subsection 9. QUALIFICATIONS OF BIDDER**

- A. Any bidder, if requested, shall submit a financial statement, experience records, and an equipment schedule, on forms to be provided by the Town of Barnstable. Financial statements shall reflect true financial conditions of bidder within three months prior to date of bid opening and shall be validated by a Certified Public Accountant.
- B. A bidder, in order to be eligible for the contract, must be able to show their financial ability to carry on the work until the project is complete and accepted by the Town of Barnstable.
- C. Experience references provided must be relevant in size and scope to the work being bid on and current. Town reserves the right to request additional financial or reference information.
- D. In evaluating the qualifications of bidders, the Town will consider past performance with the Town and outside references. Negative or poor references or poor performance on past work/projects for the Town shall constitute a reason to consider the bid non-responsible.

### **Subsection 10. LABOR AND MATERIALS PAYMENT & PERFORMANCE BONDS**

- A. Within ten (10) days after the date of Notice of Award of Contract, Saturdays, Sundays and legal holidays excluded, the bidder to whom the award is made shall furnish a performance bond and labor and materials bond, each equal to the full amount of the contract price, including accepted alternates (if applicable) to guarantee the faithful performance of all terms, covenants and conditions of the same. The bonds are to be issued by an acceptable bonding company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Town of Barnstable. Bonds must be in the form specified by the Town of Barnstable.
- B. The performance bond shall guarantee the satisfactory completion of the project and that the contractor will make good any faults or defects in their work which may develop during the period of said guarantee as a result of improper or defective workmanship, material or apparatus. The full performance bond shall remain in effect until final payment is received by the Contractor or until any warranty period under the Contract expires, whichever is later.

The payment bond shall guarantee that the contractor shall pay in full all persons, firms or corporations who furnish labor or material or both labor and materials for, or on account of the work included herein. Payment bonds will be in effect until such time as the contractor furnishes proof that payment in full has been made for all materials used on the contract work. The bonds shall be paid for by the contractor. The Town of Barnstable shall have the right to demand proof that parties signing the bonds are duly authorized to do so.
- C. Every such bond shall have a power of attorney attached thereto, authorizing the Town of Barnstable to enter judgment thereon in any court in the United States of America or elsewhere against the obligors therein named for the amount therein named and shall be

conditioned for the honest and faithful compliance with all provisions of the bidder or bidders.

- D. Separate Performance Bond and Labor and Materials Payment Bond forms shall be provided with Notice of Acceptance.

**Subsection 11. "OR EQUAL" CLAUSE:**

(Statutory reference: M.G.L. Ch.30, §39M(b)) Where products, materials or equipment are prescribed by manufacturer name, trade name, or catalog reference, the word "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 Consulting Engineer:

- a. it is at least equal in quality, durability, appearance, strength and design;
- b. it performs at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and
- c. it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the specifications.

To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must:

- a. Meet the salient physical, functional, or performance characteristic specified in this solicitation;
- b. Clearly identify the item by-
  - i. Brand name, if any; and
  - ii. Make or model number;
- c. Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and
- d. Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

Any structural or mechanical changes made necessary to accommodate substituted Equipment under this paragraph shall be at the expense of the Contractor or Subcontractor responsible for the work item. See other paragraphs of the General Conditions for any procedures that may be used in determining compliance with the standards of this paragraph.

**Subsection 12. SUBSTITUTIONS**

- A. The Bid shall be based on using the materials or products as specified and provided. Where several materials are specified by name for one use, any of those so specified may be supplied.
- B. Whenever the specified products or class of materials is specified exclusively by trade name, by manufacturer's name or by catalog reference, only such items shall be used, unless the Town's written approval for substitution is secured in accordance with the Conditions of the Contract.

**Subsection 13. WORK TIME LIMITS**

- A. Contractor shall furnish a proposed construction schedule, in writing, with their bid. A final construction schedule shall be submitted at the time of delivery of the properly executed contract, bonds and certificates of insurance to the Awarding Authority, allowing for completion of the contract work prior to the date specified below and appearing on the Contract Form. Thereupon the Town of Barnstable will review the completed documents and proposed schedule, ask for revisions or corrections, or issue a "NOTICE TO PROCEED" indicating its Contract with final contract terms. The construction schedule shall be added as an exhibit to the contract and will contain construction start dates and substantial completion dates measured in days following the Notice to Commence. Failure to meet both the commencement date and/or the substantial completion date, and any other dates set forth in the construction schedule, unless extended by the town in writing prior to the indicated date's, shall be deemed a default of a material condition of the contract.
- B. The completion date for all of the work to be performed under this contract is May 14, 2027. Construction may begin following the receipt of notice to proceed and approval of all required Contractor submittals.

**Subsection 14. TAX EXEMPTION**

The project is exempt from payment of Massachusetts sales tax to the extent permitted by MGL Ch. 64H, Subsection 6F. **Exemption Certificate E-046-001-079** shall be used in lieu thereof and will be provided in the signed contract documents.

**Subsection 15. ACCEPTANCE OF BIDS**

Within thirty (30) days after the opening of the Bids the Town of Barnstable will act upon them. The acceptance of a Bid will be a Notice of Acceptance in writing signed by a duly authorized representative of the Town of Barnstable and accompanied by Performance and Labor and Materials Payment Bond forms. No other act of the Town of Barnstable shall constitute the acceptance of a Bid. The acceptance of the Bid shall bind the successful bidder to the contract. The rights and obligations provided for in the contract shall become effective and binding upon the parties only upon its formal execution.

**Subsection 16. TIME FOR EXECUTING CONTRACT AND PROVIDED CONTRACT BONDS**

Any contractor whose Bid shall be accepted will be required to execute the contract and furnish contract bonds within ten (10) days, Saturdays, Sundays and legal holidays excluded after the notice that the contract has been awarded to them.

**Subsection 17. PAYMENT OF EMPLOYEES**

- A. For work done in the Town of Barnstable, the payment for employees of the Contractor and any or all Sub-contractors and suppliers shall comply with the wage scale current at the commencement of construction, as published by the Department of Labor and Industries, under provisions of the Massachusetts General Laws. The Contractor and each of his Sub-contractors and suppliers shall pay each of their employees engaged in work on the project under the contract in full, less deductions made mandatory by law, and not less often than once a week. All forms required by local authorities, the Commonwealth of Massachusetts, and the United States Government, shall be properly submitted. No payments will be made on any application for payment until all required payroll and

Affirmative Action/Equal Opportunity information for the period covered by the application has been submitted to the Town.

- B. A copy of applicable wage rate schedules is attached and forms part of the contract documents. For MULTI-YEAR projects, Awarding Authorities must request and provide to contractor, an Annual Update to this Prevailing Wage Schedule each year for the duration of the project, no later than two weeks before the anniversary date of the execution of the general contract. Annual updates are not required for projects that last LESS THAN ONE YEAR. Updated rates do not impact the contract value as the contractor is to take into account contract duration in pricing the initial bid.

**Subsection 18. WITHDRAWAL OF BIDS**

- A. At any time prior to the scheduled closing time for receipt of Bids, any bidder may withdraw his Bid, either personally or by email or written request. If withdrawal is made personally, proper receipt shall be given therefore.
- B. After the scheduled time for receipt of Bids and before award of contract, no bidder will be permitted to withdraw his Bid unless said award is delayed for a period exceeding thirty (30) days. Negligence on the part of the bidder in preparing his bid confers no rights for the withdrawal of the Bid after it has been opened.

**Subsection 19. PRICE ADJUSTMENT CLAUSES (Fuel, Asphalt, Portland Cement, Steel as defined)**

- A. In accordance with Massachusetts General Laws, Chapter 30, Section 38A, Price adjustment clauses are applicable to this project for Diesel Fuel and Gasoline, Hot Mix Asphalt, Portland Cement Concrete Mixes, and Structural Steel and Reinforcing Steel and are included per Appendix A.

END OF SECTION

## **SECTION 3 – GENERAL CONDITIONS**

### **ARTICLE 1. GENERAL PROVISIONS**

#### **1.1 CONTRACT DOCUMENTS:**

The following Documents form the Contract and what is required by any one shall be as binding as if required by all:

- a. Invitation for Bid
- b. Instructions to Bidders
- c. General Conditions
- d. Special Conditions
- e. Bid Drawings and Technical Specifications
- f. All Addenda issued prior to the execution of this Contract
- g. Performance and Labor and Materials Payment Bonds
- h. All amendments, Change Orders, and written interpretations of the
- i. Contract Documents issued by the Town
- j. Labor Rates
- k. Completed Bid and supporting forms signed and submitted by
- l. Contractor
- m. Owner-Contractor Contract
- n. All other documents in these Project Specifications and Drawings referenced in the Bid compose the Contract Documents.

The intention of the Contract Documents is to include all labor, materials, equipment and other items necessary for the proper execution and completion of the Work and the terms and conditions of payment therefore, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results. The Contract Documents are intended to be complementary; however, any inconsistency, ambiguity or conflict among the Contract Documents shall be resolved in the following order of precedence (with (i) having the highest priority) and in the manner most favorable to the Town: (i) Contract Modifications; (ii) Owner-Contractor Contract; (iii) General Conditions of the Contract; (iv) Drawings and Specifications.

1.1.1 One copy of the Contract Documents shall be signed by the Town of Barnstable and the Contractor. By executing the Contract, the Contractor represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed.

1.1.2 The Contract Document represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship of any kind between 1) the Contractor and the Consulting Engineer or the Consulting Engineer's consultants, 2) the Owner and a Subcontractor or a Sub-subcontractor, 3) the Owner and the Consulting Engineer or the Consulting Engineer's consultants, or 4) any persons or entities other than the Owner and the Contractor. The Consulting Engineer shall, however, be entitled to performance and enforcement of

obligations under the Contract intended to facilitate performance of the Consulting Engineer's duties.

## **1.2 WORK:**

The term "Work" as used in the Contract Documents includes all labor necessary to produce the construction required by the Contract Documents, and all permits, materials and equipment incorporated or to be incorporated in such construction.

1.2.1 Organization of the Specifications into divisions, sections or articles of Work, and arrangement of Drawings, shall not control the Contractor in dividing the Work among Subcontractors.

## **1.3 PROJECT:**

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

## **1.4 DRAWINGS & SPECIFICATIONS:**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Each of these are produced for the purpose of the Contractor providing a formal bid for consideration by the Owner.

## **1.5 INSTRUMENTS OF SERVICE:**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consulting Engineer and the Consulting Engineer's consultants under their respective professional services Contracts. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

## **1.6 INTERPRETATION:**

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## **1.7 USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE:**

The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the drawings, specifications and other Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on said documents.

The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use said documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Consulting Engineer and the Consulting Engineer's consultants.

## **ARTICLE 2. THE OWNER**

### **2.1 GENERAL:**

The terms "Owner" or "awarding authority" is the Town of Barnstable and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the owner's authorized representative, the Owner's Project Manager and/or Town Engineer or any other employee or agent of the Owner. With the exception of Article 8 or any other provision herein which grants the Consulting Engineer certain decision-making responsibilities, the Owner's Project Manager shall exercise authority, responsibility or otherwise bind the Owner with respect to all matters requiring the Owner's approval in any portion of the Work.

### **2.2 OWNER'S PROJECT REPRESENTATIVE:**

The Town of Barnstable's Representative for this project and Owner's Project Manager will be: Paul Graves, P.E. Senior Project Manager for the Town of Barnstable. Once the project contract is signed, all project questions, shop drawings, samples and requirements for approvals shall be directed to:

Town of Barnstable  
Attn: Paul Graves, P.E. Senior Project Manager  
Department of Public Works  
382 Falmouth Road  
Hyannis, MA 02601  
Phone: (774)-487-0641  
Paul.graves@barnstable.gov

2.2.1 The Owner's Project Manager shall represent the Owner throughout this Project. The Owner's Project Manager shall be responsible for all services associated with the management of the project. The Owner's Project Manager shall not have any responsibility for the design or the construction of the project. Such responsibilities shall remain with the Consulting Engineer and Contractor.

### **2.3 OWNER'S RIGHT TO ACCESS WORK SITE:**

The Owner shall at all times have access to the Work wherever it is in preparation and progress. The Owner will make periodic visits to the site to become thoroughly familiar with the progress and quality of the Work in accordance with the Contract Documents. On the basis of on-site observations, the Owner's Project Representative will endeavor to guard against defects and deficiencies in the Work of the Contractor. The Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and the Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with Contract Documents.

## **2.4 INFORMATION AND SERVICES REQUIRED OF THE OWNER:**

The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness.

2.4.1 As deemed necessary by the Owner, the Owner shall furnish surveys describing physical characteristics and utility locations for the site of the Project.

2.4.2 The Owner will be, in the first instance, the interpreter of the requirements of the Contract Documents.

2.4.3 AutoCad files will be released to the Contractor for use for construction and in the preparation of record drawings of the Project to be provided upon completion of the Project to the Consulting Engineer for review and submission to the Owner.

2.4.4 The Owner shall receive from the Contractor periodic Applications for Payment for work performed by the Contractor. Based on observations, site visits and other such information, the Owner shall determine amounts owed to the Contractor and will issue Certificates for Payment in accordance with Article 12 herein.

## **2.5 OWNER'S RIGHT TO STOP THE WORK:**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Article 15.2 in its entirety, or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

## **2.6 OWNER'S RIGHT TO CARRY OUT THE WORK:**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued, deducting from payments, then or thereafter due to the Contractor, the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Consulting Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Consulting Engineer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3. THE CONTRACTOR**

### **3.1 GENERAL:**

The Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the Commonwealth of Massachusetts where the Project is

located. The Contractor shall designate in writing a representative who shall have the express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.1 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.2 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Consulting Engineer in the Consulting Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR:**

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

3.2.1 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Article 2.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Consulting Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a Request for Information in such form as the Consulting Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

3.2.2 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Consulting Engineer any nonconformity discovered by or made known to the Contractor as a Request for Information in such form as the Consulting Engineer may require.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions that the Consulting Engineer issues in response to the Contractor's notices or Requests for Information pursuant to Article 3.2.1 or 3.2.2, the Contractor shall make Claims as provided in Article 18. If the Contractor fails to perform the obligations of Articles 3.2.1 or 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Consulting Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and

regulations, and lawful orders of public authorities, unless the Contractor recognized such error, inconsistency, omission or difference, and knowingly failed to report it to the Consulting Engineer.

3.2.4 The Contractor shall reimburse the Owner for costs incurred by the Consulting Engineer for design and construction administration services which are caused by the Contractor's inefficient or otherwise faulty administration or execution of its Work. These may include, but are not limited to the cost of the Consulting Engineer or Owner's Project Manager to perform:

- a. Repeated review of the Contractor's submittals and resubmittals substantially out of sequence from the submittal schedule provided by the Contractor and agreed to by the Consulting Engineer;
- b. An extensive number of responses to the Contractor's Requests for Information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- c. An extensive number of Change Orders and Change Directives requiring evaluation of Bids and the preparation or revision of Instruments of Service and not otherwise caused by the design defects of the Consulting Engineer;
- d. Consultation regarding replacement of Work resulting from fire or other cause during construction;
- e. Evaluation of an extensive number of claims not otherwise caused by design defects;
- f. Evaluation of substitutions proposed by the Contractor and making subsequent revisions to Instruments of Service resulting therefrom;
- g. Preparation of design and documentation for alternate bid or Bid requests proposed by the Contractor; or
- h. Contract administration services provided 45 days or more after Substantial Completion.

3.2.5 The Contractor shall conduct a preconstruction inspection of the worksite and notify the Owner in writing of any existing damage to the property or any unsafe conditions at the site prior to commencing the Work.

### **3.3 AUDIO VIDEO RECORDING SITE CONDITIONS:**

Except as stipulated otherwise in the supplemental conditions, the Contractor shall submit a quality audio-video recording documenting Pre-Construction field conditions for the entire project and adjacent areas within 50 feet of the limits of work. The Pre-Construction video shall be submitted to the Owner and Consulting Engineer as one or more MP4 files viewable on Windows Media Player. The video(s) must be accepted by the Owner prior to commencing any Work or using any Contractor laydown areas.

### **3.4 SUPERVISION AND CONSTRUCTION PROCEDURES:**

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Consulting Engineer and shall not proceed with that portion of the Work without further written instructions from the Consulting Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of reasonable changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

3.4.1 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of the Contractor or any of its Subcontractors.

3.4.1.1 The Contractor shall, upon written request of the Owner, remove and replace workers whom the Owner deems to be disorderly, careless, incompetent, are illegal aliens, or to be employed in violation of the terms of the Contract Documents, at no increase in the Contract Sum or the Contract Time.

3.4.2 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **3.5 LABOR AND MATERIALS:**

Unless otherwise provided for in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tolls, 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.

3.5.1 Except in the case of minor changes in the Work authorized by the Consulting Engineer in accordance with Articles 3.16.7 or 10.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Consulting Engineer and in accordance with a Change Order.

3.5.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **3.6 WARRANTY:**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6.1 All warranties and guarantees regarding the workmanship by the General Contractor, Subcontractors and Sub-Subcontractors shall commence on the date of Substantial Completion. Warranties and guarantees shall extend for a minimum of one (1) year or longer if required by a particular specification. Notwithstanding the foregoing, any special warranties, as defined by the Consulting Engineer, required by the Contract Documents or manufacturer's standard warranties, extending longer than a year, shall remain in effect for the full warranty period.

### **3.7 TAXES:**

The Contractor shall not pay, and the Owner shall not reimburse or pay the Contractor for any sales taxes for building supplies or materials for which exemption is provided by law. The Owner's Tax Exemption number to be used by the Contractor in this regard will be provided by the Owner to the Contractor.

### **3.8 PERMITS AND FEES:**

Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for any applicable permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Town of Barnstable permitting authorities will not waive permit fees for the project.

### **3.9 NOTICES:**

The Contractor shall comply with and give notices required by the Contract Documents, applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities applicable to performance of the Work.

3.9.1 Notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice.

### **3.10 COMPLIANCE WITH LAWS:**

If the Contractor performs Work contrary to the Contract Documents, applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall be responsible for such Work and shall bear the costs attributable to correction of said work, along with any other damages incurred by the Owner.

### **3.11 DEVIATIONS:**

(Statutory reference: M.G.L. Ch.30, §39I): The Contractor shall perform all the work required by this contract in conformity with the plans and specifications contained herein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the Owner or by the Consulting Engineer in charge of the work who is duly authorized by the Owner to approve such deviations. In order to avoid delays in the prosecution of the work required by such contract, such deviation from the plans or specifications may be authorized by a written order of the Owner or such Consulting Engineer so authorized to approve such deviation. Within thirty (30) days thereafter, such written order shall be confirmed by a certificate of the Owner stating:

- a. If such deviation involves any substitution or elimination of materials, fixtures, or equipment, the reasons why such materials, fixtures, or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefore;
- b. The specified deviation does not materially injure the project as a whole;
- c. Either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the Owner and the Contractor and the amount in dollars of said adjustment; and
- d. The deviation is in the best interest of the Owner; such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the work contracted for.

### **3.12 DIFFERING SITE CONDITIONS**

(Statutory reference: M.G.L. Ch.30, §39N): If during the progress of the Work, the Contractor or the Owner discovers that the actual subsurface or latent physical conditions encountered at the Work site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the Owner may request an equitable adjustment in the contract price of the contract applying to 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 within the time period provided and pursuant to Article 18.

3.12.1 (Statutory reference: M.G.L. Ch.30, §39N) Upon receipt of such a claim from a Contractor, or upon its own initiative, the Owner shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the Owner shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

### 3.13 ALLOWANCES/UNIT PRICES:

- a. **Allowances:** If applicable and requested in the bid documents, the Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.
- b. **Unit Prices:** If applicable. Unit pricing is only applicable if unit pricing requested in the bid documents, the Contractor shall include in the bid submittal package unit pricing on provided form in accordance with provided standards as designed or with reference as defined by MassDOT, Federal Highway, FAA, etc. for example as applicable. Quantities shall be controlled by change order.
  - i. Bids will be compared on the estimate of quantities of work to be done, as shown on the bid.
  - ii. The contractor expressly agrees that these quantities are being set forth for the comparison of bids only and that the actual amount of work may not correspond therewith. The Town expressly reserves the right to adjust said quantities in accordance with actual conditions as found to exist during the course of work. The Contractor further agrees that any increase or decrease in the quantity for any item shall not be regarded as cause for an increase in the contract unit prices, or in the time allowed for completion of the work except as provided in the contract.

#### 3.13.1 Unless otherwise provided in the Contract Documents:

- a. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site, less any applicable trade discounts;
- b. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- c. Whenever costs are more than or less than the allowances, the Contract Sum shall be adjusted accordingly by a Change Order. The amount of the Change Order shall reflect
  - i. the difference between actual costs and the allowances under Article 3.12.1 (a), and
  - ii changes in the Contractor's costs under Article 3.12.1 (b).

#### 3.13.2 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### 3.14 CONTRACTOR'S AUTHORIZED SITE REPRESENTATIVE:

The Contractor shall employ a competent project manager/superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Contractor's project manager/superintendent shall represent the Contractor, and communications:

- a. Given by the Owner to the Contractor's project manager/superintendent shall be as binding as if given to the Contractor;
- b. Given by the Contractor's project manager/superintendent to the Owner shall be as binding as if given by the Contractor; and

- c. Given by the Contractor's project manager/superintendent to any Subcontractor, Sub-subcontractor or any other party performing work or providing supplies on behalf the Contractor shall be a binding as if given by the Contractor.

3.14.1 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Consulting Engineer the name and qualifications of a proposed Contractor's project manager/superintendent. The Consulting Engineer may reply within fourteen (14) days to the Contractor in writing, stating:

- a. Whether the Owner has reasonable objection to the proposed Contractor's project manager/superintendent, or
- b. That the Owner requires additional time to review. Failure of the Consulting Engineer to reply within the 14 day period shall constitute notice of no reasonable objection, unless the Owner has deemed it necessary for additional time to review.

3.14.2 The Contractor shall not employ a proposed Contractor's project manager/superintendent to whom the Owner has made reasonable and timely objection. Additionally, the Contractor shall not change the Contractor's project manager/superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Any Contractor's project manager/superintendent or assistant(s) replaced by the Contractor for whatever reason shall not cause any increase or change in the Contract Sum or Contract Time.

3.14.3 The Contractor's representative, as well as representatives of any Subcontractor, or material or supply contractor shall attend any meetings as requested by the Owner.

### **3.15 CONTRACTOR'S CONSTRUCTION SCHEDULES:**

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Consulting Engineer's approval a Contractor's Construction Schedule for the Work. The schedule shall not exceed time limits currently under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.15.1 The Contractor shall prepare a Submittal Schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current Submittal Schedule, and shall timely submit revised schedules for the Consulting Engineer's and Owner's approval. The Consulting Engineer's and Owner's Project Manager's approval shall not unreasonably be delayed or withheld. The Submittal Schedule shall:

- a. Be coordinated with the Contractor's Construction Schedule, and
- b. Allow the Consulting Engineer reasonable time to review submittals. If the Contractor fails to submit a Submittal Schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

3.15.2 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Consulting Engineer.

### **3.16 DOCUMENTS AND SAMPLES AT THE SITE:**

The Contractor shall maintain at the site for the Owner one (1) copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order, appropriately organized and sequenced, and marked currently to indicate field changes and selections made during construction, and one (1) copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Consulting Engineer and shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed.

### **3.17 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES:**

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

3.17.1 Product Data are illustrations, standard schedules, performance charts, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

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

3.17.3 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Consulting Engineer is subject to the limitations of Article 8.3.3. Informational submittals upon which the Consulting Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Consulting Engineer without action.

3.17.4 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Consulting Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Submittal Schedule approved by the Consulting Engineer or, in the absence of an approved Submittal Schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or separate contractors.

3.17.5 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Consulting Engineer that the Contractor has 1) reviewed and approved them, 2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and 3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.17.6 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Consulting Engineer as authorized by the Owner's Project Manager.

3.17.7 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Consulting Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Consulting Engineer in writing of such deviation at the time of submittal and 1) the Consulting Engineer has given written approval as authorized by the Owner's Project Manager to the specific deviation as a minor change in the Work, or 2) a Change Order has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Consulting Engineer's approval thereof.

3.17.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Consulting Engineer on previous submittals. In the absence of such written notice, the Consulting Engineer's approval of a resubmission shall not apply to such revisions.

3.17.9 The Contractor shall not be required to provide professional services that constitute the practice of architecture or Consulting Engineering unless such services are specifically required by the Contract Documents for a portion of the Work unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Consulting Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by properly licensed design professional whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Consulting Engineer. The Owner and the Consulting Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of services, certifications and approvals performed or provided by such design professionals, provided the Owner and Consulting Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this paragraph, the Consulting Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **3.18 USE OF THE SITE:**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not reasonably encumber the site with materials or equipment.

### **3.19 CUTTING AND PATCHING:**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

3.19.1 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **3.20 CLEANING UP:**

The Contractor shall regularly keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project Site. Prior to removal of surplus material, the Contractor shall notify the Owner of surplus material inventory and the Owner reserves the right to retain surplus materials if deemed by the owner to be in the owner's best interests.

3.20.1 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

3.20.2 At the end of each work day, the Contractor will be responsible to secure the job site being worked on in a manner satisfactory to the Owner's Project Manager.

### **3.21 INDEMNIFICATION:**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and save harmless the Town and all of the Town officers, agents and employees from and against all suits and claims of liability of every name and nature, including attorney's fees and costs of defending any action or claim, for or on account of any claim, loss, liability or injuries to persons or damage to property of the Town or any person, firm, corporation or association arising out of or resulting from any act, omission, or negligence of the Contractor, subcontractors and their agents or employees in the performance of the work covered by this Contract and/or their failure to comply with terms and conditions of this Contract, regardless of whether said claim is caused in part by the Town or any third party. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the Contractor under this Contract with the Town. The provisions of this paragraph shall survive the termination or expiration of the Contract.

3.21.1 In claims against any person or entity under Article 3.20 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Article 3.20 shall not be limited by a limitation on amount or type of damages, compensation

or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **3.22 ROYALTIES, PATENTS AND COPYRIGHTS:**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Contract Documents, or where the copyright violation is contained in Drawings, Specifications or other documents prepared by the Owner or Consulting Engineer.

### **3.23 AS-BUILT DRAWINGS:**

Except as stipulated otherwise in the supplemental conditions, upon completion of the project and prior to final payment, the Contractor shall provide the Owner an as-built survey prepared in conformance with 250 CMR, Sections 6.01 and 6.02, from update Nov. 22, 2013 by a 3rd Party Professional Licensed Surveyor (P.L.S). The completed survey shall be presented on a black line print(s) and stamped and signed by a Professional Surveyor registered in the Commonwealth of Massachusetts. A digital copy of the survey in AutoCad shall accompany the print(s). The as-built shall include all changes made to the work during construction and shall use the NAVD 88 and NAD 83, unless otherwise agreed by the Owner in writing. The survey shall include elevations at centerline, face of curb, top of curb, back of sidewalk and any off-site areas of work. An appropriate number of benchmarks shall be set in the job vicinity. Manholes shall be shown with rim elevations, inverts, pipe types and sizes and all pertinent information to determine flow rates. Water lines shall be shown with the size and type of pipe, services and valves well as depth beneath finished grades. All utilities shall be shown on the as-built. All pole relocations, light poles, etc. shall be depicted. Pavement striping, color and character. If building construction was included, an accurate location with dimensions to the boundary line(s) shall be shown. Floor elevations of each floor as well as building height, outside lighting and all parking and striping. Accurately record the details of all completed works.

### **3.24 SURVEY MONUMENTS, BOUNDS, AND MARKERS:**

The Contractor shall protect survey monuments during the course of construction and shall replace any property corners, roadway bounds or geodetic control markers destroyed during construction.

## **ARTICLE 4. THE SUBCONTRACTORS**

### **4.1 GENERAL:**

"Subcontractor" as used in this Article for contracts awarded:

- a. As provided in Massachusetts General Laws, Chapter 30, Section 39M, shall mean a person approved by the Owner in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor, and
- b. Shall also mean a person contracting with the Contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.

4.1.1 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number.

## **4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK:**

Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after the award of the Contract, shall furnish in writing to the Owner through the Consulting Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the Work. The Consulting Engineer may reply within seven (7) days to the Contractor in writing stating:

- a. Whether the Owner has reasonable objection to any such proposed person or entity, or
- b. That the Consulting Engineer requires additional time for review. Unless the Consulting Engineer fails to request additional time for review, failure of the Owner or Consulting Engineer to reply within seven (7) days shall constitute notice of no reasonable objection.

4.2.1 The Contractor shall not contract with a proposed person or entity to whom the Owner or Consulting Engineer has made reasonable and timely objection.

4.2.2 If the Owner or Consulting Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Consulting Engineer has no reasonable objection.

4.2.3 The Contractor shall not substitute a Subcontractor to perform any portion of the Work without the approval of the Owner, pursuant to Article 4.2.

## **4.3 CONTRACTUAL RELATIONS:**

By appropriate Contract pursuant to Massachusetts General Laws, Chapters 30 and 149, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Contract Documents, assumes toward the Owner and Consulting Engineer. Each subcontract Contract shall preserve and protect the rights of the Owner and Consulting Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract Contract, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner or Consulting Engineer. Where appropriate, the Contractor shall require each Subcontractor to enter into similar Contracts with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract Contract, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract Contract that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective Sub-subcontractors.

#### **4.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS:**

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

- a. Assignment is effective only after termination of the Contract between the Contractor and the Owner for cause pursuant to Article 17, and only for those subcontract Contracts that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- b. Assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.

4.4.1 When the Owner accepts the assignment of a subcontract Contract, the Owner assumes the Contractor's rights and obligations under the subcontract.

4.4.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.

4.4.3 Upon such assignment to the Owner under Article 4.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract as it had with the original contractor.

### **ARTICLE 5. WAGES AND EMPLOYMENT PRACTICES**

#### **5.1 PREFERENCE TO VETERANS AND CITIZENS, AND RATES OF PAY**

(Statutory reference: M.G.L. Ch.149, §26): In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six (6) months at the commencement of their employment, who are veterans as defined in Massachusetts General Laws, Chapter 4, Section 7, Clause 43, and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States, and every contract for such work shall contain a provision to this effect. Each county, town or district in the construction of public works, or persons contracting or subcontracting for such works, shall give preference to veterans and citizens who are residents of such county, town or district.

5.1.1 The rate per hour of the wages paid to said mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works shall not be less than the rate or rates of wages to be determined by the Commissioner of Labor and Industries as hereinafter provided; provided, that the wages paid to laborers employed on said works shall not be less than those paid to laborers in the municipal service of the town or towns where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more towns, the wages paid to laborers shall not be less than those paid to laborers in the municipal service of the town paying the highest rate; provided further, that if, in any of the towns where the works are to be constructed, a wage rate or wage rates have been established in certain trades and occupations by collective agreements or understandings between

organized labor and employers, the rate or rates to be paid on said works shall not be less than the rates so established; provided, further, that in towns where no such rate or rates have been so established, the wages paid to mechanics, teamsters, chauffeurs and laborers on public works, shall not be less than the wages paid to the employees in the same trades and occupations by private employers engaged in the construction industry. This Article shall also apply to regular employees of the Commonwealth or of a county, town or district, when such employees are employed in the construction, addition to or alteration of public buildings for which special appropriations of more than one thousand dollars are provided. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreement or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

## **5.2 LIST OF JOBS, CLASSIFICATIONS, DETERMINATION OF RATES OF PAY AND SCHEDULES**

(Statutory reference: M.G.L. Ch. 149, §27): The Commissioner of Labor and Industries shall prepare, for the use of such public officials or public bodies whose duty it shall be to cause public works to be constructed, a list of the several jobs usually performed on various types of public works upon which mechanics and apprentices, teamsters, chauffeurs and laborers are employed. The Commissioner shall classify said jobs, and he may revise such classifications from time to time, as he may deem advisable. Prior to awarding a contract for the construction of public works, said public official or public body shall submit to the Commissioner a list of the jobs upon which mechanics and apprentices, teamsters, chauffeurs and laborers are to be employed, and shall request the Commissioner to determine the rate of wages to be paid on each job. The Commissioner, subject to the provisions of Article 5.1.1, shall proceed forthwith to determine the same, and shall furnish said official or public body with a schedule of such rate or wages as soon as said determination shall have been made. In advertising or calling for bids for said works, the awarding official or public body shall incorporate said schedule in the advertisement or call for bids by an appropriate reference thereto, and shall furnish a copy of said schedule without cost, to any person requesting the same, said schedule shall be made a part of the contract for said works and shall continue to the minimum rate or rates of wages for said employees during the life of the contract. Any person engaged in the construction of said works shall cause a legible copy of said schedule to be kept posted in a conspicuous place at the site of said works during the life of the contract. The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in the previous section, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works that does not make payments to a health and welfare plan, a pension plan and a supplementary unemployment benefit plan, where such payments are included in said rates of wages, shall pay the amount of said payments directly to each employee engaged in said construction. Note: The Owner does not guarantee the accuracy of any schedule of any schedule of wage rates furnished to the Contractor hereunder, and the Contractor shall be responsible for ascertaining the prevailing wages in the area where the work will be performed.

## **5.3 MAINTENANCE OF EMPLOYMENT RECORDS AND STATEMENT OF COMPLIANCE BY CONTRACTOR & SUBCONTRACTOR**

(Statutory reference: M.G.L. Ch.149, §27B):

Every Contractor, Subcontractor or public body engaged in said public works to which Article 5.2 applies shall keep a true and accurate record of all mechanics and apprentices, teamsters, chauffeurs and laborers employed thereon, showing the name, address and occupational classification of each such employee, and shall furnish to the Commissioner of Labor and Industries, upon his request, a copy of said record, signed by the employer or his authorized agent under the penalties of perjury, such records shall be open to inspection by any authorized representative of the Department of Labor and Industries at any reasonable time, and as often as may be necessary.

5.3.1(Statutory reference: M.G.L. Ch.149, §27B) Each such Contractor, Subcontractor or public body shall preserve its payroll records for a period of three (3) years from the date of completion of the contract.

5.3.2(Statutory reference: M.G.L. Ch.149, §27B) Each such Contractor, Subcontractor or public body shall furnish to the Commissioner of labor and Industries within fifteen (15) days after completion of its portion of the work a statement, executed by the Contractor, Subcontractor, or public body who supervises the payment of wages, in the following form:

STATEMENT OF COMPLIANCE

I, \_\_\_\_\_  
(Name and Title of signatory party)

do hereby state:

That I pay or supervise the payment of the persons employed by

\_\_\_\_\_  
(Contractor, subcontractor or public body)

On the \_\_\_\_\_  
(Name of Project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of Massachusetts General Laws, Chapter 149, Section 27.

Signature: \_\_\_\_\_

1. Title: \_\_\_\_\_

The above mentioned copies of payroll records and statements of compliance shall be available for inspection by any interested party filing a written request to the Contractor for such inspections.

## I. HUD-4010

### U.S. Department of Housing and Urban Development Federal Labor Standards Provisions

#### Office of Davis-Bacon and Labor Standards

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##### A. APPLICABILITY

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

##### 1. Minimum wages and fringe benefits

- i. All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in 29 CFR 5.5(d) and (e), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(v) of these contract clauses; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under 29 CFR 5.5(a)(1)(iii)) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

##### ii. Frequently recurring classifications

A. In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly

submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:

1. The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;
  2. The classification is used in the area by the construction industry; and
  3. The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- B. The Administrator will establish wage rates for such classifications in accordance with 29 CFR 5.5(a)(1)(iii)(A)(3). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

iii. **Conformance**

A. The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be

classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

1. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  2. The classification is used in the area by the construction industry; and
  3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- B. The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- C. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- D. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- E. The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5 (a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR 5.5 (a)(1)(iii)(C) or (D) must be paid to all workers performing work in the classification under this contract from the

first day on which work is performed in the classification.

iv. **Fringe benefits not expressed as an hourly rate**

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

v. **Unfunded plans**

If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

vi. **Interest** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. **Withholding**

i. **Withholding requirements**

The U. S. Department of Housing and Urban Development may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5(a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), HUD may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

ii. **Priority to withheld funds**

The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- B. A contracting agency for its procurement costs;
- C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- D. A contractor's assignee(s);
- E. A contractor's successor(s); or
- F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

### 3. Records and certified payrolls

#### i. Basic record requirements

- A. Length of record retention.** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.
- B. Information required** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.
- C. Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- D. Additional records relating to apprenticeship** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

#### ii. Certified payroll requirements

- A. Frequency and method of submission** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to HUD if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid

electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system

- B. Information required** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- C. Statement of Compliance** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:
1. That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5(a)(3)(i), and such information and records are correct and complete;
  2. That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and
  3. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.
- D. Use of Optional Form WH-347** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR 5.5(a)(3)(ii)(C).
- E. Signature** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.
- F. Falsification** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

- G. **Length of certified payroll retention** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.
- iii. **Contracts, subcontracts, and related documents** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

## II. iv Required disclosures and access

- A. **Required record disclosures and access to workers** The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i)–(iii), and any other documents that HUD or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of HUD or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
- B. **Sanctions for non-compliance with records and worker access requirements** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to 29 CFR 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.
- C. **Required information disclosures** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to HUD if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to HUD, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other

compliance action.

#### 4. **Apprentices and equal employment opportunity**

##### i. **Apprentices**

- A. **Rate of pay** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- B. **Fringe benefits** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.
- C. **Apprenticeship ratio** The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- D. **Reciprocity of ratios and wage rates** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

- ii **Equal employment opportunity** The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

#### 5 **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6 Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as the U.S. Department of Housing and Urban Development may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

**7 Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8 Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9 Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

## **10. Certification of eligibility.**

- i. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
- ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or 29 CFR 5.12(a).
- iii. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

**11 Anti-retaliation** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5;
- iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5; or
- iv. Informing any other person about their rights under the DBA, Related Acts, or 29 CFR parts 1, 3, or 5.

## B. **Contract Work Hours and Safety Standards Act (CWHSSA)**

The Agency Head must cause or require the contracting officer to insert the following clauses set forth in 29 CFR 5.5(b)(1), (2), (3), (4), and (5) in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses must be inserted in addition to the clauses required by 29 CFR 5.5(a) or 4.6. As used in this paragraph, the terms "laborers and mechanics" include watchpersons and guards.

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of \$31 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR 5.5(b)(1).
3. **Withholding for unpaid wages and liquidated damages**
  - i. **Withholding process** The U.S Department of Housing and Urban Development or the recipient of Federal assistance may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 CFR 5.5(b) on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.
  - ii **Priority to withheld funds** The Department has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

- A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
  - B. A contracting agency for its reprocurement costs;
  - C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
  - D. A contractor's assignee(s);
  - E. A contractor's successor(s); or
  - F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1) through (5) and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR 5.5(b)(1) through (5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- 5 Anti-retaliation** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
- i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in 29 CFR part 5;
  - ii. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or 29 CFR part 5;
  - iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or 29 CFR part 5; or
  - iv. Informing any other person about their rights under CWHSSA or 29 CFR part 5.
- C. **CWHSSA required records clause** In addition to the clauses contained in 29 CFR 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by 29 CFR 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.

**D. Incorporation of contract clauses and wage determinations by reference**

Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

**E. Incorporation by operation of law** The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by 29 CFR 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

HEALTH AND SAFETY  
The provisions of this paragraph (F) are applicable where the amount of the prime contract exceeds

**\$100,000.**

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.
3. The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

#### **5.4 WAGES PAID TO OPERATORS OF TRUCKS AND OTHER EQUIPMENT**

(Statutory reference: M.G.L. Ch.149, §27F): Prescribed rates of wages, as determined by the Commissioner of Labor and Industries, shall be paid to the operators of all trucks, vehicles or equipment employed on the Project. Said rates of wages shall be requested of said Commissioner by the Owner and shall be furnished by the Commissioner in a schedule containing the classification of jobs, and the rate of wage to be paid for each job. Said rates of wages shall include payments to health and welfare plans, or, if no such plan is in effect between employers and employees, the amount of such payments shall be paid directly to said operators.

#### **5.5 RESERVE POLICE OFFICERS**

(Statutory reference: M.G.L. Ch.149, §34B): The Contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wages paid to regular police officers in such city or town. As identified in Article 12.3.3, the Contractor shall timely submit for payment to the Owner costs incurred in the employment of police officers necessary for the control and safety of the Project Work. Within seven (7) days of receipt of payment by the Owner, the Contractor shall make full payment to every police officer whose work was included for payment in the Contractor's original request for payment.

#### **5.6 EIGHT HOUR DAY AND WORK WEEK**

Statutory reference: M.G.L. Ch.149, §§30, 34 and 34A): No laborer, worker, mechanic, foreman or inspector working within the Commonwealth in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall be required or permitted to work more than eight (8) hours in any one (1) day or more than forty-eight (48) hours in any one (1) week, or more than six (6) days in any one (1) week, except in cases of extraordinary emergency.

#### **5.7 LODGING**

(Statutory reference: M.G.L. Ch.149, §25): Every employee in public work shall lodge, board and trade where and with whom he elects; and no person or his agents or employees under contract with the commonwealth, a county, city or town, or with a department, board, commission or officer acting therefore, for the doing of public work shall directly or indirectly require, as a condition of employment therein, that the employee shall lodge, board or trade at a particular place or with a particular person.

#### **5.8 ACCESS TO CONTRACTOR'S RECORDS**

(Executive Order No. 195): The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the Contractor which pertain to the performance and requirements of this contract.

## **ARTICLE 6. EQUAL EMPLOYMENT OPPORTUNITY & AFFIRMATIVE ACTION**

(Statutory reference: M.G.L. Ch.151B; Executive Orders No. 74, No. 116, and No. 143)

### **6.1 GENERAL:**

Article 6 in its entirety applies to all contractors employing six or more persons and to all state or state-assisted contracts for public buildings and public works or for goods and services exceeding the dollar amount set forth in Executive Order No. 116, as amended. The provisions of this Article 6 are intended to comply with the Commonwealth's Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program, referred to in Executive Order No. 116 and administered by the Massachusetts Commission Against Discrimination. If no specific percentage has been inserted in Article 6 herein, the applicable minimum percentage provided for in such Supplemental Program shall be deemed to have been so inserted.

### **6.2 DEFINITIONS:**

For purposes of this contract, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.

### **6.3 CONTRACTOR REQUIREMENTS AND OBLIGATIONS:**

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

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

### **6.4 COMPLIANCE WITH EXECUTIVE ORDERS AND LAWS:**

The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116, dated May 1, 1975, and of M.G.L. Ch.151B, both of which are herein incorporated by reference and made a part of this contract.

### **6.5 NON-DISCRIMINATION:**

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national

origin, age, sexual orientation or sex in employment practices, in the selection or retention of Subcontractors, or in the procurement of materials and rentals of equipment.

## **6.6 SOLICITATIONS FOR SUB-CONTRACTS, AND PROCUREMENT OF MATERIALS AND EQUIPMENT:**

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential 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.

## **6.7 EQUAL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED:**

The Contractor shall comply with the provisions of Executive Order No. 143, entitled "Equal Employment Opportunity for the Handicapped," which is herein incorporated by reference and made a part of this contract. In connection with the performance or work under this contract, the Contractor, Subcontractors and suppliers of goods and services shall not discriminate against the handicapped.

## **6.8 SUSPENSION OF PAYMENTS:**

If the Owner determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of any provision of Article 6, it may suspend any payment or portion thereof due under the contract until the Contractor demonstrates compliance with the terms of Article 6.

6.8.1 This temporary suspension of payments by the awarding authority is separate from the sanctions set forth in Article 17 herein.

## **ARTICLE 7. CONTRACTOR'S ACCOUNTING METHODS AND REQUIREMENTS**

(Entire provisions of Article 7 are Statutory reference: M.G.L. Ch. 30, §39R):

### **7.1 GENERAL:**

This Article applies to "Contracts" and "Contractors" as defined in Articles 7.1.1 and 7.1.2 below. The words defined herein shall have the meaning stated below whenever they appear in this Article.

7.1.1 "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to Massachusetts General Laws, Chapter 7C, Sections 44 to 57, inclusive, and any contract awarded or executed pursuant to Chapter 25A, Section 11C, Chapter 30, Section 39M, or Chapter 149, Sections 44A to 44H, inclusive, which is for an amount or estimated amount greater than one hundred thousand dollars (\$100,000.00).

7.1.2 "Contract" means any contract awarded or executed pursuant to Massachusetts General Laws, Chapter 7C, Sections 44 to 57, inclusive, and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, and any contract awarded or executed pursuant to Chapter 25A, Section 11C, Chapter 30, Section 39M, or Chapter 149, Sections 44A to 44H, inclusive, which is for an amount estimated amount greater than one hundred thousand dollars (\$100,000.00).

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

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

7.1.5 “Audit”, when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a CERTIFIED opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

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

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

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

7.1.9 Article 7.1.3 notwithstanding, every agreement or contract awarded or executed pursuant to Massachusetts General Laws, Chapter 7C, Sections 44 to 57, inclusive, or Chapter 25A, Section 11C, and pursuant to Chapter 30, Section 39M or to Chapter 149, Sections 44A through 44H, inclusive, shall provide that:

- a. The Contractor shall make, and keep for at least six (6) years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor;
- b. Until the expiration of six (6) years after final payment, the Office of Inspector General, the office of Attorney General, and the Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the contractor or of his Subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his Subcontractors;

- c. If the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his description the date of the change and reasons therefore, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes;
- d. If the agreement is a contract as defined herein, the Contractor has filed a statement of management on internal accounting controls as set forth in Section 7.1.10 prior to the execution of the contract, and
- e. If the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph (d) below.

7.1.10 Every contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the contractor and its subsidiaries reasonably assures that:

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

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

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

7.1.12 Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in Massachusetts General Laws, Chapter 4, Section 7, and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of Clause (2) of Paragraph (b).

## **ARTICLE 8. THE CONSULTING ENGINEER**

### **8.1 GENERAL:**

The Owner has retained a Consulting Engineer lawfully licensed to perform and provide Consulting Engineering (civil, electrical, mechanical) services in the State of Massachusetts. That person or entity is identified as the Consulting Engineer in the Contract and is referred to throughout the Contract Documents as if singular in number.

8.1.1 Duties, responsibilities and limitations of authority of the Consulting Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.

8.1.2 If the employment of the Consulting Engineer is terminated, the Owner shall solely and promptly employ a successor Consulting Engineer, whose status shall be that of the Consulting Engineer.

### **8.2 ADMINISTRATION OF THE CONTRACT:**

The Consulting Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Consulting Engineer, with the Owner's consent, issues the final Certificate for Payment. The Consulting Engineer will have authority to act on behalf of the Owner only to the extent provided for in the Contract Documents.

8.2.1 The Consulting Engineer will visit the site at intervals appropriate to the stage of construction, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consulting Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Consulting Engineer will not have control over, charge of, or be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Article 3.3.

8.2.2 On the basis of the site visits, communication with the Contractor and Subcontractors, and communication with the Owner's Project Manager, the Consulting Engineer will keep the Owner fully informed about the progress and quality of the portion of the Work completed, and report to the Owner:

- a. Known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and
- b. Defects and deficiencies observed in the Work.

### **8.3 COMMUNICATIONS AND OTHER ACTIONS FACILITATING CONTRACT ADMINISTRATION:**

Except as otherwise provided in the Contract Documents, or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Consulting Engineer about matters arising out of or relating to the Contract. Communications by and with the Consulting Engineer's consultants shall be

through the Consulting Engineer. Communications by and with Subcontractors and material and equipment suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

8.3.1 Based on the Consulting Engineer's and Owner's Project Manager's evaluations of the Contractor's Applications for Payment, the Consulting Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts for the Owner's approval.

8.3.2 The Consulting Engineer as authorized by the Owner's Project Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Consulting Engineer considers it necessary or advisable, the Consulting Engineer will have authority to require inspection or testing of the Work in accordance with Article 16, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consulting Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consulting Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

8.3.3 The Consulting Engineer, pursuant to Article 3.16, will review and approve, or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consulting Engineer's action will be taken in accordance with the submittal schedule approved by the Consulting Engineer or, in the absence of an approved Submittal Schedule, with reasonable promptness while allowing sufficient time in the Consulting Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consulting Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Articles 3.3, 3.5 and 3.16. The Consulting Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consulting Engineer, or any construction means, methods, techniques, sequences or procedures. The Consulting Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

8.3.4 The Consulting Engineer, in consultation with the Owner's Project Manager, will prepare Change Orders and may authorize minor changes in the Work as provided in Article 10.4. The Consulting Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Article 3.11.

8.3.5 The Consulting Engineer and the Owner's Project Manager will conduct inspections to:

- a. Determine the date or dates of Substantial Completion and the date of final completion;
- b. Issue Certificates of Substantial Completion pursuant to Article 12.7;
- c. Receive and forward to the Owner, for the Owner's review and records,

- written warranties and related documents required by the Contract Documents and assembled by the Contractor pursuant to Article 12.9; and
- d. Issue a final Certificate for Payment pursuant to Article 12.9.

8.3.6 The Consulting Engineer will interpret and decide matters concerning performance pursuant to, and requirements of, the Contract Documents on a verbal or written request of the Owner or by a written request of the Contractor. The Consulting Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

8.3.7 Interpretations and decisions of the Consulting Engineer will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in writing or in the form of drawings.

8.3.8 The Consulting Engineer will review and respond to Requests for Information about the Contract Documents. The Consulting Engineer's response to such requests will be made in writing with the time limit as defined in Article 8.4 or otherwise with reasonable promptness. If appropriate, the Consulting Engineer will prepare and issue supplemental Drawings and Specifications in response to the Requests for Information.

#### **8.4 TIMELY DECISIONS BY OWNER:**

(Statutory reference: M.G.L. C.30, §39P): In every case in which the Contract Documents requires the Owner, any official, or its Consulting Engineer to make a decision in interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, the decision shall be made promptly and, in any event, no later than thirty days after the written submission for decision. But if such decision requires extended investigation and study, the Owner, the official, or Consulting Engineer shall, within thirty (30) days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty (30) day period and the date by which the decision will be made.

### **ARTICLE 9. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Work site under conditions of the Contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation.

9.1.1 When separate contracts are awarded for different portions of the Project or other construction or operations on the Work site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Contract.

9.1.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their Construction Schedules. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The Construction Schedule shall then constitute the schedule to be

used by the Contractor, separate contractors, the Owner and the Consulting Engineer until subsequently revised.

## **9.2 MUTUAL RESPONSIBILITY:**

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

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

9.2.2 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

9.2.3 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided by Article 13.2.4.

9.2.4 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as described in Article 3.18.

## **9.3 OWNER'S RIGHT TO CLEAN UP:**

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Consulting Engineer shall allocate the cost among those responsible parties.

## **ARTICLE 10. CHANGES IN THE WORK**

### **10.1 GENERAL:**

Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated throughout the entirety of this Article.

10.1.1 A Change Order shall be based upon agreement among the Owner, Contractor and Consulting Engineer. A Construction Change Directive requires agreement between the Owner and Consulting Engineer, but may or may not be agreed to by the Contractor.

10.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.

10.1.3 No Change Order or Construction Change Directive affecting either Contract Sum or Contract Time shall be granted because of seasonal or abnormal variations in temperature, humidity, or precipitation, which conditions shall be wholly at the risk of the Contractor.

## **10.2 CHANGE ORDERS:**

A Change Order is a written instrument prepared by the Consulting Engineer and signed by the Owner, Contractor and Consulting Engineer stating their agreement upon all of the following:

- a. The change of Work;
- b. The amount of the adjustment, if any, in the Contract Sum; and
- c. The amount of the adjustment, if any, in the Contract Time.

10.2.1 Upon the request of the Owner or the Consulting Engineer, the Contractor shall, without cost to the Owner, submit to the Consulting Engineer in such form as the Consulting Engineer may require, a written Bid for a Change Order in the Work. The Bid shall include the quantity and the cost of each item of material, the number of hours of work and the hourly rate for each class of labor, as well as the description and amounts of all other costs sought by the Contractor to perform the proposed Change. The Contractor shall also furnish to the Consulting Engineer, bona fide Bids from Subcontractors or suppliers for all labor, materials or equipment to be included in such work. The Bid shall be furnished promptly so as not to delay the Work and shall include an estimate of any additional time required to finish the Work.

10.2.2 The Contractor shall also have the authority to initiate Change Order Bids for consideration by the Owner and Consulting Engineer. The submittal of such Bids shall be in accordance with the requirements and format as identified in this Article.

10.2.3 Change Order Bids shall be complete and definitive and the amount of the adjustment in the Contract Sum and the Contract Time, if any, shall be stated in the Bid for all Work affected by the proposed Change. Once a Change Order is executed, the Contractor shall be required to perform all of the Work required therein (including incidental work and changes to related Work which may be required to complete the Change Order) in accordance with the Contract Documents for the amounts stated in the Change Order.

10.2.4 In the cost or credit to the Owner resulting from a Change in the Work, the value of such cost or credit shall be determined as follows, absent the applicability of a unit price for such item(s) set forth in the Contract:

- a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits and workers' compensation insurance;
- b. Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- c. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others used directly for the work;
- d. Costs of premiums for all bonds and insurance, and permit fees related to the Work that may not otherwise exempted by state or federal law; and
- e. Fifteen percent (15%) of Subparagraphs A,B,C of this section, for overhead, superintendence and profit, however, if the work to be performed results in a

credit to the Owner, an equal percentage for overhead and profit will also be credited.

- f. On work to be performed by a sub-contractor, the Contractor's allowance is to be five percent (5%), applied to a total cost of Sub-Contractor's Work, including his allowance.
- g. On any change involving the Contractor, Subcontractor or any Sub-subcontractor, their total cost or credit shall be combined before application of the percentage allowed for the Contractor's overhead and profit.
- h. On work to be performed by a Sub-contractor, The subcontractor's allowance is to be fifteen percent (15%) for his overhead and profit.
- i. On work to be performed by a Sub-subcontractor, the subcontractor's allowance is to be five percent (5%) for his overhead and profit, and the sub-subcontractor's allowance (the one that actually performs the work) is to be fifteen percent (15%) for his overhead and profit, however, that for any such subcontracted work the maximum total fee to be paid by the Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work.

Additional costs of supervision and field office personnel directly attributable to the change, only if the "change" is approved with an extension of the substantial completion date.

The Owner reserves the right to review all T&M (time and material) and change order labor burden breakdowns for all contractors and subcontractors prior to final acceptance of the cost change.

10.2.5 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that result in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Consulting Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

### **10.3 CONSTRUCTION CHANGE DIRECTIVES:**

A Construction Change Directive is a written order prepared by the Consulting Engineer and signed by the Owner and Consulting Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may issue a Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with Contract Sum and Contract Time adjustments made accordingly if necessary.

10.3.1 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

10.3.2 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following:

- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. Unit prices stated in Contract Documents or subsequently agreed upon;
- c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed percentage fee; or

d. As provided for in Article 10.3.6.

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

10.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Consulting Engineer of the Contractor's Contract or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

10.3.5 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be recorded and formalized as a Change Order based on the final negotiated cost of the change in work and shall be duly signed by the Town Manager and thereby made part of the contract.

10.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Consulting Engineer as authorized by the Owner's Project Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Contract, or if no such amount is set forth in the Contract, a reasonable amount. In such case, the Contractor shall keep and present, in such form as the Consulting Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Article shall be limited to the following:

- a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits and workers' compensation insurance;
- b. Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- c. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- d. Costs of premiums for all bonds and insurance, permit fees, and taxes related to the Work that may not otherwise be exempted by state or federal law; and
- e. Additional costs of supervision and field office personnel directly attributable to the change.
- f. The appropriated level of funding for this project.

10.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Consulting Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

10.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed

under the Construction Change Directive in Applications for Payment. The Consulting Engineer will make an interim determination for purposes of monthly Certifications for Payment for those costs and certify for payment the amount that the Consulting Engineer determines, in the Consulting Engineer's professional judgment, to be reasonably justified, subject to the Owner's final approval.

#### **10.4 MINOR CHANGES IN THE WORK:**

The Consulting Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or Contract Time, and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order by the Consulting Engineer and shall be binding on the Owner and Contractor.

### **ARTICLE 11. TIME**

#### **11.1 DEFINITIONS:**

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

11.1.1 The date of commencement of the Work is the date established in the Contract.

11.1.2 The date of Substantial Completion is the date certified by the Consulting Engineer in accordance with Article 12.7.

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

#### **11.2 PROGRESS AND COMPLETION:**

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

11.2.1 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 14 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

11.2.3 If the Consulting Engineer and/or the Owner's Project Manager determine that the amount of Work properly completed is less than ninety percent (90%) of the Work required to be performed pursuant to the Construction Schedule, or that there have been delays to critical paths and that in the Owner's sole discretion, there is reasonable concern that the Project will not be Substantially Complete by the date described in the Contract, the Owner may, in addition to any other remedy it may have, direct the Contractor to take some or all of the following actions at no additional cost:

- a. Increase the number or workers in such quantities and trades as the Consulting Engineer recommends;

- b. Increase the number of working hours per shift, shift per day, working days per week, amount of construction equipment, or any combination of the foregoing in accordance with the Consulting Engineer's and Owner's Project Manager's recommendation;
- c. Re-Schedule activities at the Consulting Engineer's and Owner's Project Manager's discretion.

11.2.4 Nothing contained herein shall limit the Owner's rights to withhold or recover damages for delays caused by the Contractor, or any other remedy to which the Owner is entitled, pursuant to the Contract Documents or by law.

### **11.3 DELAYS AND EXTENSIONS OF TIME:**

(Statutory reference: M.G.L. Ch.30, §39O): Except as otherwise provided by law and by this Paragraph, the Contractor shall not be entitled to damages on account of any hindrances or delays, avoidable or unavoidable; but if such delay is caused by awarding authority, the Contractor may be entitled to an extension of time only in which to complete the work. Said decision is to be determined by the Consulting Engineer in conjunction with the Owner.

11.3.1 The awarding authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided, however, that if there is a suspension, delay or interruption for fifteen (15) days or more 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 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.

11.3.2 The Contractor must submit the amount of a claim under this Article 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 (20) before the Contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

11.3.3 In the event a suspension, delay, interruption or failure to act by the awarding authority increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of his performance as this Article gives the Contractor against the Owner, but nothing in this Article shall in any way change, modify or alter any other rights which the Contractor or the Subcontractor may have against each other.

11.3.4 Claims arising under this Article shall be made in accordance with applicable provisions of Article 18.

## **ARTICLE 12. PAYMENTS AND COMPLETION**

### **12.1 CONTRACT SUM:**

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

## **12.2 SCHEDULE OF VALUES:**

Where the Contract is based on a stipulated sum, the Contractor shall submit to the Consulting Engineer, before the first Application for Payment, a Schedule of Values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Consulting Engineer may require. This schedule must be approved by the Consulting Engineer and Owner, and shall be used as a basis for reviewing the Contractor's Applications for Payment.

## **12.3 APPLICATIONS FOR PAYMENT**

(Statutory reference: M.G.L. Ch.30, §39K): Within fifteen (15) days after receipt from the Contractor, at the place designated by the awarding authority if such a place is so designated, of an Applications for Payment requesting payment of the amount due for the preceding month, the Owner will make a periodic payment to the Contractor for the Work performed during the preceding month and for the materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner, upon certification by the Contractor that he is the lawful owner and that the materials are free from all encumbrances, but less:

- a. A retention based on its estimate of the fair value of its claims against the Contractor;
- b. A retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of Massachusetts General Laws, Chapter 30, Section 39F, and
- c. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.

12.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Consulting Engineer an itemized Application for Payment prepared in accordance with the Schedule of Values, for completed portions of the Work. Such application shall be signed by the appropriate Contractor representative (shall be notarized, if required), and supported by such data substantiating the Contractor's right to payment as the Owner or Consulting Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

12.3.2 (Statutory reference: M.G.L. Ch.30, §39K) All Applications for Payment shall be submitted to the Owner, or to its designee as set forth in writing to the Contractor, and the date of receipt by the Owner or its designee shall be marked on the estimate. All Applications for Payment shall contain a separate item listing the amount paid to each Subcontractor and Sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the Owner shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.

12.3.3 Submitted with every Application for Payment shall be the following minimum information relative to the time period reflected in the Application and the corresponding progress of the Work:

- a. Certified payroll records in accordance with Massachusetts General Laws, Chapter 149, Section 27B, and shall include hours worked by employees of the Contractor, Subcontractors and Sub-subcontractors;
- b. Copies of invoices of any supplies or materials used, or services performed in the completion of Work, or stored materials (see Article 12.3.7), and in particular, invoices for police officers for work performed on police details within the last thirty (30) days; and
- c. Any other forms or information that may be required by the Owner.

12.3.4 As provided in Article 10.3.8, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Change Orders or Construction Change Directives.

12.3.5 Five percent (5%) of all payments due the Contractor for work done and materials furnished, or stored as applicable as herein defined, will be withheld until final completion of the work, as authorized by Massachusetts General Laws, Chapter 30, Section 39G.

12.3.6 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

12.3.7 In no case shall store materials or equipment, whether stored at the site or at some other Massachusetts location (no other states allowed for storage), be considered for payment unless, at the sole discretion of the Owner, the materials or equipment are ready for and actually scheduled for prompt use. Written notice required for Payment of stored material must be made thirty (30) days in advance of the due date for the Application for Payment. Payment for materials or equipment stored on site shall require submission and approval of:

- a. A valid invoice including the unit quantity, description of the material or equipment, and cost;
- b. Bill of Sale naming the Owner a purchaser;
- c. Certified statement identifying the exact location of materials or equipment, that the materials or equipment are properly stored and protected, and that it will not be diverted for use and installation on a different project;
- d. Such off-site material or equipment is to be clearly identified and set apart from other material or equipment;
- e. Photographs of said stored material or equipment; and
- f. An All Risk Insurance Certificate for the full invoiced value of the items, with the Owner as a Certificate Holder, Insured Party and Payee in the case of loss, with no deductible attached. Additionally, there shall be a minimum thirty (30) day notice of cancellation to the Certificate Holder.

12.3.8 Should the Owner need to visit the location of the stored material or equipment to further authenticate or verify the acquisition and storage of said material or equipment, the Contractor shall pay all costs associated for the Owner's Project

Manager, Consulting Engineer or other representative of the Owner to visit the storage location.

12.3.9 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **12.4 CERTIFICATES FOR PAYMENT:**

(Statutory reference: M.G.L. Ch.30, §39K): The Owner may make changes in any Application for Payment submitted by the Contractor and the payment due on said Application shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected Application for Payment 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 Owner may, within seven (7) days after receipt, return to the Contractor for correction, any Application for Payment 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.

12.4.1 The issuance of a Certificate for Payment will constitute a representation by the Consulting Engineer to the Owner, based on the Consulting Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Consulting Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

The contractor must submit The Davis-Bacon and related Acts Weekly or monthly Certified Payroll form.://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf

#### **12.5 DECISIONS TO WITHHOLD CERTIFICATION:**

The Consulting Engineer may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner, if in the Consulting Engineer's opinion the representations to the Owner required by Article 12 cannot be made or complete submittal of information required by Article 12 is not submitted. If the Consulting Engineer is unable to certify payment in the amount of the Application, the Consulting Engineer will notify the Contractor and Owner. If the Contractor and Consulting Engineer cannot agree on a revised amount, the Consulting Engineer will promptly issue a Certificate for Payment for the amount for which the Consulting Engineer is able to make such representations to

the Owner. The Consulting Engineer may also withhold a Certificate for Payment previously issued to such extent as may be necessary in the Consulting Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Article 3.3.1 because of:

- a. Defective Work not remedied;
- b. Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- c. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- a. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- b. Damage to the Owner or a separate contractor;
- c. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- d. Repeated failure to carry out the Work in accordance with the Contract Documents;
- e. Failure of the Contractors and Subcontractors to comply with mandatory requirements for maintaining Record Drawings. or
- f. Costs incurred by the Owner as described in Article 13.2.4.

12.5.1 When the above reasons for withholding certification are removed or addressed by the Contractor to the satisfaction of the Consulting Engineer, certification will be made for amounts previously withheld.

## **12.6 PROGRESS PAYMENTS:**

After the Consulting Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Consulting Engineer.

12.6.1 The Contractor shall pay each Subcontractor and material and equipment suppliers no later than seven (7) days after receipt of payment including retentions from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in an exact manner.

12.6.2 The Consulting Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Consulting Engineer and Owner on account of portions of the Work done by each Subcontractor. The Owner may charge a reasonable cost based on the Consulting Engineer's time and expense to prepare the information.

12.6.3 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Consulting Engineer shall have an obligation to pay or to see

the payment of money to a Subcontractor, except as may otherwise be required by law.

12.6.4 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that as required in Articles 12.6.2 through 12.6.4.

12.6.5 A Certificate for Payment, a Progress Payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of the Work not in accordance with the Contract Documents.

## **12.7 SUBSTANTIAL COMPLETION:**

Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

12.7.1 (Statutory reference: M.G.L. Ch.30, §39K) Notwithstanding any provisions of this section, at any time after the value of the work remaining to be done is, in the estimation of the Owner, less than 1 percent of the adjusted contract price, or the Owner has determined that the Contractor has substantially completed the Work, the Owner may send to the 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 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 Contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the Owner or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the Contractor by certified mail, return receipt requested, the Owner may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the Contractor and such termination shall be without prejudice to any other rights or remedies the Owner may have under the Contract Documents.

12.7.2 When the Work is substantially complete, the Consulting Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or designated portion thereof unless otherwise provided for in the Certificate of Substantial Completion.

12.7.3 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. The Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **12.8 RESERVED – NOT USED**

## **12.9 FINAL COMPLETION AND FINAL PAYMENT**

(Statutory reference: M.G.L. Ch.30, §39K):

After the receipt of a request for final payment from the Contractor, and within sixty-five (65) days after (a) the Contractor fully completes the Work or substantially completes the Work so that the value of the Work remaining to be done is, in the estimate of the awarding authority, less than one percent (1%) of the original contract price, or (b) the Contractor substantially completes the Work, 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 Massachusetts General Laws, Chapter 30, Section 39F, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in said Section 39F. 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 (3) percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate from the Contractor, at the place designated by the awarding authority if such a place is so designated. The Contractor agrees to pay to each Subcontractor a portion of any such interest paid in accordance with the amount due each Subcontractor.

12.9.1 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Consulting Engineer:

- a. An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, and all certified payrolls have been submitted to the Owner;
- b. A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;
- c. A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- d. If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- e. All warranties;
- f. As-built drawings;
- g. Completed Owner training sessions for safety and operations; and
- h. All operating manuals.

12.9.2 If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien in full amount thereof. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the

Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

12.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Consulting Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Consulting Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

12.9.4 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- a. Liens, claims, security interests or encumbrances arising out of the Contract and remain unsettled;
- b. Failure of the Work to comply with the requirements of the Contract Documents; or
- c. Terms of special warranties required by the Contract Documents.

12.9.5 The acceptance by the Contractor of the final payment, including the retainage of five percent (5%), shall operate as a release to the Town of all claims and all liabilities to the Contractor for all work done or materials furnished in connection with the Contract, not including replacements of any defective equipment or material or defects in work that arise over the one year maintenance period. Final payment shall be as provided in Massachusetts General Laws, Chapter 30, Section 39G.

12.9.6 Notwithstanding any article within Article 12.10, the payment to the Contractor does not, however, release them or their sureties from any obligation under this Contract.

## **12.10 DIRECT PAYMENT**

(Entire provisions of Article 12.10 are Statutory reference: M.G.L. Ch.30, §39F): Forthwith after the Contractor receives payment on account of an Application for Payment, the 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 Contractor.

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

12.10.2 Each payment made by the Owner to the Contractor pursuant to Article 12.10 for the labor performed and the materials furnished by a Subcontractor shall be made to the Contractor for the account of that Subcontractor; and the Owner shall take

reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the Owner has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in this Article, the Owner shall act upon the demand as provided herein.

12.10.3 If, within seventy (70) days after the Subcontractor has substantially completed the subcontract work, the Subcontractor has not received from the Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the Owner. The demand shall be by a sworn statement delivered to or sent by certified mail to the Owner, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the Subcontractor has substantially completed the subcontract work. Within ten (10) days after the Subcontractor has delivered or so mailed the demand to the Owner and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Owner and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.

12.10.4 Within fifteen (15) days after receipt of the demand by the Owner, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Owner shall make direct payment to the Subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount:

- a. Retained by the Owner as the estimated cost of completing the incomplete or unsatisfactory items of work;
- b. Specified in any court proceedings barring such payment, or
- c. Disputed by the Contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided herein if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by Article 12.10.3. The Owner shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided by this Article.

12.10.5 The Owner shall forthwith deposit the amount deducted from a direct payment as provided in Article 12.10.4 in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the Owner or agreed upon by the Contractor and the Subcontractor and shall notify the Contractor and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in a Contract between the Contractor and the Subcontractor or as determined by decree of a court of competent jurisdiction.

12.10.6 All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to Article 12.10.5 shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a Subcontractor and out of amounts which later become payable to the Contractor and in the order of receipt of such demands from Subcontractors. All direct payments shall discharge the obligation of the Owner to the Contractor to the extent of such payment.

12.10.7 The Owner shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant Article 12.10.5, are sufficient to satisfy all unpaid balances of demands for direct payment received from Subcontractors. All such amounts shall be earmarked for such direct payments, and the Subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the Contractor.

12.10.8 If the Subcontractor does not receive payment as provided in Article 12.10, or if the Contractor does not submit an Application for Payment 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 Article 12.10, the Subcontractor may demand direct payment by following the procedure in Article 12.10.4, and the Contractor may file a sworn reply as provided in that same Article. 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 an Application for Payment from the Contractor. Thereafter the Owner shall proceed as provided in this section of Articles.

12.10.9 Any assignment by a Subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of Massachusetts General Laws, Chapter 149, Section 29 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 Owner or which are on deposit pursuant to Article 12.10.6 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.

12.10.10 A Contractor or a Subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposited as provided in this Article 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 this article by a petition in equity in the superior court against the Owner and the 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. Massachusetts General Laws, Chapter 231, Sections 59 and 59B 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 59 and 59B 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 Contractor are available for direct payment shall have a right to file a petition in court of equity against the Owner claiming a demand for direct payment is premature and such Subcontractor must file the petition before the Owner has made a direct payment to the Subcontractor and has made a deposit of the disputed portion as provided in this Article.

12.10.11 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 Contractor, reduce by the amount of any deposit of a disputed amount by the Owner as provided in this Article by any amount held under a trustee writ or pursuant to a restraining order or injunction.

## **ARTICLE 13. PROTECTION OF PERSONS AND PROPERTY**

### **13.1 SAFETY PRECAUTIONS AND PROGRAMS:**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs at the Work Site and in connection with the performance of the Contract.

13.1.1 (Statutory reference: M.G.L. Ch.149, S44F(1)) The Contractor shall install suitable weather protection in the Work area for all employees, material or equipment that may be affected thereby, and that he shall furnish adequate heat in the Work area so protected during the months of November through March.

13.1.2 (Statutory reference: M.G.L. Ch.149, §129A) Any part of the Work pursuant to this Contract Document in which a trench is to be dug to a depth of five feet or more, except a trench for laying of water pipes dug to a depth of six and one-half feet which will be open less than forty-eight hours, such trench shall be shored and braced in conformity with the rules and regulations for the prevention of accidents in construction operations, as adopted and enforced by the attorney general.

### **13.2 SAFETY OF PERSONS AND PROPERTY:**

The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a. Employees on the Work and other persons who may be affected thereby;
- b. The Work and materials and equipment to be incorporated therein, whether in storage on or off the Work site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- c. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.1 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public

authorities bearing on safety of persons or property or their protection from damage, injury or loss.

13.2.2 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

13.2.3 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified or licensed personnel.

13.2.4 The Contractor shall promptly remedy damage any loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in this Article caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under this Article, except damage or loss attributable to acts or omissions of the Owner or Consulting Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3.20.

13.2.5 The Contractor shall designate a responsible member of the Contractor's organization at the Work Site whose duty shall be the prevention of accidents. This person shall be the Contractor's Project Manager/Superintendent unless otherwise designated by the Contractor in writing to the Owner and Consulting Engineer.

13.2.6 The Contractor shall not permit any part of the Work or Work site to be loaded so as to cause damage or create an unsafe condition.

### **13.3 INJURY OR DAMAGE TO PERSON OR PROPERTY:**

If Contractor shall notify the Town in writing of any injury or damage to person or property occurring at the Work Site, whether or not such injury or damage is insured, within twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the Town to investigate the matter.

13.3.1 The Contractor shall be responsible for the adequate support and safety of all scaffolding, staging and hoisting equipment and for temporary shoring and bracing.

13.3.2 The Contractor shall furnish approved hard hats, safety colored vests, eye protection and other personal protective equipment as required, approved first aid supplies, name of first aid attendant and a posted list of emergency facilities and telephone numbers.

13.3.3 The Contractor shall take immediate action to correct any dangerous conditions revealed or made known to it.

13.3.4 No unauthorized visitors shall be allowed on the Work site without the permission from the Owner, Contractor, Consulting Engineer or Owner's Project Manager.

13.3.5 On projects in which the Work is performed adjacent to a building in which any portion of said building is occupied or used by employees or the public, the Contractor shall take any and all measures to protect them from harm as they pass through or otherwise utilize approved areas of the Work site.

13.3.6 The Contractor shall comply with the requirements of the Occupational Safety and Health Act (OSHA), the OSHA 10 hour safety certification program for workers and the Construction Act of 1969, which are incorporated herein by reference and all standards and regulations promulgated by the governmental and regulatory bodies responsible for administration thereof. The Contractor shall be responsible for compliance with such Acts, standards and regulations by its officers, agents, employees, Subcontractors, Sub-subcontractors, and material and equipment suppliers. The Contractor shall indemnify and hold harmless the Owner and its employees and the Consulting Engineer from any and all fines, costs and expenses, including, but not limited to reasonable attorneys' fees incurred by the Owner, the Owner's Project Manager and Consulting Engineer due to violation of such Acts, standards and regulations. OSHA certifications for all Contractor and Subcontractor employees must be held on the Work site.

#### **13.4 HAZARDOUS MATERIALS:**

The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable human exposure, bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered at the Work site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and immediately report the condition to the Owner and Consulting Engineer in writing.

13.4.1 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such hazardous material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Consulting Engineer the name and qualifications of the person or entity that shall be responsible for the removal or safe containment of such hazardous material or substance. The Contractor and Consulting Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the person or entity proposed by the Owner. If either has an objection, the Owner shall propose another to whom the Contractor and Consulting Engineer have no reasonable objection. When the hazardous material or substance has been removed or contained, Work in the affected area shall resume upon written notice by the person or entity that the affected area is safe to resume the Work. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

13.4.2 The Owner shall not be responsible under this Article 13.4 for materials or substances the Contractor brings to the Work that is necessary to carry out the Work.

13.4.3 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs resulting from:

- a. Remediation of a material or substance the Contractor brings to the site and negligently handles; or
- b. Contractor's failure to perform its obligations under Article 13.4, except to the extent that the cost and expense are due to the Owner's fault or negligence.

### 13.5 **EMERGENCIES:**

In an emergency affecting safety of persons or property, the Contractor shall act at their discretion to prevent threatened bodily injury, damage or loss. The Owner shall be notified immediately of any on-site emergency. Changes to the Contract Sum or Contract Time claimed by the Contractor on account of an emergency shall be determined pursuant to Articles 10 and 18.

## **ARTICLE 14. INSURANCE AND BONDS**

### **14.1 INSURANCE GENERALLY**

14.1.1 The Contractor shall purchase and maintain insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires. Failure of the Contractor to obtain and maintain in force any insurance policy required herein may be deemed by the Owner as a material breach of this Contract, and may constitute sufficient grounds for immediate termination of the Contract.

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

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

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

- that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the Awarding Authority.

14.1.4 Contractor shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Awarding Authority shall at all times possess certificates indicating current coverage.

14.1.5 If requested by the Town, the Contractor shall file one certified complete copy of all policies and endorsements with the Awarding Authority. If the Awarding Authority is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall be responsible for all costs and damages to the Awarding Authority attributable thereto.

14.1.6 The Owner's authority to review certificates and policies of insurance, and its decision to raise or not to raise any objections about those certificates and policies shall not in any way give rise to any duty or responsibility on the part of the Owner to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor, material or equipment supplier, or any other party.

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

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

14.1.9 The Contractor shall require each Subcontractor and Sub-subcontractor to purchase and maintain insurance in the amount and type at least equal to the limits stated in Article 14, and the provisions of Article 14 shall be equally applicable to them. The Contractor shall provide certificates of such insurance to the Owner prior to such Subcontractor or Sub-subcontractor performing work at the Work Site.

**14.2 CONTRACTOR'S COMMERCIAL GENERAL LIABILITY**

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

Bodily Injury &	\$1,000,000 each occurrence
Property Damage	\$3,000,000 general aggregate per project
Products & Completed Operations	\$3,000,000 annual aggregate

Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$5,000

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

14.2.3 This policy shall include contractual liability coverage.

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

14.2.5 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.

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

14.2.7 The policy shall include endorsement CG 24 04, a Waiver of Subrogation in favor of the Awarding Authority.

**14.3 AUTOMOBILE LIABILITY**

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

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

14.3.3 The policy shall include the Awarding Authority as an additional insured.

14.3.4 The policy shall contain a Waiver of Subrogation in favor of the Awarding Authority.

**14.4 CONTRACTOR’S POLLUTION LIABILITY**

14.4.1 The Contractor shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated

soil, etc. The insurance policy shall cover the liability of the Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-Site and off-Site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. The Awarding Authority 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 the Contract Documents, in which case the Contractor shall provide the additional coverage:

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

**14.5 WORKER'S COMPENSATION**

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

Worker's Compensation	Statutory limits
Employer's Liability	\$ 1,000,000 each accident
	\$ 1,000,000 disease per employee
	\$ 1,000,000 disease policy aggregate

14.5.2 If specified in the Contract Documents the policy must be endorsed to cover United States Longshoremen & Harborworkers Act (USLHW), or Maritime Liability.

14.5.3 The policy shall contain a Waiver of Subrogation in favor of the Awarding Authority.

**14.6 UMBRELLA COVERAGE**

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

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

**14.7 ADDITIONAL TYPES OF INSURANCE**

The Contractor shall provide such other types of insurance as may be required by the Contract Documents.

#### **14.8 OWNER'S LIABILITY INSURANCE:**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability and property insurance during the term of the Work, or at such times as the Owner has made a determination of Substantial Completion in a portion of or the total Work as identified in Article 12.7.

14.8.1 The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents, or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, Contractor, Subcontractor and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### **14.9 PROPERTY INSURANCE:**

Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and start-up, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Consulting Engineer's and Contractor's services and expenses required as a result of such insured loss.

14.9.1 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

14.9.2 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by an appropriate Change Order.

14.9.3 If, during the Work construction period, the Owner insures properties, real or personal, or both, at or adjacent to the Work site by property insurance under policies separate from those insuring the Project, or if after Final Payment, property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Article 14.4 for damages caused by fire or other causes of loss covered by this separate property insurance.

14.9.4 Before an exposure to loss may occur, upon request by the Contractor, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by Article 14.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced until at least thirty (30) days prior written notice has been given to the Contractor.

14.9.5 The Owner shall have the power to adjust and settle with its insurer any loss for which it has obtained insurance pursuant to this Article.

14.9.6 Upon the occurrence of an insured loss, the Owner and the Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information, and the distribution of any insurance proceeds. If, after such a

loss, no special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order or Change Directive.

## **ARTICLE 15. UNCOVERING AND CORRECTION OF WORK**

### **15.1 UNCOVERING WORK:**

If a portion of the Work is covered contrary to the Consulting Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Engineer Consulting Engineer, be uncovered for the Consulting Engineer's examination and be replaced at the Contractor's time and expense without change to either the Contract Sum or Contract Time.

15.1.1 If a portion of the Work has been covered that the Consulting Engineer has not specifically requested to examine prior to its being covered, the Consulting Engineer, with the Owner's Contract, may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs. Depending on the cause of the faulty Work, change to either the Contract Sum or Contract Time may be considered.

### **15.2 CORRECTION OF WORK:**

The Contractor shall promptly correct Work rejected by the Consulting Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the costs of uncovering and replacement, and compensation for the Consulting Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense without change to either the Contract Sum or Contract Time.

15.2.1 In addition to the Contractor's obligations under Article 3.5, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Article 12.9, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one (1) year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Consulting Engineer, the Owner may correct it in accordance with Article 2.6.

15.2.2 The one (1) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

15.2.3 The one (1) year period for correction of Work shall not be extended by corrective Work performed by the Contractor after Substantial Completion for correction work necessary as a result of damage caused by the Owner or a separate contractor.

15.2.4 The Contractor shall remove from the Work site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor or accepted by the Owner.

15.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

15.2.6 Nothing contained in the entirety of Article 15 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in this Article relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **15.3 ACCEPTANCE OF NON-CONFORMING WORK:**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made. Owner's acceptance of Work under this provision must be in writing, signed by the Owner's Project Manager.

## **ARTICLE 16. TESTS, INSPECTIONS AND APPROVALS**

### **16.1 TESTS, INSPECTIONS AND APPROVALS:**

Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Consulting Engineer timely notice of when and where tests and inspections are to be made so that the Consulting Engineer may be present for such procedures. The Owner shall bear costs of:

- a. Tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded; and
- b. Tests, inspections or approvals where applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

16.1.1 If the Consulting Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval

not included under Article 16, the Consulting Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an individual or entity acceptable to the Owner, and the Contractor shall give timely notice to the Consulting Engineer of when and where tests and inspections are to be made so that the Consulting Engineer may be present for such procedures. Such costs, except as provided in Article 16.1.3, shall be at the Owner's expense.

16.1.2 If such procedures for testing, inspection or approval under Articles 16.1 and 16.1.1 reveal failure of the portions of Work to comply with requirements established by the Contract Documents, all costs, including the cost of re-testing made necessary by such failure, including those of repeated procedures and compensation for the Consulting Engineer's services and expenses, shall be at the Contractor's expense.

16.1.3 The Contractor shall obtain and deliver promptly to the Consulting Engineer any permits, certificates of final inspection of any part of the Contractor's Work, and operating permits for any mechanical apparatus (if applicable). Receipt of such permits or certificates by the Consulting Engineer shall be a condition precedent to determining that the Work is Substantially Complete.

16.1.4 If the Consulting Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Consulting Engineer will do so promptly, and where practicable, at the normal place of testing.

16.1.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **ARTICLE 17. TERMINATION OR SUSPENSION OF THE CONTRACT**

### **17.1 TERMINATION BY THE OWNER FOR CAUSE:**

The Owner may terminate the Contract if the Contractor:

- a. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- b. Fails to make payment to Subcontractors for materials or labor in accordance with the respective Contracts between the Contractor and Subcontractors;
- c. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- d. Otherwise is guilty of substantial breach of a provision of the Contract Documents;
- e. Assigns any portion of the Contract between the Contractor and the Owner, or otherwise assigns any portion of the Contractor's responsibilities to a third party without the express approval of the Owner; or
- f. The Contractor files for bankruptcy.

17.1.1 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's Surety, if any, seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of the Surety:

- a. Exclude the Contractor from the site and take possession of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor;

- b. Accept assignment of subcontract pursuant to Article 4.4; and
- c. Finish the Work by whatever reasonable method the owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

17.1.2 When the Owner terminates the Contract for one of the reasons stated in Article 17, the Contractor shall not be entitled to receive further payment until the Work is finished.

17.1.3 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Consulting Engineer and Owner's Project Manager services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, application, and this obligation for payment shall survive termination of the Contract.

## **17.2 TERMINATION BY OWNER FOR EXTRAORDINARY DELAY:**

Should the Contractor's performance of the Work be delayed for ninety (90) or more days pursuant to any provision in Article 11.3, the Owner shall have the authority to terminate the Contract.

17.2.1 In the case of such termination due to delay, the Contractor shall only be entitled to receive payment for Work executed to the date of such termination.

## **17.3 TERMINATION BY THE OWNER FOR CONVENIENCE:**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

17.3.1 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- a. Cease operations as directed by the Owner in the notice;
- b. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- c. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

17.3.2 In the case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

17.3.3 For any termination under Article 17.1 or 17.2 which is later determined to be unwarranted, without cause or not in compliance with the terms of the Contract Documents, such termination shall be deemed a termination for convenience under this section.

**17.4 SUSPENSION BY THE OWNER FOR CONVENIENCE:**

The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period as the Owner may determine.

17.4.1 The Contract Sum and Contract Time shall be adjusted for increases thereto caused by suspension, delay or interruption as described in Article 17.2. Adjustment of the Contract Sum shall include reasonable overhead and profit as may be defined in the Contract Documents. No adjustment shall be made to the extent that:

- a. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- b. An equitable adjustment is made or denied under another provision of the Contract.

**ARTICLE 18. CLAIMS AND DISPUTES**

**18.1 DEFINITION OF CLAIM:**

A claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**18.2 NOTICE OF CLAIMS:**

Claims by either the Owner or Contractor must be initiated by written notice, as provided herein, to the other party. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

18.2.1 The failure of either party to provide written notice in strict accordance with this Article shall result in either party having waived its claim. Written notice submitted by the Contractor must include pricing of the Claim in accordance with Article 10.

**18.3 CONTINUING CONTRACT PERFORMANCE:**

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 12.7 and Article 17 in its entirety, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**18.4 CLAIMS FOR ADDITIONAL COST:**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Article 13.4 or 13.5.

18.4.1 The Contractor hereby acknowledges that the Owner has the contractual right to delay the Work. Such right may not be exercised unreasonably. In addition, the Contractor shall not be entitled to additional compensation as a result of delay, even if

caused by the Owner or those for whom the Owner is responsible. The Contractor's sole remedy for any delay is an extension of time, notwithstanding the above.

#### **18.5 CLAIMS FOR ADDITIONAL TIME:**

If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

18.5.1 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled Work.

18.5.2 No increase in Contract Time will be allowed for Work which is delayed as a result of the Contractor's failure to timely submit, revise or re-submit shop drawings, product data and/or samples.

18.5.3 Any claim or dispute outstanding, or otherwise not settled between the Owner and Contractor may be brought by either party to the appropriate State of Massachusetts court having jurisdiction in the matter. The Appellant shall notify the other party promptly at the time of the filing of the matter in court.

#### **18.6 NOTIFICATION OF SURETY:**

In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the Surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the Claim.

#### **18.7 MECHANIC'S LIEN:**

If a Claim relates to or is the subject of a mechanic's lien or payment bond claim, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien/bond notice or filing deadlines.

### **ARTICLE 19. MISCELLANEOUS PROVISIONS**

#### **19.1 FOREIGN CORPORATIONS:**

Each and every contractor awarded a contract pursuant to this bid shall comply with the provisions of Massachusetts General Laws, Chapter 30, Section 39L and Chapter 156D as they relate to Foreign Corporations.

### **ARTICLE 20. TRAFFIC CONTROL AND BARRICADES**

Contractor shall coordinate with the police and fire departments and shall initiate all measures to include erection of barricades, to insure the safety of vehicular and pedestrian traffic in the area adjacent to construction, if required for the project.

#### **20.1 EXCAVATION**

No excavation shall be left open overnight.

## **20.2 NOTICE OF PAVEMENT CUTS**

Contractor shall notify the Town 24 hours in advance of any pavement cut and shall at that time supply any estimate of the duration of work involving disruption of traffic.

## **20.3 OVERNIGHT PAVEMENT CUTS**

Any paving cuts left overnight shall be marked with an approved illuminated warning device.

## **20.4 WARNING DEVICES**

Refer to Standard Specification Section 850 for general policy and description of warning devices.

## **ARTICLE 21. PARTIAL AWARD**

21.1 The Owner reserves the right to award all or part of the Contract item stated in the specification or to reduce the amount of work under any item by agreement with the lowest eligible bidder.

21.2 A number of alternate prices may be requested in the Bid and the Town reserves the right to award the Contract on the basis of any one of the proposed alternatives.

## **ARTICLE 22. PRE-BID CONFERENCE**

A non-mandatory pre-bid conference will be held at 10:00am on 4/29/2026 at the Department of Public Works 382 Falmouth Road, Hyannis, MA 02601. All bidders' questions regarding the project shall be submitted in writing through the Town's Bonfire online Procurement Portal via the Bonfire Opportunity Q&A by the date shown on the cover page of this bid document.

## **ARTICLE 23. ROAD OPENING/TRENCH PERMIT**

The Contractor, if required, shall apply to the Town for a Road Opening/Trenching Permit at least 24 hours in advance of commencement of work in the Town right-of-way or on Town property. A form for this purpose can be obtained from the Department of Public Works Administration and Technical Support Division. The cost of the Permit is \$160.00.

## **ARTICLE 24. NOTIFICATION OF UTILITIES**

In accordance with Chapter 502 of the Acts of 1980, the Contractor shall notify the applicable Water District, Eversource, Comcast, Verizon Telephone Company and National Grid, 72 hours, Saturdays, Sundays and holidays excluded prior to commencing work on the site. Evidence of this notification must be furnished to the Town in order to obtain the road opening permit of Article 23 of these Contract General Conditions.  
NOTIFICATION OF UTILITIES

The following utility companies which may maintain underground lines or equipment in the project area may be contacted for the required notification of excavation by a single call to DIG-SAFE CENTER 1-888-344-7233.

EVERSOURCE (electric)  
484 Willow Street

Brian Mello, Sr. Account Executive  
508-44-5832 (Emergencies 800-592-2000)

Yarmouth, MA 02673

[brian.mello@eversource.com](mailto:brian.mello@eversource.com)

VERIZON (telephone)  
44 Old Town House Road  
South Yarmouth, MA 02664

Kevin Overko  
774-218-6039  
[Kevin.overko@verizonwireless.com](mailto:Kevin.overko@verizonwireless.com)

NATIONAL GRID (gas)  
40 Sylvan Road  
South Yarmouth, MA 02664

Richard Logue  
781-907-3155 (O), 617-839-5268(C)  
[richard.logue@nationalgrid.com](mailto:richard.logue@nationalgrid.com)

COMCAST (cable)  
10 Old Townhouse Road  
South Yarmouth, MA 02664

Jeffrey Mello  
774-907-3155 (O), 617-839-5268 (C)  
[Jeffrey\\_mello@comcast.com](mailto:Jeffrey_mello@comcast.com)

Open Cape (fiber optic)  
3195 Main Street  
Barnstable, MA 02603

Steven Johnson  
508-524-5905  
[sjohnson@opencape.org](mailto:sjohnson@opencape.org)

In addition, direct contact must be made with the applicable water district and municipal utilities.

#### HYANNIS

Water Supply Division  
47 Old Yarmouth Road  
Hyannis, MA 02601

Hans Keijser  
508-775-0063  
[Hans.Keijser@town.barnstable.ma.us](mailto:Hans.Keijser@town.barnstable.ma.us)

#### CENTERVILLE, MARSTONS MILLS AND OSTERVILLE

C.O.M.M. Water Department  
1138 Main Street  
Osterville, MA 02655

Craig Crocker  
508-438-6691  
[CCrocker@commfiredistrict.com](mailto:CCrocker@commfiredistrict.com)

#### COTUIT

Cotuit Fire District Water Department  
4300 Falmouth Road  
Cotuit, MA 02635

Chris Wiseman  
508-438-2687  
[chris@cotuitwater.org](mailto:chris@cotuitwater.org)

#### BARNSTABLE VILLAGE

Barnstable Fire District Water Department  
1841 Phinney's Lane  
Barnstable, MA 02630

Tom Rooney  
508-362-6498  
[bfdwatersupt@comcast.net](mailto:bfdwatersupt@comcast.net)

#### TOWN WIDE

I.T. Department (fiber optic)  
367 Main Street  
Hyannis, MA 02601

James Benoit  
508-862-4624  
[james.benoit@town.barnstable.ma.us](mailto:james.benoit@town.barnstable.ma.us)

Water Pollution Control Division  
617 Bearnse's Way  
Hyannis MA 02601

Andrew Boulé  
508-790-6335  
[Andrew.Boule@town.barnstable.ma.us](mailto:Andrew.Boule@town.barnstable.ma.us)

Dig-Safe cannot be relied upon to locate electric utilities that are "privately" owned. This can include electric cables located in public ways that run from utility poles to buildings.

**END OF SECTION**

## SECTION 4 – SPECIAL CONDITIONS

### SPECIAL CONDITIONS

## SECTION 5 – BID SUBMITTAL REQUIREMENTS

Bidders must complete Required Bid Submittal Forms and other requested information in their entirety and upload to the procurement portal prior to the closing date in the format requested. Additional instructions available on the procurement portal and technical assistance available by emailing [Support@GoBonfire.com](mailto:Support@GoBonfire.com).

Bids must be accompanied by a bid security in the amount of five percent (5%) of the Bid Price in the form of a bid bond or certified, treasurer's or cashier's check issued by a responsible bank or trust company (herein "check"). Both the bid bond or check deposits are to be scanned and uploaded to the Town of Barnstable Bonfire Procurement Portal as a pdf file.

**IMPORTANT:** If bidder elects to make a bid deposit in the form of a "check" the bidder must scan a copy of the check and upload to the procurement portal where requested and have the check physically delivered to the Awarding Authority to the Town of Barnstable Procurement Office Lockbox, 367 Main Street, Hyannis, MA 02601, prior to the date and time of the bid opening.

### **Bid Submittal Checklist:**

- ✓ Form for General Bid
- ✓ Combined Certificate of Compliance
- ✓ Required 5% Bid Bond
- ✓ Contractor References
- ✓ List of Sub-Contractors
- ✓ List of All Equipment to be Used
- ✓ Proposed Construction Schedule
- ✓ Minority & Women Business Enterprise (MWBE) Letters of Intent

**Note: 100% Payment and Performance Bonds and Certificate of Insurance will be required with submission of the signed contract.**

**REQUIRED BID SUBMITTAL FORM – FORM FOR GENERAL BID**

**FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**

Town of Barnstable

**1. FORM FOR GENERAL BID**

To: Town of Barnstable, Awarding Authority

From: \_\_\_\_\_  
Name of Contractor

**A. Bid:** The undersigned proposes to furnish all labor and materials required for:

\_\_\_\_\_  
(FY26 Downtown Hyannis Great Streets Project )  
Town of Barnstable, Massachusetts, in accordance with the accompanying plans and specifications prepared by Tighe & Bond, Inc . as specified subject to the additions and deductions according to the terms of the specifications, for the lump sum price of:

\_\_\_\_\_  
Total Contract Price in Words (which governs)

Dollars \$ \_\_\_\_\_ (in Numbers)

**B. Alternate Prices:** The undersigned Bidder submits the following alternate prices, as described in the Bidding Documents, which are to be added to or deducted from the above stated Bid submittal, as may be selected by the Awarding Authority for inclusion into this Contract. (In the event that as alternate does not affect the Contract Price, the Bidder shall remark, “No Change”). The following prices for listed alternates will be accepted at the Owner’s discretion in the following order to the base contract lump sum Bid. The contract will be awarded based upon the lowest total price of base bid and accepted alternates.

**Alternate No. 1: N/A**

\_\_\_\_\_  
Total Alternate Price 1 in Words (which governs)

\$ \_\_\_\_\_ (Total Alternate Price 1 in Numbers )

**Alternate No. 2: N/A**

---

Total Alternate Price 2 in Words (which governs)

\$ \_\_\_\_\_ (Total Alternate Price 2 in Numbers)

**Rule For Award:**

The contract will be awarded to the lowest responsible, eligible bidder based on base bid (plus selected alternates, if acceptable).

- C. **Addendum:** This bid includes addenda numbered \_\_\_\_\_
- D. The undersigned, as bidder, declares under penalties of perjury that the only persons or parties interested in this Bid as principals are those named herein; that this Bid is made and submitted in good faith and without collusion or fraud with any other person, firm or corporation; that he has filed all state tax returns and paid all state taxes under law; that he has carefully examined the locations of the proposed work, the proposed form of contract, the standard specifications and plans therein referred to and the Special Conditions herein annexed; and he proposes and agrees, if this Bid is accepted, that he will contract with the Awarding Authority, in the form of the contract referred to herein and to be annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work and furnish all the materials specified in the contract, in the manner and time herein prescribed, and according to the requirements of the Engineer as therein set forth.
- E. The undersigned agrees that if presented with the Notice of Acceptance for this contract, he will within ten (10) days, Saturdays, Sundays and legal holidays excluded, execute a contract in accordance with the terms of this bid and furnish a performance bond and a payment bond, each of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the awarding authority and each in the sum of one hundred (100%) percent of the contract price, the premiums for which are to be paid by the Contractor and are included in the contract price; and within five (5) days of the bid opening, the bidder will submit all M/WBE required documentation, per Section 6, as applicable.

**Bidder accepts the provisions of the Contract as to liquidated damages.**

**Contractor Firm Name:** \_\_\_\_\_

**Contractor Address:** \_\_\_\_\_

**Authorized Signature:** \_\_\_\_\_  
**Print Name of Authorized Signer:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Telephone:

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Email:

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For Town of Barnstable tracking purposes, is the submitting bidder a state certified  
\_\_\_\_\_ MBE or \_\_\_\_\_ WBE \_\_\_\_\_ Not a MBE or WBE (please check which is applicable)

**REQUIRED BID SUBMITTAL FORM – COMBINED CERTIFICATIONS**

**CERTIFICATIONS REQUIRED BY LAW FOR PUBLIC CONSTRUCTION CONTRACTS**

You must **COMPLETE** and **SIGN** the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

**TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

**NON-COLLUSION**

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

**PUBLIC CONTRACTOR DEBARMENT**

The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

**OSHA TRAINING**

Pursuant to G.L. c. 30, §39S, the Contractor hereby certifies under penalties of perjury as follows:

- (1) Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;
- (2) 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 they shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) All employees to be employed in the work subject to this contract have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

**IF A FOREIGN CORPORATION**

I hereby certify that I comply with the provisions of Massachusetts General Laws, Chapter 30, Section 39L and Chapter 156D as they relate to Foreign Corporations.

**(Check one)**  Not Applicable       I comply and am registered and in good standing with the Massachusetts Secretary of State

**COMPLETE AND SIGN BELOW:**

\_\_\_\_\_  
Authorized Person's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title of Signatory

\_\_\_\_\_  
Name of Contractor

## REQUIRED BID SUBMITTAL FORM – CONTRACTOR REFERENCES

**FY26 Downtown  
Hyannis Great  
Streets Project:** \_\_\_\_\_

***BIDDER NAME:*** \_\_\_\_\_

Bidders must provide a list of at least five (5) references to which similar size and scope projects have been completed within the past five (5) years, along with a name of a contact person and phone numbers. (Municipalities desired, if applicable). Additionally, please attach to this form a complete list of ongoing projects, projects completed within the past two years including project contact names, values and contact names and numbers. The Town reserves the right to obtain additional references at their option. The Town shall interpret whether project references are similar in scope and size.

1. Owner: \_\_\_\_\_ Project Date: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value and Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Owner: \_\_\_\_\_ Project Date: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value and Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Owner: \_\_\_\_\_ Project Date: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value and Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REQUIRED BID SUBMITTAL FORM – REFERENCES - continued**

4. Owner: \_\_\_\_\_ Project Date: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value and Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Owner: \_\_\_\_\_ Project Date: \_\_\_\_\_  
Contact: \_\_\_\_\_ Phone: \_\_\_\_\_  
Project Value and Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REQUIRED BID SUBMITTAL FORM – LIST OF SUB-CONTRACTORS**

**LIST OF SUB-CONTRACTORS**

**FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**

Any person making a bid or offer to perform the work, shall in his or her bid or offer, set forth: (a) The name and location of the place of business of each subcontractor who will perform work or labor or render service to the prime Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the Commonwealth of Massachusetts who, under subcontract to the primary Contractor specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime Contractor's total bid; (b) The portion of the work which will be done by each such subcontractor under this act. The prime Contractor shall list only one subcontractor for each such portion as defined by the prime Contractor in his or her bid.

Any item of work, which does not set forth a designated Subcontractor will be done by the Prime Contractor.

<b>Name &amp; Address</b>	<b>Portion of Work</b>

\_\_\_\_\_  
(Prime Contractor)

Signed by: \_\_\_\_\_

Title: \_\_\_\_\_

**REQUIRED BID SUBMITTAL FORM – LIST OF ALL EQUIPMENT TO BE USED**

**LIST OF ALL EQUIPMENT TO BE USED**

**FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**

Contractor is required to submit for review copies of all applicable current inspections and certificates, as applicable. Use additional sheets as necessary.

**Proposed Equipment:**

Type/Name	Manufacturer	Age & Condition

Signed by: \_\_\_\_\_  
Title: \_\_\_\_\_

## SECTION 6 – MINORITY & WOMEN OWNED BUSINESS PARTICIPATION REQUIREMENTS

### TOWN OF BARNSTABLE

#### Minority and Woman Owned Business Participation Requirements

Minority Business Enterprise (MBE) and Women’s Business Enterprise (WBE) policies of the Town of Barnstable are applicable. The “Fair Share” construction **requirement** for this project is a minimum of **10.4%** combined MBE/WBE participation by state certified MBEs and WBEs. Within five days after the Bid Opening, the Bidder shall submit a “Schedule for Participation by Minority Business Enterprises” with accompanying Letters of Intent by each minority subcontractor proposed to be used by the Bidder. The Bidder shall submit a “Schedule for Participation by Women Business Enterprises” with accompanying Letters of Intent by each WBE subcontractor to be used by the Bidder including their SBA approval letter. The Letters of Intent shall include, among other things, the contract items the M/WBE is proposing to perform and the prices that the M/WBE proposed to charge for the work. Original signed copies of the letters will be required prior to the signing of a contract. The Schedule of Participation shall list these M/WBE subcontractors with whom the Contractor intends to contract and state the total price to be paid each M/WBE contractor as taken from each Letter of Intent submitted with the bid. Failure to comply with the requirements of this paragraph may be deemed to render a Bid non-responsive.

**See Town of Barnstable MBE/WBE Policy – Available on the Town of Barnstable website:** [https://www.townofbarnstable.us/Departments/purchasing/Bulletin\\_Board/Town-of-Barnstable-MinorityWoman-Business-Enterprise-Plan-\(MBEWBE\)-.pdf?tm=2/28/2023%208:44:24%20AM](https://www.townofbarnstable.us/Departments/purchasing/Bulletin_Board/Town-of-Barnstable-MinorityWoman-Business-Enterprise-Plan-(MBEWBE)-.pdf?tm=2/28/2023%208:44:24%20AM)

**Requirement – 10.4% combined MBE/WBE for this project**

## **SECTION 7 – PREVAILING WAGE RATES**

### **PREVAILING WAGE RATES**

**Prevailing wages, attached hereinafter, apply to this project and are a part of this Contract. This includes the applicable Davis Bacon wages determinations**

**SECTION 8 - OWNER-CONTRACTOR CONTRACT FORM**

**CONTRACT BETWEEN CONTRACTOR AND TOWN OF BARNSTABLE**

THIS CONTRACT is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the TOWN OF BARNSTABLE, Massachusetts, a municipal corporation with its main address at 367 Main Street, Hyannis, MA 02601 (the "Town") and **CONTRACTOR NAME** with legal address and principal place of business at \_\_\_\_\_ (the "Contractor"):

WITNESSETH: That for and in consideration of the payments to be made by the Town, the Contractor hereby agrees with the Town to commence and complete the **FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**. (the "Project"), for the consideration set forth in the Bid, as defined herein, and all extra work in connection therewith, under the terms as stated in the Invitation for Bid dated \_\_\_\_\_, 20\_\_ including Addendums \_\_ and ") including all drawings, specification and attachments thereto (the "IFB") and the additional terms and conditions set forth herein; and at the Contractor's own proper cost and expense to furnish all the materials supplies, machinery, equipment, tools, superintending, labor, insurance, and other accessories and services necessary to complete said Project in accordance with the prices stated in the Contractor's bid submittal dated \_\_\_\_\_, 20\_\_ (the "Bid"), all of which are made a part hereof by reference and collectively evidence and constitute the Contract.

Term – The Term of this Contract shall commence as of the date set forth above and shall terminate on \_\_\_\_\_, 20\_\_ unless sooner terminated as provided herein. Construction is anticipated to commence upon the issuance of a written notice to proceed by the Town after execution of this Contract.

Contract Value – Total payments to be made hereunder shall not exceed \$ \_\_\_\_\_ ( PRICE IN WORDS)

The Minority and Woman Owned Participation commitment for this project is \$ \_\_\_\_\_ (PRICE IN WORDS). Compliance with this commitment shall be monitored by the Town project manager and reported to the Contract Compliance Officer.

The Town agrees to pay the Contractor for the performance of this Contract, subject to additions and deductions, as provided in the General Conditions of the IFB, and make payments on account thereof as provided in Article 12 Payments and Completion in the General Conditions of the IFB.

LIQUIDATED DAMAGES: Contractor and Owner recognize that time is of the essence and that Owner will suffer financial loss if the Work is not completed within the times specified in the Contract, plus any extensions thereof allowed in accordance the General Conditions and this contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$ \_\_\_\_\_ for each day that expires after the time specified in the Contract for Substantial Completion until the Work is substantially complete unless otherwise extended per an agreed and approved change order for work that was not included in the original bid. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$ \_\_\_\_\_ for each day that expires after the

time specified in the Contract for completion and readiness for final payment until the Work is completed and ready for final payment.

Force Majeure – This Contract shall be subject to Force Majeure considerations. Either party hereto shall be excused from performance of any act under this Contract if prevented from the performance of any act required by reasons of strikes, lockouts, labor trouble, failure of power, fire, winds, Acts of God, riots, insurrections, war or other reason of a like nature not reasonably within the control of the party. The period for the performance of such obligation shall be extended for an equivalent period for no additional cost. Continued prevention from performance by such causes for periods aggregating sixty (60) or more days shall be deemed to render performance impossible, and either party shall thereafter have the right to terminate this Contract upon written notice to the other party.

Termination of Contract - Subject to the provisions of the section above explaining Force Majeure, if the Contractor shall fail to fulfill in a timely and satisfactory manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, conditions, or stipulations of this Contract, the Town may terminate this Contract in accordance with Article 17, Termination or Suspension of the Contract of the IFB.

Insurance - The Contractor shall maintain insurance with minimum limits as defined in the Invitation for Bid, Special Conditions for the entire duration of the project work to be performed, and provide a certificate of insurance with the Town of Barnstable named as an additional insured. Renewal certificates of insurance must be submitted to the Town of Barnstable, Risk Management, 367 Main Street, Hyannis, MA 02601 on a yearly basis.

Governing Law, Jurisdiction and Venue. This Contract shall be governed by and construed pursuant to the laws of the Commonwealth of Massachusetts without regard to its conflict of laws principles. Venue for any legal actions initiated concerning this Contract or arising in any way from and out of this Contract shall be brought in the appropriate state court sitting in Barnstable County, having jurisdiction over said claim. The parties waive any right they may have to venue in any other jurisdiction.

Massachusetts General Laws Chapter 30, sec. 39M hereby applies to this Contract. Prevailing Wage Rates dated 4/15/2026 apply to this Contract. The Contractor shall submit weekly certified payrolls with invoices to Town of Barnstable, Attn: NAME/ADDRESS. OSHA 10 certification required for all employees and subcontractors performing work on the job site. A one hundred percent (100%) payment bond and a one hundred percent (100%) performance bond are required with this signed Contract. Contractor hereby agrees to comply with all Town, State or Federal Directives and guidelines in regard to construction and health safety related to COVID-19 Pandemic.

It is expressly understood and agreed that Contractor shall at all times during the term of this Contract act as an independent contractor, and shall not have any authority to bind the Town. Contractor and Contractor's employees, agents and/or subconsultants shall not be deemed to be employees or agents of the Town. Further, nothing contained herein shall be construed to create a joint venture, partnership, association or other affiliation between the Contractor and the Town.

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and save harmless the Town and all of the Town officers, agents and employees from and against all suits and claims of liability of every name and nature, including attorney's fees and costs of defending any action or claim, for or on account of any claim, loss, liability or injuries to persons or damage to property of the Town or any person, firm, corporation or association

arising out of or resulting from any act, omission, or negligence of the Contractor, subcontractors and their agents or employees in the performance of the work covered by this Contract and/or their failure to comply with terms and conditions of this Contract, regardless of whether said claim is caused in part by the Town or any third party. The foregoing provisions shall not be deemed to be released, waived or modified in any respect by reason of any surety or insurance provided by the Contractor under this Contract with the Town. The provisions of this paragraph shall survive the termination or expiration of the Contract.

IN WITNESS WHEREOF, the parties to these present have executed this on the dates set forth below.

Approved as to form:

By:

By:

\_\_\_\_\_  
Karen L. Nober, Town Attorney

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Print Name of Authorized Signer & Title

By: TOWN OF BARNSTABLE

\_\_\_\_\_  
Mark S. Eills, Town Manager

I hereby certify that the Town of Barnstable has an appropriation to cover the cost of this Contract in accordance with Ch. 44 §31C of the Massachusetts General Laws.

By:

\_\_\_\_\_  
Mark Milne, Finance Director

**SIGNATORY AUTHORIZATION FORM**

DATE: \_\_\_\_\_

FY26  
DOWNTOWN  
HYANNIS GREAT  
STREETS  
PROJECT: \_\_\_\_\_

CWSRF#: \_\_\_\_\_  
*(as applicable)*

At a duly constituted meeting of \_\_\_\_\_ held on \_\_\_\_\_  
(Name of Corporation) (Date of Meeting)

at which all Directors were present or waived notice, it was voted that:

\_\_\_\_\_  
(Name of Officer) (Title of Officer)  
of this company, be and he/she is hereby authorized to execute contracts and bonds in the name and  
behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or  
obligation in this company's name on its behalf of such

\_\_\_\_\_ under seal of the company, shall be valid and  
(Officer)  
binding upon this company.

A TRUE COPY, ATTEST:

\_\_\_\_\_  
(Clerk of the Corporation) (Print Name & Signature)

Place of Business: \_\_\_\_\_  
\_\_\_\_\_

I hereby certify that I am the clerk of the \_\_\_\_\_ and that  
\_\_\_\_\_ is duly elected \_\_\_\_\_ of  
(Print Name of Officer) (Print Signature Name & Title)

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

(CORPORATE SEAL) \_\_\_\_\_  
(Clerk of the Corporation)

**IF A FOREIGN CORPORATION:** I hereby certify that I comply with the provisions of Massachusetts  
General Laws, Chapter 30, Section 39L and Chapter 156D as they relate to Foreign Corporations.

**(Check one)**  Not Applicable  I comply and am registered and in good standing with the  
Massachusetts Secretary of State.

**NOTARIZATION:**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, the undersigned notary public,

Personally appeared \_\_\_\_\_, proved to me through  
satisfactory evidence of identification, which were \_\_\_\_\_  
to be the person whose name is signed on the preceding or attached document in my presence.

\_\_\_\_\_  
Notary Public  
Print Name of Notary Public \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**SECTION 9 – LABOR AND MATERIALS PAYMENT BOND**

**LABOR AND MATERIALS PAYMENT BOND**

KNOWN ALL MEN AND WOMEN BY THESE PRESENT, THAT:

\_\_\_\_\_ as principal, and

\_\_\_\_\_ as surety, are held and firmly bound unto the Town of Barnstable, Hyannis, Massachusetts in the sum of:

\_\_\_\_\_ lawful money of the United State of America, to be paid to the Town of Barnstable, Hyannis, Massachusetts, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principal has made a contract with the Town of Barnstable, Hyannis, Massachusetts, bearing the date \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, for the construction project:

**FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**

Now the condition of this obligation is such that if the principal shall pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the surety of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purpose or items set out in, and subject to, the provisions of Massachusetts General Laws, Chapter 30, Section 39A, and Chapter 149, Section 29, as amended, then this obligation shall become null and void; otherwise it shall remain in full force and virtue.

IN WITNESS THEREOF, we hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**(Seal)**

By: \_\_\_\_\_

By: \_\_\_\_\_

**SECTION 10 – PERFORMANCE BOND**

**PERFORMANCE BOND**

KNOW ALL MEN AND WOMEN BY THESE PRESENT, THAT:

\_\_\_\_\_ as principal,

and

\_\_\_\_\_ as surety,

are held and firmly bound unto the Town of Barnstable, Hyannis, Massachusetts, in the sum of \$\_\_\_\_\_ lawful money of the United States of America, to be paid to the Town of Barnstable, Hyannis, Massachusetts, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principal has made a contract with the Town of Barnstable, Hyannis, Massachusetts, bearing the date of \_\_\_\_\_, 20\_\_\_\_, for the construction of Project:

**FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**

Now the condition of this obligation is such that if the principal shall well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of said contract on its part to be kept and performed during the original term of said contract any extensions thereof that may be granted by the Town of Barnstable, Hyannis, Massachusetts, with or without notice to the surety, and during the life of any guarantee required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions to said contract that may be hereafter made, notice to the surety of such modifications, alterations, changes or additions being hereby waived, then this obligation shall become null and void; otherwise it shall remain in full force and virtue.

IN WITNESS WHEREOF we hereunto set our hands and seal this \_\_\_\_\_ day of

\_\_\_\_\_, 20 \_\_\_\_.

Seal

By: \_\_\_\_\_

By: \_\_\_\_\_

**SECTION 11 – ACCEPTANCE OF BID NOTICE**

DATE: \_\_\_\_\_

\_\_\_\_\_  
(Contractor Name/Address)

Is hereby notified that their bid for the:

\_\_\_\_\_  
(FY26 Downtown Hyannis Great Streets Project)

In accordance with the Invitation for Bid dated \_\_\_\_\_

And Addendum(s) \_\_\_\_\_  
There to, in the amount of \_\_\_\_\_

\_\_\_\_\_  
(in words)

\$ \_\_\_\_\_ dated \_\_\_\_\_ Has been accepted.

It is requested that acknowledgement of this ACCEPTANCE be indicated by endorsement below by an authorized representative of the contractor, return by email to [procurementmailbox@barnstable.gov](mailto:procurementmailbox@barnstable.gov).

A formal Contract will be drawn up based on the terms of the Bid offered through the Town of Barnstable, subject to final approval by the Town Manager of the Town of Barnstable. Contractor shall provide a 100% payment and performance bond per the Invitation for Bid and supply a certificate of insurance naming the Town of Barnstable as an additional insured with the contract document.

\_\_\_\_\_  
Mark S. Ells, Town Manager

TO: Procurement Department  
NAME: Amber Patterson, Chief Procurement Officer  
ADDRESS: 367 Main Street  
Hyannis, MA 02601  
EMAIL: [Amber.Patterson@barnstable.gov](mailto:Amber.Patterson@barnstable.gov)

Receipt is hereby acknowledged for the above **ACCEPTANCE OF BID**

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

**SECTION 12 – APPLICATION & CERTIFICATION FOR PAYMENT**

CONTRACT #: \_\_\_\_\_

TITLE: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

TO: Town of Barnstable, Department of Public Works Owner's Project Manager

Application Date: \_\_\_\_\_

Period: From \_\_\_\_\_ to \_\_\_\_\_

NOTE: In order to receive payment for the monthly period covered by this application, this form shall be delivered to the Town of Barnstable on the third Monday of each month or the working day immediately preceding. Amounts not so applied for shall carry over to the next scheduled billing period.

**CHANGE ORDER SUMMARY**

Number	Date		
<b>TOTALS</b>			

ORIGINAL CONTRACT SUM	\$ _____
Net Change by Change Order	\$ _____
Contract Sum to Date	\$ _____
<b>TOTAL COMPLETED TO DATE</b>	<b>\$ _____</b>
Retainage	\$ _____
Total Earned Less Retainage	\$ _____
Less, Previous Certificates for Payment	\$ _____
Current Payment Due	\$ _____

The undersigned certifies that the work covered by this application has been completed in accordance with the Contract Documents, that all amounts have been paid by them for Work and Materials for which previous Certificates for Payments have been issued and payments received from the Town of Barnstable, that all Contractor and Sub-contractor payroll data for the time period covered by this application has been submitted to the Town and that the current payment shown herein is now due.

CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

**SECTION 13 – TAX EXEMPTION NUMBER**

TOWN OF BARNSTABLE

HYANNIS, MA 02601

(508) 862-4090

TAX EXEMPTION NUMBER

Date: \_\_\_\_\_

TO WHOM IT MAY CONCERN:

This is to certify that whenever

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purchases material and supplies for projects awarded by bid for the Town of Barnstable, all materials used on these projects are tax exempt.

Our Tax Exempt number is E-046-001-079.

\_\_\_\_\_  
Owner's Project Manager

**SECTION 14 – TOWN OF BARNSTABLE CHANGE ORDER**

CHANGE ORDER NO. \_\_\_\_\_ DATE: \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_ PROJECT NO. \_\_\_\_\_

CONTRACTOR'S NAME: \_\_\_\_\_

CONTRACTOR'S ADDRESS: \_\_\_\_\_

ORIGINAL CONTRACT AMOUNT	\$ _____
LIST ALL PREVIOUS CHANGE ORDERS	
CHANGE ORDER#(s)	\$ _____
AMOUNT OF THIS ORDER	\$ _____
<input type="checkbox"/> decrease <input type="checkbox"/> increase	\$ _____
REVISED CONTRACT AMOUNT	\$ _____

An  increase  decrease  no change of \_\_\_\_\_ calendar days in the contract is hereby authorized.

Change in date of  (substantial completion) or  (final completion)

This order covers the contract modification hereunder described:

List all Attachments:

The work covered by this order shall be performed under the same terms and conditions as included on the original construction contract.

Change Approved:

By: \_\_\_\_\_  
Contractor

Date: \_\_\_\_\_

Title:  
TOWN OF BARNSTABLE

By: \_\_\_\_\_  
Project Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Griffin Beaudoin, P.E., Town Engineer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Santos, P.E., DPW Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark Milne, Town Accountant  
Verify funds are available for this Change Order

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mark S. Ells, Town Manager

Date: \_\_\_\_\_

**SECTION 15 – NOTICE TO PROCEED**

TOWN OF BARNSTABLE  
NOTICE TO PROCEED

DATE: \_\_\_\_\_, 20\_\_\_\_

**SUBJECT CONTRACT: FY26 DOWNTOWN HYANNIS GREAT STREETS PROJECT**

To: \_\_\_\_\_

1. You are hereby given formal NOTICE TO PROCEED in accordance with the provisions of the subject contract.

2. It is requested that acknowledgment of this NOTICE be indicated by endorsement hereon, and that the original be returned to this office. The duplicate should be retained in your office files.

\_\_\_\_\_  
Paul Graves, P.E. Senior Project Manager

FIRST ENDORSEMENT

TO: Town of Barnstable  
Owner's Project Manager

Receipt is hereby acknowledged of the above **NOTICE TO PROCEED** under this contract.

**FY26 DOWNTOWN HYANNIS  
GREAT STREETS PROJECT:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Document 00811; Speciation Provisions, Monthly Price Adjustment for Hot Mix Asphalt (HMA) Mixtures

Document 00812; Speciation Provisions, Monthly Price Adjustment for Diesel Fuel and Gasoline

Document 00813; Speciation Provisions, Price Adjustment for Structural Steel and Reinforcing Steel

Document 00814; Speciation Provisions, Price Adjustment for Portland Cement Concrete Mixes

**DOCUMENT 00811- Speciation Provisions, Monthly Price Adjustment for Hot Mix Asphalt (HMA) Mixtures**

TOWN OF BARNSTABLE  
SPECIAL PROVISIONS  
MONTHLY PRICE ADJUSTMENT FOR HOT MIX ASPHALT (HMA) MIXTURES ENGLISH AND METRIC UNITS  
Revised: 07/08/2016

This provision applies to all projects using hot mix asphalt (HMA) mixtures containing liquid asphalt cement as stipulated in the Notice to Contractors section of the bid documents.

Price Adjustments will be based on the variance in price, for the liquid asphalt component only, between the Base Price and the Period Price. They shall not include transportation or other charges. Price Adjustments will occur on a monthly basis.

**Base Price**

The Base Price of liquid asphalt on a project as listed in the Notice to Contractors section of the bid documents is a fixed price determined by the Department at the time of the bid using the same method as the determination of the Period Price detailed below. The Base Price shall be used in all bids.

**Period Price**

The Period Price is the price of liquid asphalt for each monthly period as determined by the Department using the average selling price per standard ton of PG64-28 paving grade (primary binder classification) asphalt, FOB manufacturer's terminal, as listed under the "East Coast Market - New England, Boston, Massachusetts area" section of the Poten & Partners, Inc. "Asphalt Weekly Monitor". This average selling price is listed in the issue having a publication date of the second Friday of the month and will be posted as the Period Price for that month. The Department will post this Period Price on its website at <http://www.mhd.state.ma.us/> within two (2) business days following its receipt of the relevant issue of the "Asphalt Weekly Monitor". Poten and Partners has granted the Department the right to publish this specific asphalt price information sourced from the Asphalt Weekly Monitor. This method of period price determination was formerly called the New Asphalt Period Price Method. Separate website postings using both the New Asphalt Period Price Method and the Old Asphalt Period Price Method were discontinued after June 2013.

**Price Adjustment Determination, Calculation and Payment**

The Contract Price of the HMA mixture will be paid under the respective item in the Contract. Price Adjustments, as herein provided, either upwards or downwards, will be made after the work has been performed using the monthly period price for the month during which the work was performed.

Price Adjustments will be paid only if the variance from the Base Price is 5% or more for a monthly period. The complete adjustment will be paid in all cases with no deduction of the 5% from either upward or downward adjustments.

The Price Adjustment applies only to the actual virgin liquid asphalt content in the mixture placed on the job in accordance with the Standard Specifications for Highways and Bridges, Division III, Section M3.11.03.

Price Adjustments will be separate payment items. The pay item numbers are 999.401 for a positive price adjustment (a payment) and 999.402 for a negative price adjustment (a deduction). Price Adjustments will be calculated using the following equation:

Price Adjustment = Tons of HMA Placed X Liquid Asphalt Content % X RAP Factor X (Period Price - Base Price) No Price Adjustment will be allowed beyond the Completion Date of this Contract, unless there is a Department-approved extension of time.

\*\*\*\*\* END OF DOCUMENT 00811\*\*\*\*\*

**DOCUMENT 00812 - Speciation Provisions, Monthly Price Adjustment for Diesel Fuel and Gasoline**

TOWN OF BARNSTABLE  
SPECIAL PROVISIONS  
MONTHLY PRICE ADJUSTMENT FOR DIESEL FUEL AND GASOLINE –  
ENGLISH UNITS

Revised: 01/26/2009

This monthly fuel price adjustment is inserted in this contract because the national and worldwide energy situation has made the future cost of fuel unpredictable. This adjustment will provide for either additional compensation to the Contractor or repayment to the Commonwealth, depending on an increase or decrease in the average price of diesel fuel or gasoline.

This adjustment will be based on fuel usage factors for various items of work developed by the Highway Research Board in Circular 158, dated July 1974. These factors will be multiplied by the quantities of work done in each item during each monthly period and further multiplied by the variance in price from the Base Price to the Period Price.

The Base Price of Diesel Fuel and Gasoline will be the price as indicated in the Department's web site ([www.mhd.state.ma.us](http://www.mhd.state.ma.us)) for the month in which the contract was bid, which includes State Tax.

The Period Price will be the average of prices charged to the State, including State Tax for the bulk purchases made during each month.

This adjustment will be effected only if the variance from the Base Price is 5% or more for a monthly period. The complete adjustment will be paid in all cases with no deduction of the 5% from either upward or downward adjustments.

No adjustment will be paid for work done beyond the extended completion date of any contract.

Any adjustment (increase or decrease) to estimated quantities made to each item at the time of final payment will have the fuel price adjustment figured at the average period price for the entire term of the project for the difference of quantity.

The fuel price adjustment will apply only to the following items of work at the fuel factors shown:

ITEMS COVERED	FUEL FACTORS	
	Diesel	Gasoline
Excavation: and Borrow Work: Items 120, 120.1, 121, 123, 124, 125, 127, 129.3, 140, 140.1, 141, 142, 143, 144., 150, 150.1, 151 and 151.1 (Both Factors used)	0.29 Gallons / CY.	0.15 Gallons / CY
Surfacing Work: All Items containing Hot Mix Asphalt	2.90 Gallons / Ton	Does Not Apply

\*\*\*\*\* END OF DOCUMENT 00812 \*\*\*\*\*

TOWN OF BARNSTABLE

SPECIAL PROVISIONS

PRICE ADJUSTMENTS FOR STRUCTURAL STEEL AND REINFORCING STEEL FOR CONTRACTS BID ON OR AFTER APRIL 5, 2011

ENGLISH UNITS December 12, 2016

This provision applies to projects containing a price adjustment for structural steel and reinforcing steel as stipulated in the Notice to Contractors section of the Bid Documents. It applies to all structural steel as defined below and all reinforcing steel on the project. Compliance with this provision is mandatory, i.e., there are no "opt-in" or "opt-out" clauses. Price adjustments will be handled as described below and shall only apply to unfabricated structural steel material, consisting of rolled shapes, plate steel, sheet piling, pipe piles, steel castings and steel forgings, and unfabricated reinforcing steel bars.

Price adjustments will be variances between Base Prices and Period Prices. Base Prices and Period Prices are defined below.

Price adjustments will only be made if the variances between Base Prices and Period Prices are 5% or more. A variance can result in the Period Price being either higher or lower than the Base Price. Once the 5% threshold has been achieved, the adjustment will apply to the full variance between the Base Price and the Period Price.

Price adjustments will be calculated by multiplying the number of pounds of unfabricated structural steel material or unfabricated reinforcing steel bars subject to a price adjustment by the index factor calculated as shown below under Example of a Period Price Calculation.

Price adjustments will *not* include the costs of shop drawing preparation, handling, fabrication, coatings, transportation, storage, installation, profit, overhead, fuel costs, fuel surcharges, or other such charges not related to the cost of the unfabricated structural steel and unfabricated reinforcing steel.

The weight of steel subject to a price adjustment shall not exceed the final shipping weight of the fabricated part by more than 10%. Base Prices and Period Prices are defined as follows:

Base Prices of unfabricated structural steel and unfabricated reinforcing steel on a project are fixed prices determined by the Department and found in the Notice to Contractors section of the Bid Documents.

The Base Price Date is the month and year in which MassDOT opened bids for the project. This date is used to select the Base Price Index.

Period Prices of unfabricated structural steel and unfabricated reinforcing steel on a project are variable prices calculated based on the purchase date of the steel (Period Price Date) using an index of steel prices to adjust the Base Price.

The Period Price Date is the date the steel was delivered to the fabricator as evidenced by an official bill of lading submitted to the Department containing a description of the shipped materials, weights of the shipped materials and the date of shipment. This date is used to select the Period Price Index.

The index used for the calculation of Period Prices is the U.S. Bureau of Labor Statistics (BLS) Producer Price Index (PPI) Series ID WPU101702 (Not Seasonally Adjusted, Group: Metals and Metal Products, Item: Semi-finished Steel Mill Products.) As this index is subject to revision for a period of up to four (4) months after its original publication, no price adjustments will be made until the index for the period is finalized, i.e., the index is no longer suffixed with a "(P)".

Period Prices are determined as follows:

Period Price = Base Price X Index Factor

Index Factor = Period Price Index / Base Price Index

Example of a Period Price Calculation:

Calculate the Period Price for December 2009 using a Base Price from March 2009 of \$0.82/Pound for 1,000 Pounds of ASTM A709 (AASHTO M270) Grade A36 Structural Steel Plate.

The Period Price Date is December 2009. From the PPI website\*, the Period Price Index = 218.0.

The Base Price Date is March 2009. From the PPI website\*, the Base Price Index = 229.4.

Index Factor = Period Price Index / Base Price Index = 218.0 / 229.4 = 0.950

Period Price = Base Price X Index Factor = \$0.82/Pound X 0.950 = \$0.78/Pound

Since \$0.82 - \$0.78 = \$0.04 is less than 5% of \$0.82, no price adjustment is required.

If the \$0.04 difference shown above was greater than 5% of the Base Price, then the price adjustment would be 1,000 Pounds X \$0.04/Pound = \$40.00. Since the Period Price of \$0.78/Pound is less than the Base Price of \$0.82/Pound, indicating a drop in the price of steel between the bid and the delivery of material, a credit of \$40.00 would be owed to MassDOT. When the Period Price is higher than the Base Price, the price adjustment is owed to the Contractor.

\* To access the PPI website and obtain a Base Price Index or a Period Price Index, go to <http://data.bls.gov/cgi-bin/srgate>

END OF EXAMPLE.

The Contractor will be paid for unfabricated structural steel and unfabricated reinforcing steel under the respective contract pay items for all components constructed of either structural steel or reinforced Portland cement concrete under their respective Contract Pay Items.

Price adjustments, as herein provided for, will be paid separately as follows: Structural Steel

Pay Item Number 999.449 for positive (+) pay adjustments (payments to the Contractor)

Pay Item Number 999.457 for negative (-) pay adjustments (credits to MassDOT Highway Division)

Reinforcing Steel

Pay Item Number 999.466 for positive (+) pay adjustments (payments to the Contractor)

Pay Item Number 999.467 for negative (-) pay adjustments (credits to MassDOT Highway Division)

No price adjustment will be made for price changes after the Contract Completion Date, unless the MassDOT Highway Division has approved an extension of Contract Time for the Contract.

\*\*\*\*\* END OF DOCUMENT 00813\*\*\*\*\*

TOWN OF BARNSTABLE  
SPECIAL PROVISIONS  
PRICE ADJUSTMENT FOR PORTLAND CEMENT CONCRETE MIXES

This provision applies to all projects using greater than 100 Cubic Yards (76 Cubic Meters) of Portland cement concrete containing Portland cement as stipulated in the Notice to Contractors section of the Bid Documents. This Price Adjustment will occur on a monthly basis.

The Price Adjustment will be based on the variance in price for the Portland cement component only from the Base Price to the Period Price. It shall not include transportation or other charges.

The Base Price of Portland cement on a project is a fixed price determined at the time of bid by the Department by using the same method as for the determination of the Period Price (see below) and found in the Notice to Contractors.

The Period Price of Portland cement will be determined by using the latest published price, in dollars per ton (U.S.), for Portland cement (Type I) quoted for Boston, U.S.A. in the **Construction Economics** section of *ENR Engineering News-Record* magazine or at the ENR website <http://www.enr.com> under **Construction Economics**. The Period Price will be posted on the MassHighway website the Wednesday immediately following the publishing of the monthly price in ENR, which is normally the first week of the month.

The Contract Price of the Portland cement concrete mix will be paid under the respective item in the Contract. The price adjustment, as herein provided, upwards or downwards, will be made after the work has been performed, using the monthly period price for the month during which the work was performed.

The price adjustment applies only to the actual Portland cement content in the mix placed on the job in accordance with the Standard Specifications for Highways and Bridges, Division III, Section M4.02.01. No adjustments will be made for any cement replacement materials such as fly ash or ground granulated blast furnace slag.

The Price Adjustment will be a separate payment item. It will be determined by multiplying the number of cubic yards of Portland cement concrete placed during each monthly period times the Portland cement content percentage times the variance in price between the Base Price and Period Price of Portland cement.

This Price Adjustment will be paid only if the variance from the Base Price is 5% or more for a monthly period. The complete adjustment will be paid in all cases with no deduction of the 5% from either upward or downward adjustments.

No Price Adjustment will be allowed beyond the Completion Date of this Contract, unless there is a Department-approved extension of time.

\*\*\*\*END OF DOCUMENT 00814\*\*\*\*

**SECTION 16 - Supplemental General & Special Conditions Separate pdf**

**SECTION 17 - Technical Specifications - Separate PDF**

# General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban  
Development  
Office of Public and Indian Housing  
OMB Approval No. 2577-0157 (exp. 1/31/2027)

**Applicability. This form is applicable to any  
construction/development contract greater than \$250,000.**

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding the accuracy of this burden estimate and any suggestions for reducing this burden can be sent to the Reports Management Officer, Office of Policy Development and Research, REE, Department of Housing and Urban Development, 451 7th St SW, Room 4176, Washington, DC 20410-5000. When providing comments, please refer to OMB Approval No. 2577-0157. This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 2 CFR 200, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 75. The form is required for construction contracts awarded by Public Housing Agencies (PHAs). The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, PHAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality. HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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## 1. Definitions

- (a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.
- (b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.
- (c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.
- (d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.
- (e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.
- (f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Terms and Conditions (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.
- (g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.
- (h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.
- (j) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.
- (l) "Work" means materials, workmanship, and manufacture and fabrication of components.

## 2. Contractor's Responsibility for Work

- (a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.
- (b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.
- (c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.
- (d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.
- (e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.
- (f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.
- (g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.
- (h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

## 3. Architect's Duties, Responsibilities, and Authority

- (a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.

- (b) The Architect shall serve as the Contracting Officer's technical representative with respect to architectural, **Schedule** engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.
- (c) The Architect's duties and responsibilities may include but shall not be limited to:
- (1) Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor's designated representative at the site;
  - (2) Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
  - (3) Reviewing and making recommendations with respect to - (i) the Contractor's construction progress schedules; (ii) the Contractor's shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor's price breakdown and progress payment estimates; and,
  - (4) Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

#### 4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees

### Construction Requirements

#### 5. Pre-construction Conference and Notice to Proceed

of the work, and that it has investigated and satisfied itself

- (a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.
- (b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

#### 6. Construction Progress

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.
- (b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- (c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

#### 7. Site Investigation and Conditions Affecting the Work

- (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is

reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

- (b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

## 8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the

Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

## 9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be

promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown" "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place" that is "furnished and installed".

(d) "Shop drawings" means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be

required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

- (h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.
- (i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

#### 10. As-Built Drawings

- (a) "As-built drawings," as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. "As-built drawings" shall be synonymous with "Record drawings."
- (b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.
- (c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

#### 11. Material and Workmanship

- (a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.
- (b) Approval of equipment and materials.
- (1) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the

machinery and mechanical and other equipment.

When required by this contract or by the Contracting Officer, the Contractor shall also obtain the

Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting

approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- (2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- (3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.
- (4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.
- (5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.
- (6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.
- (c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

#### 12. Permits and Codes

- (a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any

waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer.

Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

- (b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

### 13. Health, Safety, and Accident Prevention

(a) In performing this contract, 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 Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and,
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and
  - (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.
- (c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract 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.
- (d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- (e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

### 14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

### 15. Availability and Use of Utility Services

- (a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.
- (b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

### 16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

- (a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.
- (b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- (c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- (e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.

- (f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.
- (g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.
- (h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels **Construction** when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- (i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.
- (j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- (k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

## 17. Temporary Buildings and Transportation of Materials

- (a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- (b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

## 18. Clean Air and Water

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

## 19. Energy Efficiency

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

## 20. Inspection and Acceptance of

- (a) Definitions. As used in this clause -
- (1) "Acceptance" means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.
- (2) "Inspection" means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.
- (3) "Testing" means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.
- (d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer's written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

- (f) The PHA may conduct routine inspections of the construction site on a daily basis.
- (g) The Contractor shall, without charge, replace or correct work found by the PHA not to conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor's right to proceed.
- (i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the **Construction PHA** considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA's right under any warranty or guarantee.

## 21. Use and Possession Prior to Completion

- (a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA's possession or use shall not be deemed an acceptance of any work under the contract.
- (b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA's possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water used in the areas

occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

## 22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

## 23. Warranty of

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of \_\_\_\_\_ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.
- (b) The Contractor shall remedy, at the Contractor's expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—
- (1) The Contractor's failure to conform to contract requirements; or
  - (2) Any defects of equipment, material, workmanship or design furnished by the Contractor.
- (c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.
- (d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.
- (e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:
- (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed in writing, for the benefit of the PHA; and,
  - (3) Enforce all warranties for the benefit of the PHA.
- (g) In the event the Contractor's warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor's, manufacturer's or supplier's warranty.

- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.
- (i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligation other than specifically to correct the work.
- (j) This warranty shall not limit the PHA's rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

**24. Prohibition Against Liens**

The Contractor is prohibited from placing a lien on the PHA's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

**Administrative Requirements**

**25. Contract Period**

this contract within \_\_\_\_\_ calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

**26. Order of Provisions**

accordance with the terms and conditions of the

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

**27. Payments**

retain ten (10) percent of the amount of progress

- (a) The PHA shall pay the Contractor the price as provided in this contract.
- (b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.
- (c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a

basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

- (d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved submitted not later than \_\_\_\_\_ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.
- (e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:

- (1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,
- (3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in subcontract.

**Name:**

Title:

Date:

- (f) Except as otherwise provided in State law, the PHA shall payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor's performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor's performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.
- (g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.

Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA's interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

- (h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.
- (i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned.
- (j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.
- (k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in no wise impair the obligations of any surety or sureties under any bonds furnished under this contract.

## 28. Contract Modifications

- (a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or

- responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.
- (c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA's approved threshold), such modification shall not be effective until the required approval is received by the PHA.

## 29. Changes

- (a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the work;
  - (3) PHA-furnished facilities, equipment, materials, services, or site; or,
  - (4) Directing the acceleration in the performance of the work.
- (b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.
- (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.
- (f) The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:

- (1) Direct Costs. Materials (list individual items, the quantity and unit cost of each, and the aggregate cost); Transportation and delivery costs associated with materials; Labor breakdowns by hours or unit costs (identified with specific work to be performed); Construction equipment exclusively necessary for the change; Costs of preparation and/ or revision to shop drawings resulting from the change; Worker's Compensation and Public Liability Insurance; Employment taxes under FICA and FUTA; and, Bond Costs when size of change warrants revision.
- (2) Indirect Costs. Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.
- (3) Profit. The amount of profit shall be negotiated and may vary according to the nature, extent, and complexity of the work required by the change. The allowability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this contract. The Contractor shall not be allowed a profit on the profit received by any subcontractor. Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs. On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the work.
- (g) The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the contract in its entirety.
- (h) The Contracting Officer shall act on proposals within 30 days after their receipt, or notify the Contractor of the date when such action will be taken.
- (i) Failure to reach an agreement on any proposal shall be a dispute under the clause entitled Disputes herein. Nothing in this clause, however, shall excuse the Contractor from proceeding with the contract as changed.
- (j) Except in an emergency endangering life or property, no change shall be made by the Contractor without a prior order from the Contracting Officer.

### 30. Suspension of Work

- (a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have

- been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

### 31. Disputes

- (a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- (e) The Contracting Officer's decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA's policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.
- (f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

### 32. Default

- (a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to

proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the **Convenience** Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

- (b) The Contractor's right to proceed shall not be terminated or the Contractor charged with damages under this clause if—
- (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and
  - (2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.
- (c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

### 33. Liquidated Damages

- (a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of \$ \_\_\_\_\_ Contracting Officer insert amount] for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.
- (b) If the PHA terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final

completion of the work together with any increased costs occasioned the PHA in completing the work.

- (c) If the PHA does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

### 34. Termination for

- (a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.
- (b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.
- (c) The Contracting Officer will act on the Contractor's claim within days (60 days unless otherwise indicated) of receipt of the Contractor's claim.
- (d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

### 35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

### 36. Insurance

- (a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:
- (1) Workers' Compensation, in accordance with state or Territorial Workers' Compensation laws.
  - (2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than \$ \_\_\_\_\_ [Contracting Officer insert amount]

per occurrence to protect the Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a "claims made" policy, then the following additional requirements apply: the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and the extended reporting period may not be less than five years following the completion date of the Contract.

(3) Automobile Liability on owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ \_\_\_\_\_

[Contracting Officer insert amount] per occurrence.

(b) Before commencing work, the Contractor shall furnish the PHA with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force. The Builder's Risk Insurance shall be for the benefit of the Contractor and the PHA as their interests may appear and each shall be named in the policy or policies as an insured. The Contractor in installing equipment supplied by the PHA shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by the PHA. The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. It need not be carried on landscape work. Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by the PHA. The Contractor may terminate this insurance on buildings as of the date taken over for occupancy by the PHA. The Contractor is not required to carry Builder's Risk Insurance for modernization work which does not involve structural alterations or additions and where the PHA's existing fire and extended coverage policy can be endorsed to include such work.

(c) All insurance shall be carried with companies which are financially responsible and admitted to do business in the State in which the project is located. If any such insurance is due to expire during the construction period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Contracting Officer. All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to the Contracting Officer.

### 37. Subcontracts

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

### 38. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

### 39. Equal Employment Opportunity

During the performance of this contract, the Contractor/Seller agrees as follows:

(a) The Contractor/Seller shall not discriminate against any employee or applicant for employment because of race color, religion, sex, sexual orientation, gender identity, disability, or national origin.

(b) The Contractor/Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall include, but not be limited to, (1) employment, (2) upgrading demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship

(c) The Contractor/Seller agrees to post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(d) The Contractor/Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(e) The Contractor/Seller shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor/Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor/Seller shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor/Seller shall permit

access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a that the Contractor/Seller is in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor/seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(i) The contractor/seller will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub[contractor/seller] or vendor. The [contractor/seller] will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the [contractor/seller] becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the [contractor/seller] may request the United States to enter into such litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

#### **40. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.**

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 prioritization requirements and shall state the minimum percentages of labor hour requirements established in the Benchmark Notice (FR-6085-N-04).

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75.

(e) Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(f) Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

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#### 41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

#### 42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

#### 43. Limitations on Payments made to Influence Certain Federal Financial Transactions

- (a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of **Acts** Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

#### 44. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the PHA harmless from loss on account thereof; except that the PHA shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Contracting Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

#### 45. Examination and Retention of Contractor's Records

- (a) The PHA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

#### 46. Labor Standards - Davis-Bacon and Related

If the total amount of this contract exceeds \$2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

- (a) Minimum Wages.
  - (1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall

be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics, including

helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the

amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;
  - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
  - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.
- (iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to

make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under

- the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.
- (f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- (g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.
- (i) Certification of eligibility.
- (1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- (3) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.
- (j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause. DOL posts current fines at: <https://www.dol.gov/whd/govcontracts/cwhssa.htm#cmp>
- (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.
- (k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

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47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

48. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

( ) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.