Terms and Conditions

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Attached as a separate document located on the Terms and Conditions Tab.

INSTRUCTIONS TO BIDDERS - SECTION 00100

SECTION 1

INTRODUCTION; DEFINITIONS

1.1 The Massachusetts Water Resources Authority (the "Authority") has invited bids in accordance with Section 00030, Advertisement for Bids.

1.2 These Instructions to Bidders, Section 00100 (these "Instructions"), are intended to assist bidders in the preparation of their bids, to call attention to various legal requirements, and to set forth certain conditions upon which bids are submitted and received.

1.3 The award of the Contract is governed by Section 39M of Chapter 30 of the Massachusetts General Laws. Certain provisions of the foregoing statute and of other applicable statutes are summarized in these Instructions. Whenever these Instructions or any other Contract Documents set forth or summarize applicable statutory provisions, whether or not the statutes have been specifically referred to, such summaries are for convenience only, do not purport to be complete or correct as summaries in any material particular, and shall in no respect supersede, expand or limit rights or duties of the Authority or bidders in matters governed by statute.

1.4 The following definitions shall apply in these Instructions and in the other Contract Documents:

1.4.1 The terms "Addenda" and "Addendum" shall mean written documents and/or drawings issued by the Authority prior to the deadline for bid submittal which correct, modify, add to, delete from, or change the Contract Documents.

1.4.2 All definitions set forth in Section 00700, General Conditions or the other Contract Documents are applicable to these Instructions.

SECTION 2

AVAILABILITY OF CONTRACT DOCUMENTS

2.1 Bidders may only access the Contract Documents by registering and joining the Planholders List for this contract through the MWRA Supplier Portal at https://supplier.mwra.com.

2.2 The Authority makes the Contract Documents available only for the purpose of obtaining bids on the Work of this Contract, and does not expressly or impliedly confer a license or permission of any kind to any person for any other use thereof.

SECTION 3

EXAMINATION OF CONTRACT DOCUMENTS

3.1 Before submitting a bid, each bidder must: (a) thoroughly examine the Contract Documents, (b) acquaint itself with local conditions that may in any manner affect cost, progress or performance of the Work, (c) familiarize itself with federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the Work, and (d) study and carefully correlate its observations with the requirements of the Contract Documents. A site visit will be held if indicated in Section 00030, Advertisement for Bids. Failure of a bidder to acquaint itself with the Contract Documents or to attend the site visit, if any, shall in no way relieve the bidder from any obligation with respect to its bid.

3.2 Each bidder shall promptly notify the Authority of any ambiguity, inconsistency or error it may discover upon examination of the Contract Documents, the site or other local conditions. The submission of a bid will constitute a representation by the bidder

that it has complied with every requirement of this Section and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work of this Contract.

3.3 Surveys and investigative reports of subsurface or other physical site conditions which have been relied upon in preparing the Contract Documents and are identified therein as being provided for reference only are not guaranteed or warranted as to accuracy or completeness and are not part of the Contract Documents.

3.4 The lands upon which the Work is to be performed, rights-of-way for access thereto and other lands designated for use by the Contractor in performing the Work are identified in the Contract Documents.

SECTION 4

ADDENDA AND INTERPRETATION OF CONTRACT DOCUMENTS

4.1 Corrections, modifications, additions, deletions or changes to any of the Contract Documents will be issued in the form of Addenda posted on the MWRA Supplier Portal prior to the deadline for bid submittal. Only Addenda so issued will become part of the Contract Documents.

4.2 Each bidder is solely responsible for determining that it has obtained all Addenda issued and acknowledging each Addendum in the space provided on the MWRA Supplier Portal. Failure to acknowledge all Addenda shall be cause for rejection of any bid if, in the sole discretion of the Authority, such unacknowledged Addenda contain matters of substance.

4.3 Any questions, requests for information, clarification or interpretation of the meaning of the Contract Documents must be entered on the MWRA Supplier Portal and, to be given consideration, must be received at least seven days prior to the deadline for bid submittal.

4.4 The Authority may, at its option, respond to any such question or request in the form of "Questions and Answers" appearing on the MWRA Supplier Portal. Such response shall represent the Authority's interpretation of the matter questioned or requested, but will not become part of the Contract Documents. Any modification to the Contract Documents arising out of any question or request will only be made by Addendum. In the event of a conflict between the Contract Documents and the Question and Answers, the Contract Documents shall prevail. In no event will oral modifications to the Contract Documents or oral responses to questions or requests for information be deemed binding on the Authority or given any force or effect.

SECTION 5

QUALIFICATIONS OF BIDDERS

5.1 The Authority may make such investigations as it deems necessary to determine the qualifications of any bidder and its ability to perform the Work of this Contract, and all bidders shall promptly furnish to the Authority all such evidence and information for this purpose as the Authority may request.

5.2 The investigation of a bidder may seek, without limitation, the information described below, and the three lowest bidders shall be prepared to submit such information to the Authority no later than two (2) business days after a request for such information from the Authority:

5.2.1 The number of years the bidder has been in business under its present name;

5.2.2 Whether the bidder is authorized to do business in Massachusetts;

5.2.3 Identification of at least three construction projects completed within the last five years, of comparable type of construction, complexity, and dollar size to the project set forth in the Contract Documents, including the following for each project:

(a) Brief description of the project, including specific types of construction;

(b) Name of owner, with address, telephone number, and contact person;

(c) Name of designer, with address, telephone number, and contact person;

(d) Dollar value of the project;

(e) Contract completion date and actual completion date;

5.2.4 Identification of all construction projects the bidder has in progress, and the total cost left to complete each project;

5.2.5 Identification of all projects the bidder has failed to complete, the reasons for the failure(s), and the name, address, and telephone number of the owner of each project not completed;

5.2.6 Identification of equipment, forces, and financial resources available to the bidder;

5.2.7 Identification of any fines issued by OSHA or any other state or federal agency for violations of any laws or regulations related to occupational health or safety; and

5.2.8 Other information related to the bidder's experience, ability, financial status, and business status.

5.3 In evaluating bids, the Authority will consider the qualifications of only those bidders whose bids are otherwise in compliance with the prescribed requirements.

SECTION 6

WAGE RATES

6.1 Minimum rates of wages for Work performed under this Contract will be as predetermined by the Commissioner of Labor and Industries of the Commonwealth of Massachusetts in accordance with the provisions of Sections 26 to 27C, inclusive, of Chapter 149 of the Massachusetts General Laws. Attention is called to serious penalties established under said Section 27C for violation of provisions of these sections. The schedule of wage rate determinations applicable to this Contract is included in Section 00830 of the Contract Documents. If the Contractor finds it necessary during the progress of the Work to secure a minimum wage rate for some additional classification not included in such schedule, it shall make a request for such additional classification to the Authority, which will obtain the classification and corresponding minimum wage rate from the Department of Labor and Industries and advise the Contractor accordingly. Section 27 of said Chapter 149 also requires that any person engaged in the construction of public works shall cause a legible copy of said schedule of wage rates to be kept posted in a conspicuous place at the site of the Work during the life of the Contract.

6.2 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 said Section 26, and such payments shall be considered as payments to persons under said Section 27 performing work as therein provided. Any employer engaged in the construction of public works who 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.

6.3 Section 27B of said Chapter 149 provides record-keeping requirements for the Contractor and each Subcontractor with respect to employees, hours, wages and other matters. Such records shall be furnished to the Commissioner of Labor and Industries upon request, signed by the employer or its 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. The Contractor and each Subcontractor under this Contract shall submit a copy of such records to the Authority on a weekly basis. The Contractor and each Subcontractor under this Contract shall preserve its payroll records for a period of three years from the date of completion of the Work. The Contractor and each Subcontractor shall furnish to the Commissioner of Labor and Industries within fifteen days after completion of its portion of the Work a statement, executed by the Contractor or Subcontractor who supervises the payment of wages, in the form appearing in Section 00830 of the Contract Documents with the schedule of wage rates. 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 Commissioner of Labor and Industries for such inspection.

6.4 Bidders' attention is called to Section 148 of Chapter 149 of the Massachusetts General Laws, relating to the weekly payment of wages.

SECTION 7

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS

7.1 Within three (3) business days after the deadline for bid submittal, the apparent low general bidder, including a bidder who is a DMBE or DWBE firm, shall submit a completed and signed "Letter of Intent" (Form EEO-92-007) for each DMBE and DWBE with which it intends to make a commitment ("first tier DMBE/DWBE Subcontractors"), and for each DMBE and DWBE with which the first tier DMBE/DWBE Subcontractor intends to make a commitment for the performance of Work and/or other business activity under the Contract. If the apparent low general bidder is requesting a waiver of all or part of the DMBE/DWBE participation percentage requirements specified in Section 00700, Paragraph 3.15, such bidder must submit a letter signed by its authorized

representative within such three (3) business day time period requesting a full or partial waiver of such DMBE/DWBE participation percentage requirements. If a waiver has been requested by the apparent low general bidder, such bidder must file all information required by Part III.C of Section 00810, including, as applicable, either a signed statement as detailed in Part III.C.3.a of Section 00810, or a signed "DMBE/DWBE Contractor Unavailability Certification" (Form EEO-92-001) within said three (3) business day period. Requests for a waiver will only be considered if all efforts to satisfy the specified DMBE and/or DWBE percentage participation requirements were made, and all information required by Part III.C of Section 00810 was developed, prior to the deadline for bid submittal.

7.2 Within three (3) business days after the deadline for bid submittal, the apparent low general bidder must also complete and submit the "Contractor's Certification" (Form EEO-90-001). The Authority also reserves the right to request the submission of Letter(s) of Intent, or any other information relevant to equal employment opportunity/affirmative action compliance, from any other general bidder.

7.3 The EEO forms referenced in this section can be accessed through a link on the MWRA Supplier Portal Home Page.

SECTION 8

SALES TAX

8.1 Section 6(f) of Chapter 64H of the Massachusetts General Laws exempts from Massachusetts sales tax building materials and supplies to be used in the Work, and a bidder shall not include any amount for sales tax in its bid. The words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling or repair of any building, structure, public highway, bridge, or other such public work, as well as such materials and supplies physically incorporated therein. Said words shall also include rental charges for construction vehicles, equipment and machinery rented specifically for use on the site of the Work or while being used exclusively for the transportation of materials for the Work. Copies of the Authority's Department of Revenue tax exempt certificates will be provided to the Contractor with the Notice to Proceed.

SECTION 9

PREPARATION AND SUBMISSION OF BIDS

9.1 Each bid shall be submitted on the MWRA Supplier Portal. All required entries shall be filled in and submitted by a person or persons legally authorized to bind the bidder to a contract.

9.2 The bid deposit shall be submitted as specified in Section 11 below.

SECTION 10

RECEIPT OF BIDS

10.1 The deadline for bid submittal will be the time stated in Section 00030, Advertisement for Bids, as it may be extended by written Addendum.

10.2 All bidders are cautioned to allow ample time for transmittal of bids. Each Bidder is solely responsible for completing its bid submission on the MWRA Supplier Portal prior to the deadline for bid submittal. The MWRA Supplier Portal will not permit submission of bids after the specified deadline. No paper bids will be accepted.

10.3 After submittal, a bid may only be modified, edited or withdrawn through the MWRA Supplier Portal prior to the deadline for bid submittal. Bids cannot be modified, edited or withdrawn by telephone, email, or any other means.

10.4 Bidders or their authorized representatives are invited to be present at the bid submittal deadline to view bid results. Bid results will be available to all planholders through the MWRA Supplier Portal after the deadline for bid submittal.

10.5 No bid may be withdrawn for ninety (90) calendar days after the deadline for bid submittal.

10.6 If the low bidder is a joint venture, it must submit a copy of the joint venture agreement within two (2) days after the deadline for bid submittal.

SECTION 11

BID DEPOSIT

11.1 As required by Section 39M of Chapter 30 of the Massachusetts General Laws, each bid must include a bid deposit in the amount of 5% of the value of the bid in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the Massachusetts Water Resources Authority. The term "value of the bid" shall mean that amount which is the sum of the Proposed Contract Price plus all alternates, unless one or more of such alternates call for a deduction from the Proposed Contract Price, in which case "value of the bid" shall mean the Proposed Contract Price plus the highest possible amount resulting from all possible combinations of alternates which could be included in the award of the Contract.

11.1.1 If bid security is in the form of a bid bond, the bid bond shall be:

11.1.1.1 in form satisfactory to the Authority substantially and materially conforming to the sample contained in the Contract Documents,

11.1.1.2 with a surety company qualified to do business in the Commonwealth of Massachusetts and satisfactory to the Authority, and

11.1.1.3 conditioned upon the faithful performance by the principal of the agreements contained in the bid.

11.1.1.4 A bid bond may either be obtained and submitted through Surety 2000, or an image of the bond and Power of Attorney may be attached where indicated on the Supplier Portal.

11.1.2 If bid security is in the form of a certified check or a treasurer's or cashier's check, an image of the front and back of the check may be attached where indicated on the Supplier Portal.

11.1.3 Any form of bid security may be submitted at the office of the Authority, Procurement Department, Second Floor, prior to the deadline for bid submittal. Bidders should email SupplierAdministration@mwra.com prior to the deadline for bid submittal to notify the Authority that bid security will be submitted in person.

11.2 All bid deposits, except those of the three lowest responsible and eligible bidders will be released within five days, Saturdays, Sundays and legal holidays excluded, after the deadline for bid submittal. The bid deposits of the three lowest responsible and eligible bidders will be released upon the execution and delivery of the Contract Documents or, if no award is made, within ninety (90) calendar days after the deadline for bid submittal; except that, if any bidder to whom the Contract is awarded fails to perform its agreement to execute the Authority-Contractor Agreement and furnish a Performance Bond and a Labor and Materials Bond, the bid deposit of such bidder will become the property of the Authority as liquidated damages for such failure; provided that the amount of the bid deposit which becomes the property of the Authority shall not, in any event, exceed the difference between the bid price of such bidder and the bid price of the next lowest responsible and eligible bidder; and provided further that, in case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the bidder, its bid deposit will be returned.

11.3 In addition to the provisions for the release of bid deposits in the foregoing Paragraphs, upon receipt of a bid bond after the deadline for bid submittal in the form and amount specified in Paragraph 11. 1 above, the Authority will return any bid deposit of a bidder forthwith.

SECTION 12

REJECTION OF BIDS

12.1 The Authority reserves the right to reject any or all bids if it is in the public interest to do so.

12.2 The Authority will reject any bid which is not accompanied by the required bid deposit or which does not conform with Section 39M of Chapter 30 of the Massachusetts General Laws. Any bid which is otherwise not prepared and submitted in accordance with all requirements of the Contract Documents, or which contains errors or irregularities of any kind, or which contains proposed prices for any class or item of Work which are, in the judgment of the Authority, substantially less or more than the actual cost to complete the Work, may be rejected by the Authority, at its sole discretion; provided, however, that the Authority reserves the right to waive any and all such matters.

12.3 The Authority reserves the right to reject any bid if the evidence submitted by, or the investigation of, the bidder fails to satisfy the Authority that such bidder is qualified and competent to carry out the obligations of the Contract Documents and to complete the Work in accordance therewith.

12.4 Subject to the foregoing, if the Contract Documents require submission of any information or data, not otherwise required by statute, and any bidder does not furnish such information or data, the Authority may, at its sole discretion, reject the bid of such bidder as incomplete; provided, however, that the Authority reserves the right to waive any such omission.

SECTION 13

AWARD AND EXECUTION OF CONTRACT

13.1 The Contract will be awarded to the lowest responsible and eligible bidder complying with the conditions and requirements provided in these Instructions and all other Contract Documents. The term "lowest responsible and eligible bidder" shall mean a bidder: (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the Work; (2) who shall certify that it is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work; (3) who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; (4) who, where the provisions of Section 8B of Chapter 29 apply, shall have been determined to be qualified thereunder; and (5) who obtains within 10 days of the notification of contract award the security by bond required under Section 29 of Chapter 149; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the Authority; provided further that, if there is more than one surety company, the surety companies shall be jointly and severally liable.

13.2 Award of the Contract will be made within ninety (90) calendar days after the deadline for bid submittal, and the bidder agrees that, notwithstanding any statutory or other provision to the contrary, it shall not withdraw its bid during that time period.

13.3 The successful bidder will be notified that its bid has been accepted and that it has been awarded the Contract. The successful bidder shall execute and submit the Authority-Contractor Agreement and furnish the required bonds and insurance certificates and policy wording/endorsements indicating evidence of insurance coverage required by Section 00820, within five days, Saturdays, Sundays and legal holidays excluded, after presentation of the Contract Documents.

13.4 The Authority will not enter into a contract with, and will not accept as a Subcontractor furnishing labor and materials for a part of any Work of this Contract, a foreign corporation which has not filed with the Secretary of State of the Commonwealth of Massachusetts all documents required to comply with the applicable provisions of the Massachusetts General Laws. The Authority will report to said Secretary of State and to the Department of Corporations and Taxation of the Commonwealth of Massachusetts any foreign corporation performing any Work under this Contract or any such subcontract, and any person, other than a corporation, performing Work under this Contract or any such subcontract, and residing or having a principal place of business outside the Commonwealth of Massachusetts.

13.5 By executing the Authority-Contractor Agreement, the Contractor certifies that it has complied with any and all state and local tax laws designated in Article 7 of Section 00500, the Authority-Contractor Agreement. Contractor's failure to certify compliance with said laws will be cause for the Authority not to enter into the Contract. The Authority further reserves the right to investigate, at any time, any information indicating that the Contractor has not complied with said laws. If the Authority determines that the Contractor has not complied with said laws, it will decline to enter into the Contract and may decline to extend the Contract.

SECTION 14

SUBMITTALS REQUIRED PRIOR TO EXECUTION OF THE CONTRACT

14.1 Within five days, Saturdays, Sundays and legal holidays excluded, after receipt of an award letter, the successful bidder must furnish the following certificates and documents to the Authority together with the Authority-Contractor Agreement, executed in the number of originals provided with the award letter:

14.1.1 A Performance Bond and a Labor and Materials Bond, each in the amount of the Contract Price, on the forms contained in the Contract Documents. Each attorney-in-fact who executes such a bond on behalf of the surety must affix thereto a certified and current copy of its Power of Attorney.

14.1.2 Certificates and policy wording/endorsements evidencing required insurance coverage in accordance with the provisions of the insurance requirements contained in Section 00820 of the Contract Documents.

14.1.3 An affidavit evidencing compliance with applicable laws of the Commonwealth relating to corporations and a Vote of

Corporation evidencing corporate authority with respect to execution of the Contract Documents on behalf of the Contractor.

14.1.4 If the amount of this Contract is greater than $100,000:

14.1.4.1 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.

14.1.4.2 A statement prepared and signed by an independent certified public accountant, stating that s/he has examined the statement of management on internal accounting controls, and expressing an opinion as to:

(a) whether the representations of management 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.

14.1.4.3 A financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. All statements shall be accompanied by an accountant's report. The financial statement shall also be filed with the Deputy Commissioner of Capital Asset Management.

SECTION 15

ACCESS TO WORK

15.1 Representatives of the Commonwealth and any local agencies having a direct interest in the Work shall have access to the Work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and inspection.

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS (PRICE ADJUSTMENTS) - SECTION 00110

Add the following after Section 15 of Section 00100, Instructions to Bidders:

SECTION 16 - PRICE ADJUSTMENTS

16.1 This Contract contains Base Prices for Diesel Fuel; Gasoline; Liquid Asphalt; and Portland Cement Contained In Cast-in-place Concrete and provisions for price adjustments for those commodities in accordance with Chapter 30, Section 38A of the Massachusetts General Laws.

A. The Base Price(s) are specified below and will be updated five days prior to the final bid opening date.

B. The cost of Diesel Fuel, Gasoline, Liquid Asphalt, and Portland Cement Contained In Cast-in-place Concrete shall be included in the lump sum price bid in Item 1 of the Bid Schedule.

C. Price adjustments will be paid only when the variance between the Base Price and the Period Price for the month during which the cost is incurred exceeds plus or minus five percent (5%). A price adjustment will either result in additional compensation to the Contractor or repayment to the Authority, depending on whether there is an increase or decrease.

D. Price adjustments will be based on the actual quantity included in a monthly Application for Payment, as supported by paid invoices, and will be made after the work has been performed, using the applicable Period Price.

i. The Contractor will be compensated for price adjustments from the allowance in the Bid Schedule in Section 00300.

ii. The Authority will be repaid from retainage.

iii. The entire difference between the Base Price and Period Price for the month in which the cost was incurred will be paid.

16.2 Base Prices and basis of payment are as follows:

A. Diesel Fuel and Gasoline

Diesel Fuel - Base Price: $5.413 PER GALLON (including state tax)

Gasoline - Base Price: $3.665 PER GALLON (including state tax)

1. Price adjustments will be based on the Period Price of Gasoline and Diesel Fuel for each monthly period as it appears on the Massachusetts Department of Transportation (MassDOT) website [http://www.massdot.state.ma.us]

2. The price adjustment only applies to actual fuel usage during each month for site dedicated equipment requiring gasoline or diesel fuel, including but not limited to construction equipment, trucks, and bypass pumps.

3. The price adjustment will be determined by multiplying the number of gallons used during the applicable monthly period times the difference between the Base Price and the Period Price of Diesel Fuel or Gasoline.

B. Liquid Asphalt

Base Price - $712.50 PER TON

1. Price adjustments will be based on the New Asphalt Period Price for each monthly period as it appears on the MassDOT website. The Period Price will be posted on the MassDOT website within two (2) business days following receipt of this issue.

2. The Price Adjustment only applies to the actual virgin liquid asphalt content in the mixture placed.

3. The Price Adjustment will be determined by multiplying the number of tons of hot mix asphalt mixtures placed during the applicable monthly period times the liquid asphalt content percentage times the difference between the Base Price and the Period Price of Liquid Asphalt.

C. Portland Cement Contained In Cast-in-place Concrete

Base Price - $452.13 PER TON

1. Price adjustments will only be made on contracts using greater than 100 cubic yards of concrete containing Portland cement.

2. Price adjustments will be based on the Period Price of Portland cement for each monthly period as it appears on the MassDOT website. The Period Price will be posted on the MassDOT website the Wednesday immediately following the publication of the monthly price in ENR.

3. The price adjustment only applies to the actual Portland cement content in the mix placed based on the approved concrete mix design. No adjustments will be made for any cement replacement materials such as fly ash or ground granulated blast furnace slag.

4. The price adjustment will be based on the variance between the Base Price and the Period Price for the Portland cement component only and will not include transportation or other charges.

5. The price adjustment will be determined by multiplying the number of cubic yards of Portland cement concrete placed during each month times the Portland cement content percentage times the variance between the Base Price and the Period Price of Portland cement.

AUTHORITY CONTRACTOR AGREEMENT - SECTION 00500

Attached as a separate document located on the Terms and Conditions Tab.

GENERAL CONDITIONS - SECTION 00700

ARTICLE 1 - DEFINITIONS; CONTRACT DOCUMENTS

1.1 DEFINITIONS

Wherever used in the Contract Documents, the following terms shall have the meanings indicated, which shall be applicable to both the singular and plural thereof:

1.1.1 Authority, MWRA and Owner - The Massachusetts Water Resources Authority. The Authority may act directly or through its properly authorized representatives.

1.1.2 The term "approved" or "approval" means written approval.

1.1.3 Change Order - A written order to the Contractor authorizing an addition to, deletion from or revision in the Work, or authorizing an adjustment in the Contract Price or Contract Time.

1.1.4 Contract Documents - The Contract, including Advertisement For Bids (Section 00030); Instructions to Bidders (Section 00100); General Bid Response; Authority-Contractor Agreement, Performance Bond, Labor and Materials Bond (Section 00500); General Conditions of the Contract (Section 00700), Supplementary Conditions (Section 00800); Specifications; Drawings; Addenda and other bid documents; Notice to Proceed; Change Orders and other written amendments to the Contract executed by the Authority and the Contractor.

1.1.5 Contract Price - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.

1.1.6 Contract Time - The time period for the completion of the Work stated in Division One of the Contract Documents.

1.1.7 Contractor - The person, firm, corporation, or joint venture with whom the Authority has executed the Authority-Contractor Agreement, Section 00500.

1.1.8 Drawings - The graphic and pictorial portions of the Contract Documents showing the design, location, scope and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.9 Early (Late) Dates - Early (Late) times of performance for the Work in the Progress Schedule.

1.1.10 Engineer - The person holding the position or acting in the capacity of Chief Engineer, or his or her designee.

1.1.11 Field Order, Field Transmittal Order - A written order issued by the Authority to the Contractor which orders a minor change in the Work in accordance with Subparagraphs 1.2.10 and 2.1.8, and which does not involve an adjustment in the Contract Price or an extension of the Contract Time. Such Field Order may be issued in the form of a Field Transmittal Memorandum ("FTM").

1.1.12 Notice of Award - Written notice from the Authority to the successful bidder of the acceptance of the bidder's bid.

1.1.13 Notice to Proceed - A written communication issued by the Authority to the Contractor authorizing it to proceed with the Work and establishing the date of commencement of the Work.

1.1.14 Product Data - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product, assembly or system for some portion of the Work.

1.1.15 Project - The undertaking to be performed as provided in the Contract Documents.

1.1.16 Samples - Physical examples which illustrate materials, products, equipment or workmanship and which, when approved in accordance with the Contract Documents, establish standards by which the Work will be judged.

1.1.17 Where the words "shown" or "shown on Drawings" are used in the Specifications, such word(s) shall be construed to mean "noted", "indicated", "scheduled", "detailed", or any other diagrammatic or written reference made on any of the Contract Documents, including both Drawings and Sections of the Specifications.

1.1.18 The word "site" shall mean the Project site as shown on the Drawings.

1.1.19 Shop Drawings - All drawings, prints, diagrams, illustrations, brochures, schedules and other data which are prepared by the Contractor, a Subcontractor, manufacturer, Supplier or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

1.1.20 Specifications - That portion of the Contract Documents consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards and workmanship.

1.1.21 Subcontractor - An individual, firm or corporation having a contract with the Contractor or with any other Subcontractor for the performance of a part of the Work, regardless of tier.

1.1.22 Substantial Completion - As defined in Paragraph 10.3.

1.1.23 Supplier - Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

1.1.24 Total Float - Number of working days by which a part of the Work in the Progress Schedule may be delayed from its Early Dates without necessarily extending the Contract Time.

1.1.25 Work - All labor, materials, equipment, supervision, and services required by, or reasonably inferred from, the Contract Documents, which are necessary for the construction and completion of the Project.

1.1.26 Unless the Contract Documents specifically provide otherwise or the context clearly requires a different meaning, the terms "directed", "required", "permitted", "ordered", "designated", "prescribed", and words of like import shall imply the direction, requirements, permission, designation or order of the Authority; and "approved", "acceptable", and words of like import shall mean approved by, or acceptable or satisfactory to the Authority as to form and apparent compliance with the Contract Documents; provided, however, that no approval or lack of objection shall relieve the Contractor from complying with the Contract Documents, which shall be and remain the sole responsibility of the Contractor; and "necessary", "reasonable", "proper", "correct", and words of like import shall mean necessary, reasonable, proper or correct in the judgment of the Authority.

1.2 INTERPRETATION OF CONTRACT DOCUMENTS

1.2.1 This Contract is subject to all laws, regulations, codes, rules and orders of the United States of America, the Commonwealth of Massachusetts and other public authorities, and all amendments thereto, and to all contracts and other agreements between the Authority and any such governmental or public authorities, and where any requirements contained herein do not conform to or are inconsistent with such laws, regulations, codes, rules, orders or agreements to which the Contract is subject or by which it is governed, such laws, regulations, codes, rules, orders or agreements shall have precedence over any matters set forth herein. Statutes, regulations, and portions and summaries thereof which are set forth or referred to herein shall be construed to include all amendments thereto effective as of the date of opening of bids. The Authority makes no representation as to and assumes no responsibility for the correctness or completeness of such statutory matters referred to or set forth herein.

1.2.2 By submitting a bid, and by executing the Authority-Contractor Agreement, Section 00500, the Contractor represents that it has examined and understands all of the Contract Documents and has visited the site, examined and familiarized itself with the local conditions under which the Work is to be performed, including any work in progress under previously awarded contracts, and correlated its observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to describe a functionally complete facility or result, or portion thereof, and it is intended that the Contractor shall furnish all labor, supervision, materials, tools and equipment necessary for the execution of the Work in accordance therewith, including all work incidental to or reasonably inferable from the Contract Documents as being necessary to produce the intended results and to complete the Project in a satisfactory manner, ready for use, occupancy or operation by the Authority.

1.2.4 The Authority may, as it deems desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work reasonably inferable from the Contract Documents. Such additional drawings and instructions shall become a part of the Contract Documents without modification of the Contract Time or the Contract Price, and the Contractor shall carry out the Work in accordance therewith.

1.2.5 In the event of conflicts, inconsistencies or discrepancies among the Contract Documents or within any of the Contract Documents, to the extent applicable the better quality or greater quantity of work, or higher performance requirement shall be provided without change in the Contract Price. In the event of such conflicts, inconsistencies or discrepancies which do not relate to the quality or quantity of work, the Contractor shall request instructions or interpretations from the Authority. In resolving conflicts, errors or discrepancies, the Contract Documents shall be given precedence as may be reasonably inferred by the Authority as being consistent with their overall intent and required to produce the intended result. Subject to such determination by the Authority, the Contract Documents shall be given precedence in the following order: Change Orders, Authority-Contractor

Agreement, Notice to Proceed, Addenda, Special Conditions, General Conditions, Supplementary Conditions (except that Section 00840 only governs the relationship between the Authority and its funding source and does not apply to the Contractor), Division 1, Divisions 2 through 16 of the Specifications, Contract Drawings, Advertisement for Bids, Instructions to Bidders, General Bid Response, Bonds, Insurance Certificates.

1.2.5.1 If the issue of priority involves Divisions 2 through 16 of the Specifications and the Drawings, in all cases, figured dimensions shall govern over scaled dimensions, but work not dimensioned shall be as directed by the Authority, and work not particularly shown, identified, sized, or located shall be the same as similar parts that are shown or specified. Detail Drawings shall govern over general Drawings, larger scale Drawings take precedence over smaller scale Drawings, Change Order Drawings govern over Contract Drawings, and Contract Drawings govern over Shop Drawings.

1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

1.2.7 Where codes, standards, requirements or publications of public or private bodies are referred to in the Contract Documents, references shall be understood to be to the latest revision in effect on the date of opening of bids, except where otherwise indicated. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.8 The Drawings shall not be scaled for dimensions. If figured dimensions are not given on the Drawings, the Contractor shall request same from the Authority giving reasonable advance notice.

1.2.9 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by a Change Order.

1.2.10 The Contract Price and the Contract Time may only be changed by a Change Order. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by:

1.2.10.1 a Field Transmittal Order,

1.2.10.2 the Authority's review of a Shop Drawing, sample or other submittal, or

1.2.10.3 the Authority's written instruction, interpretation or clarification.

1.2.11 If any term or provision of any of the Contract Documents, or the application thereof to any party or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remaining provisions of the Contract Documents, or the application of such term or provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of each of the Contract Documents shall be valid and shall be enforced to the fullest extent permitted by law.

1.2.12 The Contract Documents furnished to the Contractor, and all copies thereof and the copyright therein, are the property of the Authority. They are to be used only with respect to this Project, and are to be returned or satisfactorily accounted for to the Authority, on request, upon final completion of the Work.

ARTICLE 2 ADMINISTRATION OF THE CONTRACT

2.1 AUTHORITY'S ADMINISTRATION OF THE CONTRACT

2.1.1 The Authority will provide administration of the Contract as provided in the Contract Documents. The Authority may act directly or through its properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

2.1.2 The Authority will not be responsible for construction means, methods, techniques, sequences or procedures, quality control or construction safety, which shall be and remain the sole responsibility of the Contractor.

2.1.3 The Authority and its agents and employees shall at all times have access to the Work and areas occupied by the Contractor. The Contractor shall provide safe and proper facilities for such access and observation and inspection of the Work.

2.1.4 Based on the Authority's observations and its evaluations of the Contractor's periodic estimates and requests for payment, the Authority will review and verify the amounts owing to the Contractor and will make payment in such amounts, as provided in Paragraph 10.3.

2.1.5 The Authority will decide all questions which may arise as to the performance, quality, acceptability, fitness, and rate of

progress of the Work. The Authority will interpret the requirements of the Contract Documents and will make recommendations regarding claims, disputes and other matters in question relating to performance thereunder by the Contractor, subject to the provisions of the Contract Documents and of Section 39J of Chapter 30 of the Massachusetts General Laws.

2.1.6 Pursuant to Section 39P of Chapter 30 of the Massachusetts General Laws, the Authority will render decisions on interpretation of the Contract Documents, approval of equipment, material or any other approval, or progress of the Work 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 Authority will, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made.

2.1.7 All materials and all portions of the Work shall be subject to inspection by the Authority. The Authority may reject work which does not conform to the Contract Documents. The Authority shall be furnished with such information and assistance, including, without limitation, labor, tools, equipment and water or land transportation, by and at the expense of the Contractor as is required to make complete and detailed inspections. Whenever the Authority considers it necessary or advisable for the implementation of the intent of the Contract Documents, it may require special inspection or testing of portions of the Work in accordance with Article 8 whether or not such work be then fabricated, installed or completed. However, neither the Authority's right to act under this Subparagraph nor any decision made by it in good faith either to exercise or not to exercise its rights under this Subparagraph shall give rise to any duty or responsibility of the Authority to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.1.8 The Authority may issue Field Orders for minor changes in the Work.

2.1.9 If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to provide labor that can work in harmony with other elements of labor employed or to be employed on the Work or furnishes or performs the Work in a way that the completed Work will not conform to the Contract Documents or will result in a threat to life or property, or if, in the Authority's opinion, during performance of the Work, the Contractor fails to perform the Work in a safe manner in accordance with Article 11 or fails to conform to any rule, regulation or industry standard relative to safety, the Authority may, but shall not have the obligation to, order the Contractor to stop the Work, or any portion in question, until the cause for such order has been eliminated; however, this right of the Authority to stop the Work shall not give rise to any duty on the part of the Authority to exercise this right for the benefit of the Contractor, Subcontractors, employees of either or any other person on site. The Contractor shall not be allowed to recover any resultant costs, and the Contractor shall reimburse the Authority for all direct, indirect or consequential costs of the Authority's attributable to such order to stop the Work. The Authority shall be entitled to withhold a set-off against any amounts recommended for payment on this or any other contract between the Authority and the Contractor. The Contractor shall remain responsible for maintaining schedule and shall not be entitled to any extension in Contract Time or any increase in Contract Price.

ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES

3.1 DUTY TO REVIEW CONTRACT DOCUMENTS AND SITE CONDITIONS

3.1.1 Before starting the Work, and at such frequent intervals during the progress thereof as may be necessary for discovery and resolution prior to adversely affecting construction of the Project, the Contractor shall carefully study and compare the Contract Documents with each other and shall at once report to the Authority all errors, inconsistencies and omissions it discovers. Any necessary change shall be ordered as provided in Article 13, subject to the requirements of Paragraph 1.2 and other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Authority, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents it could have discovered such errors, inconsistencies or omissions, the Contractor shall bear all costs arising therefrom and waives all claims for any increase in the Contract Price or for an extension in the Contract Time or any milestone, due to extra work made necessary thereby.

3.1.2 The Contractor shall give the Authority timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail or otherwise required to permit the proper progress of the Work.

3.1.3 The Contractor shall not proceed with any work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Authority as provided in Subparagraph 3.1.2. If the Contractor proceeds with such work without obtaining further drawings or instruction, it shall correct at its own expense work incorrectly done.

3.2 PROGRESS SCHEDULE; SCHEDULE OF VALUES

3.2.1 Within ten days after the Notice to Proceed date, unless otherwise specified in the Specifications, the Contractor shall prepare and submit to the Authority for review, in each case in such form and supported by such data to substantiate its accuracy as the Authority may require:

3.2.1.1 An estimated progress schedule indicating the starting and completion dates of the various stages of the Work including any information and following any form as may be specified in the Specifications;

3.2.1.2 A preliminary schedule of Shop Drawing, Product Data and Sample submittals; and

3.2.1.3 A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such sums will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by Contractor at the time of submittal.

3.2.2 The Authority will review the schedules submitted pursuant to Subparagraph 3.2.1 and the Contractor shall make changes and corrections in such schedules as requested by the Authority and resubmit such schedules until approved by the Authority. The Authority shall have the right at any time to revise the schedule of values if, in the Authority's sole opinion, such schedule of values does not accurately reflect the value of the Work performed.

3.3 SUPERVISION BY CONTRACTOR

3.3.1 The Contractor shall supervise and direct the Work competently and efficiently, using its best skill and attention. It shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.

3.3.2 The Contractor shall employ and maintain on the Work a qualified full time Project Manager who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The Project Manager shall have full authority to act on behalf of the Contractor. No change shall be made in the Project Manager without the Authority's approval, and the Authority may require the replacement of the Project Manager with or without cause. The Project Manager and necessary assistants shall be in attendance at the site at all times during the progress of the Work until final completion of the Work. The Contractor shall coordinate and supervise the work of all Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Project Manager and authorized representatives of any Subcontractors as requested by the Authority, shall attend construction coordination meetings and all other Project meetings. The Project Manager shall represent the Contractor and notices or other communications given to it shall be as binding as if given to the Contractor directly. In addition to the foregoing, the Contractor shall have on site other Superintendents, such as but not limited to safety superintendents, maintenance superintendents, and equipment vendor representatives, at such times as may be deemed necessary by the Contractor or the Authority to prosecute the Work.

3.3.3 The Contractor shall be responsible for the acts and omissions of its employees, Subcontractors, and their agents and employees, and other persons performing any of the Work.

3.3.4 The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Authority in its administration of the Contract, or by inspections, tests or approvals required or performed under Article 8 by persons other than the Contractor.

3.3.5 Where the Contract Documents specify particular construction means, methods, techniques, sequences or procedures, such are to be used by the Contractor in performing the Work. If none are specified the operations of the Contractor shall be such as to produce at least the quality of Work required by the Contract Documents and the actual determination of whether or not operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor, who shall notify the Authority in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those specified in the Contract Documents. All loss, damage or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents, and the Contractor shall have no claim for any additional cost or increase in Contract Time or extension of a milestone unless the Contractor has given timely notice to the Authority in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Contractor has then been instructed in writing to proceed at the Authority's risk.

3.3.6 If work is to be suspended by the Contractor for any reason at any time on any portion of the Work, prior notice shall be given to the Authority of such suspension and of the resumption of such Work.

3.3.7 Dependent Work: If any part of the Contractor's Work depends for proper execution or results upon the work of the Authority or any other contractor or owner, the Contractor shall inspect and promptly report to the Authority in writing any defects or deficiencies in that work that render it unavailable or unsuitable for proper execution and results and any delays that may occur in the Contractor's Work. Failure to notify Authority shall be deemed a waiver of any claim for additional costs or time. The Contractor's commencement of Work will constitute an acceptance of other work as fit and proper for integration with the Work except for latent or nonapparent defects and deficiencies in the other work. Installation of Work by the Contractor or by a

Subcontractor in any given area shall constitute acceptance of all previously placed dependent work. Wherever the Work of the Contractor or of a Subcontractor is dependent upon the Work of other Subcontractors or the work of separate contractors, then the Contractor shall, and shall require such Subcontractor whose Work is so dependent to:

3.3.7.1 Coordinate its Work with the dependent work,

3.3.7.2 Provide necessary dependent data and requirements,

3.3.7.3 Supply and/or install items to be built into dependent work of others,

3.3.7.4 Make provisions for dependent work of others,

3.3.7.5 Examine dependent drawings and specifications,

3.3.7.6 Examine previously placed dependent work,

3.3.7.7 Check and verify dependent dimensions of previously placed work,

3.3.7.8 Notify the Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work,

3.3.7.9 Not proceed with its Work until the unsatisfactory dependent conditions have been corrected.

3.3.8 Should the Contractor cause damage to the work or property of any other contractor or owner performing work at or contiguous to the site, or any injury to any person, or should any claim arising out of the Contractor's performance of Work at or contiguous to the site be made by any other contractor or owner against the Contractor or the Authority, the Contractor shall promptly attempt to resolve such claim with such separate contractor or owner by agreement, or otherwise resolve the dispute at equity or at law. The Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the Authority, its consultants, agents and employees from and against all claims, damages, losses and expenses, including, but not limited to, fees of engineers, architects, attorneys, and other professionals and court or arbitration costs, arising out of or resulting from damage to the work of others caused by the Contractor's performance of the Work.

3.3.9 Should another contractor or owner cause damage to the Work or property of the Contractor, or should the performance of work by another contractor or owner give rise to any other claim by the Contractor, the Contractor shall promptly attempt to resolve such claim with that contractor or owner by agreement, or otherwise resolve the dispute at equity or at law.

3.3.10 The Contractor shall not institute any action, legal or equitable, against the Authority, its consultants, agents or employees, or permit any action against them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability or the recovery of damages from the Authority, or its consultants, agents or employees, on account of such damages or claim.

3.3.11 In the event that the Authority incurs any costs contrary to the provisions of this Paragraph, including but not limited to legal or administrative costs, the Contractor shall reimburse the Authority for those costs, and if the Contractor fails to pay the Authority within thirty (30) days after receipt of an invoice from the Authority, the Authority will be entitled to withhold a set-off against any amount recommended for payment on this or any other Contract between the Authority and the Contractor.

3.3.12 The Contractor shall be responsible for settling or resolving at equity or at law directly with all other contractors all claims arising out of delay, disruption, interference, hindrance or schedule extension caused by the Contractor or inflicted upon the Contractor by the actions of another contractor, regardless of whether or not an extension or shortening in Contract Time is ordered by the Authority. The Contractor agrees and understands that neither the Authority nor any of its consultants, employees or agents, will be involved in any way in such actions, and hereby waives any and all claims against the Authority and any of its consultants, employees or agents for any such claims.

3.3.13 If the Contractor is delayed, and/or incurs additional costs due to delay, at any time in performing or furnishing the Work, by any act or neglect of another contractor or owner performing work under a separate contract with the Authority, or by any act or failure to act of the Authority, or by the furnishing or failure to furnish, either by the Authority or a public service corporation, construction utilities including but not limited to water, sewer or electrical service, the Contractor shall absorb all related delay, extension or acceleration costs, however caused; except that if the Authority and the Contractor believe such delay to require an adjustment in Contract Time, the Authority may authorize the necessary extension in Contract Time. However, an extension in Contract Time, if any so granted, shall be the Contractor's sole and exclusive remedy with respect to the Authority or any of its consultants, agents or employees for any delay, disruption, interference, extension or hindrance and associated costs, however caused, resulting from delays caused by others performing work under separate contracts with the Authority, and the right to additional compensation for such claims is expressly waived.

3.3.14 If a contractor performing work under a separate contract with the Authority is granted an extension in Contract Time resulting in delay, disruption, interference, hindrance or extension in a related or simultaneous Contract Time, the Authority may grant the Contractor an equivalent extension in the related or simultaneous Contract Time so as to preserve the interfacing condition between that contract and this Contract. If an extension in Contract Time is granted pursuant to this Article, the Contractor shall absorb all related delay, extension or acceleration costs, however caused, and the equivalent extension in Contract Time granted shall be the Contractor's sole and exclusive remedy with respect to the Authority or any of its consultants, agents or employees for delay, disruption, interference, hindrance or extension and associated costs, however caused, due to an extension in a related or simultaneous Contract Time caused by that other contractor.

3.4 LABOR AND MATERIALS

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

3.4.2 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Authority, the Contractor shall furnish written information or other satisfactory evidence, including reports of required tests, as to the kind and quality of materials and equipment, and stating the original sources of supply of materials and products manufactured or produced at locations other than the site of the Work. In order to permit time for required inspections, testing and approvals, such information shall be furnished at least thirty days in advance of the incorporation of any such materials or products in the Work, unless otherwise directed by the Authority. The Contractor shall make no claim for delay or extension of the Contract Time arising directly or indirectly out of its failure to select materials or products early enough to permit a reasonable time for completion of inspections, testing or reviews, or because of its purchase of materials or products in advance of such reviews.

3.4.3 Reference in the Specifications or Drawings to any product, material, equipment, method or process by proprietary name, manufacturer, vendor, supplier, make or catalogue number shall be interpreted as establishing a standard of quality. In accordance with M.G.L. c. 30, §39M(b), an item will be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the Work; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the Specifications. The Authority shall be the sole judge of whether any proposed substitute product, material, equipment, process or method is equal to that specified according to this standard, and its decision shall be final and binding on the Contractor and any Subcontractor.

3.4.4 If the Contractor wants to propose a substitute product or material after the Contract has been executed, in lieu of the product or material specified or an equal to that specified, the Authority will consider formal requests for substitution only under the conditions set forth in this Subparagraph 3.4.4. A request for a substitution shall be in writing and shall include i) all variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances; ii) available maintenance, repair or replacement services; iii) increases or decreases in operating, maintenance, repair, replacement and spare parts costs; iv) whether or not acceptance of the substitute will require other changes in the Work, or in work performed by the Authority or others under contract with the Authority; and v) the time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.

3.4.4.1 For any accepted substitute, the Contractor:

(a) represents that the proposed substitute is equal or superior in all respects to that specified, and expressly warrants that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design;

(b) shall provide the same warranties and guarantees for the substitute that would be provided for that specified;

(c) shall be fully responsible for the installation of the substitute, and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time;

(d) shall be responsible for any re-design costs occasioned by the acceptance of any such substitute; and

(e) shall, in the event that a substitute is less costly than that specified, credit the Authority with one hundred percent (100%) of the net difference between the substitute and the originally specified material; in this event the Contractor agrees to execute a deductive Change Order to reflect such credit.

3.4.4.2 In no event shall the Authority be liable for any increase in Contract Price or Contract Time due to any claimed delay in the

evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

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

3.4.6 The Contractor shall furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work or at the Site. The Contractor shall have exclusive responsibility for all labor disputes or disputes or jurisdictional issues among trade organizations representing employees of the Contractor or its Subcontractors. The Authority shall have no responsibility for any such disputes or issues.

3.4.7 The Contractor may divide the Work among Subcontractors and establish the extent of Work to be performed by any trade, except as may be otherwise required for compliance with applicable law or with specific provisions and requirements of the Contract Documents, including the requirement for labor harmony.

3.4.8 Where no explicit quality or standards for materials or workmanship are established for a portion of the Work, such Work is to be of good quality for the intended use and consistent with the quality of those portions of the Work for which explicit quality or standards are specified, and consistent with the quality of the construction of the Project generally.

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

3.4.10 The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories indicated on the Drawings is diagrammatic, and all variations in alignment, elevations, and detail required to avoid interferences and satisfy architectural, engineering and structural limitations are not necessarily shown. Actual layout of such Work shall be carried out without affecting the architectural, engineering and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, obtain maximum headroom, provide adequate clearances as required for operation and maintenance, and provide an orderly appearance where exposed. Exact locations of fixtures and outlets shall be obtained from the contract drawings or as determined by the Authority before the Work is roughed in. Work installed without such information shall be relocated at the Contractor's expense.

3.5 TAXES

3.5.1 Section 6(f) of Chapter 64H of the Massachusetts General Laws exempts building materials and supplies to be used in the Project from Massachusetts sales tax, and bidders shall not include in their bids any amount therefor. The words "building materials and supplies" shall include all materials and supplies consumed, employed or expended in the construction, reconstruction, alteration, remodeling or repair of any building, structure, public highway, bridge, or other such public work, as well as such materials and supplies physically incorporated therein. Said terms shall also include rental charges for construction vehicles, equipment and machinery rented specifically for use on the site of the Project or while being used exclusively for the transportation of materials for the Project. The number of the certificate for use in obtaining the exemption is E 042-850-071.

3.5.2 The Contractor will not be paid for any sales taxes paid by the Contractor for which such exemption is or would have been applicable. The Contractor shall pay all sales, consumer, use and other similar taxes assessed upon the Work or portions thereof provided by the Contractor, or otherwise attributable to the Project, which are legally enacted at the time bids are received, whether or not yet effective, to which such exemption is not applicable.

3.6 PERMITS AND FEES; COMPLIANCE WITH LAW

3.6.1 The Contractor shall secure and, except as specifically provided otherwise in the Contract Documents, pay for all demolition permits, construction or building permits, including, but not limited to, building and electrical permits required by the Massachusetts Department of Public Safety, certificates of occupancy and all other permits, approvals and governmental fees or charges, licenses, inspections and certificates of inspection necessary for the proper execution, completion and use and occupancy of the Work, including, without limiting the generality of the foregoing, permits for temporary occupancy or obstruction of or projection into, over or under public streets and sidewalks and other public ways, curb-cut permits, and notifications to and permits or approvals from the Massachusetts Department of Environmental Protection or others necessary in connection with demolition, waste disposal and construction. The Contractor shall promptly deliver copies of all such permits, approvals, licenses and certificates, and satisfactory evidence that disposal of all waste material in connection with the Project is done in full compliance with applicable laws, to the Authority. The Contractor shall not use, occupy or obstruct, nor permit any Subcontractor or any other person performing the Work to use, occupy or obstruct, any lands or areas outside of the legal limits of the Contract area as shown on the Drawings, unless written permission in form and substance satisfactory to the Authority has been obtained by the

Contractor at the Contractor's sole cost. The Contractor shall arrange for and provide all local police and/or Massachusetts State Police required to be present at or adjacent to the site for traffic control purposes. The cost of all policemen so required shall be included in the Contract Price.

3.6.2 The Contractor shall give all notices required by and shall otherwise comply with all laws, ordinances, rules, regulations, codes and lawful orders of any public authority bearing on the performance of the Work including, without limitation, applicable provisions of the State Building Code and applicable federal, state and local environmental laws.

3.6.3 Without limiting the generality of the foregoing, this Project is subject to all of the Federal Safety and Health Regulations (29 C.F.R. Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor and 29 C.F.R. Part 1910, General Industry Safety and Health Regulations Identified as Applicable to Construction. The Contractor shall comply with the Department of Labor Safety and Health Regulations for Construction promulgated under the Occupational Safety and Health Act of 1970 (PS-91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL-91-54). The Contractor shall have a competent person or persons, as required under the Occupational Safety and Health Act, on the site to inspect the Work and to supervise the conformance of the Work with the regulations of the Act.

3.6.4 If the Contractor observes that any of the Contract Documents are at variance with applicable laws, ordinances, rules, building codes or regulations in any respect, it shall give the Authority prompt written notice thereof, and any necessary changes shall be authorized by one of the methods indicated in Subparagraphs 1.2.9 and 1.2.10. If the Contractor performs any Work knowing or having reason to know that it is contrary to such laws, ordinances, rules, codes or regulations, and without such notice to the Authority, the Contractor shall assume full responsibility therefor and shall bear all costs of correction thereof and other costs, including any costs or damages sustained by the Authority, attributable thereto.

3.7 UTILITIES

3.7.1 The Drawings and Specifications indicate all pipes, conduits, lines or other structures or equipment of public and private utility companies ("utility equipment") at the site of which the Authority is aware. This is based on information and data furnished to the Authority by their owners or by others. The Authority makes no representation or warranty that the utility equipment shown on the Drawings or referred to in the Specifications is the only utility equipment that may be encountered, nor shall the Authority be responsible for the accuracy or completeness of such information or data. The Contractor shall promptly notify the Authority in writing of any utility equipment that it discovers and that has not been identified on the Drawings. If and as directed by the Authority, the Contractor shall make necessary arrangements with utility companies for the protection, alteration and relocation of utility equipment necessary in connection with performance of the Work.

3.7.2 The Contractor shall perform the Work so as not to interfere with utility companies or municipal departments that may enter on the site to make changes in utility equipment or to place new utility equipment, and the Contractor shall have no claim for, or on account of, any delay which may be due to or result from such work of utility companies or municipal departments.

3.7.3 Prior to excavation in any public or private way, any utility company right of way of easement or any public or privately owned land or way, the Contractor and all Subcontractors shall comply with the provisions of G.L. c. 82, §§40-40E, including notifying the utility underground plant damage prevention system established pursuant to G.L. c. 164, §76D.

3.7.4 Attention is called to the penalties imposed by G.L. c. 82, §40E for violation of the provisions of G.L. c. 82, §§40-40E.

3.8 DOCUMENTS AT THE SITE

3.8.1 The Contractor shall maintain at the site in a safe place one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, graphic or written instructions, interpretations and clarifications, and all other Contract Documents, in good order and marked currently to record all changes made during construction, together with Shop Drawings, Product Data and Samples, and copies of all building, electrical, plumbing and public safety codes applicable to the Work. These shall be available to the Authority for reference and shall be delivered to the Authority upon completion of the Work.

3.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.9.1 The Contractor shall prepare or review, approve and submit to the Authority for review and comment, promptly, sufficiently in advance and in such sequence as to cause no delay in the Work or in the work of the Authority or any separate contractor, five copies of all Shop Drawings, Product Data and Samples required by the Contract Documents. The Authority will review the Contractor's submittals to determine whether such submittals conform with the information required by the Contract Documents. The Authority will review and comment upon such submittals regarding conformance to the design concept or other information required by the Contract Documents. If corrections are required, five (5) copies of duplicate parts or corrected Drawings shall be submitted to the Authority, and this procedure shall be followed until acceptance has been given.

3.9.2 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor thereby represents that it has determined and verified all materials, dimensions, quantities, field measurements, relations to existing work,

coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, or Samples and compliance with all the requirements of the Contract Documents. The accuracy and completeness of all such information is the sole responsibility of the Contractor. Approval by the Contractor shall be clearly indicated on each drawing, in ink or by stamp, and signed or initialed by the Contractor.

3.9.3 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Authority's review of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Authority in writing of such deviation at the time of submission and the Authority has given written acceptance to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Authority's review thereof. The review of any Shop Drawing by the Authority shall not be construed as a complete check, but will indicate only that the general method of construction and detailing shown appears to be satisfactory. Shop Drawings shall be submitted for complete systems. Partial submission will not be permitted. The Authority's review of a specific item shall not indicate acceptance of an assembly of which the item is a component.

3.9.4 If Shop Drawings submitted by the Contractor indicate a deviation from the Contract Documents, and the Authority deems such deviation to be acceptable and in the best interests of the Project, and not involving a change in the Contract Price or an extension of the Contract Time, the Authority may accept the Shop Drawings including such deviation, but such acceptance shall be subject to the understanding, hereby incorporated in each such acceptance given, that the deviation conforms to the purpose and intent of the design, does not involve any change in the Contract Price or the Contract Time, and is subject to all provisions of, and is accepted without prejudice to any rights of the Authority under the Contract Documents.

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

3.9.6 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been reviewed by the Authority. All such portions of the Work shall be constructed and completed strictly in accordance with the reviewed submittals.

3.9.7 No mechanical or electrical engineer or other consultant to the Authority shall have authority to review Shop Drawings, Product Data or Samples unless the Authority has specifically notified the Contractor in writing that such authority has been delegated by it to such consultant.

3.9.8 No acceptance of any Shop Drawing, Product Data or Sample, nor any indication or request marked by the Authority on any Shop Drawing, shall constitute an authorization for any increase in the Contract Price. Any claim by the Contractor for such increase must be made in accordance with applicable provisions of the Contract Documents.

3.10 SITE

3.10.1 The Contractor shall confine its apparatus and equipment, storage of materials, and all operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the directions of the Authority, and shall not unreasonably encumber the site with any materials or equipment.

3.10.2 Notwithstanding the designation of contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain phases or portions of the Work may require that certain operations be carried out beyond such designated limits. Trenching, utility work, site development, landscaping and all other Work, if required beyond such designated limits, shall be scheduled in such a manner as to cause or occasion a minimum of inconvenience or disturbance to, or interference with, the normal operations of the Authority, abutters and the public. The Contractor shall obtain the Authority's prior approval and all necessary approvals from abutters, public authorities and utility companies for such operations, prosecute such operations expeditiously and restore the affected area to its original condition immediately upon completion of such operations, unless otherwise specified in the Contract Documents.

3.10.3 All existing walks, roadways, paved or landscaped areas over which temporary driveways or walks are rerouted shall be restored to their original condition, immediately upon completion of the related phases or portions of the Work, unless otherwise specified in the Contract Documents.

3.10.4 Pumping, draining and control of surface and ground water shall be carried out so as to avoid endangering the Work or any adjacent facility or property, or interrupting, restricting or otherwise infringing on, or interfering with, the use thereof.

3.10.5 The Contractor at all times shall keep the site and all areas therein free from accumulation of rubbish, debris and waste materials. At the completion of the Work it shall remove all waste materials, rubbish and debris from and about the site as well as all tools, appliances, construction equipment, machinery and surplus materials, and shall leave the site in a neat and clean condition satisfactory to the Authority. If the Contractor fails to clean up at the completion of the Work, the Authority may do so as

provided in Article 7 and the cost thereof shall be charged to the Contractor. At the completion of the Work the Contractor shall restore to its original condition all property not designated for alteration in the Contract Documents.

3.11 CUTTING AND PATCHING OF WORK

3.11.1 The Contractor shall be responsible for all cutting of steel, masonry and other materials, and all fitting, drilling or patching that may be necessary to complete the Work or to make its several parts fit together properly, whether or not such work is specified in the Contract Documents.

3.11.2 The Contractor shall not damage or endanger any portion of the Work, or the work of the Authority, or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Authority or any separate contractor except with the written consent of the Authority and of such separate contractor. The Contractor shall not unreasonably withhold from the Authority or any separate contractor its consent to cutting or otherwise altering the Work.

3.12 WEATHER PROTECTION

3.12.1 The Contractor shall provide temporary enclosures and heat to permit construction work to be carried on during the months of November through March in compliance with Chapter 149, Section 44G. These specifications are not to be construed as requiring enclosures or heat for operations that are in the judgment of the Authority economically infeasible to protect. Included in this category, without limitation, are such items as site work, excavation, steel erection, erection of certain exterior wall panels, roofing, and similar operations.

3.12.2 "Weather Protection" shall mean the temporary protection of that Work adversely affected by moisture, wind and cold, by covering, enclosing and/or heating. This protection shall provide adequate working areas during the months of November through March to permit the continuous progress of all Work necessary to maintain an orderly and efficient sequence of construction operations. The Contractor shall furnish and install all "weather protection" material and be responsible for all costs, including heating required to maintain a minimum temperature of 40 degrees Fahrenheit at the working surface. This provision does not supersede any specific requirements for methods of construction, curing of materials or the applicable general conditions set forth in the Contract Documents with added regard to performance obligations of the Contractor. Within 30 calendar days after Notice to Proceed, the Contractor shall submit to the Authority, in writing, three copies of its proposed methods for "Weather Protection".

3.12.3 Installation of weather protection and heating devices shall comply with all safety regulations including provisions for adequate ventilation and fire protection devices. Heating devices which may cause damage to finish surfaces shall not be used.

3.12.4 The Contractor shall furnish and install one accurate Fahrenheit Thermometer at each work area as designated by the Authority. However, if required by the Authority up to one additional accurate Fahrenheit Thermometer shall be provided for every 2,000 square feet of floor space where the work area exceeds 2,000 square feet.

3.13 ROYALTIES AND PATENTS

3.13.1 The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights, and shall save the Authority harmless from loss on account thereof, except that the Contractor shall not be responsible for such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, unless the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, in which event the Contractor shall be responsible for such loss unless it promptly gives such information to the Authority.

3.14 CONFIDENTIALITY - LIMITED USE OF DOCUMENTS AND EMPLOYEE SECURITY ASSESSMENTS

3.14.1 Certain information contained in these Contract Documents is deemed by the Authority to be sensitive relative to the Authority's Water and Wastewater operating systems. The Contractor agrees that the Contract Documents are provided solely for use by the Contractor and its employees, consultants, Suppliers and Subcontractors in the performance of Work under these Contract Documents. The information contained herein, and such other information, drawings, submittals and the like, developed by the Contractor, or by those employed by the Contractor in the performance of the Work, or such other information subsequently provided to the Contractor by the Authority relating to the Work, is, to the maximum extent permitted by law, confidential and shall be treated and protected accordingly. Contractor shall disseminate this information only to those entities which have a "need to know", solely in connection with the performance of Work under this Contract, and will make the minimum number of copies available to others as is necessary to perform the Work.

3.14.2 The Contractor shall inform its employees, consultants, Suppliers and Subcontractors of the sensitive and confidential nature of the information contained herein and i) shall obtain from them their verbal acknowledgement that they understand the sensitive and confidential nature of such information; and ii) that they agree to keep such information confidential. In the event that any employee, consultant, Supplier or Subcontractor refuses to provide such verbal acknowledgement, or fails to keep such information confidential, such person shall be denied access to the site and shall not be permitted to perform any Work under the

Contract Documents, and the Contractor shall replace such employee, consultant, Supplier or Subcontractor at no additional cost to the Authority.

3.14.3 Employees of the Contractor who will perform work on this contract shall be subject to security screening requirements. The Contractor shall be solely responsible for screening employees and shall permit only persons who are legally employable in the United States to perform work on this contract. The Contractor shall not assign or permit any employee who is or may reasonably be deemed a threat to the safety or integrity of the Authority's water or wastewater systems to work in any way on the Contract, or to have access to any confidential Contract information.

3.14.3.1 The Contractor shall verify the employee's identity by conducting a Social Security number trace and verify work authorization through E-Verify administered by the US Citizenship and Immigration Services for newly hired employees who will work on this contract. Within sixty (60) days after Notice to Proceed, the Contractor shall submit a copy of its Memorandum of Understanding with the Department of Homeland Security.

3.14.3.2 Pursuant to Executive Order No. 481, the Contractor shall certify:

3.14.3.2.1 that it will not knowingly use undocumented workers in connection with the performance of the contract;

3.14.3.2.2 that, pursuant to federal requirements, it shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and

3.14.3.2.3 that it shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.

3.14.4 The Contractor must complete a background check on its Project Manager and Project Superintendent within the 6 month period prior to beginning on-site work. The purpose of the background check is to: (a) confirm the identity of the employee, including any other names the employee may have used; and (b) determine if the employee has engaged in any behavior that may reasonably lead one to conclude that the employee is, or may be, a threat to the integrity or safe operation of the Authority's water or wastewater systems or to the safe supply of drinking water to the Authority's communities.

3.14.4.1 The background check shall include:

3.14.4.1.1 Verification of Social Security number;

3.14.4.1.2 Verification of US citizenship or right to work legally in the United States;

3.14.4.1.3 Verification of professional licenses and certifications; and

3.14.4.1.4 Verification of valid motor vehicle operator's license, if required for job duties and responsibilities.

3.14.4.2 The Contractor shall maintain records of background checks and make them available for Authority review upon demand.

3.14.4.3 The Authority may designate certain Contractor employees who will be subject to higher levels of security.

3.14.5 The Authority shall have the right to examine and audit all documents and records pertinent to compliance with this Article. Failure to comply with this Article may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, suspension or termination of the contract. If the Contractor fails to comply with this Article, the Authority may, without in any way limiting any other right it may have at law or under the Contract Documents, terminate this Contract for cause immediately upon written notice to the Contractor. In any event, the Contractor shall be liable for any and all damages sustained by the Authority arising out of, or in any way connected to, the Contractor's failure to comply with the provisions of this Article.

3.14.6 The Contractor shall include the provisions of this Article in any subcontract, consultant agreement or purchase order placed for services, labor, or labor and materials for Work to be performed hereunder.

3.14.7 The provisions of this Article shall survive any termination or expiration of this Contract.

3.15 REQUIREMENTS FOR SUBCONTRACTING WITH MINORITY AND WOMEN BUSINESSES

3.15.1

(a) The percentage of business activity to be performed by Minority Business Enterprises ("MBEs") on this contract shall be not less than N/A of the Contract Price.

(b) The percentage of business activity to be performed by Women Business Enterprises ("WBEs") on this contract shall be not less

than N/A of the Contract Price.

(c) At least 90% of each required dollar amount set forth above shall be allocated for construction work. A bidder or prime contractor that utilizes a MBE or WBE material supplier toward meeting the percentage participation requirements is generally only entitled to credit in the amount of 10% of the purchase order.

(d) If no requirement for construction work has been specified above, the required dollar amount set forth in Clauses (a) and (b) above may be satisfied by the provision of construction work, construction related services, material supply, equipment rental, or any combination thereof.

ARTICLE 4 - PHYSICAL CONDITIONS; REFERENCE POINTS; MEDICAL AND SANITARY REQUIREMENTS

4.1 LINES AND GRADES; MEASUREMENTS

4.1.1 The Contractor shall keep the Authority informed, a reasonable time in advance, of the times and places at which it intends to do Work, so that necessary measurements for record and payment may be made, and progress photographs may be taken with a minimum of inconvenience to the Authority or delay to the Contractor. The Contractor shall survey and lay out the Work and establish lines and grades and reference points. The Contractor shall protect and preserve established reference points and shall make no changes or relocations without the prior written approval of the Authority. The Contractor shall report to the Authority whenever any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified survey personnel.

4.1.2 Wherever in the Specifications or orders issued thereunder, or on the Drawings, there are given survey stations, coordinates or similar designations for the locations of structures or portions of structures, it is understood that they are approximate only, and no change of such designations caused by the developments of, or otherwise arising during, construction shall be made the basis of claims for payment.

4.1.3 Stone bounds, concrete bounds and other bounds, monuments and landmarks affected by construction operations shall not be altered or removed without the prior written consent of the Authority. When such consent has been given, each such bound, monument or landmark shall be carefully removed, stored, cared for and subsequently reset, in a manner directed by the Authority, to the depths and in the locations ordered. No such bounds, monuments or landmarks shall be removed until the Contractor has notified the Authority in advance so as to allow the Authority sufficient time to make necessary measurements before their removal.

4.1.4 For the estimating of quantities in which the computations of areas by analytic and geometric methods would be comparatively laborious, it is stipulated and agreed that the planimeter shall be considered an instrument of precision adapted to the measurement of such areas.

4.1.5 To aid the Authority in determining the quantities and weights of cement and other materials, for purposes of determining payments due therefor or for any other reasons, the Contractor shall, whenever so required, give the Authority access to invoices, bills of lading, and other related documents, and shall provide scales and assistance in weighing, or assistance in otherwise measuring, any materials.

4.2 MEDICAL AND SANITARY REQUIREMENTS

4.2.1 The Contractor and its Subcontractors and employees shall promptly and fully carry out the sanitary and medical requirements as hereinafter described, or as may from time to time be promulgated by the Authority to the end that the health of all workers, and of the local communities and of persons residing on or near waters affected by the Work, may be preserved and safeguarded. The Contractor and all Subcontractors shall also obey all regulations and orders of public authorities, municipal and state. The Contractor shall dismiss, and shall not again employ on the Work, except with the written consent of the Authority, any person who violates the sanitary and medical requirements on this Project.

4.2.2 The Contractor shall rigorously prohibit the committing of nuisances upon the lands of the Authority or the Commonwealth of Massachusetts or upon adjacent property. Structures for the sanitary necessities of all persons employed on the Work shall be provided and maintained by the Contractor in the number, manner and places ordered from the time the first workman arrives at the site and until the Work is finally completed. The requirements for sanitaries shall be on a basis of not less than one unit for each 15 persons, including all those on duty at any time who are dependent on the sanitaries in the area in question, and the required number of sanitaries shall be located reasonably near the operations in progress.

4.2.3 The sanitary conveniences shall be closets having watertight removable receptacles, and shall be of the type using sodium hydroxide or chloride of lime as disinfectant. Insofar as practicable, the sanitary conveniences shall be secluded from public observation. Satisfactory precautions shall be taken to render the interior of the closets inaccessible to flies. The receptacles shall

be removed daily and more frequently, if required or ordered, and discharged into Massachusetts Water Resources Authority or municipality manholes at locations designated by the Authority. The disposal of the contents of the receptacles shall be done in such a manner as to prevent pollution of the ground in the vicinity thereof. All sanitary facilities and toilet fixtures for the Contractor's office shall be connected to the sewerage system in a manner satisfactory to the municipal authorities and to the Authority.

4.2.4 With respect to matters of health and sanitation, the Contractor and Subcontractors shall promptly and fully comply with the orders of the Authority, the rules and regulations of the Massachusetts Department of Public Health, and the regulations of all other state, county and municipal authorities.

4.2.5 The Contractor shall provide adequate medical and surgical care for its employees and those of its Subcontractors; and for this purpose shall designate one or more competent licensed physicians, who shall at all times be in readiness to supply such medical and surgical services. The Contractor shall provide at the site all articles necessary for giving first aid to the injured. The Contractor shall make proper and satisfactory provisions for the transportation of sick and injured employees to, and their care at, established hospitals in the vicinity of the Work.

4.3 PROTECTION AGAINST OCCUPATIONAL HAZARD

4.3.1 The Contractor shall conduct and supervise the Work so as to minimize any hazards to which the workers may be subjected in connection with the Work, including the handling and relaying of existing sewers, water lines and cables. The Contractor shall furnish safety equipment and adopt and maintain safe practices to eliminate the likelihood of explosions, physical injury or infection due to contact with noxious gases and vapors and oxygen deficiencies in sewage gases or to the handling of tools or materials saturated or in contact with sewage.

4.4 DOMESTIC WATER SUPPLY

4.4.1 The Contractor shall furnish a sufficient supply of drinking water from approved sources, of acceptable quality and satisfactorily cooled, for all workers employed on the Work, and for employees and consultants of the Authority.

4.5 INSPECTION

4.5.1 The Authority shall have the right, in order to determine whether the requirements of the Contract Documents as to sanitary and health matters are being complied with, to enter and inspect any buildings or structures or any part of the Work, and to cause any employee to be examined physically or medically or to be vaccinated or otherwise treated, and to inspect the drinking water supplied to the employees.

ARTICLE 5 - INDEMNIFICATION

5.1 CONTRACTOR'S INDEMNITY

5.1.1 The Contractor shall indemnify, defend with counsel acceptable to the Authority, keep and save harmless the Commonwealth of Massachusetts, the Authority and its consultants, the Engineer, and their respective board members, officers, representatives, contractors, agents and employees, in both individual and official capacities, against all suits, claims, damages, losses and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its Subcontractors to the full extent allowed by the laws of the Commonwealth of Massachusetts and not beyond any extent that would render these provisions void or unenforceable, provided that any such suit, claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and is caused in whole or in part by any default, negligence or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 5.1.

5.1.2 The Contractor shall give prompt notice to the Authority in the event of any such injury (including death), loss or damage. Without limitation of the provisions of Subparagraph 1.2.11, if the Contractor's agreement to indemnify, defend and save harmless the Authority and the Engineer and the other indemnitees referred to above as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of the Authority or the Engineer or such other indemnitees, respectively, shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that such circumstance shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend and save harmless the Authority and the Engineer and such other indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses or expenses caused in part by the default, negligence or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by the Authority or the Engineer or any other such indemnitees, the Contractor shall be and remain fully liable on its

agreements and obligations under this Paragraph 5.1 to the full extent permitted by law.

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

5.2 CONTRACTOR'S INDEMNITY - FAILURE TO PERFORM

5.2.1 The Contractor shall, to the fullest extent permitted by law, indemnify and hold harmless the Authority, the Engineer, their consultants, any subsidiaries or affiliates, and each of their directors, officers, representatives, agents or employees from and against all losses, expenses, damages (including damages to the Work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect or refusal of the Contractor to faithfully perform the Work or other obligations under the Contract. Such costs, expenses, and damages shall cover all costs, including attorneys' fees incurred by the indemnified parties in any lawsuit to which they are a party. If the Authority incurs costs contrary to this indemnification provision, the Contractor shall reimburse the Authority for such costs, and if the Contractor fails to pay such costs within thirty (30) days after receipt of an invoice from the Authority, the Authority will be entitled to withhold a set-off against any amounts recommended for payment on this or any other contract between the Authority and the Contractor.

ARTICLE 6 - SUBCONTRACTORS

6.1 SUBCONTRACTORS

6.1.1 Unless otherwise required by the Contract Documents, the Contractor, as soon as practicable after Notice to Proceed, shall furnish to the Authority in writing the names of the persons or entities, including those who are to furnish materials or equipment fabricated to a special design, proposed for each of the principal portions of the Work. The Authority will notify the Contractor in writing whether or not it has objection to any such proposed person or entity. Failure of the Authority to reply within a reasonable time shall constitute notice of no objection.

6.1.2 The Contractor shall not contract with any such proposed person or entity to whom the Authority has made objection under the provisions of this Subparagraph. Subject to the provisions of applicable law, the Contractor shall not be required to contract with anyone to whom it has a reasonable objection.

6.1.3 If the Authority has objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Authority has no objection.

6.1.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Authority makes objection to such substitution.

6.1.5 The Contractor shall furnish the Authority with executed copies of all contracts with Subcontractors, promptly upon execution thereof.

6.2 SUBCONTRACT AGREEMENTS

6.2.1 The Contractor shall, by written agreement, require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Authority. Said agreement shall preserve and protect the rights of the Authority under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Authority. The Contractor shall require each Subcontractor to enter into similar agreements with its Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of a subcontract with such Subcontractor, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 6.2, and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its Subcontractors. Nothing contained herein shall be deemed to create any contractual relationship, express or implied, between the Authority and any Subcontractor employed by the Contractor.

6.2.2 The Contractor shall require each Subcontractor to agree in writing that in the event of termination of the Contract for any reason, the Authority shall have the right, but shall have no obligation, to assume, and/or to assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the

Contractor under the subcontract with such Subcontractor. In the event of such assumption or assignment by the Authority, the Subcontractor shall have no claim against the Authority or such third party for Work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the Authority or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption.

ARTICLE 7 - OTHER WORK

7.1 AUTHORITY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

7.1.1 The Authority may perform other work related to the Project at the site with its own forces, have other work performed by utility suppliers, or award separate contracts for such work or other work on the site under these or similar conditions of the contract. If the fact that such other work is to be performed is not noted in the Contract Documents, notice thereof will be given to the Contractor prior to commencing such other work. If the Contractor believes that performance of such other work not noted in the Contract Documents will cause delay or additional cost to it, it may make a claim therefor in accordance with applicable provisions of the Contract Documents.

7.2 MUTUAL RESPONSIBILITY

7.2.1 The Contractor shall provide the Authority and utility suppliers or other separate contractors proper and safe access to the site and a reasonable opportunity for the delivery and storage of materials and equipment and the execution of their work, and shall properly connect and coordinate the Work with theirs. Disputes arising with respect to delivery or storage of materials or equipment, or otherwise relating to coordination of the Work under this Contract with the work of separate contractors shall initially be submitted to the Authority.

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

7.2.3 Costs caused by delays or by improperly timed or defective work shall be borne by the party responsible therefor.

7.2.4 Should the Contractor cause damage to work or property of the Authority, or to other work at the site, the Contractor shall promptly remedy such damage.

7.2.5 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Subparagraphs 3.10.5 and 11.2.14, the Authority may clean up and charge the cost thereof to the contractor(s) responsible therefor.

ARTICLE 8 - INSPECTION AND TESTING

8.1 INSPECTION AND TESTING

8.1.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of, or conditions imposed by, any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Authority, and, if applicable, public authorities requiring such inspection, testing or approval, timely notice (at least 24 hours) prior to the commencement of Work or operations requiring such inspection, testing or approval so the Authority or such public authorities may perform or observe such inspection, testing or approval. Except in the event of an unforeseen emergency, Work or operations requiring such inspection, testing or approval shall not be performed at times other than during the normal working day without the prior approval of the Authority. The Contractor will provide such assistance, including, without limitation, labor, tools, equipment, and water or land transportation, as the Authority or such public authorities may request in connection with such inspection, testing or approval. The Contractor shall make all necessary arrangements at its expense to permit the Authority to make factory, shop or other inspections of materials or products ordered for the Work and in the process of manufacture, fabrication or extraction or in storage at locations other than the site of the Work. The Authority may, at its election, retain the services of testing laboratories, agencies, or consultants, to perform such tests or inspections. The Contractor shall make no claim for delay or extension of the Contract Time arising directly or indirectly out of its failure to give timely notice so as to permit performance or observance of inspections, testing or approvals. Inspections of the Work shall not relieve the Contractor of any obligations under this Contract. Without limiting any other provisions hereof, defective work shall be made good and unsuitable materials may be rejected, notwithstanding that such work and materials have been previously inspected by the Authority and accepted or estimated for payment or paid for.

8.2 SPECIAL TESTING

8.2.1 If the Authority determines that any portion of the Work requires special inspection, testing, or approval which Paragraph 8.1 does not include, it will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Paragraph 8.1. If such special inspection or testing reveals a failure of the Work to comply strictly with the requirements of the Contract Documents, the Contractor shall correct such Work and bear all costs of such inspection, testing and corrections, including compensation for the Authority's additional services made necessary by such failure; otherwise the Authority shall bear the costs of such inspection or testing, and an appropriate Change Order shall be issued.

8.3 INSPECTION CERTIFICATES AND PERMITS

8.3.1 The Contractor shall obtain and deliver promptly to the Authority at such times as may reasonably be required any certificates of inspection, testing or approval, including, where required by law, building code certificates of occupancy, certificates of compliance required under Title V of the State Environmental Code, and operating permits for any mechanical apparatus, which may be required by law to permit full use and occupancy of the Work by the Authority. In any event, receipt of all such permits and certificates by the Authority shall be a condition precedent to Substantial Completion of the Work.

ARTICLE 9 - TIME

9.1 DEFINITIONS

9.1.1 The Contract Time is the period of time specified in Division One of the Contract Documents within which the Contractor must achieve final completion of the Work, including adjustments thereto approved by the Authority as provided in the Contract Documents.

9.1.2 Substantial Completion of the Work or designated portion thereof occurs when the requirements of Article 10 have been satisfied. The date or dates of Substantial Completion shall be established by certification by the Authority.

9.1.3 The term "day" as used in the Contract Documents shall mean calendar day. The terms "working day" and "business day" shall mean any calendar day except Saturdays, Sundays, and legal holidays.

9.2 PROGRESS AND COMPLETION

9.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

9.2.2 The Contractor shall begin the Work on the date of commencement as specified in the Notice to Proceed. It shall carry the Work forward expeditiously with adequate forces and shall achieve completion within the Contract Time. Liquidated damages, if any, to be paid to the Authority in the event that completion of the Work is not achieved within the Contract Time are specified in Division One of the Contract Documents.

9.2.3 Whenever critical items of construction fall behind the required schedule of construction, or when items which were not critical become critical, the Authority shall be notified by the Contractor and advised of action proposed or being taken to make the Project comply with schedule requirements and such action, which shall include but not be limited to that specified in Subparagraph 9.2.4 below, shall be indicated on the construction progress schedule, if any, which shall then be re-issued by the Contractor. The Contractor shall promptly undertake such appropriate action to recover schedule as may be necessary to comply with contract time requirements.

9.2.4 If in any periodic estimate and request for payment it appears that the actual Work completed is less than 90%, or such greater percentage as the Authority may determine in its discretion, of the Work scheduled to be completed as of the date of such request for payment, the Authority may, at its option, require the Contractor to accelerate the progress of the Work, without cost to the Authority, by increasing the work force or hours of work, by providing additional equipment or by such other means as required by the Authority. If the Contractor disputes such action by the Authority, it shall have no right to refuse to accelerate the Work, but its only recourse shall be to make a claim as provided in Article 19.

9.2.5 If each of three successive periodic estimates and requests for payment indicate that the actual Work completed is less than 90% of the Work scheduled to be completed by the respective dates of such requests for payment, or if the Contractor fails to promptly undertake such remedial action as may be necessary to recover schedule and if such failure is not caused by the Authority or by other reasons beyond the control of the Contractor, the Authority may exercise its rights and remedies as provided in Article 17, or may, at its option, treat the Contractor's delinquency as a default justifying the actions permitted under Article 16, or exercise any other remedy it may have at law or under the Contract Documents, including but not limited to, the imposition of liquidated damages.

9.2.6 Nothing contained herein shall limit the Authority's right to damages for delays by the Contractor or any other rights or

remedies of the Authority under the Contract Documents or by law.

9.3 DELAYS AND EXTENSIONS OF TIME

9.3.1 If the Contractor is delayed in the progress of the Work by any act or omission of the Authority or any of its duly authorized representatives, or a separate contractor employed by the Authority, except when the contract with such separate contractor has been assigned to the Contractor, or by an act or omission of the Commonwealth or by any Federal or Municipal entity, or by changes in the Work duly ordered by the Authority, or by strikes, fires, unusual delay in transportation not anticipatable and for which no alternative mode of transportation is available, unusually severe weather not anticipatable and preventing any continuation of operations by the Contractor, unavoidable casualties, or such other unforeseeable causes as are beyond the control of the Contractor and are not caused in whole or in part by any fault or negligence of the Contractor, other than delays occasioned by financial difficulties of the Contractor, then, except as provided in Subparagraph 9.3.7 below in the case of certain delays caused by the Authority, the Authority shall not be liable for any damages for delay, hindrance, or interruption and the Contractor's sole and exclusive remedy shall be that the Contract Time shall be extended by Change Order for such reasonable period of time, if any, as the Authority may determine is required due to the nature of the delay, all subject to the provisions of this Paragraph 9.3. The procedures set forth in, and all other provisions contained in, this Paragraph 9.3 are in addition to the provisions of the Contract Documents relating to procedures for Change Orders.

9.3.2 Whenever the Contractor claims an extension of the Contract Time, only the net increase in the time necessary to complete the Work as a whole shall be considered in measuring or evaluating the extension. If, for example, extra work can be, or could have been, performed along with the regular Work called for by the Contract Documents so as to reduce or eliminate a delay in the progress of the Work or some portion thereof, without causing necessary delay to such regular Work, no claim for extension of the Contract Time shall be granted. In any event, even though a cause of delay meets all of the above conditions, any extension shall be granted only to the extent that the effect of such cause cannot be, or could not have been, avoided or mitigated by the exercise of all reasonable precautions, efforts and measures, including planning, scheduling and rescheduling, whether before or after the occurrence of the cause of delay, and all of the available Total Float has been expended. No extension shall be granted for a cause of delay which would not have affected the performance of the Contract were it not for the fault of the Contractor or for other delay for which the Contractor is not entitled to an extension of the Contract Time (concurrent delay). Any reference in this Paragraph 9.3 to the Contractor shall be deemed to include Subcontractors and Suppliers, whether or not in privity of contract with the Contractor, and employees and others performing any part of the Contract, and all the foregoing shall, for this purpose, be considered as if they were agents of the Contractor.

9.3.3 The Contractor shall notify the Authority as soon as possible of any cause that may delay the Work. The Contractor shall give written notice to the Authority within ten days after the time that it knows or should know of any cause which will result, or has resulted, in delay for which it claims or intends to claim an extension of the Contract Time, including those causes which the Authority is responsible for or has knowledge of. Any such written notice shall (1) state that an extension is claimed; (2) identify the cause of delay; and (3) describe as fully as practicable at the time the nature and expected duration of the delay and its effect on the various portions of the Work.

9.3.4 The submission of such written notice within the time period provided above shall be a condition precedent to any extension of the Contract Time. Since the possible necessity for an extension of the Contract Time might materially alter the scheduling, plans and other actions of the Authority, and since, with sufficient opportunity, the Authority might, if it knew of the Contractor's claim, attempt to mitigate the effect of a delay for which an extension of the Contract Time was to be claimed, and since merely oral notice might cause disputes as to the existence or substance thereof and notice long after the event would seriously hinder or prevent the Authority's investigation of the pertinent facts, the giving of written notice within the time period stated above shall be of the essence of the Contractor's obligations and failure of the Contractor to comply with these requirements shall be a conclusive waiver of a claim for extension of the Contract Time. It shall in all cases be presumed that no extension or further extension of the Contract Time is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Authority that it is due an extension. To this end, the Contractor shall maintain adequate records supporting any claim for an extension of the Contract Time, and in the absence of such records the foregoing presumption shall be deemed conclusive.

9.3.5 After written notice has been given by the Contractor as provided above, the Authority may, at such time as it deems appropriate, require the Contractor to submit, on or before a date specified in writing, whatever records, data and explanation support, in the Contractor's view, its claim for extension of the Contract Time. Within a reasonable time, as determined by the Authority, after the date on which the Contractor submitted or should have submitted such records, data and explanation, the Authority will render a decision in writing with respect to the Contractor's claim for extension of the Contract Time. The decision will include a statement as to the number of days, if any, by which the Contract Time, or the time stated in the Contract Documents for completion of a designated portion of the Work, will be extended. The decision of the Authority shall be final and conclusive with respect to all questions relating to an extension of the Contract Time, or the time for completion of a designated portion of the Work, including, in particular, (1) whether a claim by the Contractor for an extension of time should be granted, and (2) if so, the appropriate period of any such extension.

9.3.6 No claim for delay shall be allowed on account of failure of the Authority or its consultant to furnish instructions or drawings, grant approvals, or return Shop Drawings, Product Data or Samples until expiration of the maximum time periods provided in

Subparagraph 2.1.6 and not then unless such claim is reasonable.

9.3.7 The provisions of this Subparagraph 9.3.7 are included herein pursuant to the requirements of Section 39O of Chapter 30 of the Massachusetts General Laws. In the event that suspension, delay, interruption or failure to act of the Authority increases the cost of performance to any Subcontractor, the Subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of its performance as provisions (a) and (b) give the Contractor against the Authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the Contractor or the Subcontractor may have against each other.

(a) The 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 Authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the Authority to act within the time specified in this Contract, the 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 Authority shall not make any adjustment in the Contract Price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Contract Price under any other contract provisions.

(b) The Contractor must submit the amount of a claim under provision (a) to the 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 Authority shall not approve any costs in the claim incurred more than twenty (20) days before the Contractor notified the Authority in writing of the act or failure to act involved in the claim.

ARTICLE 10 - PAYMENTS AND COMPLETION

10.1 CONTRACT PRICE

10.1.1 The Contract Price is stated in Section 00500, Authority-Contractor Agreement and, including adjustments thereto authorized in accordance with the Contract Documents, is the total amount payable by the Authority to the Contractor for the performance of the Work under the Contract.

10.2 PERIODIC ESTIMATES AND REQUESTS FOR PAYMENT

10.2.1 The Contractor shall submit to the Authority for its review a periodic estimate requesting payment of the amount due the Contractor for the Work completed as of the date of the periodic estimate. Such periodic estimates shall be on a form provided or approved by the Authority and shall be based upon the approved Schedule of Values and shall be accompanied by such certifications, accountings, invoices, payrolls, receipted bills and other supporting documentation and information substantiating the Contractor's right to payment as the Authority may request. The periodic estimates shall show the total value of the Work performed and materials furnished by the Contractor and each Subcontractor to date, the value of the Work completed during the payment period and the percentage of completion to date for each line item of Work. The term "Application for Payment" as used in the Contract Documents shall have the same meaning as the term "periodic estimate" as used in this Article.

10.2.2 Such periodic estimates may include materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance in writing by the Authority, payment may be requested for materials or equipment suitably stored at some other location agreed upon in writing in accordance with Paragraph 10.10. Without limiting the provisions of Subparagraph 10.2.1, payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale, invoices or such other documents, information or procedures as may be required by the Authority to establish the Authority's title to such materials or equipment free and clear of all liens, claims, security interests or encumbrances (collectively referred to in the Contract Documents as "liens"), or otherwise to protect the Authority's interests, including provision for appropriate property insurance and transportation to the site for those materials and equipment stored off the site.

10.2.3 The Contractor warrants that title to all Work, materials and equipment covered by a periodic estimate will pass to the Authority either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, and that no Work, materials or equipment covered by a periodic estimate shall have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or any other secured party or otherwise imposed by the Contractor or any other person.

10.3 PROGRESS PAYMENTS TO THE CONTRACTOR

10.3.1 The Authority will make payments in accordance with the following provisions, pursuant to Section 39G of Chapter 30 of the Massachusetts General Laws:

(a) Upon substantial completion of the Work required by a contract with the Commonwealth, or any agency or political subdivision

thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges and other highway structures, sewers and, water mains, airports and other public works, the Contractor shall present in writing to the Authority its certification that the Work has been substantially completed. Within twenty-one days thereafter, the Authority shall present to the Contractor either a written declaration that the Work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the Contract sufficient to demonstrate that the Work has not been substantially completed. The Authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the Contractor must achieve Substantial Completion of the Work. In the event that the Authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the Contractor's certification within the twenty-one day period, the Contractor's certification shall take effect as the Authority's declaration that the Work has been substantially completed.

(b) Within sixty-five days after the effective date of a declaration of a substantial completion, the Authority shall prepare and forthwith send to the Contractor for acceptance a substantial completion estimate for the quantity and price of the Work done and all but one per cent retainage on that Work, including the quantity, price and all but one percent retainage for the undisputed part of each Work item and extra Work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the Work. The Authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by Subcontractors and not yet paid to Subcontractors or deposited in joint accounts pursuant to Section 39F of Chapter 30 of the Massachusetts General Laws, but no contract subject to said Section 39F shall contain any other provision authorizing the Authority to deduct any amount by virtue of claims asserted against the Contract by Subcontractors, Suppliers or others.

(c) If the Authority fails to prepare and send to the Contractor any substantial completion estimate required by Section 39G of Chapter 30 of the Massachusetts General Laws, on or before the date herein above set forth, the Authority shall pay to the Contractor interest on the amount which would have been due to the Contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the Authority sends that substantial completion estimate to the Contractor for acceptance or to the date of payment therefor, whichever occurs first. The Authority shall include the amount of such interest in the substantial completion estimate.

(d) Within fifteen days after the effective date of the declaration of Substantial Completion, the Authority shall send to the Contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond its control, the Contractor shall complete all such work items within forty-five days after the receipt of such list or before the then contract completion date, whichever is later. If the Contractor fails to complete such work within such time, the Authority may, subsequent to seven days' written notice to the Contractor by certified mail, return receipt requested, terminate the Contract and complete the incomplete or unsatisfactory work items and charge the cost of same to the Contractor.

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

(f) The Authority shall pay the amount due pursuant to any substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the Contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the day of payment. Within 15 days after receipt from the Contractor, at the place designated by the Authority, if such place is so designated, of a periodic estimate requesting payment of the amount due for the preceding periodic estimate period, the Authority shall make a periodic payment to the Contractor for the work performed during the preceding periodic estimate period and for the materials not incorporated in the Work but delivered and suitably stored at the site, or at some location agreed upon in writing, to which the Contractor has title or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Authority, upon certification by the Contractor that it is the lawful owner and that the materials are free from all encumbrances. The Authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the Authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the Contractor, a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of Section 39F of said Chapter 30, and a retention to secure satisfactory performance of the contractual Work not exceeding five percent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded Subcontractors entitled to direct payment under Section 39F of said Chapter 30; provided, that a five per cent value of all items that are planted in

the ground shall be deducted from the periodic payments until final acceptance.

(g) No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar the Contractor from reserving all rights to dispute the quantity and amount of, or the failure of the Authority to approve a quantity and amount of, all or part of any Work item or extra Work item.

(h) Substantial Completion, for the purposes of this Paragraph, shall mean either that the Work required by the Contract has been completed except for Work having a contract price of less than one per cent of the then adjusted total Contract Price, or substantially all of the Work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Work required by the Contract. Substantial Completion shall be conclusively determined by the Authority after inspection of the Work and in accordance with Subparagraph 10.8.1.

10.3.2 The payment approved will be based on a determination that the Work indicated in the periodic estimate has progressed to the indicated point and is in accordance with the Contract Documents subject to evaluation upon Substantial Completion, to results of subsequent tests specified in the Contract Documents and to specific qualifications issued as part of the approval. The Authority may, within seven days after receipt, return to the Contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

10.4 PAYMENTS TO SUBCONTRACTORS

10.4.1 Pursuant to Section 39F of Chapter 30 of the Massachusetts General Laws, the following provisions shall apply with respect to payment of Subcontractors:

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

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

(c) Each payment made by the Authority to the Contractor pursuant to Clauses (a) and (b) of this Subparagraph 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 Authority shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the Authority 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 Clauses (a) and (b), the Authority shall act upon the demand as provided in this Paragraph.

(d) If, within seventy 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 Authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the Authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the Authority, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract Work shall be valid even if delivered or mailed prior to the seventieth day after the Subcontractor has substantially completed the subcontract Work. Within ten days after the Subcontractor has delivered or so mailed the demand to the Authority 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 Authority and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.

(e) Within fifteen days after receipt of the demand by the Authority, but in no event prior to the seventieth day after substantial completion of the subcontract Work, the Authority shall make direct payment to the Subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount (i) retained by the Authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided, that the Authority shall not

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

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

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

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

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

10.4.2 "Subcontractor" as used in Subparagraph 10.4.1 shall mean a person approved by the Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor.

10.4.3 The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Subcontractors in a manner similar to that provided in Clauses 10.4.1(a) and (b).

10.4.4 Except as set forth in this Paragraph or as may be otherwise required by law, the Authority shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor.

10.5 PAYMENTS WITHHELD

10.5.1 If the Authority is unable to approve an application for payment as provided in Paragraph 10.3, it will notify the Contractor. If the Contractor and the Authority cannot agree on a revised amount, the Authority will issue a payment for the amount which it is able to approve. The Authority may also decline to make payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or any part of any payment previously issued, or, notwithstanding that the Authority has issued a payment, the Authority, in addition to and without limitation of any other rights and remedies of the Authority under the Contract Documents, may withhold payment of any amounts claimed to be due by the Contractor and paid by the Authority, in each case to such extent as may be necessary in order to provide for retention covering the fair value of the Authority's claims against the Contractor, which amounts may include, but shall not be limited to, the fair value of costs or losses arising from:

10.5.1.1 defective Work not remedied,

10.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims,

10.5.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,

10.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price,

10.5.1.5 damage to the Authority or another contractor,

10.5.1.6 reasonable evidence that the Work will not be completed within the Contract Time,

10.5.1.7 failure to carry out the Work in accordance with the Contract Documents or other default by the Contractor under, or failure of the Contractor to comply with any provisions of, the Contract Documents, or

10.5.1.8 actual or anticipated claims for damages for delay.

10.5.2 If and when the grounds set forth above are removed without cost to the Authority, payment may be requested and shall be made for amounts withheld because of such grounds.

10.6 PAYMENT NOT ACCEPTANCE

10.6.1 No payment of any progress payment made, nor final payment, nor any partial or full use or occupancy of the Project by the Authority, shall constitute an acceptance of any work not in accordance with the Contract Documents.

10.7 FAILURE OF PAYMENT

10.7.1 The Contractor's sole remedy for the Authority's delay in paying the Contractor is the payment of interest as provided in Paragraph 10.3.

10.8 SUBSTANTIAL COMPLETION

10.8.1 When the Contractor considers that the Work, or a portion thereof designated by the Authority in the Contract Documents, is substantially completed as defined in Paragraph 10.3, the Contractor shall prepare and submit to the Authority three complete sets of all warranties and guarantees required by the Contract Documents, and a list of items to be completed or corrected in addition to the certification that the Work has been substantially completed as required by Paragraph 10.3. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Authority, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, and when the Contractor has complied with the provisions of Paragraph 8.3 and all other conditions precedent to Substantial Completion provided for in the Contract Documents have been satisfied, the Authority will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include an itemized list of incomplete or unsatisfactory work items as required by Paragraph 10.3 and shall state the responsibilities of the Authority and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. The incomplete and unsatisfactory work items shall be completed within the time specified in Paragraph 10.3. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be signed by the Authority and the Contractor indicating their written acceptance of the responsibilities assigned to them in such Certificate.

10.8.2 Upon Substantial Completion of the Work or the occupancy or use by the Authority of the Work, or designated portion thereof, and upon application by the Contractor and certification by the Authority, payment will be made in accordance with Paragraph 10.3.

10.9 FINAL COMPLETION AND FINAL PAYMENT

10.9.1 Subject to the provisions of Paragraph 10.3, if applicable, upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final request for payment, the Authority will promptly make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract fully performed, it will promptly issue a final recommendation for payment stating that, based on its observations and inspections, the Work has been completed and that to its best knowledge, information and belief the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final recommendation, is due and payable. The Authority will not approve final payment until an inspection for final completion has been performed and the Work has been accepted. The Authority's final recommendation for payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 10.9.2 have been fulfilled.

10.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Authority (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Authority or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of the Contractor's surety to final payment and (3), if required by the Authority, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Authority. If any Subcontractor refuses to furnish a release or waiver required by the Authority, the Contractor may furnish a bond satisfactory to the Authority to indemnify it against any such claim or lien. If any such claim or lien remains unsatisfied after all payments are made, the Contractor shall refund to the Authority all moneys that the latter may be compelled to pay in discharging such claim or lien, including all costs and reasonable attorneys' fees.

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

10.10 STORAGE OF MATERIALS OFF SITE

10.10.1 The Contractor and its Subcontractors shall obtain prior written approval from the Authority for permission to store materials to be incorporated in the Work, for which progress payments will be requested, at off-site locations. Any and all charges for storage, including insurance, shall be borne solely by the Contractor. Before approval, the Authority will require proper proof of insurance and a letter in which is furnished:

10.10.1.1 The name of the Contractor and/or Subcontractor leasing or owning the storage area.

10.10.1.2 The location of such storage space, including the storage area; i.e., the entire premises or certain areas of a warehouse giving the number of floors or portions thereof.

10.10.1.3 The date on which the material is first stored.

10.10.1.4 The value of the material stored.

10.10.2 The Contractor and its Subcontractors shall notify the Authority to inspect, at least once each month, the materials being stored at any off site location.

10.10.3 The Contractor and its Subcontractors shall mark each sealed carton with the name of the Project and the Authority.

10.10.4 A perpetual inventory shall be maintained for all materials held in storage for which payment has been requested.

10.10.5 Payment for materials stored off site shall be at the sole discretion of the Authority. Any additional costs to the Authority resulting from storage of material off-site for which payment is requested, such as, but not limited to, travel expenses and time for inspectors, shall be backcharged to, and paid by, the Contractor. Title to materials stored off-site shall be transferred at the time at which the Authority pays for them.

10.11 INTERPRETATION

10.11.1 In the event of any conflict, discrepancy or ambiguity between or arising from any provisions of this Article 10 and the provisions of Sections 39F, 39G, and other applicable sections of Chapter 30 of the Massachusetts General Laws, the provisions of said sections of Chapter 30 of the General Laws shall be controlling.

ARTICLE 11 - SAFETY AND PROTECTION

11.1 SAFETY PRECAUTIONS AND PROGRAMS

11.1.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including, but not limited to, compliance by the Contractor and all Subcontractors with all safety precautions and programs required by any insurance carrier providing insurance coverage for the Authority or the Contractor in connection with the Project. Within the time specified in Division One and prior to commencing work on the site, the Contractor shall submit to the Authority a safety plan which addresses the safety concerns contained in this Article and any other safety issues occasioned by the specific nature of this Project.

11.2 SAFETY OF PERSONS AND PROPERTY

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

11.2.1.1 all employees on the Work and all other persons or other entities who may be affected thereby;

11.2.1.2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site; and

11.2.1.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, improvements and utilities not designated for removal, relocation or replacement in the course of construction.

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

11.2.3 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss including, without limiting the generality of the foregoing, any local fire department.

11.2.4 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety rules and notifying owners and users of adjacent utilities and other improvements.

11.2.5 The Contractor shall satisfactorily conduct its work at all highway crossings and along all highways, streets, and other ways in accordance with the permission and requirements of the proper authorities. Vehicular traffic, including buses, shall be routed over temporary detours during construction when required to maintain proper flow of traffic. The Contractor shall plan and conduct its operations in such a manner that the continuous flow of traffic is uninterrupted and with a minimum of inconvenience to the general public.

11.2.6 The Contractor shall preserve and protect from injury all animals and all trees not required to be removed and shall, if directed by the Authority, trim branches of certain trees to be protected, in accordance with the best tree surgery practice. The Contractor shall assume all responsibility for the protection of property of adjacent owners so far as affected by its operations, and shall build and maintain such temporary fences as may be required to permit the reasonable use of such adjacent property and to exclude trespassers from the site.

11.2.7 Trees, brush, weeds, grass and other obstructions shall be removed from the sites of the proposed excavations when and as directed and may be removed from other areas only to the extent directed or permitted. The Contractor shall take all necessary precautions to prevent the starting or spreading of fires. No materials directed to be disposed of shall be burned.

11.2.8 Where expressly permitted by the Authority, the Contractor may use in various parts of the Work, without charge therefor, any surplus materials taken from the specified excavations in the areas to be occupied by structures to be constructed pursuant to this Contract. No borrow will be permitted from lands of the Authority or the Commonwealth, except for such excavations.

11.2.9 Blasting operations, if allowed in the technical specifications, shall be conducted by experienced personnel and in strict accordance with the rules and regulations of the Massachusetts Department of Public Safety governing the keeping, storage, use, manufacture, sale, handling, transportation or other disposition of explosives, and such other rules and regulations as may be promulgated from time to time by authorities having jurisdiction such as, but not limited to any local fire department or State fire marshal. When the use or storage of other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

11.2.10 The Contractor shall not sell intoxicating liquors on or about the Work and shall neither permit nor suffer the sale, distribution, introduction or use upon or near the site, nor upon any other areas occupied or controlled by it, of products containing alcohol or controlled substances.

11.2.11 The Contractor shall promptly remedy all damage or loss to any property referred to in Subparagraph 11.2.1 caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under this Article 11, except damage or loss attributable in whole or in part to the acts or omissions of the Authority or Engineer and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to its obligations under Article 5.

11.2.12 The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Project Superintendent unless otherwise required by the Contract Documents and designated by the Contractor in writing to the Authority.

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

11.2.14 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment, and shall comply with all recommendations regarding fire protection made by the representatives of the insurance company or companies carrying insurance on the Work or by the local fire chief or state fire marshal at no additional cost to the Authority. The site shall be kept orderly and clean, and all combustible rubbish shall be promptly removed regularly from the site.

11.2.15 The Contractor shall at all times protect excavations, trenches, buildings and materials from damage from rain water, ground water, ice build up, back-up or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

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

11.2.17 If at any time the Authority determines that the methods, procedures or programs employed by the Contractor to ensure the safety of persons or property as provided under this Article 11 or otherwise employed under the provisions of the Contract Documents are unsafe, inadequate or not otherwise in compliance with the Contract Documents, the Authority may, but shall have no duty or obligation to, order the Contractor to stop the Work or order the Contractor to increase or improve the safety, efficiency or adequacy thereof, and the Contractor shall promptly comply with such order without claim for increase in the Contract Price or the Contract Time; provided that the failure of the Authority to make such determinations or orders shall not relieve the Contractor from its obligations to ensure the safe conduct and satisfactory quality of the Work and the rate of progress required by the Contract Documents, and the Contractor shall be solely responsible for the safety, efficiency and adequacy of all such methods, procedures and programs.

11.3 EMERGENCIES

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

ARTICLE 12 - BONDS AND INSURANCE

12.1 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

12.1.1 The Contractor shall furnish a performance bond for the full amount of the Contract Price, and a labor and materials bond or payment bond for the full amount of the Contract Price, each in the form contained in the bid documents and each naming the Authority as obligee and each of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and acceptable to the Authority, the premiums for which are to be included in the Contract Price and paid by the Contractor. These bonds shall remain in effect during the entire Contract Time, as extended, and remain in effect for the entire warranty period. All bonds shall be executed in the required number of counterparts and shall be submitted to the Authority for insertion into the Contract Documents prior to the execution of the Authority-Contractor Agreement, Section 00500.

12.2 CONTRACTOR'S INSURANCE

12.2.1 The Contractor shall purchase and maintain insurance coverage in the amounts specified in Section 00820. Except as provided in Section 00820, Subparagraph 1.3.1, all insurance coverage required under Section 00820 shall be maintained until completion of all Work on site.

12.2.2 The Authority shall have the right to require that the limits of liability set forth in Section 00820 be raised if in its judgment economic conditions warrant. If additional costs are incurred because of raised limits, the additional costs will be added to the Contract Price in accordance with Article 13.

12.3 PROPERTY INSURANCE

12.3.1 The Authority may, at its option, purchase and maintain property insurance upon the Work or other improvements at the site.

12.3.2 If there is a casualty resulting in a loss of more than 20% of the cost of the Work, determined by the Authority, then the Authority may elect to terminate the Contract upon seven days' notice to the Contractor, and the Contractor shall be entitled to payment for all Work executed prior to said termination and for any loss sustained by the Contractor upon its materials, equipment, tools and machinery, provided the Contractor furnishes satisfactory proof of such loss, and including an allowance for profit on the Work executed prior to termination, all as determined by the Authority, but without claim or payment for loss of profit on that portion of the Work not executed.

ARTICLE 13 - CHANGES IN THE WORK

13.1 CHANGE ORDERS

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

13.1.2 The Authority, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, the Contract Price and the Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be

authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. With respect to Change Orders upon the request of the Authority, the Contractor shall submit to the Authority, as soon as reasonably possible but in any event within ten (10) days of the Contractor's receipt of a request therefor, an accurate written statement setting forth in detail, with a suitable breakdown for each trade and work classification, the Contractor's best estimate of the increased or decreased cost as a result of such proposed Change Order.

13.1.2.1 Contractor proposals should include all direct, indirect, consequential, serial and cumulative costs and delays, as applicable, and those costs and delays that would be or were necessarily incurred, despite the Contractor's reasonable and diligent efforts to mitigate them.

13.1.3 The cost or credit to the Authority resulting from a change in the Work shall be determined in one or more of the following ways:

13.1.3.1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

13.1.3.2 by unit prices stated in the Contract Documents or subsequently agreed upon;

13.1.3.3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

13.1.3.4 by the method provided in Subparagraph 13.1.4.

13.1.4 If none of the methods set forth in Clauses 13.1.3.1, 13.1.3.2 or 13.1.3.3 is agreed upon, the Contractor, provided it receives a written order signed by the Authority, shall promptly proceed with the work involved. The cost of such work shall then be determined by the Authority on the basis of the reasonable expenditures and savings of those performing the work attributable to the change (as further provided in Subparagraph 13.1.7), and including, in the case of increases or decreases in the Contract Price, an allowance for overhead, superintendence and profit as provided in Subparagraph 13.1.7. In such case, and also under Clauses 13.1.3.1, 13.1.3.2 and 13.1.3.3 above, the Contractor shall keep and present, in such form as the Authority may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Pending final determination of cost to the Authority, payments on account, if any, shall be made on Authority's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Authority for any deletion or change which results in a net decrease in the Contract Price will be the amount of the actual net decrease in cost plus the surcharge for overhead and profit as provided in Subparagraph 13.1.7, as confirmed by the Authority. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

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

13.1.6 Lump sum proposals as provided for in Clause 13.1.3.1 shall be accompanied by a detailed breakdown of estimated costs of labor, materials, equipment and insurance, including a similar breakdown of costs for subcontracted work. Such proposals shall be subject to the Authority's review and acceptance which will be based upon the Contractor's satisfactory demonstration that all costs and charges included therein are fair and reasonable, consistent with current price indexes for labor, materials and equipment, and do not in any way reflect exorbitant or non-applicable charges. Surcharges for overhead and profit shall not exceed the amounts stipulated in Subparagraph 13.1.7. Proposals shall be based on the approved schedule of values where applicable, except that surcharges for overhead and profit shall be listed separately. The Contractor shall cooperate fully with the Authority to whatever extent necessary in providing adequate substantiation of cost and in conducting negotiations pertaining thereto.

13.1.7 If the value of the work performed under a Change Order is to be determined by either a lump sum proposal or by the actual cost of work as it progresses, the costs of labor, material, equipment and other direct costs due solely to, and by reason of, changes in the Work shall be limited to the following:

13.1.7.1 Labor Costs:

13.1.7.1.1 Payroll costs of all necessary craft labor and foremen in the direct employ of the Contractor and engaged in performing the change in the Work, in accordance with established wage rates, as evidenced by certified payroll records. Payroll costs shall include wages, plus the necessary labor burdens, which may include health and retirement benefits, vacation and holiday pay, and other payments required to labor organizations under existing labor agreements.

13.1.7.1.2 State and Federal taxes for unemployment insurance (SUTA, FUTA) and Federal taxes for social security (FICA) and Workers' Compensation (WC) required to be paid and directly required by reason of such change in the Work. Amounts must represent the actual effective rates paid or expected to be paid by the Contractor for the Work performed. The actual effective

rates will be substantiated by the Contractor in a form acceptable to the Authority.

13.1.7.2 Material/Equipment Costs:

13.1.7.2.1 The net cost to the Contractor of all necessary materials, including transportation to the site, storage costs and necessary field services, less all discounts, rebates, refunds, returns from sale of surplus items and other savings.

13.1.7.2.2 Maintenance, operation and rental or lease of, or reasonable rental value of Contractor-owned, necessary equipment other than small tools, and including gas, oil, coal, electric current and other forms of energy used, where directly required by reason of such change in the Work.

In no event shall the rental, lease or reasonable rental value exceed the hourly rates developed from the "Rental Rate Blue Book" ("Blue Book") published by Dataquest, Inc. in effect at the time of equipment usage.

For Contractor owned equipment, or for equipment rented or leased from lessor firms associated with or owned by the Contractor, the hourly rates shall be developed by dividing the monthly Blue Book rates by 176 hours a month (the weekly, hourly and daily rates listed in the Blue Book shall not be used). For equipment rented or leased from lessor firms not owned by, or associated with, the Contractor, the hourly rates shall be based on the Blue Book rates for the actual period of rental or lease. Rates in all cases shall be adjusted by application of the Rate Adjustment Tables, reductions for the machine age and equipment overhead, and regional adjustments.

The allowable equipment rates for the first operating shift necessitated by the Change Order work shall not exceed 100% of the Blue Book rate, as adjusted, plus operating costs. The allowable equipment rates for the second operating shift and third operating shift necessitated by the Change Order work shall not exceed 50% of the Blue Book rate, as adjusted, plus operating costs.

The allowable equipment rates for equipment at the site, and not in actual use, as a direct result of the changed work (standby equipment) shall be paid at 50% of the Blue Book rate after application of the rate adjustment tables with no operating costs applied. Payments for standby equipment shall come due only as long as the equipment was idled solely by the actions of the Authority, and that the idle period exceeds that normally experienced for such equipment. Reimbursement for standby equipment shall not exceed eight hours per day, and 40 hours per week. There will be no reimbursement for equipment idled at the discretion of the Contractor, or by actions not under the control of the Authority, such as, but not limited to, acts of God, strikes or adverse weather conditions.

13.1.7.2.3 Necessary installation and dismantling of such equipment, if any, including transportation to and from site, if directly required by reason of such change in the Work.

13.1.7.3 Subcontractor Costs:

13.1.7.3.1 Payments by the Contractor to the Subcontractor for Change Order work to be performed by the Subcontractor. When determining Subcontractor costs, the Subcontractor costs shall be determined in the same manner as in the Contractor's costs. If required by the Authority, the Contractor shall obtain competitive detailed bids from at least three (3) Subcontractors (or Suppliers at the Authority's discretion) that are qualified and acceptable to both the Authority and the Contractor.

13.1.7.4 Surcharges on labor, materials and equipment:

13.1.7.4.1 For Labor costs, the surcharge for overhead and profit shall not exceed fifteen percent (15%).

13.1.7.4.2 For Material/Equipment costs, the surcharge for overhead and profit shall not exceed fifteen percent (15%).

13.1.7.4.3 For Subcontractor costs, and for Change Order work performed by (a) a Subcontractor having a direct subagreement with the Contractor, the Contractor's surcharge shall not exceed five percent (5%) of the cost of the work excluding lower tier fees, and the Subcontractor's surcharge shall not exceed ten percent (10%); (b) a lower tier Subcontractor, the Contractor's surcharge and the corresponding first tier Subcontractor's surcharge shall not exceed five percent (5%) each, and the lower tier Subcontractor's surcharge shall not exceed ten percent (10%).

No Contractor surcharge shall include or be payable on the basis of a Subcontractor's surcharge or other direct costs.

13.1.7.5 Other Direct Costs:

Other direct costs will be allowed only to the extent that these costs increase or decrease solely on account of, and as a direct result of, the performance of Change Order work, or because of an adjustment in Contract Time required because of the Change Order work. No Contractor or Subcontractor surcharge shall be payable on the basis of these other costs. Such costs shall be limited to the following:

13.1.7.5.1 Sales, consumer or use taxes on materials incorporated in the Work;

13.1.7.5.2 Premium the Contractor has to pay for liability and other insurance, or for an increase in bond premiums, due to the Change Order work;

13.1.7.5.3 Royalty payments and fees for permits and licenses;

13.1.7.5.4 Cost of special technical consultants, including but not limited to engineers, architects, testing laboratories, or surveyors, employed for services specifically related to the Change Order work, if approved in advance by the Authority.

13.1.7.5.5 Deposits to be lost for causes other than negligence of the Contractor, any Subcontractor or anyone directly or indirectly to be employed by any of them or for whose acts any of them may be liable, related solely to the Change Order work.

13.1.7.5.6 Costs of office and temporary facilities at the site, inclusive of materials, supplies, equipment and appliances, minor expenses (telegrams, expressage, and petty cash items), required solely for the performance of the Change Order work.

13.1.7.5.7 The cost of utilities, fuel and sanitary facilities, long distance telephone calls, telephone service at the site, required solely in the performance of the Change Order work.

13.1.7.5.8 Special Project employees required by the Authority (e.g. Safety Officer) to the extent that those costs are for duties related solely to the Change Order work involved.

13.1.8 The following costs will in no event be allowed in determining the cost of Change Order work, all of which are considered to be included in the base contract amount, or are indirect, administrative, or other overhead and contingencies covered by Contractor's surcharge:

13.1.8.1 Payroll costs and other compensation of personnel employed by the Contractor whether at the site or in the Contractor's principal or a branch office for management, administration or in support of the performance, management or administration of the work, including, but not limited to, the Contractor's officers, executives, principals, general managers, project managers, construction managers, site superintendents (above the level of foreman) estimators and schedulers, detailers, claims consultants, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, engineers, architects, timekeepers, and clerks.

13.1.8.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.

13.1.8.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the work involved and charges for delinquent payments.

13.1.8.4 Costs due to the fault or negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, deposits to be lost, costs to correct defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.

13.1.8.5 Costs of small tools and field supplies used or consumed in performance of the Change Order work.

13.1.8.6 Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, or the preparation or filing of claims.

13.1.8.7 Expenses of the Contractor associated with anticipated lost profits or lost revenues, lost income or earnings, lost interest on earnings or unpaid retainage.

13.1.8.8 Costs derived from the computation of a "home office overhead" rate.

13.1.8.9 Costs of special consultants or attorneys, whether or not in the direct employ of the Contractor, employed for services specifically related to the resolution of a claim, dispute, or other matter relating to the acceptability of the work.

13.1.8.10 Other administrative expense or contingent costs of any kind, and the costs of any item not specifically and expressly included in Subparagraph 13.1.7.

13.1.9 The Contractor shall not subcontract any work under a Change Order unless Work under the basic Contract of a similar type was previously subcontracted; and Subcontractors will not be allowed to further subcontract any work under a Change Order without the advance written approval and acceptance of the Authority, unless Work under the basic Contract of a similar type was previously subcontracted by them.

13.1.10 A Change Order duly executed by the Authority and the Contractor provides for an all inclusive settlement for all changes and direct, indirect, consequential and cumulative costs and delays, and the Contractor's signature represents a waiver of any and

all rights to file a claim on account of that instrument or the change.

13.1.11 Change Order duly executed by the Authority, but not executed by the Contractor, shall become final and binding on the Contractor, unless the Contractor delivers to the Authority written notice of a claim within twenty-one (21) days after receipt of that instrument.

13.1.12 All changes in the Work shall be in accordance with provisions of Massachusetts General Laws Chapter 30, Section 39I, which provides criminal penalties for unauthorized, willful and substantial deviations from the plans and specifications for public building projects.

13.1.13 No submittal by the Contractor for an adjustment under this Article 13 however justified, nor claim by the Contractor for an adjustment in Contract Price or Contract Time under Article 19, however justified, shall be allowed for any costs or delay incurred more than twenty-one (21) days before the Contractor gives written notice as required, or if made after the date of final payment.

13.2 DIFFERING SUBSURFACE OR LATENT PHYSICAL CONDITIONS

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

If, during the progress of the Work, the Contractor or the Authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents either the Contractor or the Authority may request an equitable adjustment in the Contract Price of the Contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered, but in no event more than twenty-one (21) days after discovery of such condition. Upon receipt of such a claim from the Contractor, or upon its own initiative, the Authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the plans and Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the Authority shall make an equitable adjustment in the Contract Price and the Contract Documents shall be modified in writing accordingly. Such equitable adjustment shall be determined solely in accordance with Paragraph 13.1.

13.3 CLAIMS FOR ADDITIONAL COST OR DAMAGES

13.3.1 If the Contractor wishes to make a claim for an increase in the Contract Price by reason of any work performed or materials furnished by it or by reason of any event, circumstance or occurrence, or if it wishes to make a claim for damages by reason of any direction, interpretation, or any other act or omission of the Authority, including, without limitation, any written interpretation pursuant to Subparagraph 2.1.7, or any order by the Authority to stop the Work pursuant to Paragraph 17.1 where the Contractor was not at fault, it shall give the Authority written notice thereof within twenty-one (21) days after the occurrence of the event giving rise to such claim, otherwise it shall be waived. This notice shall be given by the Contractor before proceeding to execute the Work involved, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 11.3. A written report by the Contractor setting forth the facts and reasons for proceeding under Paragraph 11.3 shall be submitted in support of its claim for relief under Paragraph 11.3. No such claim for an increase in the Contract Price or any other matter described above shall be valid unless so made. If the Authority and the Contractor cannot agree on the amount of the adjustment, if any, to the Contract Price, or cannot agree upon any other matter giving rise to a claim, it shall be determined by the Engineer, subject to the provisions of Article 19. Any change in the Contract Price resulting from such a claim shall be effected by Change Order. Nothing contained in this subparagraph shall be interpreted to permit or recognize a claim by the Contractor for any cost, damage or increase in the Contract Price arising out of or based on a delay in the progress of the Work caused by any act or omission of the Authority or the Engineer, or an employee of either, or a separate contractor, or by changes in the Work duly ordered by the Authority, or by unforeseeable causes beyond the control of the Contractor, which claims may be made only to the extent specifically permitted in and in accordance with Paragraph 9.3.

ARTICLE 14 - CORRECTION OF WORK

14.1 UNCOVERING OF WORK

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

14.1.2 If any other portion of the Work has been covered which the Authority has not specifically requested to observe prior to

being covered, the Authority may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Authority. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Authority or a separate contractor as provided in Article 7, in which event the Authority shall be responsible for the payment of such costs.

14.2 CORRECTION OF WORK

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

14.2.2 If, within one year after the date of Substantial Completion of the Work or portion thereof designated by the Authority or within one year after acceptance by the Authority of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable guarantee or warranty required by or referred to in the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Authority to do so and shall reimburse the Authority for any expenses it shall have incurred in inspecting or testing such portion of the Work. The obligations provided in this Paragraph 14.2 shall survive termination of the Contract.

14.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Article 18 or Subparagraphs 14.2.1 and 14.2.2, unless removal is specifically waived by the Authority.

14.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Article 18 and Subparagraphs 14.2.1 and 14.2.2, the Authority may correct it in accordance with Paragraph 17.2.

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

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

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

14.2.8 It is specifically agreed that the Contractor's agreements, obligations and guarantees under this Article 14, and all other warranties, guarantees, responsibilities and liabilities of the Contractor under the Contract Documents or otherwise provided under law, shall apply to all products and equipment, if any, furnished by the Authority as referred to in the Specifications and to the installment thereof by the Contractor or its Subcontractors under this Contract as fully as if such products and equipment had been purchased directly by the Contractor for incorporation in the Work, as further provided in Article 18.

14.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

14.3.1 If the Authority prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case a debit will be issued to a payment due the Contractor.

ARTICLE 15 - PARTIAL USE OR OCCUPANCY

15.1 AUTHORITY'S USE OR OCCUPANCY

15.1.1 The Authority shall have the right to use and occupy designated areas and portions of the Work prior to completion and

acceptance of all the Work or of other portions of the Work, provided that in the opinion of the Authority such use or occupancy shall not interfere with the Contractor's operations nor delay it in completing the entire Work. If the Authority desires to exercise its right of partial occupancy and use under this Paragraph 15.1, the Authority shall give reasonable notice thereof to the Contractor. If the Authority determines that the proposed use or occupancy would not interfere with the Contractor's operations or delay it in completing the entire Work, the Contractor shall cooperate with the Authority in providing basic services and facilities reasonably required for the proposed use or the health, safety and comfort of the users or occupants and other parties lawfully present on or entering or leaving the site. Mutually acceptable arrangements shall be made between the Authority and the Contractor with regard to procedures, terms, and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Authority. The Authority will assume proportionate and reasonable responsibility for operation of systems, equipment and/or utilities required to provide such services, in part or in total, including proportionate and reasonable expenses of operation incidental thereto, and mutually acceptable arrangements shall be made as to guarantees and warranties affecting designated portions or elements of the Work associated therewith.

15.2 USE NOT ACCEPTANCE

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

15.3 NO CLAIM FOR DELAY

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

ARTICLE 16 - TERMINATION OF THE CONTRACT

16.1 TERMINATION BY THE AUTHORITY

16.1.1 If (i) a petition is filed by the Contractor, or against the Contractor with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors; or (ii) such a petition is filed against the Contractor without its consent and is not dismissed within sixty (60) days; or (iii) the Contractor is generally not paying its debts as they become due; or (iv) the Contractor becomes insolvent; or (v) the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the Contractor or of all or any substantial portion of its assets, or (vi) a receiver, trustee, liquidator, custodian or the like is appointed with respect to the Contractor or takes possession of all or any substantial portion of its assets; or (vii) the Contractor makes an assignment for the benefit of creditors; or (viii) the Contractor refuses or fails, to supply enough properly skilled workmen or proper materials; or (ix) the Contractor fails to make prompt payment to any Subcontractor(s), or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or (x) the Contractor fails to perform the work in accordance with the Contract Documents; or (xi) the Contractor fails to supply labor including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or (xii) the Contractor fails to prosecute the Work with the diligence necessary to complete the Work within the Contract Time or otherwise is guilty of a violation of any provision of the Contract Documents, then, and in any such event, the Authority may, without prejudice to any other right or remedy, and after giving the Contractor and its surety seven (7) days' written notice, terminate the Contract and the employment of the Contractor and hold the Contractor and its sureties liable in damages for breach of the Contract, or may direct the Contractor to discontinue the Work or any designated portion thereof and take possession of the site or any portion thereof and possession and use of any and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work or any portion thereof by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is fully completed. The Authority shall not be liable for any depreciation, loss or damage to such materials, equipment or tools during such use thereof, nor thereafter prior to removal thereof by the Contractor after completion of the Work. The Authority may, at its option, require the Contractor's surety or sureties to complete the Work in accordance with the Contract Documents.

16.1.2 When the Work is fully completed, if the costs incurred by the Authority in finishing the Work, including the cost of any additional services of others, when added to the payments made to the Contractor prior to termination, exceed the Contract Price, the Contractor or its Sureties shall pay the amount of such excess to the Authority. If the sum of such costs and payments is less than the Contract Price, the Contractor shall be paid for any costs, as certified by the Authority on the basis of its determination of "cost" under Subparagraph 13.1.4, incurred by the Contractor but not paid for prior to the termination, to the extent that such payment does not cause the total of payments to the Contractor when added to the cost of finishing the Work to exceed the

Contract Price. In case of such termination of the Contract pursuant to this Article 16, the Authority may, at its election, assume and become liable for obligations, commitments and unsettled claims that the Contractor has previously undertaken or incurred in good faith in connection with the Work. Without limiting the generality of the foregoing, the Authority shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the work, the rights of the Contractor under its subcontracts with any or all Subcontractors. In the event of such assumption or assignment by the Authority, no such Subcontractor shall have any claim against the Authority or such third party for Work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the Authority or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption. Should the Authority so elect, the Contractor shall execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights, as the Authority may require, for the purpose of fully vesting in itself the rights and benefits of the Contractor under such subcontracts or other obligations or commitments. All payments due the Contractor hereunder shall be subject to a right of offset by the Authority for expenses and damages suffered by the Authority as a result of any default, acts or omissions of the Contractor.

16.2 TERMINATION FOR CONVENIENCE

If the Authority determines that it is in the public interest to do so, it may notify the Contractor to discontinue all work, or any part thereof. Such notice shall be given to the Contractor in writing and thereupon the Contractor shall discontinue such work, or such part thereof, as the Authority may designate. If the Authority notifies the Contractor to discontinue all work, or any part thereof, the Authority shall pay and the Contractor shall accept, as full payment for all work and materials provided, a sum agreed to by the Contractor and the Authority. If a sum cannot be agreed upon, the Contractor shall accept the sum of 16.2.1 for the completed work, plus 16.2.2 and 16.2.3 for other costs, determined as follows:

16.2.1. For all completed work for which there are unit prices provided in the contract. The original contract unit prices.

16.2.2 For Construction Related Costs.

16.2.2.1 The actual costs for direct labor (direct labor costs shall include the actual salary costs of laborers, equipment operators, truck drivers, steel workers and other trades persons up to and including working foremen. The costs of general superintendence shall be considered included in field and/or home office overhead.), materials (less salvage value, if any) and use of equipment (determined in accordance with Section 13.1) plus 10% of this total for overhead and profit (the 10% additive is inclusive of both field and home office overhead and profit); and

16.2.2.2 The actual cost for Salary Related Costs such as Worker's Compensation and Liability Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits; and

16.2.2.3 The estimated proportionate cost of surety bonds; and

16.2.2.4 The actual cost to the Contractor for work performed by a subcontractor, plus 5% of such cost prior to any overhead & profit markup by the subcontractor.

16.2.2.5 No allowance shall be made for general superintendence and the use of small tools and manual equipment. General superintendence is that next level above the working foreman. The costs of general superintendence as well as use of small tools and manual equipment shall be considered included in field and/or home office overhead and profit.

16.2.3. For Discontinuance Costs. The reasonable and necessary costs of storage, transportation and other costs incurred for the preservation, protection or disposition of the discontinued work, which are pre-approved by the Authority to be determined as follows:

16.2.3.1 The actual costs for direct labor (Direct labor costs shall include the actual salary costs of laborers, equipment operators, truck drivers, steel workers and other trades persons up to and including working foremen. The costs of general superintendence shall be considered included in field and/or home office overhead.), materials (less salvage value, if any) and use of equipment (determined in accordance with Section 13.1), plus 10% of this total for overhead and profit (the 10% additive is inclusive of both field and home office overhead and profit); and

16.2.3.2 The actual cost for Salary Related Costs such as Worker's Compensation and Liability Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits.

16.2.3.3 No allowance shall be made for general superintendence and the use of small tools and manual equipment. General superintendence is that next level above the working foreman. The costs of general superintendence as well as use of small tools and manual equipment shall be considered included in field and/or home office overhead and profit.

16.2.3.4 The reasonable and necessary legal costs of work discontinuance, plus an additive of 10% for overhead and profit (the additive is inclusive of both field and home office overhead and profit), is allowable. The legal costs for litigation and/or negotiation

purposes with the Authority in settlement of said discontinuances are not allowable.

16.2.3.5 Any other reasonable and necessary costs for discontinuance that are pre-approved by the Authority, plus an additive of 10% for overhead and profit (the additive is inclusive of both field and home office overhead and profit).

16.2.4 When requested by the Authority, the Contractor shall furnish itemized statements of the cost of the work performed and shall give the Authority access to any and all financial and/or project records and documents, relating thereto. Unless the Contractor, when requested to do so, furnishes such itemized statements and access to any and all financial and/or project records and documents, the Contractor shall not be entitled to payment for the work for which such information is sought by the Authority.

The Contractor shall not be paid and the Contractor shall not have any claim for loss of anticipated profits or for any costs or profit in addition to those stipulated above; for loss of expected reimbursement or for any increased expenses resulting directly or indirectly from the discontinuance of any or all work or from unbalanced allocation, among the contract items, of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefor or any other cause.

The Contractor shall incorporate the provisions of this section as provisions in its contracts with each of their subcontractors.

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

17.1 AUTHORITY'S RIGHT TO STOP THE WORK

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

17.2 AUTHORITY'S RIGHT TO CARRY OUT THE WORK

17.2.1 If the Contractor fails to perform the Work diligently and in a timely manner or defaults or neglects to carry out the Work in accordance with the Contract Documents, the Authority may, without prejudice to any other remedy it may have, correct such deficiencies, provided, however, that the Authority shall not take any action to perform the Work or to correct such deficiencies, except in the event of an emergency, unless the Contractor shall have failed, within three (3) business days after receipt of written notice from the Authority of such failure, default or neglect, to commence corrective action and thereafter to promptly and diligently pursue the corrective action to completion. If the Authority undertakes to correct such deficiencies, the cost of correcting such deficiencies, including compensation for the Authority's or other additional services made necessary by such default, neglect or failure shall be deducted from the payments then or thereafter due the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Authority within thirty (30) days of receipt of an invoice therefor. Further, if the Contractor fails, within such three-business-day notice period, to commence corrective action and thereafter to promptly and diligently pursue correction of such deficiencies, or fails to carry out the Work in a timely manner in accordance with the Contract Documents, or if the Project cannot reasonably be completed by the Contractor within the Contract Time, then, at the request of the Authority, the Contractor's Surety shall promptly complete the Work in accordance with the terms of the Contract Documents.

ARTICLE 18 - WARRANTY

18.1 CONTRACTOR'S WARRANTY

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

18.1.2 It is specifically agreed that the Contractor's warranties of materials, equipment and labor under this Article 18 and all other warranties, guarantees, responsibilities and liabilities of the Contractor under the Contract Documents or otherwise provided under law, shall apply to all products and equipment, if any, furnished by the Authority as referred to in the Specifications and to the installment thereof by the Contractor or its Subcontractors under this Contract as fully as if such products and equipment had been purchased directly by the Contractor for incorporation in the Work. The Contractor acknowledges that it has received and approved all information and specifications for such Authority furnished products and equipment sufficient so as to permit the

Contractor to make this agreement. Such specifications for Authority furnished products and equipment shall be considered a part of the Contract Documents, and such Authority furnished products and equipment, upon delivery to and acceptance by the Contractor, shall become part of the Work.

18.1.3 The Contractor shall obtain and preserve for the benefit of the Authority manufacturer's warranties on materials, fixtures and equipment incorporated into the Work, and the Contractor shall prepare and execute a written guarantee and warranty applicable to all phases of the Work in accordance with the provisions of this Article and all other applicable provisions of the Contract Documents pertaining to warranties and guarantees, and shall also secure and pass through to the Authority written guarantees and warranties prepared in a similar manner from each Subcontractor engaged in the performance of the Work and, prior to Substantial Completion, shall deliver three (3) sets of all such guarantees and warranties to the Authority for review.

18.1.4 All materials, equipment, supplies, appliances, fixtures, and specialty devices requiring replacement during any guarantee period specified in the Contract Documents shall be subject to a supplementary guarantee and warranty extending the guarantee period to cover all such items for the full guarantee period specified, beginning as of the date of acceptance of each such replacement item or element of work.

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

18.1.6 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, including, without limitation, the costs of modifying documents and additional fees of the Authority's consultants or engineers, notwithstanding approval or acceptance of such substitution by the Authority, unless such substitution was made at the written request or direction of the Authority.

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

ARTICLE 19 - DISPUTE RESOLUTION

19.1 CLAIMS, COUNTERCLAIMS, DISPUTES

19.1.1 All claims, counterclaims, disputes, and other matters in question arising under, or relating to, the Contract Documents or the breach thereof shall be processed in accordance with the provisions of this Article and are a condition precedent to commencing any action in a court of law. All claims are subject to audit at any time by the Authority's internal audit staff or its representative.

19.1.2 A claim means a written demand or assertion by the Contractor seeking an adjustment in Contract Price and payment of monies so due; an extension or shortening in Contract Time; the adjustment or interpretation of Contract terms or requirements; or other relief arising under or relating to the Contract. A written demand or assertion by the Contractor seeking the payment of money or an extension of time is not a claim under this Article unless clearly designated as such by the Contractor and until certified as required below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this Article.

19.2 WHEN NOTICE AND CLAIM SUBMITTAL BECOME DUE

19.2.1 For any claim under this Article to be valid, it shall be based upon a written notice of claim delivered by the Contractor to the Engineer promptly, but in no event later than twenty-one (21) days, after the occurrence of the event giving rise to the claim and stating the general nature of the claim. The claim submittal with all supporting cost data, CPM schedule analysis and Contractor's affidavit shall be delivered within sixty (60) days after delivery of the notice of claim (unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim). The responsibility to substantiate claims shall rest with the party making the Claim. Failure to provide a notice of claim within said twenty-one (21) day period, or failure to provide a complete claim submittal within the time required in accordance with this Article, shall be conclusively deemed to be a waiver of claim in the instant matter.

19.2.2 A claim by the Contractor shall be made in writing and submitted to the Engineer for written decision by the Engineer.

19.3 REQUIREMENTS FOR CONTRACTOR CLAIMS

19.3.1 For all Contractor claims seeking an increase in Contract Price or Contract Time, the Contractor shall submit with the claim an affidavit certifying that:

19.3.1.1 the claim is made in good faith, and the amount claimed accurately reflects the adjustments in Contract Price or Contract Time for which the Contractor believes the Authority is liable, and covers all direct, indirect consequential, serial and cumulative costs and delays to which the Contractor is entitled as a result of the occurrence of the claimed event;

19.3.1.2 supporting Cost and Pricing Data are current, accurate, complete and represent the best of the Contractor's knowledge and belief; and

19.3.1.3 if the Contractor is an individual, the affidavit shall be executed by that individual; if the Contractor is not an individual, the affidavit shall be executed by a senior company official in charge at the Contractor's plant or location involved, or a responsible officer or general partner of the Contractor.

19.3.2 All claims for time shall be supported by an analysis of the Progress Schedule detailing the impact of the claimed work.

19.4 PENALTIES FOR FALSE CLAIMS

19.4.1 The attention of the Contractor and all Subcontractors, Suppliers, and vendors is drawn to Sections 5A through O of Chapter 12 of the Massachusetts General Laws.

19.5 DETERMINATION ON A CLAIM

19.5.1 For Contractor-certified claims of $50,000.00 or less, the Engineer will, if requested in writing by the Contractor, render a determination within ninety (90) days of the request. For Contractor-certified claims over $50,000.00, the Engineer will, within ninety (90) days decide the claim or notify the Contractor of the date by which the decision will be made. The Engineer's determination shall be final, conclusive and binding on the Contractor subject to the provisions of M.G.L. Chapter 30, Section 39J. If Contractor objects to such determination, Contractor must notify the Engineer within twenty-one (21) days after receipt of the Engineer's decision of its objection to such decision and must commence an action in a court of competent jurisdiction within the time permitted by law. Failure to give notice of objection within said twenty-one (21) day period shall be conclusively deemed to be a waiver of objection or further claim of the instant matter.

19.5.2 Pending final resolution of any claim, including litigation, the Contractor shall proceed diligently with performance of the Work, and comply with any decision of the Authority or the Engineer.

19.5.3 Any adjustment in Contract Price shall be determined solely in accordance with Paragraph 13.1.

19.6 FORUM SELECTION

19.6.1 The Contractor, or any Subcontractor, Supplier and any other person or organization performing any part of Work, agrees that in consideration of the award of the Contract Work to the successful bidder: (i) it will submit all claims, as to which it is aggrieved by the final action and decision of the Engineer, only to the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts, (ii) it consents to and will not contest the exercise of said courts of personal jurisdiction over it relative to this Contract and the Work thereunder which is to be performed within the Commonwealth of Massachusetts, and (iii) it agrees and will not contest that the venue of any such claims or disputes is proper within the Business Law Session of the Suffolk County division of the Superior Court Department.

19.6.2 With respect to any other claim or dispute that arises out of or relates to the validity, construction, interpretation or enforcement of the Contract, the Contractor or any Subcontractor, Supplier or any other person or organization shall not commence any civil action or other proceeding against the Authority, or its third party consultants, agents or managers, other than in the state courts of the Commonwealth of Massachusetts in conformance with the provisions of Subparagraph 19.6.1.

ARTICLE 20 - MISCELLANEOUS PROVISIONS

20.1 CONTRACT DOCUMENTS

20.1.1 The Contract Documents form the Contract for construction and comprise the entire agreement between the parties hereto, and supersede all prior negotiations, representations and agreements, whether written or oral. The Contract Documents are complimentary; the requirements of any one of the Contract Documents shall be as binding as if required by all of them. Except for the special agreements in Article 5, nothing contained in the Contract Documents shall be construed to create any contractual relationship between the Engineer and the Contractor, but the Engineer shall be entitled to performance of obligations contained herein intended for its benefit, and to enforcement thereof. Nothing contained in the Contract Documents shall be construed to modify or affect in any way the rights and obligations of the Authority and the Engineer under any contract or agreement between

the Authority and the Engineer. Nothing contained in the Contract Documents shall be construed to create any contractual relationship between the Authority or the Engineer and any Subcontractor.

20.1.2 The Contract shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts. Any civil action or other proceeding against the Authority, or its third party consultants, agents or managers, by any person, relating to the validity, construction, interpretation or enforcement of the Contract, shall not be commenced other than in the state courts of the Commonwealth of Massachusetts in conformance with the provisions of Subparagraph 19.6.1 hereof.

20.2 SUCCESSORS AND ASSIGNS

20.2.1 The Authority and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet or subcontract it (other than subcontracting portions of the Work as expressly permitted by and in accordance with the Contract Documents) without the previous written consent of the Authority, which consent may be withheld by the Authority in its sole discretion, nor shall the Contractor assign any moneys due or to become due to it hereunder, without such previous written consent of the Authority.

20.3 NOTICES

20.3.1 Whenever written notice is required or permitted pursuant to the Contract Documents, the same shall be deemed to have been properly given if given in writing and delivered by hand in person or by registered or certified mail or express delivery service, return receipt requested, in the case of notices to the Authority, to the attention of the Director of Construction at the address designated by the Authority, and, in the case of notices to the Contractor, to the Contractor's Superintendent or any other officer, principal or member of the Contractor, addressed to any such person at the Contractor's principal office or at the Contractor's field office at the site, if any. Any of the persons or addresses specified above for notice purposes may be changed by notice given in the manner provided herein from the party concerned to each of the other parties.

20.4 ANTI-BOYCOTT COVENANT

20.4.1 The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151E, Massachusetts General Laws. If there shall be a breach in the warranty, representation and agreement contained in this Paragraph, then without limiting such other rights as it may have the Commonwealth shall be entitled to rescind this contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interest of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor. This provision is included in the Contract pursuant to Commonwealth of Massachusetts Executive Order No. 130.

20.5 RIGHTS AND REMEDIES

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

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

20.6 AUDIT; ACCESS TO RECORDS

20.6.1 The Authority or its designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the Contractor and all Subcontractors which pertain to the performance of the provisions and requirements of this Contract.

20.6.2 The following provision stated in Subparagraph 20.6.3 is applicable unless this Contract is not entered into pursuant to formal advertisement and is not in excess of $100,000.00.

20.6.3 If the Contractor has submitted Cost and Pricing data in connection with the pricing of any Change Order or claim related to this Contract, unless the pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by Laws or Regulations, the Authority and any of its duly authorized representatives shall have the right to examine and audit all books, ledgers, records, and documents pertinent to all Cost and Pricing data available and relied upon by the Contractor (including that used by the Contractor in the determination of its bid for the Work), in order to evaluate the accuracy, completeness, and currency of the Cost or Pricing data.

20.6.4 The Contractor and any Subcontractor engaged in work for which a change in Contract Price is requested, shall maintain accounts and original cost records, including but not limited to that used by the Contractor in developing its bid, specifically segregated and identified by job order or other appropriate accounting procedures approved by the Authority. These records will separate costs between (1) Work required under the base contract; (2) work requested to be reimbursed under Change Order; and (3) other claims, including but not limited to changes in the Work, differing site conditions, or other basis of a claim for increased cost. The accounts and records so established shall accumulate such costs under logical costs groups, such as, but not limited to, labor, labor loading, material, equipment, subcontracts, Suppliers and field overhead. In the event that the Contractor or any Subcontractor fails to originate or to maintain any accounts or records as required under this Article, the proposed surcharges for labor, material and equipment shall be limited to one-half of the allowable overhead and profit.

20.6.5 The Contractor shall make available at all reasonable times the materials described in Subparagraph 20.6.3 above, for examination, audit, or reproduction, until six (6) years after final payment under this Contract.

20.6.5.1 If this Contract is completely or partially terminated, the records relating to the Work terminated shall be made available for three (3) years after any resulting final termination settlement.

20.6.5.2 Records pertaining to litigation or the settlement of claims arising under or relating to the performance of this Contract shall be made available for three (3) years after final disposition of such appeals, litigation, or claims.

20.6.6 The Contractor shall insert a provision containing all the requirements of Subparagraph 20.6.1 through Clause 20.6.5.2, in all subagreements over $50,000.00 under this Contract, altering the provisions only as necessary to identify properly the contracting parties.

20.7 FINANCIAL RECORDS OF CONTRACTOR

20.7.1 The provisions of Paragraph 20.7 are included in this Contract pursuant to Chapter 30, Section 39R of the Massachusetts General Laws. As used in this Paragraph 20.7, the following terms have the meanings set forth below:

20.7.1.1 "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, and sections forty-four A to H, inclusive, of chapter one hundred and forty-nine.

20.7.1.2 "Contract" means any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, and sections forty-four A to H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.

20.7.1.3 "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.

20.7.1.4 "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 its 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 Authority.

20.7.1.5 "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.

20.7.1.6 "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 s/he has made and sets forth its 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 over-all opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the Contractor.

20.7.1.7 "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.

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

20.7.2 Records

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

20.7.2.2 until the expiration of six years after final payment, the Office of Inspector General, and the Deputy Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the Contractor or of its Subcontractors that directly pertain to, and involve transactions relating to, the Contractor or its Subcontractors, and

20.7.2.3 the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the Authority, including in its description the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes, and

20.7.2.4 the Contractor has filed a statement of management on internal accounting controls as set forth in Subparagraph 20.7.3 below prior to the execution of the Contract, and

20.7.2.5 the Contractor has filed prior to the execution of the Contract and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Subparagraph 20.7.5 below.

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

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

20.7.3.2 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;

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

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

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

20.7.4.1 whether the representations of management in response to this Clause and Clauses 20.7.2.1 through 20.7.2.5 above are consistent with the result of management's evaluation of the system of internal accounting controls and

20.7.4.2 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.

20.7.5 Contractor shall annually file with the Commissioner of Capital Asset Management and Maintenance during the term of the Contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the Authority upon request.

20.7.6 Failure to satisfy any requirements of Chapter 30, Section 39R may be grounds for debarment pursuant to section forty-four C of chapter one hundred forty-nine.

20.7.7 Records and statements required to be made, kept or filed under the provisions of Section 39R of Chapter 30 of the Massachusetts General Laws shall not be public records as defined in Section 7 of Chapter 4 of the Massachusetts General Laws 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 20.7.2.2.

20.8 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

20.8.1 The following provision is applicable if this Contract is in excess of $500,000.00.

20.8.2 This provision shall become operative only for any Change Order or claim settlement under this Contract involving aggregate increases and/or decreases in costs, plus applicable profits, of more than $100,000.00 except that this provision does not apply to any change to the Contract for which the price of the work involved in the change is:

20.8.2.1 Based on adequate price competition;

20.8.2.2 Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

20.8.2.3 Set by Laws or Regulations.

20.8.3 If any price, including profit, negotiated in connection with any Change Order, or claim settlement under this provision, was increased by any significant amount because (1) the Contractor or a Subcontractor, Supplier, other person or organization furnished Cost or Pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a designated or prospective Subcontractor, Supplier other person or organization furnished the Contractor Cost or Pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the Contract shall be adjusted to reflect the reduction. This right to a decrease in Contract Price is limited to that resulting from defects in data relating to amendments to the Contract for which this provision becomes operative under Subparagraph 20.8.2, above.

20.8.4 Any decrease in Contract Price under Subparagraph 20.8.3, above due to defective data from a designated or prospective Subcontractor, Supplier, other person or organization that was subsequently not awarded the subagreement (or purchase order), shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subagreement (or purchase order) or (2) the actual cost to the Contractor, if there was no subagreement (or purchase order), was less than the prospective subagreement (or purchase order) cost estimate submitted by the Contractor, provided that the actual tract (or purchase order) price was not itself affected by defective Cost or Pricing data.

20.8.5 Before awarding any subagreement (or purchase order) expected to exceed $100,000.00 when entered into, or pricing any Change Order or claim settlement under Article 13 of the General Conditions involving a pricing adjustment expected to exceed $10,000.00, the Contractor shall require the Subcontractor, Supplier, other person or organization to submit Cost or Pricing data (actually or by specific identification in writing), unless the price is:

20.8.5.1 Based on adequate price competition;

20.8.5.2 Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

20.8.5.3 Set by Laws or Regulations.

20.8.5.4 The Contractor shall require such Subcontractor, Supplier, other person or organization to certify in substantially the form prescribed in the Contract Documents that, to best of its knowledge and belief, the data submitted under this subparagraph 20.8.5 above were accurate, complete, and current as of the date of agreement on the negotiated price of the subagreement (or purchase order) or Change Order, or claim settlement affecting the subagreement.

20.8.5.5 The Contractor shall insert the substance of this provision, including this Paragraph, in each subagreement (or purchase order) that exceeds $100,000.00 when entered into.

SUPPLEMENTARY PROVISIONS FOR EEO, ANTIDISCRIMINATION AND AFFIRMATIVE ACTION - SECTION 00810

PART I COMPLIANCE LEGISLATION

A. Equal Employment Opportunity, Antidiscrimination and Affirmative Action Requirements

The Contractor shall comply with all applicable laws and regulations pertaining to nondiscrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

B. Equal Employment Opportunity for Veterans and Individuals with Disabilities

1. Discriminatory practices by the Contractor, Subcontractors and Material Suppliers based on disabilities are prohibited.

a. The Contractor and all Subcontractors shall comply with the provisions of the Commonwealth of Massachusetts Executive Order No. 143 entitled "Equal Employment Opportunity for the Handicapped" which is incorporated herein by reference and made a part of this Contract.

b. THIS CONTRACTOR AND SUBCONTRACTORS SHALL ABIDE BY THE REQUIREMENTS OF 41 CFR 60-1.4(a), 60-300.5(a) AND 60-741.5(a). THESE REGULATIONS PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN. MOREOVER, THESE REGULATIONS REQUIRE THAT COVERED PRIME CONTRACTORS AND SUBCONTRACTORS TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.

C. Where applicable federal and Massachusetts requirements differ, the higher or more strict requirements shall govern.

PART II PERCENTAGE REQUIREMENTS

A. Workforce Utilization Requirements

1. The Contractor and each of its Subcontractors shall maintain the following percentage of Minority and Women employee workforce hours to total workforce hours in each job category of construction work required to complete the Work of the Contract including, but not limited to, bricklayers, carpenters, cement masons, electricians, ironworkers, and operating engineers:

Minority employee workforce hours: 15.6%
Women employee workforce hours: 6.9%

2. The Contractor or Subcontractor shall meet the percentages stated in Part II.A.1 above, unless the Contractor or Subcontractor shall demonstrate to the satisfaction of the Authority that it has taken or is taking every possible measure to achieve compliance, but is unable to do so because insufficient Minority and/or Women workers are available.

3. In the case of a MBE or WBE trucking company used by the Contractor to fulfill all or part of the MBE or WBE program requirements, the trucking company may hire additional drivers, including independent owner operators. If the original MBE or WBE hires additional drivers or independent owner operators, these will be considered employees for purposes of determining the workforce requirements specified in Part II.A.1 above.

B. MBE/WBE Subcontracting Requirements

1. The MBE/WBE percentage requirements for this contract are specified in Paragraph 3.15 of Section 00700.

PART III POST BID PROCEDURES

A. Post Bid Submittals

1. Within three (3) business days of bid opening, the apparent low bidder, including a bidder who is a MBE or WBE, must submit Letters of Intent (Form EEO-92-007) and Contractor's Certification (Form EEO-90-001) to the Authority in accordance with the following. These forms, when completed and submitted, shall be deemed a part of the Contract Documents, and may not be altered or modified in any way unless authorized by the Authority.

a. Contractor's Certification

1) A completed and signed Contractor's Certification (Form EEO-90-001), certifying intent to comply with the Minority/Women workforce requirements and Equal Employment Opportunity requirements must be submitted.

b. Letters Of Intent

1) A completed and signed Letter of Intent (Form EEO-92-007) must be submitted for each MBE/WBE ("first-tier MBE/WBE Subcontractors") with which the apparent low bidder intends to make a commitment for the performance of Work and/or other business activity under the Contract and for each MBE/WBE ("second-tier MBE/WBE Subcontractors") with which a first-tier MBE/WBE Subcontractor intends to make a commitment for the performance of Work and/or other business activity under the Contract. At any time after bid opening, the Authority may request the submission of Letter(s) of Intent from any other bidder.

2) The Letter of Intent must list the Contract Name, Number, and location; the name of the apparent low bidder; whether the Subcontractor identified in the Letter of Intent is a MBE or a WBE; the form under which the MBE/WBE firm conducts business (i.e., individual, partnership, corporation, Joint Venture, or other); the Work or other business activity to be performed by the MBE/WBE identified in the Letter of Intent; the agreed upon price, projected start and completion date; and the signature of the Authorized Agents for the apparent low general bidder and the MBE/WBE.

3) An apparent low bidder who is a MBE or WBE must submit a Letter of Intent for the Work it will perform under the Contract.

4) The entire scope of Work identified for each MBE/WBE in the Letter of Intent, including, without limitation, all construction work, construction related services, and other services, must be performed by workers on the MBE/WBE's own payroll under the supervision of the MBE/WBE. Supervision of the MBE/WBE's workers by the Contractor, another Subcontractor, or personnel not normally under the control of the MBE/WBE, and transfer or reassignment of workers from the Contractor, another Subcontractor, or personnel not normally under the control of the MBE/WBE, to create the appearance of compliance with the above requirements is prohibited. The MBE/WBE must plan, coordinate, utilize, and pay for materials and supplies; utilize equipment which is either owned by the MBE/WBE or is leased without an operator from a party other than the Contractor or an affiliate of the Contractor; and provide knowledgeable commercial and technical management of the Work. Dollars paid for Work not performed by the MBE/WBE will not count towards the Contractor's MBE/WBE participation requirement.

5) First tier MBE/WBE Subcontractors must perform at least 60% of the percentage of business activity specified in Paragraph 3.15 of Section 00700. The first tier MBEs/WBEs may subcontract to other MBEs or WBEs respectively; provided that such second tier Subcontractors may not further subcontract the Work.

c. Joint Ventures

1) A MBE/WBE Joint Venture which is a Subcontractor, or in which the bidder is a partner, may be included in a Letter of Intent signed by all Joint Venture partners. A Joint Venture agreement, signed by all Joint Venture partners and identifying each partner's share in ownership, control, management, risk, profits, and the commercially reasonable dollar value of the Work and project management to be performed by each MBE/WBE partner, shall be submitted within three (3) business days of bid opening for each Joint Venture for which a Letter of Intent is submitted.

2) Where applicable, filed sub-bidders who are MBE/WBE Joint Venture partners and who want to be listed on the filed sub-bid tabulation for MBE or WBE credit must submit a Joint Venture agreement in the form required above to the Authority within three (3) business days of filed sub-bid opening.

3) The apparent low bidder will receive credit against the MBE and/or WBE requirement(s) only in an amount equal to the commercially reasonable dollar value of the Work and project management to be performed by the MBE/WBE partners, as evidenced by the Joint Venture agreement and approved by the Authority. The apparent low bidder must demonstrate to the satisfaction of the Authority that the Joint Venture meets the MBE/WBE requirements and that the MBE/WBE partners will perform the Work in accordance with these Supplementary Provisions.

d. SDO Certification

1) MBE and WBE firms which sign a Letter of Intent must be certified by the Commonwealth of Massachusetts Supplier Diversity Office (SDO) or have an application for certification pending with SDO. If a Letter of Intent is submitted for any firm not listed in the most recent SDO Directory, a copy of the firm's application to SDO for certification or a written acknowledgment from SDO that the firm's application for certification is pending, must be submitted with the Letter of Intent.

2) The Commonwealth of Massachusetts Supplier Diversity Office (SDO) and various other organizations prepare and publish lists of certified MBE/WBEs for the purpose of providing reference sources to assist the bidder in meeting the requirements of the MBE/WBE Program. These lists shall be a reference source only and shall not represent a final determination of qualification for MBE/WBE designation.

3) Any business may apply to SDO for MBE or WBE status. Applications need not be made in connection with a particular bid.

4) MBE/WBE firms must be certified by SDO as a MBE or WBE prior to commencing Work under the contract.

5) If a firm proposed by a Contractor does not satisfy the definition in Part VII, the general bidder shall identify a replacement MBE/WBE.

B. Authority's Determination Of Compliance

1. Following the submittal of the Letter(s) of Intent, the Authority will review the compliance of the apparent low bidder with the requirements of these Supplementary Provisions. The Authority, at its discretion, may also review the compliance of any other bidder.

2. The Authority may, prior to determining the apparent low bidder's compliance with the specified percentage participation requirements, designate, with notice to the apparent low bidder, a reasonable date, time and place for a meeting with such bidder. Upon such notice, the apparent low bidder shall meet with the Authority and shall provide the Authority with any requested information regarding the apparent low bidder's compliance. Such information may include, without limitation, a description of

proposed contract arrangements between such bidder and MBEs or WBEs and further documentation that any proposed MBE or WBE satisfies the definition contained in Part VII. At such meeting, the apparent low bidder will have an opportunity to present information and arguments pertinent to its compliance. The Authority may further require the apparent low bidder to produce such additional information as the Authority deems appropriate, and may obtain whatever other and further information from whatever sources it deems appropriate.

3. The Authority will determine whether the apparent low bidder is in compliance with the specified percentage participation requirements. If the Authority determines that such bidder is not in compliance, the Authority will inform the apparent low bidder in writing of the reasons for its determination.

4. The apparent low bidder shall be entitled, within three (3) business days of receiving the Authority's determination, to request in writing an opportunity to meet with the Authority to present pertinent arguments and information relating to its compliance with the specified percentage participation requirements.

5. The apparent low bidder may propose in writing, prior to such meeting, to substitute one or more SDO Certified MBE(s) or WBE(s), in order to satisfy the specified percentage participation requirements if the Authority has determined any of the following:

a. a firm proposed by the apparent low bidder does not satisfy the definition contained in Part VIIA of these Supplementary Provisions; or

b. the Authority has objection to a proposed MBE or WBE Subcontractor pursuant to the General Conditions; or

c. a proposed MBE or WBE fails to sign or withdraws its Letter of Intent for reasons beyond the apparent low bidder's control;

6. If no meeting is requested, and no substitute MBEs or WBEs are proposed, the Authority's determination regarding the apparent low bidder's compliance shall be deemed final and binding and, to the maximum extent permitted by law, not subject to further review.

7. If a meeting is requested, the Authority will designate a reasonable date, time and place for such a meeting if requested. The Authority may request such information from the apparent low bidder as it deems appropriate. If the apparent low bidder has proposed substitution for any MBE or WBE, the apparent low bidder shall submit a completed Letter of Intent for each new MBE or WBE.

8. Following its meeting with the apparent low bidder, where requested, and its review of any proposed substitutions, the Authority will determine in writing whether such bidder is in compliance with the specified percentage participation requirements, stating the reasons for its determination. A copy of such determination will be sent to the apparent low bidder. Such determination shall be final and binding, and to the maximum extent permitted by law, not subject to further review.

C. Bid Waiver Guidelines

1. Requests for Waivers of MBE/WBE Requirements

a. If the apparent low general bidder alleges that it is unable to comply with all the requirements of these Supplementary Provisions and the specified percentage participation requirements, it may, within the three (3) business day period for the submission of its Letter(s) of Intent, request a waiver from all or part of the percentage participation requirements which it is unable to meet. In order to make such a request, the apparent low bidder must submit a letter to the Authority signed by its authorized representative requesting a full or partial waiver of such percentage participation requirements together with all information and documentation required by Part III.C.3 below sufficient to establish to the Authority's satisfaction that the waiver is justified.

2. Grounds for Granting Waiver Requests

a. Waiver requests will generally be deemed justified if:

1) MBE/WBEs are not available to perform Work on the contract;

2) there are limited MBE/WBE subcontracting opportunities due to contractual requirements established for the project;

3) compliance with the MBE/WBE requirements would result in a significant economic burden on, or risk to, the Authority or the bidder requesting the waiver and the bidder demonstrates that the burden or risk outweighs the purposes and policies of the Authority's affirmative action program; or

4) services are available from only one source.

3. Supporting Waiver Requests

a. The information and documentation submitted in support of a waiver request must include a statement of the reason(s) for the waiver request and establish that the bidder has made a reasonable good faith effort to comply with the specified percentage participation requirements. The apparent low bidder may establish that such a good faith effort was undertaken by providing information such as the following:

1) records of the apparent low bidder's attendance at pre-bid meetings;

2) identification of Work which could be performed by MBEs/WBEs;

3) copies of the apparent low bidder's notices or advertisements concerning MBE/WBE project participation opportunities and any correspondence with MBE/WBEs regarding such opportunities;

4) evidence that adequate information was provided to a reasonable number of interested MBE/WBEs regarding the project and that negotiations in good faith were conducted by the apparent low bidder with interested MBE/WBE firms;

5) records of the apparent low bidder's requests for assistance from MBE/WBE firms, MBE/WBE organizations, or MBE/WBE placement or identification assistance offices, including any relevant correspondence;

6) records reflecting sound reasons for the rejection of all possible MBE/WBEs on the grounds of being unqualified;

7) when interested MBE/WBEs are shown to have been unable to obtain required bonding, lines of credit or insurance, evidence of the apparent low bidder's efforts to assist interested MBE/WBEs in obtaining said bonding, lines of credit, or insurance;

8) in cases where MBE/WBE unavailability is asserted, either a signed "MBE/WBE Contractor Unavailability Certificate" (Form EEO-92-001) for each MBE/WBE contacted or a statement that the MBE/WBE refused to give the requested unavailability certification after reasonable request;

9) in cases where sole-source availability is asserted, a full explanation of how the apparent low bidder determined that the services to be procured are readily available only from one source; and

10) in cases where significant economic hardship is asserted, a full explanation of the nature and extent of the hardship.

b. The Affirmative Action and Compliance Unit may require the apparent low bidder to produce such additional information as it deems appropriate and may obtain whatever other information it deems appropriate from any source.

4. Decisions on Waiver Requests

a. Within ten (10) business days after submission of all necessary information and documentation, the Authority's Special Assistant for Affirmative Action, or his/her designee, in consultation with the Authority's Law Division, will make a written decision as to whether a waiver will be granted and will forward said decision to the apparent low bidder. If the waiver request is denied, the facts upon which the denial is based will be set forth in the written decision. A bidder who is dissatisfied with the decision may request in writing, within three (3) business days of receiving the Authority's decision, an opportunity to meet with the Authority's Affirmative Action and Compliance Unit to present additional information in support of its waiver request. The Authority will designate a reasonable date, time, and place for such a meeting if requested. Following any such meeting, the Authority's Affirmative Action and Compliance Unit will issue to the bidder a final and binding decision as to whether a waiver request will be granted. Such determination shall be final and binding, and to the maximum extent permitted by law, not subject to further review.

PART IV Monitoring/Reporting During Contract Time

A. Workforce Utilization

1. After the start of Work on site, the Contractor and all Subcontractors shall prepare and submit the Weekly Workforce Utilization Report (Form EEO-99-004) and the Weekly Workforce Statistical Report (Form EEO-86-004A) by close of business each Tuesday for the previous week.

a. The Weekly Workforce Utilization Report shall be broken down by employee for the number of hours worked in each trade, indicating Minority, Women or non-Minority group member.

b. The Workforce Statistical Report shall be broken down by job category of hours worked for Minorities and Women.

c. Copies of these reports shall be submitted to the Authority's Compliance Monitor by close of business each Tuesday for the previous week.

2. The Contractor shall obtain a completed Subcontractor's Certification (Form EEO-92-003) from each Subcontractor prior to the executing any subcontract under the Contract Documents. The Authority will not allow any MBE/WBE Subcontractor to commence Work until their Subcontractor's Certification has been received.

3. Records of employment referral orders, prepared by the Contractor, shall be made available to the Authority on request.

B. Minority Business Enterprises/ Women Business Enterprises Participation

1. Reporting Requirements

a. The Contractor shall submit the Monthly Compliance Report (Form EEO-92-009) within five (5) days following the end of each month. This report shall include all MBEs and WBEs performing Work during the reporting period.

b. The Contractor shall obtain and submit a copy of a valid, executed subcontract, lease, or rental agreement and a completed Certificate of Work Start Up (Form EEO-95-010) within five (5) days prior to start of Work for each MBE/WBE working on the contract. Each subcontract, lease, rental agreement, and Form EEO-95-010 must be signed by both the Contractor and the MBE/WBE prior to submittal.

c. The Contractor shall complete and submit the Certificate of Completion (Form EEO-02-011) within five (5) days after completion of Work by each MBE/WBE.

d. The Contractor shall not perform with its own organization or any Subcontractor or any other contractor any Work designated to be performed by a MBE/WBE in a Letter of Intent submitted by the Contractor under Part III.A hereof, without the prior written approval of the Authority. Approval shall not relieve the Contractor from meeting the specified percentage participation.

e. During the Contract Time, the Contractor's fulfillment of the specified percentage participation requirements will be determined with reference to the Contract Price as follows. If the Contract Price exceeds the base bid price (e.g., because an alternate was selected), the Contractor shall submit for approval by the Authority revised Letter(s) of Intent by MBEs and WBEs evidencing the satisfaction of the percentage participation requirements and such other information concerning additional MBE/WBE participation as may be requested by the Authority. If the Contract Price increases after execution due to change orders or other adjustments, the Authority may require the Contractor to subcontract additional Work or to purchase additional goods and services from MBEs and WBEs up to the specified percentage participation requirements.

2. MBE/WBE Status

a. All SDO certifications must be current and kept updated during the Contract Time.

b. During the Contract Time, if the certification of a firm as a MBE/WBE is rescinded for any reason, the Contractor shall substitute a replacement MBE or WBE, respectively.

3. Guidelines for MBE/WBE Participation Waiver During Contract Time

a. If the Contractor, for reasons beyond its control, is unable to comply with the specified percentage participation requirements during the Contract Time, it may request a waiver from the Authority in accordance with the following procedure:

1) The Contractor shall notify the Authority in writing within five (5) business days of the occurrence of any facts or circumstances as a result of which it will be or is unable to comply with MBE/WBE percentage participation requirements and that it requests a waiver of compliance from the terms thereof.

2) The Authority will review and make a recommendation in writing on the disposition of the waiver request within ten (10) business days. If requested in writing by the Contractor, a hearing will be held within this time frame, at which time the Contractor may present evidence and argument regarding its waiver request. A summary of the proceedings of this hearing will be prepared by the Authority and will be a part of the record of review of the request.

3) The recommended disposition, together with any documentary evidence and/or summary of hearing, will be forwarded to the Special Assistant for Affirmative Action and Compliance, or his/her designee, who will issue a final determination on the waiver request within three (3) business days of reviewing said recommendation.

4) The final determination will either deny the waiver request or grant the waiver request in whole or in part.

5) Invocation of the waiver procedures shall in no way entitle the Contractor to an extension of the Contract Time.

6) If a waiver request is denied or granted only in part, the Contractor shall, within five (5) business days of receipt of the decision,

submit revised Letters of Intent for approval and the Contractor shall proceed with the Work.

PART V: REMEDIES

A. Investigation

1. Whenever the Authority believes that the Contractor or any Subcontractor may not be in compliance with the terms of any of these Supplementary Provisions, the Authority directly, or through a designated agent, will conduct an appropriate investigation. The investigation may include conferring with the parties to determine if such Contractor or Subcontractor is operating in compliance with these Supplementary Provisions.

B. Noncompliance

1. If the Authority or its agent finds the Contractor or Subcontractor not in compliance, the following steps and/or actions will be taken:

a. The Authority or its agent will make a preliminary report of noncompliance to the Authority's Special Assistant for Affirmative Action and Compliance.

b. The Authority or its agent will notify the Contractor in writing of specific measures required to bring the Contractor into compliance, if such measures are available.

c. The Contractor shall provide such information and documentation as is necessary in the judgment of the Authority to ascertain its compliance with the terms of these Supplementary Provisions. The Contractor may be subject to sanctions if it fails to provide requested information or documentation. The Contractor shall ensure that it can obtain from its Subcontractors such information and documentation as may be necessary in the judgment of the Authority to ascertain the Contractor's compliance with the terms of these Supplementary Provisions.

C. Sanctions

1. In the event that the Contractor fails or refuses to fully perform such steps, the Authority will make a final report of noncompliance and will impose one or more of the following sanctions, as it deems appropriate to attain full and effective enforcement, depending on the type of Contractor noncompliance.

a. Failure to Submit Requested Information or Documentation or Required Forms

1) If the Contractor repeatedly fails to submit information or documentation reasonably identified by the Authority to be necessary to determine whether the Contractor is in compliance with the terms of these Supplementary Provisions, or if the Contractor fails to submit one or more forms required by these Supplementary Provisions, the Authority may impose a sanction of up to $2,500 for each such form on a one-time basis or for each week that the Contractor fails to submit the required form or forms.

b. Performing MBE or WBE's Work

1) If the Contractor performs with its own workforce, or has another Contractor or Subcontractor perform, any Work designated for a MBE or WBE for which a Letter of Intent has been submitted, without first obtaining the prior written approval of the Authority, the Authority may impose a sanction of up to twenty percent (20%) of the dollar value, as determined by the Authority, of the Work so performed.

c. Failure to Meet Workforce Requirements

1) If the Contractor fails to use its best good faith efforts to maintain the percentages of Minority or Women employee workforce hours required by these Supplementary Provisions and fails to submit documentation to the Authority showing that it used its best good faith efforts to maintain such percentages, the Authority may impose a sanction of up to $2,500 on a one-time basis or for each week that the Contractor fails to maintain the required percentages of Minority or Women employee workforce hours.

d. Failure to Meet MBE or WBE Participation Requirements

1) If the Contractor fails to meet the specified percentage participation requirements, the Authority may impose a sanction of up to twenty percent (20%) of the total dollar shortfall in MBE or WBE participation, as determined by the Authority.

e. Other Noncompliance

1) In addition to the sanctions listed above, or if the Contractor otherwise fails to abide by or to conform to these Supplementary Provisions, the Authority in its discretion may impose any of the following sanctions:

a. The Authority may suspend, terminate or cancel the contract, in whole or in part, or may call upon the Contractor's surety to perform the Work and may further deny the Contractor the right to participate in any future contracts awarded by the Authority for a period of up to three (3) years.

b. The Authority may suspend any payment or part thereof due under the contract until such time as the Contractor is able to demonstrate compliance with the terms of the contract.

D. Reviews

1. No sanctions will be imposed if the Authority finds that the Contractor has taken every possible measure to comply with these Supplementary Provisions or that some other justifiable reason exists for waiving these Supplementary Provisions in whole or part.

2. If at any time after the imposition of one or more of the above sanctions, a Contractor is able to demonstrate that it is or was in compliance with these Supplementary Provisions, it may request the Authority to suspend the sanctions, pending a final determination by the Authority as to whether the Contractor is in compliance. Upon final determination, the Authority will either lift the sanctions in whole or in part or re-impose them.

3. Whenever the Authority proposes to invoke sanctions against a Contractor under these Supplementary Provisions, the Authority will notify the Contractor in writing of its proposed ruling and of its right to request, within seven (7) calendar days, a conference held by the Authority or its designee. Upon receipt of such a request, the Authority will schedule a conference to be held as soon as is practicable. The Authority will determine in its sole discretion whether the sanctions are justified by the supporting circumstances presented at the conference.

PART VI: GENERAL CONDITIONS

A. Nondiscrimination/Affirmative Action

The Contractor, Subcontractors and Material Suppliers shall give written notice of their commitments under this paragraph to any labor union, association or brotherhood with which they have a collective bargaining contract or other agreement.

In connection with the performance of Work, the provisions of Part 1 shall apply to, 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.

In the hiring of Minority and Women journeymen, apprentices, trainees, and advanced trainees, the Contractor and all Subcontractors shall comply with these requirements, including, but not limited to, referrals from multi-employer affirmative action programs, traditional referral methods utilized in the construction industry and/or referrals from community referral agencies.

The Contractor and all Subcontractors shall undertake in good faith administrative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such past discrimination.

The Contractor and all Subcontractors shall post in conspicuous places, available for employees and applicants for employment, notices provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. c. 151B).

B. Affirmative Action Plan Requirements

Each Contractor for supplies and equipment, services and construction receiving a single contract exceeding $50,000 shall submit an Affirmative Action Plan that includes the purchase of supplies, equipment and services from MBEs/WBEs as well as its employment objectives.

C. Documentation

The Authority may at any time require such information as is necessary in the judgment of the Authority to ascertain compliance with the terms of these Supplementary Provisions.

D. Minority/Women Business Liaison Officer

The Contractor shall designate and make known to the Authority the company official designated as the Minority/Women Business Liaison Officer who shall administer the Contractor's responsibilities under these Supplementary Provisions for workforce compliance and participation of Minority Business Enterprises and Women Business Enterprises.

E. Access to Contractor Site

The Authority shall have right of access during normal business hours to the project site, its facilities and any books, records, accounts and other sources of information which may be determined by the Authority to affect the employment of personnel.

Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so notify the Authority setting forth what efforts were made to obtain the information.

F. Severability

These Supplementary Provisions are severable, and if any of them shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining Supplementary Provisions.

Part VII: DEFINITIONS

1. For the purposes of these Supplementary Provisions, the following terms shall have the following meanings:

a. Authority - As defined in Section 00700 - General Conditions.

b. Commission - The Massachusetts Commission Against Discrimination (MCAD), or an officer, employee or agent thereof designated by the Commission for the particular purpose involved.

c. Compliance Monitor - The individual or individuals designated from time to time by the Authority to assist and make recommendations to the Authority with respect to compliance with these Supplementary Provisions.

d. construction work - The provision at the work site, of labor or labor and materials to construct, reconstruct, erect, demolish, alter, install, disassemble, or excavate all or part of the Work required by the Contract Documents and the following services performed at the work site ancillary to, and/or in support of such work: hauling, trucking, equipment operation, surveying or technical services (e.g., on site geotechnical services).

e. construction related services - Those services not specifically included in the definition of "construction work" above that are performed at the work site ancillary to, and/or in support of, the construction work, such as administrative services, security, food services.

f. Contractor - As defined in Section 00700 - General Conditions.

g. Minority Business Enterprise (MBE) - A business concern which is currently certified by SDO as a Minority Business Enterprise.

h. Women Business Enterprise (WBE) - A business concern which is currently certified by SDO as a Women Business Enterprise.

i. Equipment Rental Firms - A firm that owns equipment and assumes actual and contractual responsibility for renting said equipment to perform a useful function of the Work of the contract consistent with normal industry practice.

j. Joint Venture - A Joint Venture that includes one or more MBE or WBE Joint Venture partner(s) who are responsible for a clearly defined portion of the Work which is detailed separately from the Work to be performed by the non-MBE/WBE Joint Venture partner(s).

k. Letter of Intent - Form EEO-92-007 signed by the Authorized Agent of each Minority Business Enterprise and Women Business Enterprise designating Work to be performed by each MBE/WBE.

l. Material Supplier - A vendor engaged in sales to industry from an established place of business or source of supply who:

1) manufactures goods from raw materials or substantially alters them before resale; or

2) provides and maintains a storage facility for materials utilized in the Work, consistent with normal industry practice.

m. Minority - Any citizen or lawful permanent resident of the United States who satisfies one or more of the following definitions:

1) "Native American" means all persons having origin in any of the original peoples of North America and who are recognized as a Native American by a tribe or tribal organization.

2) "Asian" means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to China, Japan, Korea, Samoa, India and the Philippine Islands.

3) "Black" means all persons having origins in any of the Black groups of Africa, and all persons having origins in any of the original peoples of the Cape Verdian Islands.

4) "Hispanic" means all persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands.

n. Percentage Participation - The ratio of the actual dollar amount to be paid to a MBE/WBE for Work performed under the contract to the total Contract Price.

o. Women - Any citizens or lawful permanent residents of the United States who are of the female gender.

Part VIII:COMPLIANCE FORMS

A. COMPLIANCE FORMS - The compliance forms in the list below can be accessed through a link on the MWRA Supplier Portal Home Page.

B. COMPLIANCE FORMS CHECKLIST

Form EEO-90-001, CONTRACTOR'S CERTIFICATION - Due from the apparent low general bidder within three (3) business days of bid opening

Form EEO-92-003, SUBCONTRACTOR'S CERTIFICATION - Due from the Contractor from each Subcontractor prior to executing any subcontract

Form EEO-99-004, WEEKLY WORKFORCE UTILIZATION REPORT - Due from the Contractor after start of Work on site each Tuesday for previous week

Form EEO-86-004A, WEEKLY WORKFORCE STATISTICAL REPORT - Due from the Contractor after start of Work on site each Tuesday for previous week

Form EEO-92-007, LETTER OF INTENT - Due from the apparent low general bidder within three (3) business days after bid opening

Form EEO-92-009, MONTHLY COMPLIANCE REPORT - Due from the Contractor after the Start of Work on site within five (5) days after the end of each month

Form EEO-95-010, CERTIFICATE OF WORK START UP - Due from the Contractor for each MBE/WBE five (5) days prior to start of Work on site by MBE/WBE

Form EEO-92-011, CERTIFICATE OF COMPLETION - Due from the Contractor for each MBE/WBE within five (5) days after completion of Work by MBE/WBE

Form EEO-92-001, MBE/WBE CONTRACTOR UNAVAILABILITY CERTIFICATE - Due from the apparent low general bidder within three (3) business days after bid opening (if applicable).

INSURANCE REQUIREMENTS - SECTION 00820

1.0-CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall purchase and maintain in accordance with Section 00700, Article 12, such insurance as will protect it from claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

1.1-WORKERS' COMPENSATION INSURANCE

The Contractor shall purchase and maintain Workers' Compensation insurance as follows:

1.1.1 Insurance sufficient to discharge its obligations under all applicable workers' or workmen's compensation laws of the territories and states of the U.S.A., including but not limited to, the United States Longshoremen's & Harbor Workers Act, the Jones Act, Federal Employment Liability Act (FELA) and Admiralty or Maritime Law, as applicable.

1.1.2 Employer's liability insurance with minimum limits of $100,000 per accident for bodily injury by accident, $100,000 per employee for bodily injury by disease and $100,000 policy limit for bodily injury by disease.

1.1.3 If the Contractor or any of its Subcontractors claim an exemption from providing Workers' Compensation Insurance, pursuant to Massachusetts General Laws Chapter 152, a Workers' Compensation Insurance Affidavit must be submitted to the Authority in lieu of indicating coverage on the Insurance Certificate. If the Contractor or any of its Subcontractors claim an exemption from providing Workers' Compensation Insurance because they are a self-insured entity, a copy of the self-insured license issued by the Department of Industrial Accidents shall be submitted to the Authority in lieu of indicating coverage on the Insurance Certificate.

1.2-COMMERCIAL AUTOMOBILE LIABILITY

The Contractor shall purchase and maintain Commercial Automobile Liability insurance as follows:

1.2.1 Commercial automobile liability insurance covering use of any and all owned, non-owned, leased or hired motor vehicles to be used in conjunction with this Contract with a minimum combined single limit of $1,000,000. Coverage for loading and unloading of any motor vehicle must be covered by endorsement to the commercial automobile liability policy.

1.3-COMMERCIAL GENERAL LIABILITY INSURANCE

The Contractor shall purchase and maintain Commercial General Liability insurance on an occurrence form including a comprehensive broad form endorsement and covering the full scope of Work under the Contract with limits not less than $1,000,000 per occurrence and $2,000,000 aggregate for personal injuries, bodily injuries, and property damage. Such insurance shall include at least the following:

1.3.1 Comprehensive general liability insurance, including all products, premises operations, and completed operations liability, independent contractors, additional interests of employees, and incidental medical malpractice liability. Products and Completed Operations coverage shall be maintained for three (3) years after Substantial Completion.

1.3.2 Blanket contractual liability insurance covering all liabilities for bodily injury, personal injury, advertising injury and property damage assumed under the Contract Documents, including, but not limited to, Contractor's obligations under Section 00700, Paragraph 5.1.

1.3.3 Coverage for "XCU" hazards (explosion, collapse of buildings, blasting, undermining, and damage to underground property). Before any blasting is done, Contractor shall present evidence that blasting damage is included in Contractor's insurance coverage. Before any asbestos abatement or inspection is done, Contractor shall present evidence of coverage for asbestos hazards.

1.4-EXCESS/UMBRELLA LIABILITY INSURANCE

The Contractor shall purchase and maintain umbrella form excess liability insurance with an annual per occurrence limit of $5,000,000 in excess of underlying limits and aggregates specified for this Contract. Such policy shall be written at least as broadly as the primary or underlying policy or policies and shall apply to the General Liability, Automobile Liability, and Employers Liability insurance. Such Excess/Umbrella insurance shall provide that any insured, including any additional insured, under any underlying policy is an insured under the Excess/Umbrella policy.

2.0-ADDITIONAL INSURANCE COVERAGE

2.1- PROPERTY INSURANCE (BUILDERS RISK)

The Contractor shall purchase and maintain Property Insurance (Builders Risk) in accordance with Section 00820A - INSURANCE REQUIREMENTS - PROPERTY INSURANCE (BUILDERS RISK) if it is included in the Contract Documents posted for this event.

2.2- SPECIAL INSURANCE REQUIREMENTS

The Contractor shall purchase and maintain additional special insurance in accordance with Section 00820S - SPECIAL INSURANCE REQUIREMENTS if it is included in the Contract Documents posted for this event.

3.0-ADDITIONAL INSURANCE REQUIREMENTS

3.1 INSURANCE POLICIES AND ENDORSEMENTS

All insurance policies and endorsements provided pursuant to the foregoing provisions of these Insurance Requirements shall be in the form and written by companies satisfactory to the Authority. All policies shall be written by an insurance company with an A.M. Best and Company insurance financial strength rating in a secure category and a financial size category of VI or greater. During

the Contract Time, the Contractor shall furnish originals or certified copies of the policy or policies including all endorsements required to provide stated coverage within thirty (30) days of a written request from the Authority.

3.2-ADDITIONAL INSUREDS

The Authority and such other parties as the Authority may identify by notice to the Contractor, shall each be named as an additional insured on all policies herein required, including Completed Operations on General Liability, Automobile Liability, and Excess Liability policies, and excluding Workers' Compensation.

3.3-DEDUCTIBLES

Deductible amounts for all required coverages shall be commercially reasonable, subject to review and approval of the Authority. If the Authority determines that a deductible is not commercially reasonable, the Contractor shall revise the deductible amount at no additional cost to the Authority. All deductibles shall be the sole responsibility of the Contractor.

3.4-INSURANCE CERTIFICATES

Prior to execution of the Contract, the Contractor shall furnish insurance certificates, binders of insurance and policy language acceptable to the Authority evidencing the required coverages and endorsements. Such certificates and all insurance policies required by these Insurance Requirements shall contain provisions requiring at least thirty (30) days prior written notice to the Authority of any cancellations of or material change in the policies. Certificates shall indicate effective dates and dates of expiration of policies and shall reference coverage for all work performed under this Contract. Certificates shall also indicate all policies, limits and special conditions required by these insurance provisions. An additional certificate evidencing continuation of all insurance coverages required to remain in force after final payment shall be submitted with the application for final payment, and neither final payment nor any remaining retainage under this Contract shall be due until such certificate has been submitted to the Authority.

3.5-SUBCONTRACTOR INSURANCE

Insurance required of the Contractor shall be provided by or on behalf of all Subcontractors to cover their operations performed under the Contract Documents. The Contractor shall be held responsible for enforcing compliance with these insurance requirements as they apply to any Subcontractors. The Contractor shall be responsible for any deficiency or relaxation of the insurance requirements applicable to any Subcontractors. The Contractor shall not permit any Subcontractor to commence work until such Subcontractor has furnished evidence that insurance has been procured and certificates of insurance have been obtained by Contractor providing that, in the event of restrictions in or cancellation of Subcontractor's policies, thirty (30) days advance written notice be given to Contractor by registered mail.

3.6-WAIVER OF SUBROGATION

The Contractor and its insurers shall have no right of subrogation against the Authority. Policies for General Liability, Automobile Liability, Excess Liability and Workers' Compensation shall include a waiver of the insurer's right of subrogation in favor of the Authority.

3.7-SEVERABILITY, PRIMACY AND NON-CONTRIBUTION

All such policies shall contain provisions or endorsements necessary to assure coverage of claims by one insured against another. All required insurance policies shall be primary and non-contributory to all other insurance or self insurance available to the Authority for liability arising out of or resulting from the Contractor's operations under the Contract, whether such operations be by Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

3.8-NON-LIMITATION OF LIABILITY

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

3.8.2 The acceptance of evidence of insurance by certificate or by policy copy that is not in conformance with the requirements of this section shall not constitute a waiver of or amendment to these Insurance Requirements.

3.9-LAPSE OF COVERAGE

Failure to provide and continue in force any insurance required by this Contract shall be deemed a material breach of this Contract for which the Authority, at its sole discretion, may terminate the Contract.

3.10-VALIDITY OF AGREEMENTS

Without limitation of any other provisions of the Contract Documents, if (a) the Contractor's agreement herein to insure or to name as an insured the Authority with respect to contractual liability assumed by the Contractor under the terms of the Contract Documents or otherwise, or (b) any contract of insurance between the Contractor or any Subcontractor and its or their insurance company, shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that such circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreements and obligations under the Contract Documents nor the validity or enforceability of such contract of insurance, each of which shall be enforced to the fullest extent permitted by law.

4.0-THIRD PARTY PROPERTY DAMAGE CLAIMS

In the event the Contractor or the Contractor's insurance company fails to provide the Authority with documentation sufficient in the Authority's sole discretion to remedy all damage and loss to any property referred to in Subparagraph 11.2.1 of Section 00700 within thirty (30) days of notice from the Authority to the Contractor and the Contractor's insurance company of such damage or loss, the Authority reserves the right to submit any property damage claim alleged to be caused in whole or in part by the Contractor, any Subcontractor, or anyone directly or indirectly employed by an of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Article 11 of Section 00700 to a damage review committee established by the Authority. Such damage review committee shall make a determination as to whether the alleged claim is Construction-Related Damage and if so, the value of the Construction-Related Damage. If the Authority determines, based on the recommendation of the damage review committee, to pay the property owner for Construction-Related Damage sustained by the property, the Authority shall withhold such cost from any amounts due the Contractor.

MIMIMUM WAGE RATES - SECTION 00830

Attached as a separate document located on the Summary Tab.