

DOCUMENT 00800

SUPPLEMENTARY CONDITIONS

GENERAL CONDITIONS

The "General Conditions of the Contract for Construction," AIA Document A201-1997, Fifteenth Edition, published by the American Institute of Architects, Articles 1 through 14 inclusive, is a part of this Contract.

SUPPLEMENTARY CONDITIONS

The provisions of this document, the Supplementary Conditions, modify, delete or add to the General Conditions. Provisions of the General Conditions not expressly modified or deleted by the terms hereof shall remain in effect.

Paragraphs or subparagraphs contained in these Supplementary Conditions and marked with an asterisk (*) are required by or are intended to be consistent with the requirements of Massachusetts statutes governing construction contracts awarded by public agencies in the Commonwealth of Massachusetts (sometimes referred to in the Contract Documents as the "Commonwealth"). Such provisions containing statutory references are intended to be consistent with the statutes referenced, and any deviations or inconsistencies between the provisions contained herein and the referenced statutes are unintentional; in all cases the actual statutory provisions shall be controlling. Any additional provisions required by law or regulation to be included in this Contract shall be deemed to be so included. In addition, the Owner and the Contractor recognize that other rights, duties and obligations relating to public construction contracts are provided for by law or regulation, but may not be expressly included or referred to in the Contract Documents. In case of conflict between the asterisked provisions and other provisions of the Contract Documents, the asterisked provisions shall govern. In case of conflict between the provisions of the Contract Documents and the provisions of any applicable law or regulation, the provisions of such law or regulation shall govern. Where the term "awarding authority" appears in any asterisked provision, it shall mean the Owner.

ARTICLE 1 GENERAL PROVISIONS

- 1.1.2 Insert the following at the end of clause (1) in the fourth sentence of subparagraph 1.1.2: "(except as provided in Paragraph 3.18)"; insert the following at the end of clause (2): "(except as provided in Paragraph 5.4)"; insert the words "of the Contractor" after the word "obligations" in the fifth sentence of subparagraph 1.1.2. Add the following at the end of subparagraph 1.1.2:

The Contractor understands that the Architect's obligations under its agreement with the Owner are solely for the benefit of the Owner, and that in performing such obligations the Architect may consequently increase the burdens and expense of the Contractor, Subcontractors or material suppliers.

- 1.1.3 Insert the following at the end of the first sentence of subparagraph 1.1.3: ", including the Contractor's obligations during the correction period provided for in Paragraph 12.2."

- 1.2.1 Insert the following before the semicolon in the second sentence of subparagraph 1.2.1: "(for example, any item indicated in the Specifications which is omitted from the Drawings or vice versa shall be construed as though contained in both)". Add the following at the end of subparagraph 1.2.1:

All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. In the event of any conflict, discrepancy or ambiguity among the Contract Documents, the documents shall be construed according to the following priorities:

Highest Priority:	Modifications - later date to take precedence
Second Priority:	Agreement
Third Priority:	Addenda – later date to take precedence
Fourth Priority:	Supplementary General Conditions
Fifth Priority:	General Conditions
Sixth Priority:	General Requirements - Division 1
Seventh Priority:	Drawings and Specifications

Among Drawings, large scale details shall control over small scale details, and figured dimensions shall control over Drawings not dimensioned. In the event of conflicts, discrepancies or ambiguities between the Drawings and the Specifications, or within either the Drawings or the Specifications, the Contractor shall provide the better quality or greater quantity of Work, or comply with the more stringent requirement, as applicable, unless otherwise directed by a Modification.

1.2.2 Add the following at the end of subparagraph 1.2.2:

" , except as provided by law. The Contractor shall refer to all of the Drawings and to all of the Sections of the Specifications, and shall perform all Work reasonably inferable therefrom as being necessary to produce the indicated results."

1.2.4-

1.2.10 Add new subparagraphs 1.2.4 through 1.2.12 as follows:

1.2.4 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.

1.2.5 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

1.2.6 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

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

1.2.8 The Mechanical, Electrical and Fire Protection Drawings are diagrammatic only, and are not intended to show the exact alignment, physical locations or configurations of such Work. Such Work shall be installed without additional cost to the Owner so as to avoid conflicts, provide clear access to all control devices, clear all obstructions, permit adequate clearances for the Work of other trades and for proper operation and maintenance, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the Mechanical,

Electrical and Fire Protection installations and demonstrating to the Owner's and the Architect's satisfaction that the installations will comply with the preceding sentence. The Contractor shall be solely liable and responsible for any costs and/or delays resulting from the Contractor's failure to prepare such coordination drawings on a timely basis.

1.2.9 Exact locations of fixtures and outlets shall be obtained from the Architect as provided in Paragraph 3.2 before the Work is roughed in; Work installed without such information from the Architect shall be relocated at the Contractor's expense.

1.2.10 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified.

1.2.11 Test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor was obtained by the Owner for use by the Architect in the design of the Project or Work. The Owner does not hold out such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from reliance by the Contractor on such information shall be allowed except as provided in subparagraph 4.3.4.

1.2.12 The Contract is subject to, and shall be performed in accordance with, all laws, statutes, regulations, codes, ordinances, rules and orders of the United States of America, the Commonwealth of Massachusetts, the town where the Project is located, insofar as applicable, and other governmental or public agencies and authorities, and all amendments thereto, (collectively, "laws and regulations") and any agreements between the Owner and any such governmental or public agencies and authorities, and other agreements or commitments, if any, referred to or incorporated in the Contract Documents, and where any provisions contained in the Contract Documents do not conform to or are inconsistent with such laws and regulations or agreements to which the Contract is subject or by which it is governed, such laws and regulations or agreements shall have precedence over any matters set forth in the Contract Documents.

1.5.2 Delete subparagraph 1.5.2 and substitute the following:

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has examined and understands all of the Contract Documents, visited the site, and become familiar with local conditions under which the Work is to be performed, verified to its satisfaction the nature and quality of the Work involved, and correlated personal observations with requirements of the Contract Documents.

1.6.1 In subparagraph 1.6.1, delete the words "unless otherwise indicated" in the third sentence and substitute: ", subject to the rights reserved by the Owner in its agreement with the Architect,".

ARTICLE 2 OWNER

2.1.1 Delete the fourth sentence of subparagraph 2.1.1.

2.1.2 Delete subparagraph 2.1.2.

2.2.1 Delete subparagraph 2.2.1.

2.2.4 Change subparagraph 2.2.4 to read as follows:

2.2.4 Information or services required of the Owner hereunder shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information or services.

2.3.1 Delete the word "persistently" in the second line of subparagraph 2.3.1.

2.4.1 Delete the first and second sentences of subparagraph 2.4.1 and substitute the following:

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to begin and prosecute correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such deficiencies.

In the third sentence of subparagraph 2.4.1, insert the words "or Construction Change Directive" after the words "Change Order," and delete the fourth sentence of subparagraph 2.4.1.

ARTICLE 3 CONTRACTOR

3.2.1 In subparagraph 3.2.1, insert the words "Without limitation of the Contractor's obligations under subparagraph 1.5.2," at the beginning of the first sentence; and insert the words "and in their relation to the Work as a whole" after the words "portion of the Work" in line three. Add the following at the end of subparagraph 3.2.1:

If the Contractor proceeds with the Work without such notice to the Architect, having discovered any such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor could have discovered such, the Contractor shall bear all costs of correction and other costs arising therefrom.

3.2.3 Insert the following after the words "Contract Documents" in the eighth line of subparagraph 3.2.3: "non-conformance of the Contract Documents with applicable laws and regulations,". Insert ", nonconformance," after the word "omission" in the last line of subparagraph 3.2.3. Add the following at the end of subparagraph 3.2.3: "or unless the Contractor failed to perform the obligations of Subparagraphs 3.2.1 and 3.2.2 and would reasonably have discovered such error, inconsistency, omission, nonconformance or difference had the Contractor properly performed such obligations."

3.2.4-

3.2.5 Add new subparagraphs 3.2.4 and 3.2.5 as follows:

3.2.4 The Contractor shall give the Architect timely notice of any additional Drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work.

3.2.5 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 Architect as provided in subparagraph 3.2.4. If the Contractor proceeds with such Work without obtaining further Drawings, Specifications or instructions, the Contractor shall correct Work incorrectly done at the Contractor's own expense.

3.3.1 Delete the last eleven words of the second sentence, and sentences three, four and five of subparagraph 3.3.1, and insert the following in place thereof:

Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the Work, such reference is intended only to indicate that the operations of the Contractor shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of the Contractor, who shall notify the Architect in writing of

the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ from those referred to 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, unless the Contractor has given timely notice to the Owner and Architect in writing that such means, methods, techniques, sequences or procedures are not safe or suitable, and the Owner has then instructed the Contractor in writing to proceed at the Owner's risk.

3.3.2 Delete subparagraph 3.3.2 and substitute the following:

3.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of all entities or persons performing or supplying the Work.

3.3.4-

3.3.6 Add new subparagraphs 3.3.4, 3.3.5 and 3.3.6 as follows:

3.3.4 The Contractor shall arrange for and attend weekly job meetings with the Architect and such other persons as the Owner or the Architect may from time to time wish to have present. Job meetings shall be held at the site unless otherwise agreed by all parties and the schedule for job meetings shall be subject to the Owner's approval. If requested by the Owner, the Contractor shall prepare and circulate minutes of job meetings in a form acceptable to the Owner (or, at the Owner's election, meeting minutes will be prepared by the Architect). The Contractor shall be represented at such meetings by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own project superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if requested by the Owner or the Architect. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

3.3.5 The Contractor shall be responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work subject, however, to the Owner's obligations under subparagraph 2.2.3. Without limitation, the Contractor shall establish the building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their Work. The Contractor shall verify the figures shown on the Drawings before laying out the Work and will be responsible for any errors or inaccuracies resulting from its failure to do so. If the Contractor, while laying out the Work, becomes aware of any conflicts between the Drawings or Specifications and the actual layout of the Work, or any conflicts or inconsistencies in the Drawings and Specifications themselves, the Contractor shall promptly notify the Architect and the Owner, without whose instructions the Contractor shall not adjust the matter except at its own risk.

3.3.6 The Contractor shall retain a competent registered professional engineer or registered land surveyor, acceptable to the Architect, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated Work such as, but not limited to, roads, utilities and site grading. The engineer or land surveyor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.

3.4.1 Add the following at the end of subparagraph 3.4.1:

The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified. The Contractor shall furnish labor that can and will work in harmony with all

other elements of labor employed or to be employed on the Project. The Contractor warrants that its financial condition is sound and that the Contractor is capable of obtaining any bonds or increase in bond amounts now or hereafter required pursuant to the Contract Documents. The Contractor shall promptly advise the Owner of any occurrence, event, fact, or other matter that has had, will have, or might reasonably be predicted to have a material adverse effect upon the financial condition of the Contractor or its ability to properly perform the Contract.

3.4.4-

3.4.7 Add new Subparagraphs 3.4.4, 3.4.5, 3.4.6 and 3.4.7 as follows:

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

***3.4.5** (Statutory reference: M.G.L. c.149 §25) Every employee under this contract shall lodge, board and trade where and with whom he elects, and neither the Contractor nor his agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.

***3.4.6** (Statutory reference: M.G.L. c.149 §34B) The Contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wage paid to regular police officers in such city or town.

***3.4.7** (Statutory reference: M.G.L. c.149, §26-27H) It is the obligation of the Contractor to assure that the Contractor and all of its subcontractors comply with the requirements of the Massachusetts Prevailing Wage Law, MGL c. 149 §26-27H. The Contractor shall be responsible for all loss, cost and damage suffered or incurred by the Owner as a result of any stop work order or other enforcement action taken by the Attorney General under the authority of MGL c.149 §27, and shall release, indemnify, hold harmless and defend the Owner, the Architect, their officers, employees and consultants, from and against all claims, actions, suits, fines, or administrative proceedings arising out of or related to the violation by the Contractor or any subcontractor of the said Prevailing Wage Law (or, in the case of the Contractor's defense obligation, the claimed violation thereof). Unless otherwise expressly provided in the Contract Documents, all payroll records required to be submitted to the Owner shall be delivered to a designated employee of the Owner, and not to the Architect.

3.5.1 Change the first sentence of subparagraph 3.5.1 to read as follows:

The Contractor warrants that the materials and equipment furnished under the Contract will be new and of recent manufacture unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents.

Delete the last sentence of subparagraph 3.5.1 and substitute the following:

All special guarantees and warranties shall commence as of the date of Substantial Completion of the Work, except that warranties for punch list items shall commence when such items have been completed. All Subcontractor's and manufacturer's warranties required under the Contract Documents shall be deemed furnished and assigned to the Owner pursuant to this Contract without further action by the Contractor. All such guarantees and warranties shall extend for the period of time provided therein. Copies of all such warranties shall be submitted to the Owner prior to final payment.

3.5.2-

3.5.11 Add new subparagraphs 3.5.2 through 3.5.11 as follows:

3.5.2 The Contractor shall be responsible for determining that all materials and equipment furnished for the Work meet all requirements of the Contract Documents. The Architect may require the Contractor to produce reasonable evidence that a material or item of equipment meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Architect, would lead to a reasonable certainty that such material or equipment used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense. This provision shall not require the Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by the Contract Documents to be performed by the Contractor.

***3.5.3** (Statutory reference: M.G.L. c.30 §39M(b)) Where products or materials are described by manufacturer name, trade name or catalog reference, the words "or approved equal" shall be understood to follow. An item shall be considered equal to the item so named or described if, in the opinion of the Architect:

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

3.5.4 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials, equipment or other items to be furnished under this Contract, whether or not the phrase "or equal" is used after such name(s), the Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for substitution has been submitted by the Contractor and approved in writing by the Architect as provided in this paragraph 3.5.

3.5.5 If the Contractor proposes to use a material or item of equipment which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the Architect in writing of the nature of such deviations at the time the material or item of equipment is submitted for approval, and shall request written approval of the deviation from the requirements of the Contract Documents.

3.5.6 By making requests for substitutions, the Contractor:

- .1 represents that it has personally investigated the proposed substitute product and determined that it meets the conditions specified in subparagraph 3.5.3;
- .2 represents that it will provide the same warranties and guarantees for the substitute product that it would for that specified;
- .3 certifies that all cost data presented with respect to the proposed substitution are accurate and complete and include all related (direct and indirect) costs under the Contract, and waives all claims for additional costs related to the substitution that subsequently become apparent; and
- .4 will coordinate the installation of the substitute, if approved, making such changes as may be required for the Work to be complete in all respects.

In requesting approval of deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will meet the conditions set forth in subparagraph 3.5.3. If, in the opinion of the Architect, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Architect may reject such substitution or deviation without further investigation.

3.5.7 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. The Architect shall judge the design and appearance of proposed substitutions on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Architect will not approve as equal to materials or equipment specified proposed substitutions which, in the Architect's opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes the Contractor shall, if required by the Architect, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer(s) originally specified, at no additional cost to the Owner.

3.5.8 Any additional cost, or any loss or damage arising from the substitution or proposed substitution of any material, equipment or method for those originally specified shall be borne by the Contractor, including, without limitation, costs of evaluating substitutions whether or not approved, costs of any structural, mechanical or other changes necessary to accommodate substituted materials or equipment, and costs of modifying design documents and other additional design fees, notwithstanding approval or acceptance of such substitution by the Owner or the Architect, unless such substitution was made at the written request or direction of the Owner or the Architect. If any approved substitution results in a cost savings, the Owner shall be entitled to a credit, reducing the Contract Sum, in an amount equal to the net reduced cost of the substituted material or equipment after taking into account such related costs.

3.5.9 The warranty provided in this paragraph 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

3.5.10 The Contractor shall procure and deliver to the Architect, no later than the date claimed by the Contractor as the date of Substantial Completion, all warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

3.5.11 No additional charge shall be made by the Contractor for attending meetings at the site to diagnose problems or to instruct the Owner'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 Work during the applicable warranty period. The Contractor shall provide such service promptly upon request from the Owner. In case of emergency, service shall be provided as necessary to avoid loss or damage or to maintain normal use of the premises.

3.6.1 Delete Subparagraph 3.6.1 and substitute the following:

The Owner, as a state authority, is exempt from certain taxes. The Owner's taxpayer exemption number is 042-379-317. The Contractor hereby acknowledges that the Contract Sum has been established based upon the understanding that the Owner is exempt from certain taxes, and that such taxes would not be payable as a cost of constructing the Project. It is therefor required that the Contractor, all Subcontractors and Suppliers, purchasing building materials and supplies to be used in construction of the Project (including 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) ("Construction Materials") apprise vendors of the tax-exempt status of the Owner, so that certain taxes will not be imposed upon the purchase of Construction Materials. At the time of purchase of Construction Materials, the

purchaser shall provide the vendor with copies of certificates or other documentation necessary to permit the sale of such Construction Materials to be exempt from sales, use and other applicable taxes imposed by any state or federal taxing authority. If such taxes are paid on any Construction Material used in the construction of the Project, the Contractor shall be responsible for reimbursing the Owner, the full amount of such taxes and the Owner shall have the right to recover any such amounts not promptly reimbursed by reducing any payment due the Contractor hereunder by such amount. The most prevalent taxes concerned are:

1. Sales and Use Tax imposed by the Commonwealth under G.L. c.64(h), §6(f) and c.64(i), §7 on Construction Materials.
2. Federal Excise Taxes as applied to articles which are taxable under Chapter 32 of the Internal Revenue Code of 1954, as amended.

3.7 Add the following at the end of subparagraph 3.7.1:

Such permits and approvals shall include, without limitation, plumbing and electrical inspections, certificates of occupancy upon completion of the Work and permits for temporary occupancy or obstruction of sidewalks, streets or other public ways. 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 site, unless written permission satisfactory to the Owner has been obtained by the Contractor at the Contractor's sole cost. The Contractor shall arrange for and provide at its expense all local policemen required to be present at or adjacent to the site for traffic control or other purposes.

Delete subparagraphs 3.7.3 and 3.7.4 and substitute the following:

3.7.3 The Drawings and Specifications indicate all pipes, conduits, lines or other structures or equipment of public and private utility companies ("utility equipment") at and adjacent to the site of which the Owner is aware. However, the Owner 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. Prior to commencing work, the Contractor shall visit the site and to the extent possible shall confirm the existence and location of all utility equipment and shall, during the course of the Work, make diligent and continuous efforts to confirm the locations of all utility equipment at and adjacent to the site. The Contractor shall promptly notify the Architect in writing, prior to commencing affected portions of the Work, of any utility equipment that the Contractor discovers and that has not been identified on the Drawings. If and as directed by the Architect, the Contractor shall make necessary arrangements with utility companies for the protection, alteration or relocation of utility equipment necessary in connection with performance of the Work, and shall notify all municipal departments and utility companies concerned of the time and location of any work which may affect them. The Contractor shall be responsible for all costs and all claims, damages and liabilities arising directly or indirectly from any damage to utility equipment or any intentional or unintentional interruption of service occurring in connection with the Work or other operations of the Contractor.

3.8 Delete Paragraph 3.8.

3.9.1 Delete the first sentence of subparagraph 3.9.1 and substitute the following:

The Contractor shall employ a project manager and a superintendent, each of whom shall be subject to the approval of the Owner, and necessary assistants. The Contractor's superintendent shall be in attendance at the Project site full time during the progress of the Work until the date of Substantial Completion, and for such additional time thereafter as the Architect may determine to be necessary for the expeditious completion of the Work. Both the project manager and the superintendent shall have full authority to act on behalf of the Contractor. The Contractor shall

not remove the project manager or superintendent unless requested to do so in writing by the Owner. If so requested by the Owner, the Contractor shall promptly replace the project manager or superintendent with a competent person acceptable to the Owner.

3.9.2 Add new subparagraph 3.9.2 as follows:

3.9.2 The Contractor shall coordinate and supervise the Work performed by 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 Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

3.10.1 Delete subparagraph 3.10.1 and substitute the following:

3.10.1 The Contractor shall prepare and submit to the Architect for approval a construction schedule as described in subparagraph 8.2.4.

3.10.3 Delete subparagraph 3.10.3.

3.11.1 Add the following at the end of subparagraph 3.11.1:

Without limitation, the Contractor shall keep at the site at all times a separate and complete set of blackline prints of the Drawings and Specifications on which shall be noted neatly, accurately and currently, as the Work progresses and in no event less often than monthly: (a) the progress of the Work installed by coloring in all pipe lines, ducts and other apparatus as constructed or installed, and (b) all revisions to the Work, including but not limited to plumbing, electrical, HVAC and architectural work, wherever such Work was installed other than as shown on the Drawings or as described in the Specifications (with approval as required pursuant to the Contract Documents). The Contractor shall be responsible for assuring that the progress of the Work and all revisions are delineated by the specific trades involved on a current basis. The Owner and the Architect shall have access to such as-built Drawings at all times. When final as-built Drawings are found by the Architect to be complete, the Contractor shall furnish to the Architect the record set of Drawings in hard copy reproducible format with each sheet clearly marked "Record Drawing" and dated. In addition, the Contractor shall update the Drawings contained in the Architect's CADD files to reflect all changes during construction of the Work so as to make the CADD Drawings consistent with the Record Drawings. The Architect will make available to the Contractor the electronic CADD files for the Drawings prepared by the Architect for the Project. Delivery by the Contractor of the final as-built Record Drawings, and the CADD Drawings updated to reflect as-built conditions, shall be a condition to final payment, and furnishing of the Record Drawings and CADD Drawings may be carried on the punch list with a scheduled value determined by the Architect.

3.12.6 Delete subparagraph 3.12.6 and substitute the following:

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor thereby represents that the Contractor has determined and verified all dimensions (including field dimensions), quantities, relationship to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples, or similar submittals, and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data, Samples, and similar submittals the Architect shall be entitled to rely upon the Contractor's representation that such information is complete and accurate.

3.13.1 Delete subparagraph 3.13.1 and substitute the following:

3.13.1 The right of possession of the site and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine the Contractor's apparatus, the storage of materials and the operations of the Contractor's workmen to limits indicated by law, ordinances, the Contract Documents and permits and/or directions of the Owner or the Architect, and shall not unreasonably encumber the site with the Contractor's materials or equipment. The site and the building under construction shall, at all times, be maintained in a safe and orderly condition with access and egress ways kept clear. The Owner shall not be liable to the Contractor, any Subcontractors, their employees or anyone else with respect to the conditions of the premises, except only for a condition caused directly and solely by the negligence of the Owner.

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. Such Work, if required beyond such designated limits, shall be scheduled in such a manner as to cause a minimum of inconvenience or disturbance to or interference with the normal operations of the Owner, abutters and the public. The Contractor shall obtain the Owner'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. All existing walkways, roadways, paved or landscaped areas over which temporary driveways or walkways 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.

3.15.1 Add the following at the end of subparagraph 3.15.1:

Without limitation, the Contractor shall be responsible for the removal of all crates, cartons and other flammable waste materials or trash from the work areas regardless of cause at the end of each working day or at more frequent intervals if required to maintain the site in a safe and orderly condition. At the completion of the Work, the Contractor shall remove all waste materials and rubbish from and about the site as well as all tools, construction equipment, machinery and surplus materials, and shall leave the site in a neat and clean condition satisfactory to the Owner. Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall completely clean the premises. Concrete and ceramic surfaces shall be cleaned and washed. Resilient coverings shall be cleaned, waxed and buffed. Woodwork shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and all metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned on both sides by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense.

3.18.1 Delete subparagraph 3.18.1 and substitute the following:

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend with counsel acceptable to the Owner and hold harmless the Owner, the Owner's consultants, the Architect, the Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, relating to or resulting from (a) performance of the Work, provided that such 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 loss of use resulting therefrom, and is caused in whole or in part by acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, or (b) any breach or failure of the Contractor to comply with the terms and conditions of the Contract Documents, regardless of whether or not such claim, damage, loss or expense is caused in part

by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.3 Add subparagraph 3.18.3 as follows:

3.18.3 Nothing contained herein shall be construed to create a contractual relationship or cause of action between the Architect and the Contractor, except as expressly provided in subparagraph 3.18.1 above. The Contractor shall not bring any suit, action or other proceeding in law, equity, or arbitration against the Architect, or the officers or employees of the Architect, for the enforcement of any provisions of this Contract.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 Delete subparagraphs 4.1.2 and 4.1.3.

4.2.4 Delete the first sentence of subparagraph 4.2.4 and substitute the following: "The Owner may communicate with the Contractor directly or through the Architect."

4.2.7 In subparagraph 4.2.7, delete the word "limited" in the first sentence and insert the following at the end of the first sentence: "and only to the extent which the Architect believes desirable to protect the Owner's interest and otherwise as required by the Architect's agreement with the Owner." Delete the second sentence in subparagraph 4.2.7 and substitute the following:

The Architect's action will be taken with reasonable promptness, while allowing sufficient time in the Architect's professional judgment to permit adequate review, taking into account the time periods set forth in the approved submittal schedule and the latest construction schedule prepared by the Contractor and approved by the Architect pursuant to Paragraph 8.2 and the Specifications.

4.2.10 Add the following at the end of subparagraph 4.2.10:

If no such exhibit has been so incorporated, the duties, responsibilities, and limitations of authority of such Project Representative shall be as set forth in the edition of AIA Document B352 current as of the date of the Agreement. Alternatively, the Owner may employ a Clerk of the Works for the Project, in which case the Owner shall, upon request of the Contractor, provide the Contractor with a written statement of the duties, responsibilities and limitations of authority of such Clerk of the Works. Except as expressly set forth in such written statement, the Clerk of the Works shall have no authority to approve Work, to approve changes, or to exercise any of the power and authority of the Owner or the Architect.

4.2.11 Delete subparagraph 4.2.11 and substitute the following:

4.2.11 The Architect will, if requested, interpret the requirements of the Contract Documents or evaluate the performance thereunder by the Contractor. The Architect will render, in writing, instructions and other interpretations, clarifications, decisions and approvals necessary for the proper execution and progress of the Work, with reasonable promptness and in accordance with the provisions of subparagraph 4.7.1. Either party to the Contract may request such interpretations from the Architect by written request to the Architect with a copy thereof given to the other party, or the Architect may initiate such instructions or interpretations. A request for interpretation or additional information concerning the Contract Documents shall be in a form prepared or approved by the Architect and shall include a reasonably detailed written statement that indicates the specific Drawings or Specifications as to which clarification or interpretation is requested, and the nature of the clarification or interpretation requested. The Architect may, as it judges desirable, issue as a part of such instructions or interpretations additional drawings,

sketches, or other material indicating in greater detail the construction or design of the various parts of the Work, and provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents, the Work shall be executed in accordance with such additional drawings or instructions without increase in the Contract Sum or extension of the Contract Time. If the Contractor believes that a change in the Work has occurred by reason of the Architect's instructions or other interpretation or decision of the Architect hereunder, the Contractor shall give notice and proceed as provided in Paragraph 4.3.

4.2.12 Delete the second sentence of subparagraph 4.2.12.

4.2.13 Delete subparagraph 4.2.13 and substitute the following:

4.2.13 Decisions on matters relating to aesthetic effect shall be resolved by the Architect consistently with the intent expressed in the Contract Documents, subject however, to the Owner's approval.

4.3.1-

4.3.2 Delete subparagraphs 4.3.1 and 4.3.2 and substitute the following:

4.3.1 Definition. A Claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, increase in the Contract Sum or other payment of money, extension of the Contract Time or other relief with respect to the terms of the Contract. Claims must be initiated by written notice as hereafter provided. The responsibility to substantiate Claims shall rest with the Contractor.

4.3.2 Time Limits on Claims. For a Claim to be valid, it must be based upon a written notice of Claim or Contractor Change Notice delivered to the Owner and the Architect promptly, but in no event later than 21 days, after the occurrence of the event or circumstance upon which the Claim or Contractor Change Notice is based. Such notice of Claim or Contractor Change Notice must clearly state the nature of the Claim. Any change or addition to a previously made Claim shall be made by timely written notice in accordance with this subparagraph 4.3.2. Failure by the Contractor to provide a notice of Claim or Contractor Change Notice within the time period specified above shall be conclusively deemed to be a waiver of the Claim, including all matters arising out of the event, occurrence or circumstance giving rise to the Claim.

4.3.4-

4.3.5 Delete subparagraphs 4.3.4 and 4.3.5 and substitute the following:

***4.3.4** (statutory reference: M.G.L. C.30 §39N) If, during the progress of the work, the Contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the awarding authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the awarding 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 awarding authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

4.3.5 If the Contractor believes that it has incurred or will incur additional costs as a result of any acts or omissions of the Owner or the Architect, including any interpretations, instructions or orders, whether oral, written, by Drawings, or otherwise, or as a result of any other event, circumstance or occurrence, the Contractor shall promptly (and in any event within the time period specified in subparagraph 4.3.2) so notify the Architect and the Owner in writing of such Claim as provided in subparagraph 4.3.2 and shall not proceed with the Work relating to such Claim until the Contractor has received a further written order to proceed except, as provided in Paragraph 10.6, in the case of an emergency affecting life or property. No Claim by the Contractor on account of such interpretations, instructions or orders, or other acts, omissions, events, circumstances or occurrences shall be valid unless the Contractor has so notified the Architect and the Owner, before proceeding, and has received a further written order to proceed.

4.3.6 Delete subparagraph 4.3.6.

4.3.7 Delete subparagraph 4.3.7.2 and substitute the following:

4.3.7.2 The Contractor shall give prompt written notice to the Architect and the Owner of any cause which will result (or has resulted) in delay for which the Contractor claims or intends to claim an extension of the Contract Time, including those causes for which the Owner or the Architect is responsible or of which either has knowledge, such as any acts or omissions of the Owner or the Architect, including interpretations, instructions or orders, whether oral, written, by Drawings or otherwise, or any other event, circumstance or occurrence. Such notice shall be given as soon as practicable after the occurrence of the event or circumstance giving rise to the delay, and in any event not later than 21 days after such event, circumstance or occurrence. Such written notice shall (1) explicitly state that a time extension is claimed; (2) state in detail the circumstances which form the basis of the delay; and (3) describe as fully as practicable at the time the date of commencement and duration or expected duration of the delay and its effect on the schedule for the various parts of the Work. The Contractor shall provide such supporting documentation as the Owner or Architect may require, including, where appropriate, a time impact analysis or a revised construction schedule indicating all of the activities affected by the circumstances which form the basis for the Claim. The submission of such written notice within the time period provided above shall be a condition precedent to any extension of the Contract Time, otherwise the Claim shall be waived. In addition, if the Contractor fails (other than for reasons beyond the Contractor's control) to give notice of a delay promptly following the occurrence of the event or circumstance giving rise to the delay, and if such failure to promptly give notice causes damage or prejudice to the Owner by affecting the Owner's ability to mitigate such delay or the costs or other consequences arising from such event, circumstance or occurrence or the delay resulting therefrom, then the Contractor shall be responsible for the costs or delays incurred as a result of such failure of the Contractor to provide prompt notice, notwithstanding that the Contractor submits notice within such 21-day period.

4.3.7.3 Whenever the Contractor claims an extension of the Contract Time, only the unavoidable delay caused to completion of the Work as a whole shall be considered in measuring or evaluating the extent of the delay. If, for example, remaining work can be re-sequenced, or extra work can be (or could have been) performed along with the regular work called for by the Contract Documents so as to eliminate a delay in the progress or completion of the Work or some part thereof, without causing necessary delay to such regular work, no Claim for extension of the Contract Time shall be granted. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time. 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. No extension shall be granted for any delay which, in whole or in part, results from or arises out of the act or omission of the Contractor or its Subcontractors or others performing the Work. Any extension of the Contract Time allowed hereunder shall be net of any contingency or "float" time included in the Progress Schedule.

4.3.9 Delete subparagraph 4.3.9.

4.3.10 Delete subparagraph 4.3.10 and substitute the following:

4.3.10 As soon as practicable after giving notice of a Claim, the Contractor shall submit to the Owner and the Architect a Contractor Change Request as provided in Subparagraph 7.1.6. If the Architect or the Owner rejects a Contractor Change Request in whole or in part, and the Contractor disputes such rejection, such dispute shall be resolved as provided in Paragraph 4.6. The Contractor understands and agrees that the requirements of Paragraph 4.3 are to be strictly adhered to and that none of the requirements of the Contract Documents relating to Claims shall be waived by the Owner by course of dealing, orally or informally, and that neither the Architect nor any other representative of the Owner is authorized to waive any such requirements.

4.4 Delete Paragraph 4.4 (including all subparagraphs) and substitute the following:

4.4 REVIEW OF CLAIMS BY ARCHITECT

4.4.1 The Owner, at its election, may request that the Architect review or make recommendations with respect to any Claim made by the Contractor. The Architect shall review Claims if so requested by the Owner and may (1) defer any action with respect to all or any part of a Claim and request additional information from either party; (2) decline to render a decision or recommendation for any reason the Architect deems appropriate (including but not limited to the fact that the Claim involves allegations of fault on the part of the Architect); or (3) render a decision or recommendation on all or a part of the Claim. The Architect shall notify the parties in writing of its disposition of such Claim. If the Architect renders a decision or recommendation or declines to render a decision or recommendation, either party may proceed in accordance with Paragraph 4.6.

4.5 Delete Paragraph 4.5 and substitute the following:

4.5 COOPERATION

Undertaking and successfully completing a project of the complexity and size of the Project will require the development of effective working relationships among the Contractor, key Subcontractors, the Architect, and the Owner to promote cooperation and trust, and to achieve common and individual objectives on a non-confrontational basis. To help achieve these goals, the Owner may, at the Owner's option, implement so-called partnering techniques during the course of the Contract. If requested by the Owner, the parties shall participate in an initial partnering workshop. The Contractor's project manager, project superintendent, and other key management staff, the Architect's project manager, and the Owner's key representatives shall attend the workshop. If requested by the Owner, a team-building workshop for the Contractor's key on-site staff and Architect and Owner personnel will follow the initial workshop. Follow-up workshops may be held periodically as agreed to by the Contractor, the Architect and the Owner. The Owner shall be responsible for the expenses of conducting the initial workshop and any follow-up workshops; provided, however, that each participant shall be responsible for the costs incurred by the attendance and participation of its own representatives. Facilitators for the partnering workshops may be retained through the partnering program of the American Arbitration Association or otherwise as determined by the Owner.

4.6 Delete paragraph 4.6 and substitute the following:

4.6 RESOLUTION OF DISPUTES

4.6.1 If the Contractor gives notice of a Claim as provided in Paragraph 4.3 and submits a Contractor Change Request as provided in Subparagraph 7.1.6, and if the Owner or the Architect

rejects such Contractor Change Request in whole or in part and the Contractor disputes such rejection, or if the parties are unable to resolve any other dispute between them, then (whether or not the Architect has rendered a decision or recommendation with respect to such Claim or other dispute) either party may commence action seeking judicial resolution of the matter, provided, in the case of any Claim by the Contractor, that the Contractor has first complied with the provisions of Paragraphs 4.3 and 7.1.6 as applicable. All such actions, together with any other outstanding claims or disputes, shall be aggregated for trial in a single action. The Contractor and any Subcontractor, Sub-subcontractor, supplier and any other person or entity performing any part of the Work agree that each of them will waive objections to jurisdiction and venue and shall submit to the jurisdiction of the Suffolk County Superior Court of the Commonwealth of Massachusetts regardless of residence or domicile, with respect to any actions or suits at law or in equity arising under or related to the Contract or the bidding, award or performance of the Work. Any action commenced by the Contractor or any Subcontractor, supplier or other person or entity claiming by or through any such party against the Owner or any of its consultants, officials, employees, representatives or agents with regard to any matter arising out of or relating to the validity, construction, interpretation or enforcement of the Contract shall be brought in Suffolk County Superior Court in the Commonwealth of Massachusetts. The word "litigation" shall be deemed to replace the word "arbitration" wherever the latter word appears in the Contract Documents.

4.7 Add new Paragraph 4.7 as follows:

***4.7 DECISIONS BY AWARDING AUTHORITY OR ARCHITECT**

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

***4.7.2** (Statutory reference: M.G.L. c.30 §39J) Notwithstanding any contrary provision of this contract, no decision by the awarding authority or by the Architect on a dispute, whether of fact or of law, arising under said contract shall be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

ARTICLE 5 SUBCONTRACTORS

5.1.2 In subparagraph 5.1.2, insert the words "or another Sub-subcontractor" after the word "Subcontractor."

5.2.5 Add new subparagraph 5.2.5 as follows:

***5.2.5** The Contractor when sub-contracting with sub-bidders that filed sub-bids pursuant to M.G.L. c. 149 § 44F shall use the form of subcontract set forth in M.G.L. c.149, § 44F. The form of subcontract for non-filed Subcontractors shall be submitted to the Owner for its approval, which shall not be unreasonably withheld or delayed. Each subcontract shall expressly provide for the contingent assignment referred to in subparagraph 5.4.1. The Contractor shall furnish the Owner with copies of executed subcontracts upon request.

5.3.1 Insert the following after the first sentence in subparagraph 5.3.1:

Notwithstanding the preceding sentence, the Subcontractor shall not assume toward the Contractor the obligations and agreements which the Contractor assumes toward the Owner pursuant to Paragraph 3.18, but the subcontract shall contain provisions by which the Subcontractor agrees to indemnify the Contractor for the acts and omissions of the Subcontractor, to the maximum extent permitted by applicable law.

5.4.2 Delete subparagraph 5.4.2 and substitute the following:

5.4.2 In the event of such assignment and acceptance by the Owner, the Subcontractor shall have no claim against the Owner or any third party assignee of the Owner for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the Owner or such party assignee, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assignment and assumption.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1.4 Delete subparagraph 6.1.4.

6.2.4 Add the following at the end of subparagraph 6.2.4:

If a separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

ARTICLE 7 CHANGES IN THE WORK

7.1 Add new subparagraphs 7.1.4, 7.1.5 and 7.1.6 as follows:

***7.1.4** (Statutory reference: M.G.L. c.30 §39I) The Contractor shall perform all the work required by this Contract in conformity with the plans and specifications contained herein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the awarding authority or by the engineer or architect in charge of the work who is duly authorized by the awarding authority to approve such deviations.

7.1.5 Upon request of the Owner or the Architect, the Contractor shall, without cost to the Owner, submit to the Architect and the Owner, in such form as the Architect may require, a "Change Proposal" including a full description of the character and scope of work involved in any proposed extra Work or change in the Work, an accurate written estimate of the cost of such proposed change including all elements of pricing in appropriate detail, and an explanation of the impact of the proposed change on the construction schedule. The cost estimate shall indicate the quantity and unit cost of each item of material or other product and the number of hours of Work and hourly rate for each class of labor, as well as the description and amounts of all other costs chargeable under the terms of this article. If required by the Architect or the Owner, in order to establish the exact cost of new Work added or of previously required Work deleted, the Contractor shall obtain and furnish to the Architect bona fide proposals (on letterhead) from Subcontractors, Sub-subcontractors or recognized suppliers for furnishing labor and materials included in such Work, including the same supporting information. The Contractor shall promptly revise and resubmit such cost estimate if the Architect or the Owner determines that it is not in compliance with the requirements of this article, or that it contains errors of fact or mathematical errors. Percentage allowances for overhead and profit included in a Change Proposal shall be in accordance with provisions of Subparagraph 7.3.3. The Contractor shall state in the Change Proposal any extension of the Contract Time that the Contractor believes is necessary if the

change or extra Work is ordered or that the Contractor believes it is entitled to for any other reason. If the Contractor claims an extension of the Contract Time, the Contractor shall provide in the Change Proposal a full explanation of the need for a time extension with supporting documentation, including a schedule impact analysis (sometimes referred to as a time impact analysis) in form acceptable to the Owner and the Architect indicating the activities affected and overall impact on the schedule of the proposed change. Requests for substitutions or other changes initiated by Contractor shall be submitted with a Change Proposal in accordance with all of the provisions of this Subparagraph 7.1.5.

Change Proposals shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Contractor's expense. By submitting a Change Proposal, the Contractor shall be deemed to certify in writing that the Change Proposal includes all Work affected by the change, that the cost estimate indicated in the Change Proposal includes all direct, supplemental, indirect, consequential, serial and cumulative costs and delays, as applicable, and that those costs and delays would be necessarily incurred if the change or extra Work is ordered, despite the Contractor's commercially reasonable and diligent efforts to mitigate them. The Contractor shall cooperate fully with the Owner and the Architect to provide sufficient substantiation and explanation of costs and schedule impacts to allow the Owner and the Architect to reasonably evaluate the Change Proposal.

7.1.6 If the Contractor believes that a change has occurred by reason of any Work performed or materials furnished or by reason of any direction or interpretation by the Owner or the Architect or by reason of any other event, circumstance or occurrence, or if the Contractor wishes to make any other Claim as described in Paragraph 4.3, the Contractor shall submit to the Owner a notice of Claim or Contractor Change Notice as provided in Subparagraph 4.3.2, and shall thereafter request that a Change Order be issued by submitting to the Owner a "Contractor Change Request". A Contractor Change Request shall be expressly identified as such and shall contain, at a minimum, the information and certifications required to be included in a Change Proposal. Without limitation, a Contractor Change Request must detail the character and scope of the Work involved and provide clear and detailed justification that a change has occurred or that the Contractor is otherwise entitled to an adjustment in the Contract Sum or the Contract Time, and shall include the applicable Contract Document references supporting the Contractor's claim and the efforts taken and to be taken by the Contractor to prevent or minimize costs or schedule extension. All Contractor Change Requests submitted by the Contractor shall provide sufficient detail for the Owner to understand the basis for the adjustment in compensation or schedule extension requested. The Contractor shall furnish, within five (5) days after request from the Owner or the Architect, such further information and details including but not limited to books of account, records and other documents of the Contractor or its Subcontractors or Sub-subcontractors as may be required by the Owner or the Architect to determine the facts or issues involved in the Contractor Change Request. The Contractor's failure to deliver such information shall be sufficient cause for rejecting any Contractor Change Request. If the Owner fails to notify the Contractor as to the Owner's determination with respect to a Contractor Change Request within thirty (30) days after receipt by the Owner of a full and complete Contractor Change Request as provided herein, such failure shall be deemed to constitute a determination by the Owner that no change has occurred, and such deemed determination shall be effective as of the last day of such thirty-day period. If the Owner rejects (or is deemed to have rejected) a Contractor Change Request in whole or in part and the Contractor disputes such rejection, such dispute shall be resolved as provided in Paragraphs 4.6. Failure of the Contractor to comply strictly with the notice requirements and time periods set forth in Paragraph 4.3 and this Paragraph 7.1 shall be conclusively deemed to constitute a waiver by the Contractor of any Claim or any other right to an adjustment in the Contract Sum or the Contract Time with respect to any Work or any other occurrence, event or circumstance which is the subject of a Contractor Change Request, Change Proposal or other Claim of the Contractor.

7.2.3 Add new subparagraph 7.2.3 as follows:

7.2.3 A Change Order duly executed by the Owner, the Architect and the Contractor provides for an all-inclusive settlement for all changes and all direct, supplemental, indirect, consequential and cumulative costs and delays associated in any way therewith, and the Contractor's signature represents a waiver of any and all rights to make any claim on account of that instrument or the changes reflected therein. By executing the Change Order, the Contractor represents to the Owner that all Subcontractors performing Work under the Change Order have agreed to the terms of the Change Order, and the Contractor assumes full responsibility for, and shall indemnify and hold harmless the Owner with respect to, any claims from Subcontractors in connection with the Change Order or the performance of the Work covered by the Change Order.

7.3.3 Delete subparagraph 7.3.3 and substitute the following:

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as selected by the Owner:

- (a) By unit prices stated in the Contract Documents or otherwise mutually agreed upon.
- (b) By Cost and percentage (as set forth in subparagraph 7.3.3.2) estimated by the Contractor as provided in subparagraph 7.1.5 and accepted by the Owner; the Contractor's estimate shall become a fixed price which shall not be changed by any variation in the actual cost of executing the Work covered by the change.
- (c) By actual Cost determined after the Work covered by the change is completed, plus percentage.
- (d) By determination by the Architect of the fair value of the Work covered by the change.

7.3.3.1 As used in this paragraph, "Cost" shall mean the estimated or actual net increase or decrease in cost to the Contractor for performing the work covered by the change, including actual payments for materials, including transportation to the site, equipment rentals, expendable items, wages and associated taxes and benefits to workers, insurance, bonds and other provable direct costs, but not including any administrative, accounting or expediting costs, or other indirect or overhead costs, or any wages or benefits of the Contractor's job superintendent or other supervisory or management personnel, or any amount for profit or fee to the Contractor.

7.3.3.2 Increased costs for the Work that result from Changes in the Work shall entitle the Contractor to an adjustment to the Contractor's Fee and the General Conditions Payment, combined, in an amount not greater than ten percent (10%) of the net total increase in the cost of the Work attributable to the Change Order plus the actual cost of the performance bond and labor and material bond premiums attributable to such changes. Notwithstanding any provisions in the Contract Documents to the contrary, no additional Contractor's Fee and no additional General Conditions Payment shall be due for any Change Order or portion of a Change Order resulting from or attributable to increases in the cost of Allowance items.

7.3.3.3 Unit prices stated in the Contract Documents shall, unless otherwise determined by the Owner, be used to determine the adjustments in the Contract Sum as a result of changes in the scope or quantity of work for which unit prices are specified. Such adjustments shall be recorded by Construction Change Directive or Change Order. Unless otherwise stated in the Contract Documents, such unit prices shall be deemed to include a proportionate share of the Contractor's and all Subcontractors' overhead, profit, bonds and insurance, as well as all labor, materials, equipment, delivery and disposal to perform the work item complete, and all other direct or indirect expenses of the Contractor and Subcontractors, as applicable to that class of work, and shall be the exact amount per unit to be paid to the Contractor in the case of increases in the quantity of work, or refunded to the Owner in the case of decreases. Notwithstanding the inclusion of unit prices in the Contract Documents, it shall be the Owner's option to require the

adjustment of the Contract Sum on account of a change in work covered by Unit Prices to be determined by one of the other methods stated in this subparagraph 7.3.3. If the Owner elects to determine the adjustment based on unit prices and the nature of the work is such that its extent cannot readily be measured after the completion of such work or any subsequent work, the Contractor shall keep daily records, available at all times to the Architect for inspection, of the actual quantities of such work put in place, and delivery receipts or other adequate evidence, acceptable to the Architect, indicating the quantities of materials delivered to the site for use in such unit price work, and distinguishing such from other similar material delivered for use in work included in the base Contract Sum. If so required by the Architect, materials for use in unit price work shall be stored apart from all other materials on the Project.

7.3.3.4 If the Owner elects to determine the adjustment to the Contract Sum as provided in clauses (c) or (d) of Subparagraph 7.3.3 above, or if the method of determining the adjustment has not been established before the work is begun, the Contractor shall keep detailed daily records of labor and materials costs applicable to the work, which shall be delivered to the Owner's site representative.

7.3.3.5. 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 further subcontract any Work under a Change Order without the written consent of the Owner.

7.3.4 In subparagraph 7.3.4, insert the words "and the Owner" after the word "Architect" in the second line, and in the last line delete the words "Contract Sum or".

7.3.6-

7.3.9 Delete subparagraphs 7.3.6, 7.3.7, 7.3.8 and 7.3.9.

ARTICLE 8 TIME

8.1.3 In subparagraph 8.1.3, insert the words "and approved by the Owner" after the word "Architect".

8.2.2 Delete subparagraph 8.2.2.

8.2.4-

8.2.7 Add new subparagraphs 8.2.4 through 8.2.7 as follows:

8.2.4 The Contractor shall prepare and maintain a construction schedule using the critical path method. Such schedule is sometimes referred to in the Contract Documents as the Progress Schedule or the Construction Schedule or the CPM schedule. Unless a different time period is stated in the Specifications, a draft of the CPM schedule shall be submitted to the Architect and the Owner within three weeks after notice to proceed. The CPM schedule shall be based on an orderly progression of the Work, allowing adequate time for each operation (including adequate time for submission and review of submittals), and leading to a reasonable certainty of Substantial Completion by the date established in the Agreement. The CPM schedule will be reviewed by the Architect for compliance with the requirements of the Specifications and other applicable provisions of the Contract Documents and will be accepted by the Architect or returned to the Contractor for revision and resubmittal. Without limitation of the provisions contained in Article 9, failure of the Contractor to comply with the requirements of the Specifications concerning the CPM Schedule shall be grounds for withholding of progress payments to the Contractor. The Architect's review of the CPM schedule shall not impose any duty on the Architect or the Owner with respect to the timing, planning, scheduling, or execution of the Work. Without limitation, if the Contractor proposes a CPM schedule indicating a date of Substantial Completion which is earlier than the Contract Time, the Contractor shall not be entitled to additional payment or compensation of any kind if, for any reason, the full Contract Time is required to achieve Substantial Completion of the Work. Acceptance or approval of the CPM

schedule by the Architect or the Owner shall not constitute approval of construction means, methods, techniques, sequences or procedures, for which the Contractor shall have sole responsibility.

8.2.5 The Contractor shall at all times provide adequate rates of progress for the various parts of the Work so as to properly advance the Work and so that the Project, in the opinion of the Architect and the Owner, at all times meets the requirements of the CPM schedule. Whenever "critical path activities" (i.e., activities which, if delayed or extended, would cause the scheduled overall period to achieve Substantial Completion to be extended) fall behind the planned schedule of construction as shown on the CPM schedule, the Contractor shall notify the Owner and the Architect and advise the Owner of action being taken to return the Work to the planned schedule or to revise the schedule as necessary to maintain the Substantial Completion Date, and such action shall be indicated on the CPM schedule which shall then be re-submitted by the Contractor to the Architect and the Owner for approval.

8.2.6 Without limitation of the provisions of subparagraph 8.2.5, it is agreed that in view of the critical nature of the time for completion of the Work, if the Owner determines that the progress of the Work has been materially delayed, or that the CPM schedule is in jeopardy of not being met, the Owner shall have the right to require the Contractor to take whatever steps are necessary to recover all or a portion of such delay. If and to the extent such delay is caused by any act or omission of the Owner or the Architect and is beyond the control of the Contractor, the costs of such recovery shall be borne by the Owner; in all other cases the costs associated with such recovery shall be borne by the Contractor, and the activities required to effect such recovery shall not be deemed to be a Change in the Work and there shall be no increase in the Contract Sum on account of such recovery activities. The Contractor shall, within three days after the Owner's request to take such action, notify the Owner and the Architect in writing, and commence implementing the steps the Contractor proposes to take to effect such recovery, and provide the Owner, in a form acceptable to the Owner, a detailed recovery schedule setting forth the actions to be taken by the Contractor. If the Contractor disputes any direction given by the Owner pursuant to this paragraph, it shall have no right to refuse to accelerate the Work, but the Contractor shall have the right to make a Claim for additional costs in accordance with the provisions of the Contract Documents.

8.2.7 Nothing herein shall limit the Owner's right to liquidated or other damages for delays by the Contractor or to any other remedy which the Owner may possess under other provisions of the Contract Documents or by law.

- 8.3.1** In subparagraph 8.3.1, change "other causes beyond the Contractor's control" to read "other causes (except weather) beyond the Contractor's control". Delete the last nineteen words in subparagraph 8.3.1 commencing with the words "then the Contract Time shall be extended . . ." and insert the following in substitution therefore:

"and provided that the Contractor has given timely notice of such delay in accordance with Paragraph 4.3, then the Contract Time shall be extended by Change Order or Construction Change Directive for the period of delay so caused, net of any delay caused by or attributable to the acts or omissions of the Contractor, any Subcontractor or others for whom they are responsible, and subject to the provisions of Paragraph 4.3."

8.3.3-

- 8.3.5** Delete subparagraph 8.3.3 and insert new subparagraph 8.3.3 and subparagraphs 8.3.4 and 8.3.5 as follows:

8.3.3 No claim for extension of time shall be allowed on account of failure of the Architect to furnish Drawings, Specifications or instructions or to return Shop Drawings or Samples until 15 days after receipt by the Architect of written demand for such instructions, Drawings, or Samples, and not then unless such claim be reasonable.

8.3.4 The Contractor shall consider in its planning and scheduling of the Work the wide range of weather conditions historically experienced in the area where the Project is located. No extension of the Contract Time shall be granted because of delays or temporary inability to perform work as a result of high or low temperatures, humidity or precipitation, which conditions shall be solely at the risk of the Contractor, whether occurring within the time originally scheduled for completion or within the period of any extension granted. There shall be no increase in the Contract Sum on account of any additional costs of operations or conditions resulting from weather conditions.

8.3.5 The Contractor hereby agrees that the Contractor shall have no claim for increase in the Contract Sum or additional direct or indirect costs or damages of any kind against the Owner or the Architect on account of any delay in the commencement of the Work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Architect, or otherwise, except to the extent expressly provided under M.G.L. c.30, § 390. The Contractor acknowledges that the Contractor's sole remedy for any such hindrance, delay or suspension will be an extension of time as provided in this Article, except as provided in Paragraph 14.3 (M.G.L. c.30, § 390) in the case of certain written orders by the Owner.

ARTICLE 9 PAYMENTS AND COMPLETION

9.2.1 Add at the end of subparagraph 9.2.1:

The Schedule of Values shall be revised if found at any time to be inaccurate. Changes to the Schedule of Values require the Owner's approval.

9.3.1 Delete the first twelve words of the first sentence of subparagraph 9.3.1 and substitute the following: "At the time or times established in the Agreement." After the first sentence of subparagraph 9.3.1, add the following: "The format and number of copies of such Applications for Payment shall be as directed by the Architect. Applications for Payment are sometimes referred to in the Contract Documents as "periodic estimates."

9.3.1.1 In subparagraph 9.3.1.1, delete the words "As provided in Subparagraph 7.3.8" in line 1; delete the words "or by interim determinations of the Architect" in line 3; and add at the end of subparagraph 9.3.1.1: "when such Construction Change Directives have set forth an adjustment to the Contract Sum."

9.3.2 Add the following at the end of subparagraph 9.3.2:

Where the Owner has approved payment for materials and equipment stored off-site, all costs for storage, insurance, transportation and other costs shall be borne solely by the Contractor. In approving payment for materials and equipment stored off-site, the Owner may require, without limitation, evidence that the off-site location is properly secure, proof of insurance, and segregation and/or marking of stored materials or equipment.

9.3.3 Delete subparagraph 9.3.3 and substitute the following:

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens." The Contractor further agrees that the submission of any Application for Payment shall conclusively be deemed to waive all liens with respect to said Work to which the Contractor may then be entitled, provided that such waiver of lien rights shall not waive the Contractor's right to payment for such Work. Transfer of title to the Owner shall not relieve the Contractor of any of his duties or obligations under the Contract Documents or of any responsibility or liability for the safe delivery and safeguarding,

custody, or warehousing of the materials or equipment, nor shall it constitute a waiver of the Owner's right to absolute fulfillment by the Contractor of all of the terms of the Contract, nor shall it commence any warranty period (all warranty periods shall commence not earlier than Substantial Completion).

9.3.4-

9.3.5 Add new subparagraphs 9.3.4 and 9.3.5 as follows:

9.3.4 Each Application for Payment or periodic estimate requesting payment shall be accompanied by a certificate from each Subcontractor stating that the Subcontractor has been paid all amounts due the Subcontractor on account of previous applications for payment submitted by the Subcontractor, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall furnish the Contractor's own written explanation to the Owner through the Architect. Such certificate shall be in a form acceptable to the Owner. If requested by the Owner or the Architect, such certificates shall be provided by Sub-subcontractors or suppliers.

9.3.5 On a schedule established by the Architect, generally one week prior to formal submission of each Application for Payment, the Contractor shall submit the Application for Payment in draft form, including all supporting materials, to the Architect and the Owner. The Contractor shall meet with the Architect as necessary to review the draft Application for Payment, and shall supply additional information as requested by the Architect or the Owner so as to substantiate all amounts to be included in the Application for Payment. Upon agreement of the parties, the Contractor shall formally submit the Application for Payment.

9.5.1 In subparagraph 9.5.1, delete the fourth sentence and replace it with the following:

The Architect may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, and the Owner (in addition to and without limitation of any other rights and remedies of the Owner under the Contract Documents) may withhold payment of any amounts claimed to be due by the Contractor and certified for payment by the Architect, in each case to such extent as may be necessary in order to provide for retention covering the fair value of any claims the Owner may have against the Contractor or to protect the Owner from loss, cost or damage for which the Contractor is responsible, which amounts may include, but shall not be limited to, the fair value of any claims, costs, losses or damages arising from:

In subparagraph 9.5.1, revise item .6 and item .7 and add new item .8 as follows:

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that retainage currently held by the Owner would not be adequate to cover actual or liquidated damage for the anticipated delay;
- .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
- .8 failure of the Contractor or mechanical, electrical or other trade Subcontractors to comply with Contract requirements for maintaining record drawings. The Contractor shall check record drawings each month. Written confirmation that the record drawings are current will be required by the Architect before approval of the Contractor's monthly payment requisitions.

9.6.1 Add new Sub-subparagraphs 9.6.1.1 through 9.6.1.6, as follows: (Statutory reference: M.G.L. c.30 §39K)

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

***9.6.1.2** The awarding authority may make changes in any periodic estimate submitted by the Contractor, and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the Contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

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

***9.6.1.4** A certificate of the Architect to the effect that the Contractor has fully or substantially completed the work shall, subject to the provisions of M.G.L. c. 30 Section 39J (reproduced in Subparagraph 4.7.2) be conclusive for the purposes of this Subparagraph 9.6.1.

***9.6.1.5** Notwithstanding the provisions of this subparagraph 9.6.1, at any time after the value of the work remaining to be done is, in the estimation of the awarding authority, less than 1 per cent of the adjusted contract price, or the awarding authority has determined that the Contractor has substantially completed the work and the awarding authority has taken possession for occupancy, the awarding authority may send to the Contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The Contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the Contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the awarding authority or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the Contractor by certified mail, return receipt requested, the awarding authority may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the Contractor and such termination shall be without prejudice to any other rights or remedies the awarding authority may have under the contract. The awarding authority shall note any such termination in the evaluation form to be filed by the awarding authority pursuant to the provisions of section 44D of chapter 149. The provisions of this subparagraph 9.6.1.5 shall not be interpreted to limit or affect in any way the rights and remedies of the Owner or the obligations of the Contractor under the Contract Documents.

9.6.1.6 No certificate for payment by the Architect, nor any progress payment made by the Owner, nor any partial or full use or occupancy of the Work or the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6.2 Add new sub-subparagraphs 9.6.2.1 through 9.6.2.5, as follows: (Statutory reference: M.G.L. c.30 §39F)

***9.6.2.1** (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 his work in accordance with the plans and specifications, the entire balance due under the subcontract, less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the Subcontractor; and the awarding authority shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.

(c) Each payment made by the awarding authority to the Contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a Subcontractor shall be made to the Contractor for the account of that Subcontractor; and the awarding authority shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the awarding authority has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this Subparagraph 9.6.2.

(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 awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the 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 awarding 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 awarding authority, and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the 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 awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the Subcontractor of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the awarding 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 subparagraph (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 awarding authority to the Contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (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 subparagraph (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 subparagraph (a), the Subcontractor may demand direct payment by following the procedure in subparagraph (d) and the Contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the Subcontractor performed or furnished the labor and materials for which the Subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the Contractor. Thereafter the awarding authority shall proceed as provided in subparagraphs (e), (f), (g) and (h).

***9.6.2.2** Any assignment by a Subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of M.G.L. c.149, section 29 shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the awarding authority or which are on deposit pursuant to subparagraph (f) of subparagraph 9.6.2.1 shall be subordinate to the rights of all Subcontractors who are entitled to be paid under this section and who have not been paid in full.

***9.6.2.3** "Subcontractor" as used in this subparagraph 9.6.2 shall mean a person who files a sub-bid and receives a subcontract as a result of that filed subbid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor. "Subcontractor" as used in other provisions of the Contract Documents shall, except as otherwise expressly provided, have the meaning set forth in Subparagraph 5.1.1.

***9.6.2.4** The Contractor or a Subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposited as provided in subparagraph (f) of subparagraph 9.6.2.1 by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A Subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in subparagraph (f) of subparagraph 9.6.2.1 by a petition in equity in the superior court against the awarding authority and the Contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. M.G.L. c.231, sections 59 and 59B shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to sections 59 and 59B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any Subcontractor with the petition of one or more Subcontractors or the same general contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a Subcontractor filing a demand for direct payment for which no funds due the Contractor are available for direct payment shall have a right to file a petition in a court of equity against the awarding authority claiming a demand for direct payment is premature, and such Subcontractor must file the petition before the awarding authority has made a direct payment to the Subcontractor and has made a deposit of the disputed portion as provided in part (iii) of subparagraph (e) and in subparagraph (f) of subparagraph 9.6.2.1.

***9.6.2.5** In any petition to collect any claim for which a Subcontractor has filed a demand for direct payment the court shall, upon motion of the Contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority as provided in part (iii) of subparagraph (e) and in subparagraph (f) of subparagraph 9.6.2.1 any amount held under a trustee writ or pursuant to a restraining order or injunction.

9.6 Delete subparagraphs 9.6.3, 9.6.5 and 9.6.7.

9.7.1 Delete subparagraph 9.7.1.

9.8.1 Add the following at the end of subparagraph 9.8.1:

“pursuant to a full and unconditional certificate of occupancy, and only minor items remain which can be corrected or completed without material interference with the Owner’s use of the Work for its intended purposes.”

9.8.2-

9.8.5 Delete subparagraphs 9.8.2, 9.8.3, 9.8.4 and 9.8.5, and substitute the following:

9.8.2 When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete as defined in subparagraph 9.8.1 and that all tests and start-ups have been performed with a satisfactory outcome and all other requirements and conditions for Substantial Completion specified in the Contract Documents (including the requirements provided in Section 01770, Closeout Procedures, of the Specifications) have been satisfied, the Contractor shall submit to the Architect a request for Substantial Completion inspection, accompanied by (1) a comprehensive list of items to be completed or corrected, (2) all warranties and guarantees required by the Contract Documents, endorsed by the Contractor and in such form and number of copies as specified in the Contract Documents or as reasonably requested by the Architect, and (3) the permits and certificates referred to in subparagraph 13.5.4. The Contractor shall continue diligently to complete and correct items on the list. The failure to include any items on the list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect on the basis of an inspection determines that the Work or designated portion thereof is substantially complete and all other Contract requirements and conditions for Substantial Completion have been met, the Architect will prepare a Certificate of Substantial Completion which upon the Owner’s approval shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, shall incorporate a list prepared by the Architect of items which require completion or correction, and shall fix the time within which the Contractor shall complete the items on the list, which shall not be more than sixty (60) days. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Owner shall make payment to the Contractor in accordance with the provisions of Paragraph 9.6.

9.8.3 If, through no fault of the Architect, the Architect (including its Subconsultants) is required to conduct more than two (2) inspections of any portion of the Work to determine whether such portion of the Work is substantially complete, the Contractor shall be responsible for any fees assessed by the Architect for Additional Services on account of such additional inspections. The Contractor shall promptly reimburse the Owner for any such additional fees or, if the same are not promptly reimbursed, the Owner may deduct such amounts due from amounts otherwise payable to the Contractor.

9.9.3 Delete subparagraph 9.9.3 and substitute the following:

9.9.3 The Owner’s use or occupancy of such designated areas or portions of the Work prior to completion and acceptance of all or other portions of the Work pursuant to this Paragraph 9.9 is subject to applicable provisions of the Specifications, and such use and occupancy shall not constitute acceptance of systems, materials or other 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 other elements of the Work, nor

from other unfulfilled obligations or responsibilities of the Contractor under the Contract. The Contractor shall make no Claim for extension of the Contract Time or for damages of any kind arising directly or indirectly out of the exercise by the Owner of the rights reserved under this Paragraph 9.9.

9.10.1 Add the following at the end of subparagraph 9.10.1:

If, through no fault of the Architect, the Architect (including its Subconsultants) is required to conduct more than two (2) inspections of the Work to determine final completion, the Contractor shall be responsible for any fees assessed by the Architect for Additional Services on account of such additional inspections. The Contractor shall promptly reimburse the Owner for any such additional fees or, if the same are not promptly reimbursed, the Owner may deduct such amounts due from amounts otherwise payable to the Contractor.

9.10.2 Delete subparagraph 9.10.2 and substitute the following:

9.10.2 Prior to and as a condition precedent to final completion and final payment, all of the following matters shall have been resolved and documents and items shall have been received and approved in writing by the Owner:

- .1 final documents of similar nature to those required by the Contract Documents in connection with any Application for Payment hereunder;
- .2 all final permits, approvals (including, without limitation, the approval of the Owner's insurance company, if required), certificates, affidavits and authorizations as required by Subparagraph 13.5.4, including an unconditional permanent and full Certificate of Occupancy, unless those permits, approvals, certificates, affidavits and authorizations are not received by the Owner solely for reasons as to which the Contractor has no responsibility;
- .3 formally prepared "as-built" drawings, records and related data including all field notes of all the Work all in accordance with the requirements of the Contract Documents;
- .4 all operating and maintenance manuals as required by the Contract Documents, parts lists, the final version of the Project Directory, and repair source lists;
- .5 all guarantees and warranties to which the Owner is entitled under the Contract Documents;
- .6 satisfactory proof that all claims arising out of the Work have been released;
- .7 acknowledgment of prior payments and waivers of lien (to the extent permitted by law) from all Subcontractors and the Contractor;
- .8 the Architect's certificate certifying that the Work is complete;
- .9 reasonable assurances that all practical orientation and operating instructions for all materials, systems, and equipment have been satisfactorily completed, and that all required training of Owner's personnel has been completed;
- .10 a satisfactory report by the Contractor which is approved by the Architect that all mechanical systems have been and are properly balanced;

- .11 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible or encumbered, have been paid or otherwise satisfied;
- .12 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
- .13 consent of surety, if required, to final payment;
- .14 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- .15 delivery of all spare parts required to be submitted pursuant to the Contract Documents; and
- .16 a general release of the Owner from the Contractor and, if requested, from any Subcontractor.

If the final documentation submitted by the Contractor is not deemed complete by the Owner, or if the Owner deems the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation.

9.10.4 Add the following after clause .3 in subparagraph 9.10.4:

.4 faulty or defective Work appearing after final payment.

9.10.5 Delete the last 14 words in subparagraph 9.10.5 and substitute the following: "specifically referenced in the final Application for Payment and identified therein as unsettled."

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1.1 Add the following at the end of subparagraph 10.1.1:

Such precautions and programs shall include, but are not limited to, compliance by the Contractor and all Subcontractors with all safety precautions and programs required by the Occupational Safety and Health Act and regulations promulgated thereunder, other applicable laws and regulations, the Contract Documents, and any insurance carrier providing insurance coverage for the Owner or the Contractor in connection with the Project. Without limiting the generality of the foregoing, the Contractor shall, promptly after issuance of the Notice to Proceed, prepare a written safety program which shall be submitted to the Owner and the Architect and issued to all Subcontractors and all forces employed on the work. Such program shall include regular safety meetings, and the Contractor shall prepare, circulate and maintain on file at the site minutes of all safety meetings.

10.2.1 In subparagraph 10.2.1, replace the word "reasonable" with the words "all necessary" in line one and in line two, and add new clause 10.2.1.4 as follows:

.4 any other property of the Owner, whether or not forming part of the Work, located at the site or adjacent thereto in areas to which the Contractor has access.

10.2.5 Delete subparagraph 10.2.5 and substitute the following:

10.2.5 Unless otherwise instructed, the Contractor shall promptly remedy damage and loss to property referred to in clauses 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable. The proceeds of any property insurance maintained by the Owner and covering such property shall be made available to pay the costs of remedying such damage or loss, subject to the provisions of Article 11 below. If and to the extent such damage or loss is caused by the acts or omissions of the Owner or the Architect, the Owner shall be responsible for the costs of remedying such damage or loss to the extent the proceeds of such insurance are insufficient to cover such costs. In all other cases, the Contractor shall bear the cost of remedying such damage or loss to the extent such cost exceeds the proceeds received under property insurance covering such loss or damage. The Contractor shall be fully and solely responsible for all Work and other operations carried out by the Contractor on adjacent properties. The liability insurance required to be carried by the Contractor under Article 11 shall cover such Work or operations, and the Contractor shall indemnify and defend the Owner, the Architect, and the owners of such adjacent properties from and against all claims, suits, losses or costs arising out of such Work or operations.

10.2.8-

10.2.12 Add new subparagraphs 10.2.8 through 10.2.13 as follows:

10.2.8 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site limits shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

10.2.9 The Contractor shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, backup 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.

10.2.10 The Contractor shall remove snow and ice which might result in damage or delay.

***10.2.11** (Statutory reference: M.G.L. c. 149 § 44F) The Contractor shall install weather protection and furnish adequate heat in the protected area from November 1 to March 31.

10.2.12 The Contractor shall provide adequate facilities to keep the Site secure at all times when the Contractor's personnel are not present, from commencement of the Work until Substantial Completion, to assure that the Work, all materials and equipment stored at the Site, and all other property of the Owner located within the site limits or within other areas occupied or controlled by the Contractor, are fully and completely protected against loss or damage due to vandalism, theft, malicious mischief, pilferage or unexplained disappearance. If the Contractor fails to comply with the requirements of this Subparagraph 10.2.12, then the Owner may provide appropriate security, and charge the cost thereof to the Contractor. The Owner's provision of such security, or failure to do so, shall not relieve the Contractor of its sole responsibility to pay for loss or damage to such property due to vandalism, theft, malicious mischief, pilferage or unexplained disappearance, to the extent not covered by the Owner's insurance.

10.2.13 The Contractor shall arrange for and provide police details, if any, required by the town to be present at or adjacent to the site for traffic control purposes. The cost of police details so required shall be borne by the Contractor and is included in the Contract Sum.

10.3.3 Delete subparagraph 10.3.3.

ARTICLE 11 INSURANCE AND BONDS

11.1.1 In the first sentence of subparagraph 11.1.1 following the word "located" insert the words "and to which the Owner has no reasonable objection". Add the following at the end of subparagraph 11.1.1:

* (Statutory reference: M.G.L. c.149, §34A) The Contractor shall, before commencing performance of the Contract, provide by insurance for the payment of compensation and the furnishing of other benefits under M.G.L. c.152 to all persons to be employed under the Contract, and the Contractor shall continue such insurance in full force and effect during the term of the Contract. Sufficient proof of compliance with this subparagraph must be furnished at the time of execution of this Contract. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the Contract and shall operate as an immediate termination thereof. No cancellation of such insurance, whether by the insurer or by the insured, shall be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the awarding authority at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.

11.1.2 Add the following at the end of subparagraph 11.1.2:

The commercial general liability insurance required by subparagraph 11.1.1 shall include all major divisions of coverage, and shall include premises/operations, products and completed operations for at least three years following acceptance and final payment, independent contractors, contractual liability, additional interests of employees, incidental medical malpractice, personal injury coverage, no exclusions for X-C-U or for property in the care, custody or control of the Contractor, and notice of occurrence and knowledge of occurrence endorsements satisfactory to the Owner. The business automobile liability insurance required by subparagraph 11.1.1 shall be on a comprehensive basis and shall cover owned, non-owned and hired motor vehicles, including loading and unloading of any motor vehicle. All insurance shall be written on an occurrence basis, unless otherwise approved by the Owner.

The Owner, the Architect and such other representatives or affiliates of the Owner of which the Contractor has been notified shall each be named as additional insureds on the Contractor's commercial general liability policy(ies). 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 endorsed to state that the Contractor's policies shall be primary to all other insurance available to the Owner and other specified additional insureds 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. All policies shall include permission for partial or total occupancy of the premises by the Owner within the scope of this Contract.

The minimum limits of coverage for such policies shall be:

- .1 Employer's liability insurance: \$500,000 each accident.
- .2 Commercial general liability insurance: \$1,000,000 per occurrence; \$2,000,000 general aggregate.
- .3 Automobile liability insurance: combined single limit of \$1,000,000 per occurrence.
- .4 Umbrella liability insurance: \$5,000,000 per occurrence.

The commercial general liability policy shall be endorsed to provide that the general aggregate shall apply to this Project only.

11.1.3. Add the following at the end of the second sentence of subparagraph 11.1.3:

The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

11.4.1 Delete the words "initial Contract Sum" in the first sentence of subparagraph 11.4.1 and substitute: "replacement cost of the building"; delete the words "without optional deductibles" at the end of the first sentence and substitute: "with such deductibles as Owner may reasonably elect."

In subparagraph 11.4.1.1, delete the words "and debris removal including demolition occasioned by enforcement of any applicable legal requirements."

Delete subparagraphs 11.4.1.2, 11.4.1.3, 11.4.1.4 and 11.4.1.5, and substitute the following:

11.4.1.2 The Contractor shall be responsible for the deductible portion of all losses covered by the Owner's property insurance, not to exceed a deductible amount of \$5,000.

11.4.1.3 The Owner's property insurance will cover portions of the Work stored off-site and in transit, with sublimits of \$100,000.

11.4.1.4 Upon request, the Owner will furnish to the Contractor a certificate evidencing the Owner's property insurance. Property insurance for losses to materials or equipment stored off-site or in transit in excess of the coverage provided by the Owner's property policy shall be procured by the Contractor at its cost. In addition, the Owner's property insurance will not cover any tools, equipment, materials, supplies, temporary structures or other property owned or rented by the Contractor or Subcontractors which is not to be incorporated in the Work. The Contractor and Subcontractors assume these excluded risks, and waive all rights they may have against the Owner for damage to such items, and any policies of insurance covering the Contractor's or Subcontractors' own tools, equipment, facilities and other property against loss by physical damage shall include provisions or endorsements providing that the underwriters waive their rights of subrogation against the Owner.

11.4.2 Delete Subparagraph 11.4.2.

11.4.3 Add the following at the end of the last sentence of subparagraph 11.4.3: ", to the extent of proceeds paid by insurance obtained under this subparagraph 11.4.3."

11.4.4-

11.4.6 Delete Subparagraphs 11.4.4, 11.4.5 and 11.4.6.

11.4.8 Delete the words "as fiduciary" in the first sentence of subparagraph 11.4.8.

11.4.9 Delete the first and second sentences of subparagraph 11.4.9. Add the following at the end of the last sentence in subparagraph 11.4.9: ", all subject to the requirements, if any, of the Owner's lenders."

11.4.10 Delete subparagraph 11.4.10.

***11.5.1 Delete subparagraph 11.5.1 and substitute the following:**

***11.5.1** Pursuant to M.G.L. c. 149, § 29, the Contractor shall furnish a performance bond and a labor and materials payment bond, each in the amount of the Contract Sum and each in compliance with the requirements of said section 29. The performance bond and payment bond shall be in the forms provided by the Owner and included in the bidding documents, and shall be

issued by a surety company licensed or authorized by the Commissioner of Insurance to do business and issue surety bonds in the Commonwealth of Massachusetts and acceptable to the Owner. The penal sum of the bonds shall be increased by endorsement, amendment or re-issuance, in form acceptable to the Owner, in the event of any increase in the Contract Sum. The premiums for such bonds are included in the Contract Sum. Such bonds shall remain in effect for the entire duration of the Contractor's warranty obligations.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.2.1 Add the words "or the Owner" after the word "Architect" in line one of subparagraph 12.2.1.1. After the words "necessary thereby," in the last sentence of subparagraph 12.2.1.1 insert the following: "and any other cost, loss, or damages to the Owner resulting from such failure or defect."

12.2.2 Delete the words "unless the Owner has previously given the Contractor a written acceptance of such condition" in the second sentence of subparagraph 12.2.2.1; delete the third sentence in subparagraph 12.2.2.1.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.3.1 In subparagraph 13.3.1, after the words "registered or certified mail" insert the words "or by express mail or recognized overnight delivery service providing evidence of receipt".

13.4.3 Add new Subparagraph 13.4.3 as follows:

13.4.3 The Owner's rights and the Contractor's obligations under Paragraph 3.18, Article 12 and any other provisions of the Contract Documents that contemplate continuing rights and obligations, respectively, shall survive expiration of the Contract Time and termination of this Agreement.

13.5.4 Add the following at the end of subparagraph 13.5.4:

Without limitation, the Contractor shall obtain and deliver promptly to the Architect or the Owner any occupancy permit and any certificates of final inspection of any part of the Contractor's work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Architect or the Owner shall be a condition precedent to Substantial Completion of the Work.

13.6-

13.7 Delete Paragraphs 13.6 and 13.7 and substitute the following:

13.6 LIMITATION OF LIABILITY

13.6.1 The Owner shall be liable to the Contractor only to the extent of its interest in the Project, and no officer, official, employee, board member, consultant, volunteer participant or other agent of the Owner shall ever be personally or individually liable with respect to this Contract or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner ever succeeds to the Contractor's rights and obligations under a Subcontract.

13.7 FOREIGN CORPORATIONS

13.7.1 If the Contractor is a foreign corporation, it shall comply with M.G.L. c.181, §§ 3, 4 and 5 (and other applicable provisions of M.G.L. c.181), and M.G.L. c.30, § 39L.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1.1 Delete clause 14.1.1.4.

14.1.3 Delete subparagraph 14.1.3 and substitute the following:

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor, if not in default under the Contract, may give the Owner and the Architect written notice of its intention to terminate the Contract and if, within thirty (30) days after the Owner's receipt of such notice, the Work shall not have resumed, or the default of the Owner or the Architect shall not have been cured or action by the Owner or the Architect to effect such cure shall not have been commenced within such thirty (30) day period and diligently pursued to completion, as the case may be, then the Contractor may terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, and profit based upon the percentage of Work completed.

14.2 Delete Paragraph 14.2 and substitute the following:

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged bankrupt, or if the Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction or disregards an instruction, order or decision of the Architect or the Owner, or otherwise is guilty of a material violation of any provision of the Contract, then the Contractor shall be in default, and the Owner may, without prejudice to any other right or remedy and upon written notice to the Contractor, take possession of all materials, tools, appliances, equipment, construction equipment and machinery and vehicles, offices and other facilities on the Project site, and all materials intended for the Work, wherever stored, and, seven (7) days after such notice, may terminate the employment of the Contractor, accept assignment of any or all subcontracts pursuant to Paragraph 5.4, and finish the Work by whatever method the Owner may deem expedient. The Owner shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by the Owner on account of the Contractor's default, including without limitation additional services and expenses of the Architect made necessary thereby. The Owner shall be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such damages.

14.3 Delete subparagraphs 14.3.1 and 14.3.2 and substitute the following:

***14.3.1** (Statutory reference: M.G.L. c.30 §390) (a) The awarding authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract prices for any increase in the cost of performance of this contract but shall not include any profit to the Contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provisions 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 awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the Contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

In the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the Contractor against the awarding 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.

14.4.3 In subparagraph 14.4.3, delete the words "not executed" at the end of subparagraph 14.4.3 and insert in place thereof the following: "completed. The Contractor shall include in all subcontracts provisions allowing the termination of such subcontracts for convenience without penalty or unearned profit."

***ARTICLE 15 CONTRACTOR'S ACCOUNTING METHOD REQUIREMENTS** (Statutory reference: M.G.L. c.30, §39R)

Add new Article 15, as follows:

***15.1** The words defined herein shall have the meaning stated below whenever they appear in this Article 15:

***15.1.1** "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a Contract as defined in Subparagraph 15.1.2.

***15.1.2** "Contract" means any contract awarded or executed pursuant to M.G.L. c.7, §38A1/2 - 380, inclusive, and any contract awarded or executed pursuant to M.G.L. c. 25A, §1 1C, M.G.L. c. 30, §39M, or M.G.L. c.149, §44A-44H, inclusive, which is for an amount or estimated amount that exceeds the dollar amount set forth in M.G.L. c.30, §39R.

***15.1.3** "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.

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

***15.1.5** "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.

***15.1.6** "Accountant's Report," when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he has

made and sets forth his opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason 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.

***15.1.7 "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.

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

***15.2** Subparagraph 15.1.2 hereof notwithstanding, every agreement or contract awarded or executed pursuant to M.G.L. c.7, §38A1/2 -380, inclusive, M.G.L. c. 25A, §1 IC, M.G.L. c.30, §39M, or M.G.L. c.149, §44A -44H, inclusive, shall provide that:

***15.2.1** 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.

***15.2.2** Until the expiration of six years after final payment, the awarding authority, office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Contractor or of his Subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his/her Subcontractors.

***15.2.3** If the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his description the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes.

***15.2.4** If the agreement is a contract as defined herein, the Contractor has filed a statement of management on internal accounting controls as set forth in Paragraph 15.3 below prior to the execution of the contract.

***15.2.5** If the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Paragraph 15.5 below.

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

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

- .3 access to assets is permitted only in accordance with management's general or specific authorization; and
- .4 the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

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

- .1 whether the representations of management in response to this paragraph and Paragraph 15.2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and
- .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.

***15.5** Every Contractor awarded a contract by the Commonwealth or by any political subdivision thereof shall annually file with the Division 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.

***ARTICLE 16** EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION (Statutory reference: M.G.L. c. 151B).

Add new Article 16 as follows:

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

***16.2** Non-Discrimination and Affirmative Action Requirements. During the performance of his contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:

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

***16.2.2** In connection with the performance of work under this contract, the Contractor shall undertake in good faith 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 discrimination in the past. Such action

shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.

***16.2.3** As part of its obligation under the foregoing Subparagraph 16.2.2, the Contractor shall use its best efforts to maintain on this project a not less than ten (10%) percent ratio of minority employee man hours to total man hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in M.G.L. c.149, §44F.

If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods.

In the employment of journeymen, apprentices, trainees and advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States.

***16.3** Compliance with Requirements. The Contractor shall comply with the provisions of M.G.L. c. 151B, which is herein incorporated by reference and made a part of this contract.

***16.4** Non-Discrimination. The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of Subcontractors, or in the procurement of materials and rentals of equipment.

***16.5** Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential Subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

***16.6** Compliance-Information, Reports and Sanctions.

***16.6.1** The Contractor will provide all information and reports required by the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Commission 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 certify to the Owner and shall set forth what efforts he has made to obtain the information.

***16.6.2** Whenever the Owner believes the Contractor or any Subcontractor may not be operating in compliance with the terms of this paragraph, the Owner may conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Paragraph. If the Owner finds the Contractor or any Subcontractor not in compliance, it shall make a preliminary report on noncompliance, and notify

such Contractor in writing of such steps as will in the judgment of the Owner bring such Contractor into compliance.

***16.7 Severability.** The provisions of this Article 16 are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

***16.8 Equal Employment Opportunity for the Handicapped.** In connection with the performance of work under this contract, the Contractor, Subcontractors and suppliers of goods and services shall not discriminate against the handicapped. Furthermore, Contractors, Subcontractors and suppliers of good and services must 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, and must give such notice to handicap contractors and to handicapped contractor associations.

***16.9 MINORITY & WOMEN BUSINESS ENTERPRISE SET ASIDE GOALS**

16.9.1 All Contractors, subcontractors, sub-subcontractors, material suppliers and the like agree to use best efforts to meet the commitments and obligations outlined in the sections below, as applicable.

16.9.2 Percentage Participation. On this contract, the Contractor shall use best efforts to enter into contracts and subcontracts including contracts with suppliers, distributors and manufacturers who are Women/Minority Business Enterprises. Contractor shall use best efforts to enter into contracts worth 8% of the Total Contract Sum with MBE firms and 4% of the Total Contract Sum with WBE firms.

16.9.3 Definitions.

- a. Women/Minority Business Enterprise (W/MBE) means any business organization certified by SOMWBA as an MBE or WBE.
- b. Joint Ventures -
 1. A joint venture between a certified W/MBE and non-minority or non-WBE shall be certified by SOMWBA as a W/MBE if the certified W/MBE has at least 51% control over the management and receipt of profits of the project bid upon.
 2. A joint venture between a certified W/MBE subcontractor and a non-W/MBE subcontractor, in which the W/MBE does not exercise more than 51% control over management and profits, shall be entitled to a credit as a W/MBE for the proportion of the joint venture's contract equal to the W/MBE participation in the joint venture.
 3. Whenever a general bid is filed by a joint venture with a certified W/MBE participant in the joint venture that does not exercise more than 51% control over management and profits, that joint venture shall be entitled to credit as a W/MBE for the portion of the joint venture's price equal to the W/MBE participation in the joint venture.
 4. Whenever a joint venture with a certified W/MBE participant files a general bid or sub-bid, and requests a credit as a W/MBE, the bid must be accompanied by the pre-bid joint venture agreement for that project. SOMWBA certified joint ventures should submit a copy of SOMWBA certification.

- c. **Material Supplier** - A vendor certified by SOMWBA as a W/MBE engaged in sales to the construction industry from an established place of business or source of supply, which either:
 - 1. Manufactures goods from raw materials or substantially alters them before resale, entitling the general contractor to W/MBE credit for the full amount of the purchase order; or
 - 2. Maintains a storage facility for materials utilized in the work, entitling the general contractor to W/MBE credit for 10% of the purchase order.
- d. **Amount of Participation** - The actual dollar amount which will be paid to W/MBE for work performed on this contract, in accordance with Section 2(b) and 2(c).
- e. **Contractor** - Any successful general bidder to whom the Owner makes the contract award.
- f. **SOMWBA** - The State Office of Minority and Women Business Assistance.

Owner - The Massachusetts State College Building Authority.

- 16.9.4** Determination of W/MBE Status. Any Contractor, subcontractor, sub-subcontractor or material supplier may apply to SOMWBA for W/MBE status. Applications must be made on the W/MBE application form prepared by SOMWBA. The applicant may request a form from SOMWBA.

SOMWBA is responsible for- preparing, publishing, and updating a list of certified Women and Minority Owned businesses. The list is published in the Central Register established by G.L. Chapter 9, Section 20A and is available from SOMWBA. Bidders shall rely on the list that is most current at the time the work is advertised and shall use it as a reference source to assist in meeting the requirements of these conditions.

Submission of an application to SOMWBA does not constitute certification.

***16.10** Suspension of Payments.

***16.10.1** If the awarding authority determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of Article 16, it may suspend any payment or portion thereof due under the contract until Contractor demonstrates compliance with the terms of Article 16.

***16.10.2** Payment shall not be suspended if the awarding authority finds that the Contractor made his best efforts to comply with Article 16, or that some other justifiable reason exists for waiving the provisions of Article 16 in whole or in part.

***16.11.3** Payment may be suspended only after the Contractor and any other interested party shall have been given the opportunity to present evidence in support of its position at an informal hearing held by the awarding authority and the awarding authority has concluded upon review of all the evidence that such penalty is justified.

