

File No. _____

**AGREEMENT BETWEEN THE CITY OF CAMBRIDGE
AND
CONTRACTOR**

The City of Cambridge (“the City”), a municipal corporation, acting through its City Manager, and

_____ (“the contractor”),

_____ (address)

agree as follows:

THE CONTRACT DOCUMENTS

The Contract Documents form the Contract between the City and the Contractor and consist only of those documents listed under the definition of “Contract Documents” in the General Terms and Conditions of the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes any prior negotiations, representations, or agreements, whether oral or written.

THE WORK

The Contractor shall perform the Work as specified in the Contract Documents entitled:

Alewife Brook Floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project

CONTRACT TIME

All work for the Milestone Number 1 - Alewife Brook Floatables Control shall be completed by October 31, 2010. All work for the Milestone Number 2 - CAM400 Sewer Separation Subsurface Work shall be completed by March 31, 2011. All work for Milestone Number 3 - CAM400 Sewer Separation Surface Restoration and Surface Enhancements shall be completed by July 31, 2011.

The Contractor agrees that the Work shall be prosecuted regularly, diligently, uninterruptedly and at such rate of progress as will insure full completion thereof within the Contract Time. It is expressly understood and agreed that the Contract Time is reasonable for the completion of the Work, taking all factors into consideration.

BIDDER’s NAME _____

CONTRACT SUM

The City will pay the Contractor for performance of the Work in accordance with the Contract Documents the sum of \$ _____ as set forth on the Contractor's bid form.

The City shall not be liable for any claims or requests for payment by the Contractor which would cause the total claims or payments under this Contract to exceed by the City Auditor as being appropriated for this contract.

LIQUIDATED DAMAGES

The City and the Contractor recognize that time is of the essence of this Contract and that the City will suffer financial loss if the Work is not completed within the Contract Time plus any authorized extensions. They also recognize the delay, expense, and difficulty involved in proving the actual loss suffered by the City if the Work is not completed within the Contract Time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that the Contractor shall pay to the City as liquidated damages, not as a penalty, the sum of \$2,500 per day for each calendar day of delay until the Work is completed. The Contractor agrees to allow the City to deduct any such amounts from progress payments and retainage.

CHANGE ORDERS

As per DEP's Policy Memorandum #10 – the agreed upon DIRECT LABOR MARKUP (percentage) for Change Orders on this project shall not exceed 20 percent.

The fair share construction goals for minority enterprise (MBE) and women's business enterprise (WBE) participation for this contract is a minimum of five point three zero (5.30) percent MBE participation and four point four zero (4.40) percent WBE participation, applicable to the total dollar amount paid for the construction contract. The Contractor shall take all affirmative steps necessary to achieve this goal, and shall provide reports documenting the portion of contract and subcontract dollars paid to minority and women-owned businesses, and its efforts to achieve the goals, with each invoice submitted or at such greater intervals as specified by the City of Cambridge Department Public Works. The contractor shall require similar reports from its subcontractors

The contractor shall not discriminate against or exclude any person from participation herein on grounds of race, religion, color, sex, age, or national origin; and that it shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, sex, age, handicapped status, or national origin.

The contractor shall not participate in or cooperate with an international boycott, as

BIDDER's NAME _____

defined in Section 999 (b)(3) and (4) of the Internal Revenue code 1986, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Law

Pursuant to M.G.L. C.44, s31C, I certify that an appropriation has been made in the total amount of the contract.

This Contract is effective as of _____, the date the Agreement is signed by the City Manager.

THE CITY OF CAMBRIDGE

THE CONTRACTOR

Robert W. Healy, City Manager

Signature

APPROVED AS TO FORM:

BY: _____

Print Name and Title

Donald Drisdell., City Solicitor

(Corporate Seal)

APPROVED AS TO THE AVAILABILITY OF APPROPRIATION OF FUNDS:

Budget Code: _____

James D. Monagle, City Auditor

Cynthia H. Griffin,
Purchasing Agent

BIDDER's NAME _____

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BIDDER'S NAME _____

CAM 400/Alewife Floatables
Conformed Set

AGREEMENT
00500-4

SECTION 00550
NOTICE OF AWARD

TO: _____

PROJECT DESCRIPTION : ALEWIFE BROOK FLOATABLES CONTROL
(CONTRACT 4) AND CAM 400 SEWER
SEPARATION (CONTRACT 13) PROJECT

The Owner has considered the Proposal submitted by you for the above described Work on _____ 20__ in response to its Advertisement for Bids and Instructions to Bidders.

You are hereby notified that your Proposal has been accepted for Items totalling the amount of \$_____.

You are required by the Instructions to Bidders to execute the Contract Agreement and furnish the required Contractor's Performance Bond, Payment Bond and certificates of insurance within ten (10) days from the date of this Notice of Award.

If you fail to execute said Agreement and to furnish said Bonds and Insurance within ten (10) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Proposal as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice Of Award to the Owner.

Dated this _____ day of _____, 20_____.

(Owner)
By _____
Title _____

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged, this the _____ day of _____, 20__.

By _____
Title _____

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SECTION 00560

NOTICE TO PROCEED

To: _____ Date: _____
(Contractor)

Project: ALEWIFE BROOK FLOATABLES
CONTROL (CONTRACT 4) AND
CAM400 SEWER SEPARATION
(CONTRACT 13) PROJECT

You are hereby notified to commence the Work in accordance with the Agreement dated _____, 200__, on or before _____, 200__, and you shall complete all work on Alewife Brook Floatables Control (Contract 4) by October 31, 2010, all work on CAM400 Sewer Separation (Contract 13) by March 31, 2011 and all surface restoration by July 31, 2011.

(Owner)

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed is hereby acknowledged, this the _____
day of _____, 200_.

By _____

Title _____

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officers and agents from any and all costs and damages which it may suffer by a reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, then this obligation shall be void; otherwise, this bond shall remain in full force and effect; provided, further, that the said Surety for value received hereby agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder of the Specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications. Provided, further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed on this _____ day of

_____, _____.

CONTRACTOR AS PRINCIPAL

SURETY

(Signature)
Name and Title:

(Signature)
Name and Title:

SEAL

SEAL

Address

Telephone No.

Fax No.

SECTION 00620
PAYMENT BOND

We, the undersigned, _____

(Name of Contractor)

(Address of Contractor)

_____ (Corporation, Partnership or Individual), hereinafter called
Principal, and _____

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the CITY OF CAMBRIDGE, 795
Massachusetts Avenue, Cambridge, MA 02139, hereinafter called Owner, in the penal sum of
_____ Dollars (\$ _____) in lawful money
of the United States, for the payment of which sum well and truly to be made. We hereby jointly and
severally bind ourselves, our heirs, executors, administrators, successors and assigns.

The condition of this obligation is such that the Principal entered into a certain contract with
the Owner, dated the ____ day of _____ 20 __, a copy of which is attached hereto and
made a part hereof, for the project known as "ALEWIFE BROOK FLOATABLES CONTROL
(CONTRACT 4) AND CAM 400 SEWER SEPARATION (CONTRACT 13) PROJECT."

Now, therefore, if the Principal shall promptly make payment to all persons, firms,
subcontractors, and corporations furnishing materials for or performing labor in the prosecution of
the work provided for in such contract, and any authorized extension or modification thereof,
including all amounts due for all materials used in connection with the work, and all insurance
premiums on said work, and for all labor performed in such work whether by subcontractor or
otherwise, then this obligation shall be void; otherwise this bond is to remain in full force and effect.

Provided, further, that the said Surety for value received hereby agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder of the Specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

Provided, further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed on this ____ day of _____, _____.

CONTRACTOR AS PRINCIPAL

SURETY

(Signature)
Name and Title:

(Signature)
Name and Title:

SEAL

SEAL

Address

Telephone No.

Fax No.

SECTION 00630
CERTIFICATE OF AUTHORITY

MEETING OF THE BOARD OF DIRECTORS

CERTIFICATE OF AUTHORITY

At a meeting of the Directors of the _____
_____ duly called and
held at _____ on the _____ day of
_____ 20____, at which a quorum was present and acting, it was VOICED
THAT _____ the
_____ of this corporation is hereby authorized and
empowered to make, enter into, sign, seal and deliver, in behalf of this corporation, a Contract for
_____ with the City of Cambridge, and performance and payment bonds (each in the full amount of the
Contract) in connection with such Contract.

I DO HEREBY CERTIFY that the above is a true and correct copy of the record, that said
vote has not been amended or repealed and is in full force and effect on this date, and that
_____ is duly elected
_____ of this corporation.

ATTEST:

Clerk or Secretary of the Corporation
(Affix Corporate Seal Here)

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SECTION 00670

DIVISION OF LABOR AND WAGE RATES

Minimum wage rates to be applied for work performed under this Contract are shown on the following pages.

All work performed on this Contract requires adhering to the requirements of the Davis Bacon Act for the entirety of the construction activities and duration.



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY



DEVAL L. PATRICK
Governor

As determined by the Commissioner under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

TIMOTHY P. MURRAY
Lieutenant Governor

SUZANNE M. BUMP
Secretary of Labor and Workforce Development

GEORGE NOEL
Director of Labor

LAURA M. MARLIN
Commissioner of Division of Occupational Safety

Prevailing Wage Rates

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification	Effective Dates and Total Rates								
Construction									
(2 AXLE) DRIVER - EQUIPMENT	06/01/2009	\$43.780	12/01/2009	\$44.330	06/01/2010	\$44.930			
	12/01/2010	\$45.530	06/01/2011	\$46.280	12/01/2011	\$46.940			
	06/01/2012	\$47.590	12/01/2012	\$48.620					
(3 AXLE) DRIVER - EQUIPMENT	06/01/2009	\$43.850	12/01/2009	\$44.400	06/01/2010	\$45.000			
	12/01/2010	\$45.600	06/01/2011	\$46.350	12/01/2011	\$47.010			
	06/01/2012	\$47.660	12/01/2012	\$48.690					
(4 & 5 AXLE) DRIVER - EQUIPMENT	06/01/2009	\$43.970	12/01/2009	\$44.520	06/01/2010	\$45.120			
	12/01/2010	\$45.720	06/01/2011	\$46.470	12/01/2011	\$47.130			
	06/01/2012	\$47.780	12/01/2012	\$48.810					
ADS/SUBMERSIBLE PILOT	08/01/2009	\$102.480	08/01/2010	\$107.460	08/01/2011	\$112.980			
AIR TRACK OPERATOR	06/01/2009	\$46.850	12/01/2009	\$47.850	06/01/2010	\$48.850			
	12/01/2010	\$50.100	06/01/2011	\$51.100	12/01/2011	\$52.350			
ASBESTOS REMOVER - PIPE / MECH. EQUIPT.	06/01/2009	\$39.250	12/01/2009	\$40.250					
ASPHALT RAKER	06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350			
	12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850			
ASPHALT/CONCRETE/CRUSHER PLANT-ON SITE	06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780			
	12/01/2010	\$61.030							
BACKHOE/FRONT-END LOADER	06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780			
	12/01/2010	\$61.030							
BARCO-TYPE JUMPING TAMPER	06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350			
	12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850			
BLOCK PAVER, RAMMER / CURB SETTER	06/01/2009	\$46.850	12/01/2009	\$47.850	06/01/2010	\$48.850			
	12/01/2010	\$50.100	06/01/2011	\$51.100	12/01/2011	\$52.350			
BOILER MAKER	10/01/2008	\$54.800							
APPRENTICE: BOILERMAKER - Local 29									
Ratio	Step	1	2	3	4	5	6	7	8
1:5	%	65.00	65.00	70.00	75.00	80.00	85.00	90.00	95.00
BRICK/STONE/ARTIFICIAL MASONRY (INCL. MASONRY WATERPROOFING)	08/01/2009	\$67.120	02/01/2010	\$68.010	08/01/2010	\$69.910			
	02/01/2011	\$70.900	08/01/2011	\$73.000	02/01/2012	\$73.990			
APPRENTICE: BRICK/PLASTER/CEMENT MASON - Local 3 Boston									
Ratio	Step	1	2	3	4	5			
1:5	%	50.00	60.00	70.00	80.00	90.00			
BULLDOZER/GRADER/SCRAPER	06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430			
	12/01/2010	\$60.680							
CAISSON & UNDERPINNING BOTTOM MAN	06/01/2009	\$47.250	12/01/2009	\$48.250	06/01/2010	\$49.250			
	12/01/2010	\$50.500	06/01/2011	\$51.500	12/01/2011	\$52.750			
CAISSON & UNDERPINNING LABORER	06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100			
	12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600			

This wage schedule must be posted at the work site in accordance with M.G.L. ch. 149, sec. 27

Failure of the employer to pay "prevailing wage rates," which are the minimum wage rates listed above, on public works projects is a violation of M.G.L. ch. 149, sec. 27. Employees not receiving such rates should report the violation to the Office of Fair Labor and Business Practices, 100 Cambridge Street, Boston, MA 02108; Tel: 617-727-3465.



DEVAL L. PATRICK
Governor
TIMOTHY P. MURRAY
Lieutenant Governor

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY



SUZANNE M. BUMP
Secretary of Labor and Workforce Development
GEORGE NOEL
Director of Labor
LAURA M. MARLIN
Commissioner of Division of Occupational Safety

Prevailing Wage Rates

As determined by the Commissioner under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification	Effective Dates and Total Rates								
CAISSON & UNDERPINNING TOP MAN	06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100			
	12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600			
CARBIDE CORE DRILL OPERATOR	06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350			
	12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850			
CARPENTER	09/01/2009	\$58.930	03/01/2010	\$59.800	09/01/2010	\$60.680			
	03/01/2011	\$61.550	09/01/2011	\$62.680	03/01/2012	\$63.800			
APPRENTICE: CARPENTER - Zone 1 Metro Boston									
Ratio	Step	1	2	3	4	5	6	7	8
1:5	%	50.00	60.00	70.00	75.00	80.00	80.00	90.00	90.00
CEMENT MASONRY/PLASTERING	08/01/2009	\$65.510	02/01/2010	\$66.200	08/01/2010	\$67.670			
	02/01/2011	\$68.440	08/01/2011	\$70.060	02/01/2012	\$70.830			
CHAIN SAW OPERATOR	06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350			
	12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850			
CLAM SHELLS/SLURRY BUCKETS/HEADING MACHINES	06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780			
	12/01/2010	\$61.030							
COMPRESSOR OPERATOR	06/01/2009	\$47.070	12/01/2009	\$47.890	06/01/2010	\$48.810			
	12/01/2010	\$49.740							
DELEADER (BRIDGE)	07/01/2009	\$62.260	01/01/2010	\$63.410					
DEMO: ADZEMAN	06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100			
	12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600			
DEMO: BACKHOE/LOADER/HAMMER OPERATOR	06/01/2009	\$47.100	12/01/2009	\$48.100	06/01/2010	\$49.100			
	12/01/2010	\$50.350	06/01/2011	\$51.350	12/01/2011	\$52.600			
DEMO: BURNERS	06/01/2009	\$46.850	12/01/2009	\$47.850	06/01/2010	\$48.850			
	12/01/2010	\$50.100	06/01/2011	\$51.100	12/01/2011	\$52.350			
DEMO: CONCRETE CUTTER/SAWYER	06/01/2009	\$47.100	12/01/2009	\$48.100	06/01/2010	\$49.100			
	12/01/2010	\$50.350	06/01/2011	\$51.350	12/01/2011	\$52.600			
DEMO: JACKHAMMER OPERATOR	06/01/2009	\$46.850	12/01/2009	\$47.850	06/01/2010	\$48.850			
	12/01/2010	\$50.100	06/01/2011	\$51.100	12/01/2011	\$52.350			
DEMO: WRECKING LABORER	06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100			
	12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600			
DIRECTIONAL DRILL MACHINE OPERATOR	06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430			
	12/01/2010	\$60.680							
DIVER	08/01/2009	\$75.600	08/01/2010	\$78.890	08/01/2011	\$82.740			
DIVER TENDER	08/01/2009	\$60.240	08/01/2010	\$62.590	08/01/2011	\$65.340			
DIVER TENDER (EFFLUENT)	08/01/2009	\$79.440	08/01/2010	\$82.960	08/01/2011	\$87.090			
DIVER/SLURRY (EFFLUENT)	08/01/2009	\$102.480	08/01/2010	\$107.410	08/01/2011	\$113.190			
ELECTRICIAN	09/01/2009	\$64.800	03/01/2010	\$66.030	09/01/2010	\$67.270			
	03/01/2011	\$68.510							

This wage schedule must be posted at the work site in accordance with M.G.L. ch. 149, sec. 27

Failure of the employer to pay "prevailing wage rates," which are the minimum wage rates listed above, on public works projects is a violation of M.G.L. ch. 149, sec. 27. Employees not receiving such rates should report the violation to the Office of Fair Labor and Business Practices, 100 Cambridge Street, Boston, MA 02108; Tel: 617-727-3465.



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY



DEVAL L. PATRICK
Governor

As determined by the Commissioner under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

SUZANNE M. BUMP
Secretary of Labor and Workforce Development

TIMOTHY P. MURRAY
Lieutenant Governor

GEORGE NOEL
Director of Labor

LAURA M. MARLIN
Commissioner of Division of Occupational Safety

Prevailing Wage Rates

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification

Effective Dates and Total Rates

Classification	Ratio	Step	1	2	3	4	5	6	7	8	9	10
APPRENTICE: ELECTRICIAN - Local 103	2:3***	%	40.00	40.00	45.00	45.00	50.00	55.00	60.00	65.00	70.00	75.00
	App Prior 1/1/03; 30/35/40/45/50/55/65/70/75/80											
ELEVATOR CONSTRUCTOR							01/01/2009	\$63.690	01/01/2010	\$65.190	01/01/2011	\$66.690
							01/01/2012	\$68.190				
APPRENTICE: ELEVATOR CONSTRUCTOR - Local 4	1:1	%	50.00	55.00	65.00	70.00	80.00	Steps 1-2 are 6 mos.; Steps 3-5 are 1 year				
ELEVATOR CONSTRUCTOR HELPER							01/01/2009	\$49.830	01/01/2010	\$51.330	01/01/2011	\$52.830
							01/01/2012	\$54.330				
FENCE & GUARD RAIL ERECTOR							06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350
							12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850
FIELD ENG. - INST. PERSON (BLDG, SITE, HVY CONST)							11/01/2009	\$55.850	05/01/2010	\$56.950	11/01/2010	\$58.190
							05/01/2011	\$59.430				
FIELD ENG. - ROD PERSON (BLDG, SITE, HVY CONST)							11/01/2009	\$40.870	05/01/2010	\$41.520	11/01/2010	\$42.250
							05/01/2011	\$42.980				
FIELD ENG.-CHIEF OF PARTY (BLDG, SITE, HVY CONST)							11/01/2009	\$57.210	05/01/2010	\$58.320	11/01/2010	\$59.570
							05/01/2011	\$60.820				
FIRE ALARM INSTALLER							09/01/2009	\$64.800	03/01/2010	\$66.030	09/01/2010	\$67.270
							03/01/2011	\$68.510				
FIRE ALARM REPAIR / MAINTENANCE							09/01/2009	\$52.870	03/01/2010	\$53.790	09/01/2010	\$54.720
							03/01/2011	\$55.660				
FIREMAN (ASST. ENGINEER)							06/01/2009	\$51.780	12/01/2009	\$52.740	06/01/2010	\$53.810
							12/01/2010	\$54.890				
FLAGGER & SIGNALER							06/01/2009	\$35.800	12/01/2009	\$35.800	06/01/2010	\$36.800
							12/01/2010	\$36.800	06/01/2011	\$37.800	12/01/2011	\$37.800
FLOORCOVERER							03/01/2009	\$58.380				
APPRENTICE: FLOORCOVERER - Local 2168 Zone 1	1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	85.00	Steps are 750 hrs.	
FORK LIFT/CHERRY PICKER							06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780
							12/01/2010	\$61.030				
GENERATOR/LIGHTING PLANT/HEATERS							06/01/2009	\$47.070	12/01/2009	\$47.890	06/01/2010	\$48.810
							12/01/2010	\$49.740				

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Prevailing Wage Rates

As determined by the Commissioner under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification		Effective Dates and Total Rates									
GLAZIER (GLASS PLANK/AIR BARRIER/INTERIOR SYSTEMS)		07/01/2009	\$57.550	01/01/2010	\$58.700						
APPRENTICE: GLAZIER - Local 35 Zone 1											
Ratio	Step	1	2	3	4	5	6	7	8		
1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	90.00		
Steps are 750 hrs.											
HOISTING ENGINEER/CRANES/GRADALLS		06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780				
APPRENTICE: HOIST/PORT. ENG.- Local 4		12/01/2010	\$61.030								
Ratio	Step	1	2	3	4	5	6	7	8		
1:6	%	55.00	60.00	65.00	70.00	75.00	80.00	85.00	90.00		
HVAC (DUCTWORK)		08/01/2009	\$62.260	02/01/2010	\$63.510	08/01/2010	\$64.760				
		02/01/2011	\$66.010	08/01/2011	\$67.260	02/01/2012	\$68.510				
		08/01/2012	\$69.760	02/01/2013	\$71.010						
HVAC (ELECTRICAL CONTROLS)		09/01/2009	\$64.800	03/01/2010	\$66.030	09/01/2010	\$67.270				
		03/01/2011	\$68.510								
HVAC (TESTING AND BALANCING - AIR)		08/01/2009	\$62.260	02/01/2010	\$63.510	08/01/2010	\$64.760				
		02/01/2011	\$66.010	08/01/2011	\$67.260	02/01/2012	\$68.510				
		08/01/2012	\$69.760	02/01/2013	\$71.010						
HVAC (TESTING AND BALANCING - WATER)		09/01/2009	\$67.480	03/01/2010	\$68.730						
HVAC MECHANIC		09/01/2009	\$67.480	03/01/2010	\$68.730						
HYDRAULIC DRILLS		06/01/2009	\$46.850	12/01/2009	\$47.850	06/01/2010	\$48.850				
		12/01/2010	\$50.100	06/01/2011	\$51.100	12/01/2011	\$52.350				
INSULATOR (PIPES & TANKS)		09/01/2009	\$59.260	09/01/2010	\$61.660						
APPRENTICE: ASBESTOS INSULATOR (Pipes & Tanks) - Local 6 Boston											
Ratio	Step	1	2	3	4						
1:4	%	50.00	60.00	70.00	80.00						
Steps are 1 year											
IRONWORKER/WELDER		09/16/2009	\$59.560	03/16/2010	\$60.960						
APPRENTICE: IRONWORKER - Local 7											
Ratio	Step	1	2	3	4	5	6				
	%	60.00	70.00	75.00	80.00	85.00	90.00				
Structural 1:6; Ornamental 1:4											
JACKHAMMER & PAVING BREAKER OPERATOR		06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350				
		12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850				
LABORER		06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100				
		12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600				

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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY



DEVAL L. PATRICK
Governor

As determined by the Commissioner under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

SUZANNE M. BUMP
Secretary of Labor and Workforce Development

TIMOTHY P. MURRAY
Lieutenant Governor

GEORGE NOEL
Director of Labor

LAURA M. MARLIN
Commissioner of Division of Occupational Safety

Prevailing Wage Rates

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification		Effective Dates and Total Rates									
APPRENTICE: LABORER - Zone 1											
Ratio	Step	1	2	3	4						
1:5	%	60.00	70.00	80.00	90.00						
LABORER: CARPENTER TENDER						06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100
						12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600
LABORER: CEMENT FINISHER TENDER						06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100
						12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600
LABORER: HAZARDOUS WASTE/ASBESTOS REMOVER						06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100
						12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600
LABORER: MASON TENDER						06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350
						12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850
LABORER: MULTI-TRADE TENDER						06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100
						12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600
LABORER: TREE REMOVER						06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100
						12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600
This classification applies to the wholesale removal of standing trees including all associated trimming of branches and limbs, and applies to the removal of branches at locations not on or around utility lines.											
LASER BEAM OPERATOR						06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350
						12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850
MARBLE & TILE FINISHERS						08/01/2009	\$56.240	02/01/2010	\$56.950	08/01/2010	\$58.470
						02/01/2011	\$59.270	08/01/2011	\$60.950	02/01/2012	\$61.740
APPRENTICE: MARBLE-TILE-TERRAZZO FINISHER - Local 3 Marble & Tile											
Ratio	Step	1	2	3	4	5					
1:3	%	50.00	60.00	70.00	80.00	90.00					
Steps are 800 hrs.											
MARBLE MASONS, TILELAYERS & TERRAZZO MECH						08/01/2009	\$67.160	02/01/2010	\$68.050	08/01/2010	\$69.950
						02/01/2011	\$70.940	08/01/2011	\$73.040	02/01/2012	\$74.030
APPRENTICE: MARBLE-TILE-TERRAZZO MECHANIC - Local 3 Marble & Tile											
Ratio	Step	1	2	3	4	5					
1:3	%	50.00	60.00	70.00	80.00	90.00					
MECH. SWEEPER OPERATOR (NON-CONSTRUCTION)						07/01/2009	\$28.300	07/01/2010	\$29.000	07/01/2011	\$29.700
MECH. SWEEPER OPERATOR (ON CONST. SITES)						06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430
						12/01/2010	\$60.680				
MECHANICS MAINTENANCE						06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430
						12/01/2010	\$60.680				
MILLWRIGHT (Zone 1)						03/01/2009	\$54.400				
APPRENTICE: MILLWRIGHT - Local 1121 Zone 1											
Ratio	Step	1	2	3	4	5	6	7	8		
1:5	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	85.00		

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GEORGE NOEL
Director of Labor

LAURA M. MARLIN
Commissioner of Division of Occupational Safety

Prevailing Wage Rates

As determined by the Commissioner under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification	Effective Dates and Total Rates											
MORTAR MIXER	06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350	12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.350
OILER (OTHER THAN TRUCK CRANES, GRADALLS)	06/01/2009	\$41.090	12/01/2009	\$41.750	06/01/2010	\$42.480	12/01/2010	\$43.220	06/01/2011	\$43.990	12/01/2011	\$44.720
OILER (TRUCK CRANES, GRADALLS)	06/01/2009	\$43.990	12/01/2009	\$44.720	06/01/2010	\$45.550	12/01/2010	\$46.380	06/01/2011	\$47.210	12/01/2011	\$48.040
OTHER POWER DRIVEN EQUIPMENT - CLASS II	06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430	12/01/2010	\$60.680	06/01/2011	\$61.930	12/01/2011	\$63.180
PAINTER (BRIDGES/TANKS)	07/01/2009	\$62.260	01/01/2010	\$63.410								
APPRENTICE: PAINTER - Local 35 Zone 1												
Ratio	Step	1	2	3	4	5	6	7	8			
1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	90.00			
Steps are 750 hrs.												
PAINTER (SPRAY OR SANDBLAST, NEW) *	07/01/2009	\$58.950	01/01/2010	\$60.100								
* If 30% or more of surfaces to be painted are new construction, NEW paint rate shall be used.												
APPRENTICE: PAINTER - Local 35 Zone 1												
Ratio	Step	1	2	3	4	5	6	7	8			
1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	90.00			
Steps are 750 hrs.												
PAINTER (SPRAY OR SANDBLAST, REPAINT)	07/01/2009	\$57.010	01/01/2010	\$58.160								
APPRENTICE: PAINTER - Local 35 Zone 1												
Ratio	Step	1	2	3	4	5	6	7	8			
1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	90.00			
Steps are 750 hrs.												
PAINTER (TRAFFIC MARKINGS)	06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100	12/01/2010	\$49.100	06/01/2011	\$50.100	12/01/2011	\$51.100
PAINTER / TAPER (BRUSH, NEW) *	07/01/2009	\$57.550	01/01/2010	\$58.700								
* If 30% or more of surfaces to be painted are new construction, NEW paint rate shall be used.												
APPRENTICE: PAINTER - Local 35 Zone 1												
Ratio	Step	1	2	3	4	5	6	7	8			
1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	90.00			
Steps are 750 hrs.												
PAINTER / TAPER (BRUSH, REPAINT)	07/01/2009	\$55.610	01/01/2010	\$56.760								

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LAURA M. MARLIN
Commissioner of Division of Occupational Safety

Prevailing Wage Rates

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification

Effective Dates and Total Rates

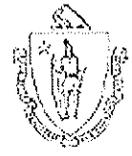
Classification	Ratio	Step	1	2	3	4	5	6	7	8		
APPRENTICE: PAINTER - Local 35 Zone 1	1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	90.00		
	Steps are 750 hrs.											
PANEL & PICKUP TRUCKS DRIVER							06/01/2009	\$43.610	12/01/2009	\$44.160	06/01/2010	\$44.760
							12/01/2010	\$45.360	06/01/2011	\$46.110	12/01/2011	\$46.770
							06/01/2012	\$47.420	12/01/2012	\$48.450		
PIER AND DOCK CONSTRUCTOR (UNDERPINNING AND DECK)							08/01/2009	\$60.240	08/01/2010	\$62.590	08/01/2011	\$65.340
PILE DRIVER							08/01/2009	\$60.240	08/01/2010	\$62.590	08/01/2011	\$65.340
APPRENTICE: PILE DRIVER - Local 56 Zone 1	1:3	%	60.00	65.00	70.00	75.00	80.00	85.00	90.00	95.00		
PIPEFITTER & STEAMFITTER							09/01/2009	\$67.480	03/01/2010	\$68.730		
APPRENTICE: PIPEFITTER - Local 537	**	%	40.00	45.00	60.00	70.00	80.00					
	** 1:3; 3:15; 1:10 thereafter											
	Refrig/AC Mechanic **1:1;1:2;2:4;3:6;4:8;5:10;6:12;7:14;8:17;9:20;10:23(Max)											
PIPELAYER							06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350
							12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850
PLUMBERS & GASFITTERS							09/01/2009	\$66.250	03/01/2010	\$67.500		
APPRENTICE: PLUMBER - Local 12	**	%	35.00	40.00	55.00	65.00	75.00					
	** 1:2; 2:6; 3:10; 4:14; 5:19											
	Steps are 1 year; Step 4 w/ license-70; Step 5 w/ license-80											
PNEUMATIC CONTROLS (TEMP.)							09/01/2009	\$67.480	03/01/2010	\$68.730		
PNEUMATIC DRILL/TOOL OPERATOR							06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350
							12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850
POWDERMAN & BLASTER							06/01/2009	\$47.100	12/01/2009	\$48.100	06/01/2010	\$49.100
							12/01/2010	\$50.350	06/01/2011	\$51.350	12/01/2011	\$52.600
POWER SHOVEL/DERRICK/TRENCHING MACHINE							06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780
							12/01/2010	\$61.030				
PUMP OPERATOR (CONCRETE)							06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780
							12/01/2010	\$61.030				
PUMP OPERATOR (DEWATERING, OTHER)							06/01/2009	\$47.070	12/01/2009	\$47.890	06/01/2010	\$48.810
							12/01/2010	\$49.740				
READY-MIX CONCRETE DRIVER							05/01/2009	\$42.470	05/01/2010	\$43.040	05/01/2011	\$43.650

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Prevailing Wage Rates

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

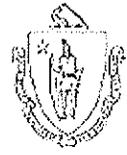
Classification	Effective Dates and Total Rates									
RECLAIMERS	06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430				
	12/01/2010	\$60.680								
RESIDENTIAL WOOD FRAME CARPENTER **	04/01/2009	\$38.870								
** The Residential Wood Frame Carpenter classification applies only to the construction of new, wood frame residences that do not exceed four stories including the basement.										
As of 9/1/09 Carpentry work on wood-frame residential WEATHERIZATION projects shall be paid the RESIDENTIAL WOOD FRAME CARPENTER rate.										
RIDE-ON MOTORIZED BUGGY OPERATOR	06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350				
	12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850				
ROLLER/SPREADER/MULCHING MACHINE	06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430				
	12/01/2010	\$60.680								
ROOFER (Inc. Roofer Waterproofing & Roofer Damproofg)	02/01/2009	\$53.860								
APPRENTICE: ROOFER - Local 33										
Ratio	Step	1	2	3	4	5				
**	%	50.00	60.00	65.00	75.00	85.00				
** 1:5, 2:6-10 thereafter 1:10 (or portion thereof)						Step 1 is 2000 hrs.; Steps 2-5 are 1000 hrs.				
Roofer (Reroofing): Same Steps and Hours as Above ** 1:4; Thereafter 1:1										
SHEETMETAL WORKER	08/01/2009	\$62.260	02/01/2010	\$63.510	08/01/2010	\$64.760				
	02/01/2011	\$66.010	08/01/2011	\$67.260	02/01/2012	\$68.510				
	08/01/2012	\$69.760	02/01/2013	\$71.010						
APPRENTICE: SHEET METAL WORKER - Local 17-A										
Ratio	Step	1	2	3	4	5	6	7		
1:4	%	40.00	45.00	50.00	60.00	65.00	75.00	85.00		
Steps 1-3 are 1 year; Steps 4-7 are 6 mos.										
SIGN ERECTOR	06/01/2009	\$37.780								
APPRENTICE: SIGN ERECTOR - Local 35 Zone 1										
Ratio	Step	1	2	3	4	5	6	7	8	9
1:1	%	50.00	55.00	60.00	65.00	70.00	75.00	80.00	85.00	90.00
Steps are 4 mos.										
SLATE / TILE / PRECAST CONCRETE ROOFER	02/01/2009	\$54.110								
SPECIALIZED EARTH MOVING EQUIP < 35 TONS	06/01/2009	\$44.070	12/01/2009	\$44.620	06/01/2010	\$45.220				
	12/01/2010	\$45.820	06/01/2011	\$46.570	12/01/2011	\$47.230				
	06/01/2012	\$47.880	12/01/2012	\$48.910						
SPECIALIZED EARTH MOVING EQUIP > 35 TONS	06/01/2009	\$44.360	12/01/2009	\$44.910	06/01/2010	\$45.510				
	12/01/2010	\$46.110	06/01/2011	\$46.860	12/01/2011	\$47.520				
	06/01/2012	\$48.170	12/01/2012	\$49.200						
SPRINKLER FITTER	09/16/2009	\$68.450	03/16/2010	\$69.700						

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Prevailing Wage Rates

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification	Effective Dates and Total Rates										
APPRENTICE: SPRINKLER FITTER - Local 550											
Ratio	Step	1	2	3	4	5	6	7	8	9	10
1:1	%	40.00	45.00	50.00	55.00	60.00	65.00	70.00	75.00	80.00	85.00
STEAM BOILER OPERATOR						06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430
						12/01/2010	\$60.680				
TAMPERS, SELF-PROPELLED OR TRACTOR DRAWN						06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430
						12/01/2010	\$60.680				
TELECOMMUNICATION TECHNICIAN						09/01/2009	\$52.870	03/01/2010	\$53.790	09/01/2010	\$54.720
						03/01/2011	\$55.660				
APPRENTICE: TELECOMMUNICATION TECHNICIAN - Local 103											
Ratio	Step	1	2	3	4	5	6	7	8		
1:1	%	40.00	45.00	50.00	55.00	60.00	65.00	75.00	80.00		
TERRAZZO FINISHERS						08/01/2009	\$66.060	02/01/2010	\$66.950	08/01/2010	\$68.850
						02/01/2011	\$69.840	08/01/2011	\$71.940	02/01/2012	\$72.930
APPRENTICE: MARBLE-TILE-TERRAZZO FINISHER - Local 3 Marble & Tile											
Ratio	Step	1	2	3	4	5					
1:3	%	50.00	60.00	70.00	80.00	90.00					
							Steps are 800 hrs.				
TEST BORING DRILLER						06/01/2009	\$47.500	12/01/2009	\$48.500	06/01/2010	\$49.500
						12/01/2010	\$50.750	06/01/2011	\$51.750	12/01/2011	\$53.000
TEST BORING DRILLER HELPER						06/01/2009	\$46.220	12/01/2009	\$47.220	06/01/2010	\$48.220
						12/01/2010	\$49.470	06/01/2011	\$50.470	12/01/2011	\$51.720
TEST BORING LABORER						06/01/2009	\$46.100	12/01/2009	\$47.100	06/01/2010	\$48.100
						12/01/2010	\$49.350	06/01/2011	\$50.350	12/01/2011	\$51.600
TRACTORS/PORTABLE STEAM GENERATORS						06/01/2009	\$57.090	12/01/2009	\$58.190	06/01/2010	\$59.430
						12/01/2010	\$60.680				
TRAILERS FOR EARTH MOVING EQUIPMENT						06/01/2009	\$44.650	12/01/2009	\$45.200	06/01/2010	\$45.800
						12/01/2010	\$46.400	06/01/2011	\$47.150	12/01/2011	\$47.810
						06/01/2012	\$48.460	12/01/2012	\$49.490		
TUNNEL WORK - COMPRESSED AIR						06/01/2009	\$58.430	12/01/2009	\$59.680	06/01/2010	\$60.930
						12/01/2010	\$62.180	06/01/2011	\$63.430	12/01/2011	\$64.680
TUNNEL WORK - COMPRESSED AIR (HAZ. WASTE)						06/01/2009	\$60.430	12/01/2009	\$61.680	06/01/2010	\$62.930
						12/01/2010	\$64.180	06/01/2011	\$65.430	12/01/2011	\$66.680
TUNNEL WORK - FREE AIR						06/01/2009	\$50.500	12/01/2009	\$51.750	06/01/2010	\$53.000
						12/01/2010	\$54.250	06/01/2011	\$55.500	12/01/2011	\$56.750
TUNNEL WORK - FREE AIR (HAZ. WASTE)						06/01/2009	\$52.500	12/01/2009	\$53.750	06/01/2010	\$55.000
						12/01/2010	\$56.250	06/01/2011	\$57.500	12/01/2011	\$58.750

This wage schedule must be posted at the work site in accordance with M.G.L. ch. 149, sec. 27

Failure of the employer to pay "prevailing wage rates," which are the minimum wage rates listed above, on public works projects is a violation of M.G.L. ch. 149, sec. 27. Employees not receiving such rates should report the violation to the Office of Fair Labor and Business Practices, 100 Cambridge Street, Boston, MA 02108; Tel: 617-727-3465.



DEVAL L. PATRICK
Governor
TIMOTHY P. MURRAY
Lieutenant Governor

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY

Prevailing Wage Rates

As determined by the Commissioner under the provisions of the
Massachusetts General Laws, Chapter 149, Sections 26 to 27H



SUZANNE M. BUMP
Secretary of Labor and Workforce Development
GEORGE NOEL
Director of Labor
LAURA M. MARLIN
Commissioner of Division of Occupational Safety

Awarding Authority: City of Cambridge Purchasing Department

Contract Number: 5117

City/Town: CAMBRIDGE

Description of Work: Alewife Brook floatables Control (Contract 4) and CAM 400 Sewer Separation (Contract 13) Project.

Job Location: Various Locations

Classification	Effective Dates and Total Rates					
	Effective Date	Hourly Rate	Effective Date	Hourly Rate	Effective Date	Hourly Rate
VAC-HAUL	06/01/2009	\$44.070	12/01/2009	\$44.620	06/01/2010	\$45.220
	12/01/2010	\$45.820	06/01/2011	\$46.570	12/01/2011	\$47.230
	06/01/2012	\$47.880	12/01/2012	\$48.910		
WAGON DRILL OPERATOR	06/01/2009	\$46.350	12/01/2009	\$47.350	06/01/2010	\$48.350
	12/01/2010	\$49.600	06/01/2011	\$50.600	12/01/2011	\$51.850
WASTE WATER PUMP OPERATOR	06/01/2009	\$57.410	12/01/2009	\$58.530	06/01/2010	\$59.780
	12/01/2010	\$61.030				
WATER METER INSTALLER	09/01/2009	\$66.250	03/01/2010	\$67.500		

Additional Apprentices Information:

Minimum wage rates for apprentices employed on public works projects are listed above as a percentage of the pre-determined hourly wage rate established by the Commissioner under the provisions of the M.G.L. c. 149, ss. 26-27D. Apprentice ratios are established by the Division of Apprenticeship Training pursuant to M.G.L. c. 23, ss. 11E-11L.

All apprentices must be registered with the Division of Apprenticeship Training in accordance with M.G.L. c. 23, ss. 11E-11L.

All steps are six months (1000 hours) unless otherwise specified.

- * Ratios are expressed in allowable number of apprentices to journeymen or fraction thereof.
- ** Multiple ratios are listed in the comment field.
- *** The job site ratio of 2 apprentices (APP) for every 3 journeymen (JM) is allowed as follows:
1 JM: 1 APP; 2-3 JM: 2 APP; 4-6 JM: 4 APP; 7-9 JM: 6 APP; 10-12 JM: 8 APP; 13-15 JM: 10 APP; etc.
- **** The job site ratio of 2 apprentices (APP) for every 3 journeymen (JM) is allowed as follows:

This wage schedule must be posted at the work site in accordance with M.G.L. ch. 149, sec. 27

Failure of the employer to pay "prevailing wage rates," which are the minimum wage rates listed above, on public works projects is a violation of M.G.L. ch. 149, sec. 27. Employees not receiving such rates should report the violation to the Office of Fair Labor and Business Practices, 100 Cambridge Street, Boston, MA 02108; Tel: 617-727-3465.

SECTION 00680

DIVISION OF LABOR AND STATEMENT OF COMPLIANCE

The Statement of Compliance and the Weekly Payroll Report Form that are required for work performed under this Contract are included on the following pages.

MASSACHUSETTS WEEKLY CERTIFIED PAYROLL REPORT FORM



Company's Name:		Address:		Phone No.:		Payroll No.:													
Employer's Signature:		Title:		Contract No.:		Work Week Ending:													
Awarding Authority's Name:		Public Works Project Name:		Public Works Project Location:		Min. Wage Rate Sheet No.:													
General / Firms Contractor's Name:		Subcontractor's Name:		Employer's Hourly Fringe Benefit Contributions:															
Employee Name & Complete Address	Employee is OSHA 10 Certified (?)	Appr. Rate (%)	Work Classification:	Hours							Project Hours (A) All Other Hours	Hourly Base Wage (B)	Health & Welfare Insurance (C)	ERISA Pension Plan (D)	Supp. Unemp. (E)	Total Hourly Prev. Wage (F)	(A + F)		Check No. (H)
				Su.	Mo.	Tu.	We.	Th.	Fr.	Sa.							Project Gross Wages (G)	Total Gross Wages	
	<input type="checkbox"/>																		
	<input type="checkbox"/>																		
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NOTE: Pursuant to MGL Ch. 149 s.27B, every contractor and subcontractor is required to submit a "true and accurate" copy of their weekly payroll records directly to the awarding authority. Failure to comply may result in the commencement of a criminal action or the issuance of a civil citation.

Date received by awarding authority _____ of _____

WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE

In accordance with Massachusetts General Law c. 149, §27B, a true and accurate record must be kept of all persons employed on the public works project for which the enclosed rates have been provided. A Payroll Form has been printed on the reverse of this page and includes all the information required to be kept by law. Every contractor or subcontractor is required to keep these records and preserve them for a period of three years from the date of completion of the contract.

In addition, every contractor and subcontractor is required to submit a copy of their weekly payroll records to the awarding authority. For every week in which an apprentice is employed, a photocopy of the apprentice's identification card must be attached to the payroll report. Once collected, the awarding authority is also required to preserve those records for three years.

In addition, each such contractor, subcontractor, or public body shall furnish to the awarding authority directly, within fifteen days after completion of its portion of the work a statement, executed by the contractor, subcontractor or public body who supervises the payment of wages, in the following form:

STATEMENT OF COMPLIANCE	
_____, 20____	
I, _____	_____
(Name of signatory party)	(Title)
do hereby state:	
That I pay or supervise the payment of the persons employed by	
_____	_____
(Contractor, subcontractor or public body)	(Building or project)
and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty nine of the General Laws.	
Signature _____	
Title _____	

SECTION 00800
GENERAL TERMS AND CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION, RECONSTRUCTION, ALTERATION,
REMODELING, OR REPAIR OF ANY
CITY OF CAMBRIDGE PUBLIC WORK
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GENERAL TERMS AND CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION, RECONSTRUCTION, INSTALLATION,
DEMOLITION, MAINTENANCE, OR REPAIR OF ANY
CITY OF CAMBRIDGE PUBLIC WORK

ARTICLE I DEFINITIONS

1.1 In General

1.1.1 Well-known meanings. When words or phrases, which have a well-known technical or construction industry or trade meaning, are used in the Contract Documents, such words or phrases shall be interpreted in accordance with that meaning, unless otherwise stated.

1.1.2 Capitalization. The words and terms defined in this Article are capitalized in these General Terms and Conditions of the Contract. Other capitalized words may refer to a specific document found in the Contract Documents.

1.1.3 Persons. Whenever the word person or persons is used, it includes, unless otherwise stated, entity or entities, respectively, including, but not limited to, corporations, partnerships, and joint ventures.

1.1.4 Singular and Plural. The following terms have the meanings indicated which are applicable to both the singular and the plural thereof.

1.2. Definitions

1.2.1 **Agreement**-The Agreement is the written document between the **City** and the **Contractor** which is titled: Agreement between the City of Cambridge and the Contractor, which is the executed portion of the Contract, and which forms a part of the Contract. The Agreement also includes all documents required to be attached thereto, including, but not limited to, the performance bond, the labor and materials or payment bonds, certificates of insurance, and all Modifications of the Agreement.

1.2.2 **Change Order**-A Change Order is a document which is signed by the **Contractor**, the **Engineer**, and the **City**; which is directed to the **Contractor**; which authorizes the **Contractor** to make an addition to, a deletion from or a revision in the Work, or an adjustment in the Contract Sum or in the Contract Time; and which is issued on or after the date of the Agreement between the **Contractor** and the **City**.

1.2.3 **City**- The **City** refers to the City of Cambridge, which is the owner of the Project and is the public awarding authority with whom the **Contractor** has entered into the Contract and for whom the Work is to be provided.

1.2.4 **Claim**-A Claim is a dispute, demand, or assertion by one of the parties arising out of or relating to the Contract for which such party is seeking relief.

1.2.5 **Contract**-The Contract consists of all the Contract Documents. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification to the Contract signed by both parties.

1.2.6 **Contract Documents**-The Contract Documents consist of the Agreement; the notice of award of the Contract; the Notice to Proceed; the entire Project Manual; Change Orders; Work Change Directives; the **Contractor's** Bid and all accompanying documents accepted by the City; and the **Engineer's** written interpretations and clarifications issued on or after the issuance of the Notice to Proceed. Shop Drawing

GENERAL TERMS
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submittals and reports or drawings utilized by the **Engineer** in preparing the Contract Documents are not Contract Documents.

1.2.7 **Contractor**-The **Contractor** is the person who is awarded the Contract for the Project herein pursuant to M.G.L. c. 39, §39M; and is identified in the Agreement as such. The term "**Contractor**" is intended to include the **Contractor** as well as its authorized representative(s).

1.2.8 **Contract Sum**-The Contract Sum is the total amount stated in the Agreement payable by the **City** to the **Contractor** for the completion of the Work in accordance with the Contract Documents.

1.2.9 **Contract Time**-Unless otherwise provided, the Contract Time is the number of days allotted in the Contract Documents or the dates stated in the Agreement, including authorized adjustments, for Substantial Completion.

1.2.10 **Coordination Drawings**-Coordination Drawings are those drawings which are prepared by the **Contractor** or a Subcontractor which show the exact alignment, physical locations, and configuration of the mechanical, electrical, and fire protection installations.

1.2.11 **Day**-The term "day" shall mean calendar day unless otherwise stated.

1.2.12 **Engineer**-The **Engineer** is the person lawfully licensed to practice engineering and has been selected by the **City** to administer the Contract. The term "**Engineer**," while referred to in the singular, means the **Engineer** and/or the **Engineer's** representative.

1.2.13 **Field Order**-A Field Order is a written order issued by the **Engineer** which orders minor changes in the Work, but which does not involve a change in the Contract Sum or the Contract Time.

1.2.14. **Final Completion**-Final Completion is the point in time when the Engineer certifies that the Work has been fully completed in accordance with the Contract Documents. Final Completion shall be no later than thirty (30) days after Substantial Completion.

1.2.15 **General Requirements**-General Requirements refer to Sections of Division 1 of the Specifications.

1.2.16. **Modification**-A Modification is a written instrument which amends the Contract after execution of the Agreement.

1.2.17 **Notice to Proceed**-A Notice to Proceed is a written notice given by the **City**, or the **Engineer**, to the **Contractor** fixing the date on which the Contract Time will begin to run and on which the **Contractor** shall start to perform its obligations under the Contract Documents.

1.2.18 **Drawings**-The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, dimensions, scope, extent, and character of the Work to be furnished and performed by the **Contractor** and which have been prepared or approved by the **Engineer**.

1.2.19 **Product Data**-Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the General **Contractor** to illustrate materials or equipment for some portion of the Work. Product Data are not considered part of the Contract Documents.

1.2.20 **Project**-The Project is the total Work to be provided under the Contract Documents and may be the whole or a part as indicated elsewhere in the Contract Documents and may include construction by the

GENERAL TERMS
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City or by separate contractors. The Project is the Work described in the invitation to bid (advertisement) and Specifications and illustrated by the Drawings, including any Modifications.

1.2.21. **Project Manual**-The Project Manual is the entire set of bidding documents which includes, but is not limited to, the invitation to bid (advertisement), the instructions to bidders, all of the forms, the wage rates, all City and state requirements, the General Terms and Conditions of the Contract, any supplementary conditions thereto, the Drawings, the Specifications, and all addenda.

1.2.22 **Proposed Change Order**-A Proposed Change Order is a Change Order that has been submitted by the **Contractor** to the **Engineer**, is under review, and has not been approved by the **City**.

1.2.23 **Samples**-Samples are physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged. Samples are not considered part of the Contract Documents.

1.2.24 **Shop Drawings**-Shop Drawings are all drawings, diagrams, illustrations, schedules, and other information which are specifically prepared or assembled by or for the **Contractor** and submitted by the **Contractor** to illustrate some portion of the Work. Shop Drawings are not considered part of the Contract Documents.

1.2.25 **Site**-The Site is the location of the Project and of the Work.

1.2.26 **Specifications**-Specifications are those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

1.2.27 **Subcontractor**-A Subcontractor is a person, firm or corporation who contracts directly with the **Contractor**, unless otherwise stated.

1.2.28 **Submittals**-Submittals are those Shop Drawings, Product Data, Samples, or any other required document which are provided to the Engineer for review and approval.

1.2.29 **Substantial Completion**-Substantial Completion means that the Work has been completed and the Site or the facility is opened to public use, except for minor incomplete or unsatisfactory items that do not materially impair the usefulness of the Work. The **Engineer** shall decide what constitutes "minor," "incomplete," "unsatisfactory," and "materially" and the **Engineer's** decision shall be final.

1.2.30 **Sub-subcontractor**-A Sub-subcontractor is a person who has contracted directly with a Subcontractor.

1.2.31 **Supplier**-A Supplier is a manufacturer, fabricator, distributor, material, person, or vendor having a direct contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated into the Work by the Contractor or any Subcontractor.

1.2.32 **Work**-Work refers to the services and the entire completed construction or the various separately identifiable parts thereof required by the Contract Documents, including all labor, materials, and equipment furnished, furnished and incorporated into the Project, or to be provided by the **Contractor** to fulfill the **Contractor's** obligations. The Work may constitute the whole or a part of the Project.

1.2.33 **Work Change Directive**-A Work Change Directive is a written directive to the **Contractor** ordering an addition to, a deletion from, or a revision to the Work issued on or after the date of the Agreement, signed by the City, and recommended by the Engineer.

ARTICLE 2 ABOUT THE CONTRACT DOCUMENTS

2.1 Priority/Conflict

2.1.1 Priority Among Contract Documents. In the event of conflict among the Contract Documents, the Contract Documents shall be construed according to the following priorities "except as may otherwise be specifically stated":

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

2.1.1.1 If there is a conflict between the Drawings and Specifications, the figured dimensions shall govern over the scaled dimensions. Detailed Drawings shall govern over the general Drawings. Larger scale Drawings shall take precedence over smaller scale Drawings. Drawings shall govern over Shop Drawings. Whenever there is a conflict concerning quality or quantity between or among notes, specifications, dimensions, details, or schedules in the Specifications or in the Drawings, or between the Specifications and the Drawings, or in all other instances not specifically noted above, the Contractor shall provide, unless otherwise directed by a Modification of the Contract, the better quality or greater quantity of Work at no increase in the Contract Sum or in the Contract Time.

2.1.1.2 Compliance with these priority conditions shall not justify any changes in the Work or any increase in the Contract Sum or Contract Time, unless any such compliance results in Work that may not be reasonably inferred from the Contract Documents as being required to produce the intended result as determined by the Engineer.

2.1.2 Review of the Contract Documents and Field Conditions and Discovery of Conflict, Error, Ambiguity, or Discrepancy. Before starting the Work, and during the progress thereof, the Contractor shall carefully study and compare the Contract Documents with each other and with the information furnished by the City pursuant to Article 3 and shall at once report to the Engineer any error, inconsistency, or omission the Contractor may discover. Any necessary change shall be ordered as provided in Article 11, subject to the requirements of any other provisions of the Contract Documents. The Contractor shall not proceed with the Work affected thereby (except in an emergency) until a Modification has been issued. If the Contractor proceeds with the Work having discovered such errors, inconsistencies, or omissions contrary to the provisions contained herein, or if by reasonable study of the Contract Documents the Contractor could have discovered such, the Contractor shall bear all costs arising therefrom. The Contractor shall be liable to the City for failure to report any conflict, error, ambiguity, or discrepancy, of which it knew or should have known.

2.1.3 Field Measurements. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Engineer at once.

2.1.4 Statutory Provisions. The City and the Contractor recognize that other rights duties and obligations with respect to public construction contracts are provided for by statute, notwithstanding the fact that they may not be provided for in the Contract Documents. In case of conflict between the statutory provisions and other provisions of the Contract Documents and the provisions of any applicable statute, the statutory provisions shall govern.

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2.1.5 Voided or Unlawful Provisions. In the event any provision in the Contract is voided or deemed unlawful, such provision shall be deleted without affecting the remainder of the Contract.

2.2 Execution

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

2.3 Intent

2.3.1 Entire Agreement. The Contract Documents comprise the entire agreement between the City and the Contractor concerning the Work. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary; what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. 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.

2.3.2 Statutory Provisions. Each and every provision of law, code, and regulation, required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be physically amended to make such insertion.

2.3.3 Functionally Complete Project. It is the intent of the Contract Documents to describe a functionally complete Project. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Any Work, materials, or equipment that may be reasonably inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed by the Contractor whether or not specifically called for in the Contract Documents.

2.3.4 Indications or Notations. 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.

2.3.5 Standards or Quality of Materials or Workmanship. 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.

2.3.6 Manufactured Products. 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.

2.3.7 Mechanical, Electrical, and Fire Protection Plans. The mechanical, electrical, and fire protection Plans are diagrammatic only and are not intended to show the alignment, physical locations, or configurations of such Work. Such Work shall be installed without additional cost to the City to clear all obstructions, permit proper clearances for the Work of other trades, and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare Coordination Drawings and demonstrate to the Engineer's satisfaction that the installations will comply with the preceding sentence.

GENERAL TERMS AND CONDITIONS

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.

2.3.8 Locations of Fixtures and Outlets. Exact locations of fixtures and outlets shall be obtained from the Engineer as provided in Article 5 before the Work is roughed in. Work installed without such information from the Engineer shall be relocated at the Contractor's expense.

2.3.9 Tests. When test boring or soil test information are included with the Contract Documents or otherwise made available to the Contractor and such test boring or soil test information was obtained by the City for use by the Engineer in the design of the Project or Work, the City does not hold out such information to the Contractor as an accurate or approximate indication of subsurface conditions, and no claim for extra cost of extension of time resulting from a reliance by the Contractor on such information shall be allowed except as otherwise provided herein. Any such reports are not part of the Contract Documents.

2.3.10 Joining Work. 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.

2.4 Organization

2.4.1 Except as provided in M.G.L. c. 149, §44F, the organization of the Specifications into divisions, sections, and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

2.5 References

2.5.1 Where codes, manuals, specifications, standards, requirements and publications of public and private bodies are referred to in the Contract Documents whether specifically or by implication, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated. Where statutes are referred to in the Contract Documents whether specifically or by implication, references shall be understood to be to the latest revision.

2.5.2 References herein to particular paragraphs or Articles are solely to facilitate finding additional information with regard to the specific matters and are not to be construed in any way as limiting the possible paragraphs and Articles in which such matters may be found elsewhere in this document.

2.6 Reuse of Engineer's Written Instruments

2.6.1 Neither the Contractor nor any Subcontractor or Supplier shall have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents prepared by the Engineer and shall not reuse any of such Drawings, Specifications, or other documents without prior written consent of the City and the Engineer.

2.7 Written Material of the Contractor

2.7.1 All written material prepared or collected by the Contractor in the course of completing the Work shall be the exclusive property of the City and shall not be used by the Contractor for any purpose other than the purpose of this Contract.

2.8 Modifying Words

2.8.1 In the interest of simplicity, modifying words such as "all" and "any" may be omitted, but the fact that such words may be absent from one sentence and appear in another is not intended to affect the interpretation of either statement.

2.9 Use of Certain Words and Terms

2.9.1 Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe a requirement, direction, review, or judgment of the City or of the Engineer as to the Work, it is intended that such requirement, direction, review, or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). As used herein, "provided" shall be understood to mean "provided complete and in place"; that is, "furnished and installed, complete."

2.9.2 The use of any such term or adjective shall not be effective to change the duties and responsibilities of the City or the Engineer from those assigned in the Contract Documents or to assign any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

2.9.3 When the words "Contractor," "Subcontractor," "Sub-subcontractor," and "Supplier" are used, they are intended to include their employees and agents, unless otherwise specified.

2.10 Modification of the Contract Documents

2.10.1 Major Modifications. Major Modifications may affect the Contract Sum or the Contract Time. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways, all of which must contain a written endorsement by the City:

2.10.1.1 A formal written amendment;

2.10.1.2 A Change Order;

2.10.1.3 A Work Change Directive; or

2.10.1.4 The Engineer's written interpretation, clarification, or decision.

2.10.2 Minor Modifications. Minor modifications do not affect the Contract Sum or the Contract Time. The requirements of the Contract Documents may be supplemented and minor variations and deviations of the Work may be authorized in one or more of the following ways:

2.10.2.1 A Field Order; or

2.10.2.2 The Engineer's approval of a Shop Drawing or Sample.

ARTICLE 3 THE CITY

3.1 Signatory

3.1.1 All documents which require a signature or an endorsement by the City must be signed by the City Manager in order to be deemed ratified by the City.

3.2 Requirements to Provide Documents

3.2.1 To the extent they are available, the City shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the Site.

3.2.2 The City shall obtain and pay for necessary approvals, easements, assessments, and charges, which are customarily secured prior to the execution of the Contract.

3.2.3 The City shall furnish information or services required of the City hereunder with reasonable promptness after receipt from the Contractor of a written request for such information or services.

3.2.4 The City shall provide the Contractor, at no charge, such copies of the Project Manual as are reasonably necessary for the execution of the Work.

3.3 Clerk of the Works

3.3.1 The City may engage a Clerk of the Works for this Project, in which case the City 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 Change Orders, or to exercise any of the power and authority of the City or the Engineer. The Clerk of the Works shall observe the Contractor's operations and construction activities for compliance with the Drawings and Specifications. The Clerk of the Works shall have access to all areas of the Project at all times. The Contractor shall fully cooperate with the Clerk of the Works in the performance of the Clerk's duties.

3.4 City's Right to Perform Construction and to Award Separate Contracts.

3.4.1 The City reserves the right to perform construction or operations at the Site with its own forces or others. If the Contractor claims that a delay or additional cost is involved because of such action by the City, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

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

3.4.3 The City shall provide for coordination of the activities of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall afford each other person access to the Site and shall properly coordinate its Work with that of the persons performing other work. The Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedules deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the City until subsequently revised.

3.5 Limitations on the City's Responsibilities

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3.5.1 The City shall not supervise, direct, or have control or authority over, nor be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws, codes and regulations applicable to the furnishing or performance of the Work. The City will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents. The City is not responsible for the acts or omissions of the Contractor, any Subcontractor, Supplier, or anyone for whose acts the Contractor, any Subcontractor or Suppliers may be liable.

3.5.2 The City's authority to review any of the Contractor's progress schedules, or its decision to raise or not to raise any objections about such schedules shall not impose on the City any responsibility for the timing, planning, scheduling, or execution of the Work, nor in any way give rise to any duty or responsibility on the part of the City to exercise this authority for the benefit of the Contractor, any Subcontractor or Supplier or any other party.

3.5.3 The City's decision to raise or not to raise objections with regard to any aspects of the Contractor's insurance shall in no way give rise to any duty or responsibility on the part of the City to or for the benefit of the Contractor, any Subcontractor, any Supplier, or any other party.

3.6 Reservation of Rights

3.6.1 The City reserves the right to correct at any time any error in any progress payment that may have been made.

3.6.2 Should defective Work be discovered subsequent to final payment, the City reserves the right to make a claim and recover all costs and professional fees associated therewith, including the cost of removing and/or replacing the defective Work.

3.7 Waivers

3.7.1 All waivers by the City are valid only to the extent that they are signed by the City. Any such waivers pertain only to the specific matter contained in the waiver and not to any similar, subsequent matters.

ARTICLE 4 THE ENGINEER

4.1 City's Representative

4.1.1 The Engineer is the City's representative (1) during construction, (2) until final payment is due, and (3) with the City's concurrence, from time to time during the correction period described in Article 10. The Engineer will advise and consult with the City. The Engineer will have authority to act on behalf of the City only to the extent provided in the Contract Documents, unless otherwise modified by a written instrument in accordance with other provisions of the Contract.

4.1.2 The duties, responsibilities, and the limitations of authority of the Engineer as the City's representative during construction are set forth in the Contract Documents and shall not be extended without the written consent of the City and the Engineer.

4.2 Administration of the Contract

4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents, unless the City has engaged a construction manager.

4.3 Visits to the Site

4.3.1 The Engineer will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an engineer, the Engineer will keep the City informed of progress of the Work in writing and will endeavor to guard the City against defects and deficiencies in the Work.

4.4 Communications Facilitating Contract Administration

4.4.1 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the City and the Contractor shall endeavor to communicate through the Engineer. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and Suppliers shall be through the Contractor. Communications by and with City employees and separate contractors shall be through the City.

4.4.2 When it deems it necessary or expedient, the City may communicate directly with the Contractor, any Subcontractors, Suppliers, or consultants.

4.5 Certification of Applications for Payment

4.5.1 Based on the Engineer's observations and evaluations of the Contractor's applications for payment, the Engineer will review and certify the amounts due the Contractor and will issue certificates for payment in such amounts.

4.6 Rejection of Work

4.6.1 The Engineer will have authority to reject or disapprove Work which (1) does not conform to the Contract Documents; (2) which the Engineer believes to be defective; and (3) the Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Whenever the Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Engineer will have authority to require additional inspection or testing of the Work in accordance with Article 9, whether or not such Work is fabricated, installed, or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, Suppliers, or other persons performing portions of the Work.

4.7 Review of Submittals

4.7.1 The Engineer will review or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents and only to the extent which the Engineer believes desirable to protect the City's interest. The Engineer's action will be taken with reasonable promptness, while allowing sufficient time in the Engineer's professional judgment to permit adequate review, taking into account the time periods set forth in the latest schedule prepared by the Contractor and approved by the Engineer. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Article 5. The Engineer's review shall not constitute approval of safety precautions or of any construction means, methods,

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techniques, sequences, or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. After the rejection of the second resubmittal of any one Submittal, the Contractor shall bear the cost of the review of each subsequent resubmittal.

4.8 Preparation of Change Orders and Work Change Directives

4.8.1 The Engineer will prepare Change Orders and Work Change Directives and may authorize minor Modifications in the Work as provided in Article 11.

4.9 Inspections

4.9.1 The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; will receive and forward to the City for the City's review and records written warranties and related documents required by the Contract and assembled by the Contractor; and will issue a final certificate for payment upon the Contractor's compliance with all of the requirements of the Contract Documents.

4.10 Interpretations, Clarifications, and Decisions

4.10.1 The Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the City or the Contractor. The Engineer's response to such requests will be made with reasonable promptness and within the time set forth in the Agreement between the City and the Engineer. Any such written interpretations, clarifications, and decisions shall be binding on the Contractor.

4.10.2 Interpretations, clarifications, and decisions of the Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. The Engineer will not be liable to the Contractor, any Subcontractor, or Supplier for results of interpretations, clarifications, or decisions so rendered in good faith.

4.10.3 The Engineer may, as the Engineer judges desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by a Field Order or other notice to the Contractor, 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 any additional cost or an extension of the Contract Time.

4.10.4 The Engineer's decisions on matters relating to aesthetic effect must be consistent with the City's and will be final.

4.11 Limitation on the Engineer's Responsibilities

4.11.1 Neither the Engineer's authority to act under the provisions of the Contract Documents nor any decision made by the Engineer in good faith to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any Supplier, any surety for any of them or any other person.

4.11.2 The Engineer will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Article 5. The Engineer will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Engineer will not have control over or charge of and will not be responsible

for acts or omissions of the Contractor, Subcontractors, Suppliers, or of any other persons performing portions of the Work.

ARTICLE 5 THE CONTRACTOR

5.1 Relationship with the City

5.1.1 The Contractor is an independent contractor and not an employee of the City. The Contractor is engaged by virtue of the Contract to perform only those services contained therein. The Contractor is not authorized to contract on behalf of the City or to incur any liability on the part of the City.

5.1.2. The City (1) shall not enter into a contract with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such work, a foreign corporation which has not filed with such awarding authority a certificate of the state secretary stating that such corporation has complied with sections three and five of chapter one hundred and eighty-one and the date of such compliance, and (2) shall report to the state secretary and to the department of corporations and taxation any foreign corporation performing work under such contract or subcontract, and any person, other than a corporation, performing work under such contract or subcontract, and residing or having a principal place of business outside the commonwealth. (*Reference: M.G.L. c. 30, §39L*)

5.2 Code of Conduct

5.2.1 Chapter 2.117 of the Cambridge Municipal Code, Code of Conduct for City Officials and Employees, establishes standards of conduct for officials and employees of the City. The Contractor is subject to certain provisions contained therein. The Contractor shall familiarize itself with the ordinance and act accordingly.

5.3 Quality Assurance

5.3.1 The Contractor shall be responsible for ensuring that it, all Subcontractors, Suppliers, and all persons employed to do the Work under the Contract Documents perform in a professional manner, provide a high quality of service and Work, and perform in accordance with the Contract Documents.

5.4 Supervision

5.4.1 Competence and Efficiency. The Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills, attention and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

5.4.2 Construction Means, Methods, Techniques, Etc. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract. 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 mention 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. 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 Engineer in writing, prior to implementation, of the actual means, methods, techniques, sequences, or procedures which will be employed on the Work, if these differ from those mentioned in the Contract Documents. All loss, damage, 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 City and the Engineer in

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writing that such means, methods, techniques, sequences, or procedures are not safe or suitable, and the City has then instructed the Contractor in writing to proceed at the City's risk.

5.4.3 Variance between the Contract Documents and Statutes, Ordinances, Codes, Rules, and Regulations. The Contractor shall promptly notify the Engineer and the City in writing of any variances between the Contract Documents and statutes, ordinances, codes, rules, and regulations. If the Contractor, without written notice to the Engineer and the City, performs Work knowing that it is contrary to statutes, ordinances, codes, rules, and regulations, the Contractor shall assume full responsibility for such Work and shall bear the costs associated therewith, i.e., replacement, repairs, removal, and fines.

5.4.4 Acts and Omissions. The Contractor shall be responsible to the City for the acts and omissions of all persons performing or supplying the Work. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors, and of persons either directly or indirectly employed by them, as for the acts and omissions of persons directly employed by the Contractor.

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

5.5 Personnel

5.5.1 Suitability. The Contractor shall provide competent, properly licensed and/or certified, suitably qualified, and reliable personnel to perform the Work required by the Contract Documents. The Contractor shall enforce strict discipline and maintain good order at the site at all times. The Contractor shall not employ any Subcontractor, Supplier, or other person, whether initially or as a substitute, against whom the City may have reasonable objection. Acceptance of any Subcontractor or other person by the City shall not constitute a waiver of any right of the City to reject defective Work.

5.5.2 Sexual Harassment. The City has a policy against sexual harassment. The Contractor, Subcontractors, and all other persons responsible for any portion of the Work are subject to the City's policy. The Contractor shall be responsible for any acts of sexual harassment committed by any persons responsible for any portion of the Work. The Contractor shall take appropriate action against any such individuals. Notwithstanding any remedial action taken by the Contractor, the City reserves the right to enforce its policy.

5.5.3 Weapons and Illegal Drugs. No weapons or illegal drugs are permitted on the Site. It is the responsibility of the Contractor to ensure that no weapons or illegal drugs are brought to the Site.

5.5.4 Maximum Work Day and Work Week. (Reference: M.G.L. c. 149, §§30 and 34). No laborer, worker, mechanic, foreperson 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 (8) hours in any one day or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week, except in cases of emergency.

5.5.5 Lodging. (Reference: M.G.L. c. 149, §25). Every employee under this Contract shall lodge, board and trade where and with whom he or she elects, and neither the Contractor nor its 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.

5.5.6 Wage Rates. (Reference: M.G.L. c. 149, §27). Mechanics and apprentices, teamsters, chauffeurs and laborers performing Work shall be paid no less than the minimum rate of wages included in the Project Manual and which are made part of the Contract. They shall continue to be the minimum rate of wages for

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said employees during the life of the Contract. The Contractor shall keep a legible copy of the wage rates posted in a conspicuous place at the site during the life of the Contract. These rates of wages shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in M.G.L. c. 149, §26, and such payments shall be considered as payments to persons under M.G.L. c. 149, §27 performing work as therein provided. If the Contractor does not make payments to a health and welfare plan, a pension plan and a supplementary unemployment benefit plan, where such payments are included in the rates of wages, the Contractor shall pay the amount of said payments directly to each employee engaged in the Work. If the Contractor pays less than the rate of wages, including payments to health and welfare funds and pension funds, or the equivalent payments in wages to any person performing Work within the classifications as determined by the Commissioner of Labor and Industries, and if the Contractor takes or receives for its own use or the use of any other person, as a rebate, refund or gratuity, or in any other guise, any part or portion of the wages, including payments to health and welfare funds and pension funds, or the equivalent payment in wages, paid to such person for Work done or service rendered on the Project, the Contractor will be subject to the penalties set forth in M.G.L. c. 149, §27.

5.5.7 Payroll Records of Employees. (Reference: M.G.L. c. 149, §27B). The Contractor and all Subcontractors who are subject to M.G.L. c. 149, §§27 and 27A shall keep a true and accurate record of all mechanics and apprentices, teamsters, chauffeurs, and laborers performing Work showing the name, address and occupational classification of each such employee, the hours worked by and the wages paid to all such employees. The Contractor and the Subcontractors shall submit a copy of said record to the City on a weekly basis.

5.5.7.1 (Reference: M.G.L. c. 149, §27B). The Contractor and all Subcontractors who are subject to M.G.L. c. 149, §§27 and 27A shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

5.5.7.2 (Reference: M.G.L. c. 149, §27B). The Contractor and all Subcontractors who are subject to M.G.L. c. 149, §§27 and 27A shall furnish to the Commissioner of Labor and Industries and the City within fifteen (15) days after completion of their portion of the Work a statement executed by the Contractor or Subcontractor or by any authorized officer or employee of the Contractor or Subcontractor who supervises the payment of wages in the form found in M.G.L. c.149, §27B.

5.6 Superintendence

5.6.1 Employment of a Superintendent. The Contractor shall employ a competent, properly licensed superintendent, reasonably acceptable to the City, and necessary assistants who shall be in attendance at the Site full time during the progress of the Work until the date of Substantial Completion and for such additional time thereafter as the Engineer or the City may determine to be necessary for the expeditious completion of the Work.

5.6.2 Removal/Replacement of a Superintendent. The Contractor shall remove the superintendent if requested to do so in writing by the City and shall promptly replace such superintendent with a competent person reasonably acceptable to the City. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall not replace the superintendent without written notice to the City and the Engineer.

5.6.3 Registered Professional Engineer or Registered Land Surveyor. The Contractor shall retain a competent Registered Professional Engineer or Registered Land Surveyor, acceptable to the Engineer, who shall establish the exterior lines and required elevations of all 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

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constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries. See also, DWPC Construction Grants Policy Memorandum No. CG-3.

5.6.4 Building Grades, Lines, Etc. The Contractor shall establish the building grades; lines; levels; column, wall and partition lines required by the various Subcontractors in laying out their Work.

5.6.5 Coordination and Supervision. 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 City, every reasonable opportunity for the installation of Work and the storage of materials.

5.6.6 Job Meetings. There shall be job meetings held on a weekly basis, or more often if required by the City. The Contractor shall arrange for and attend weekly job meetings with the Engineer and such other persons as the Engineer may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Engineer. 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 workforce power. Any notices required under the Contract may be served on such representatives.

5.7 Materials, Labor, Equipment, Etc

5.7.1 Provision of. Unless otherwise provided in the Contract Documents, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up, and completion of the Work. It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to protect, execute, complete, and deliver the work within the specified time.

5.7.2 Quality and Use of. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

5.7.3 Discrepancies or Defects. If the Contractor is unable to perform its Work because of discrepancies or defects in the work of the City's own forces or of a separate contractor, the Contractor shall immediately notify the Engineer and the City in writing of the conditions that render unable to so perform. Failure to notify the Engineer constitutes an acknowledgment and acceptance of the other work as being fit and proper for integration with the Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.

5.8 Contractor's Management and Financial Statement Requirements (Reference: M.G.L. c. 30, §39R)

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

5.8.1.1 "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to M.G.L. c.30. §39M, inclusive.

5.8.1.2 "Contract" means any contract awarded or executed pursuant to M.G.L. c. 30, §39M, which is for an amount or estimate amount that exceed the dollar amount set forth in M.G.L. c. 30, §39R.

5.8.1.3 "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.

5.8.1.4 "Independent Certified Public Account" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with 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 City.

5.8.1.5 "Audit," when used in regard to financial statement, 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.

5.8.1.6 "Accountant's Report," when used in regard to financial statements, means a document in which an independent certified accountant indicates the scope of the audit which s/he has made and sets forth his/her opinion regarding the financial statements taken as a whole with 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 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.

5.8.1.7 "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.

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

5.8.2 The contractor shall make, and keep for at least six (6) years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor, and

5.8.3 Until the expiration of six (6) years after final payment, the 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/her subcontractors that directly pertain to, and involve transactions relating to, the contractor or his/her subcontractors, and

5.8.4 The contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the City, including in his/her description the date of the change and reasons therefor, and shall accompany said description with a letter from the contractor's independent certified public accountant approving or otherwise commenting on the changes, and

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5.8.5 The contractor has filed a statement of management on internal accounting controls as set forth below prior to the execution of the contract, and

5.8.6 The contractor has filed prior to the execution of the contract and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth below.

5.8.7 The contractor shall file with the City a statement of management as to whether the system of internal accounting controls of the contractor and its subsidiaries reasonably assures that:

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

5.8.7.2 Transactions are recorded as necessary

5.8.7.2.1 To permit preparation of financial statements in conformity with generally accepted accounting principles, and

5.8.7.2.2 To maintain accountability for assets;

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

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

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

5.8.7.5.1 Whether the representation of management in response to this paragraph and paragraphs 5.8.2 through 5.8.6 above are consistent with the result of management's evaluation of the system of internal accounting controls; and

5.8.7.5.2 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.

5.8.8 The contractor shall annually file with the Commissioner of Capital Planning and Operations during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the City upon request.

5.9 Taxes

The Contractor shall pay all sales, consumer, use, and other similar taxes for the Work or portions thereof which are provided by the Contractor which are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect. However, the Contractor shall not pay, and the City shall not reimburse or pay the Contractor for, any sales taxes for building supplies or materials for which an exemption is provided in M.G.L. c. 64H, §6(f). The City's tax exemption number to be used by the Contractor in this regard is E046001383.

5.10 Permits, Licenses, and Fees COMPLIANCE WITH LAW

5.10.1 Unless otherwise provided, the Contractor shall obtain and pay the fees for all permits, licenses, and inspections which are necessary for the proper execution and completion of the Work and which are customarily secured after execution of the Contract and which are legally required. All fees for permits, licenses, and inspections required by any City department shall be waived.

5.11 Notices Required By Statutes, Ordinances, Codes, Rules, Regulations, and Orders of the City

5.11.1 The Contractor shall give notices required by statutes, ordinances, codes, rules, regulations, and orders of the City bearing on performance of the Work.

5.12 Additional Information from Engineer.

5.12.1 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Article 4.

5.12.2 The Contractor shall give the Engineer 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.

5.12.3 The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall request additional drawings or instructions from the Engineer as provided in the previous Paragraph. 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.

5.13 "Or equal"

5.13.1 Requirements. (Reference: M.G.L. c. 30, §39M(b)). Where products or materials are specified or 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 Engineer:

5.13.1.1 It is at least equal in quality, durability, appearance, strength, and design;

5.13.1.2 It performs at least equally the function imposed by the general design for the Work;

5.13.1.3 It conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Specifications.

5.13.2 Net Savings. No proposed substitution will be permitted unless the Contractor certifies that the proposed substitution will yield a net savings to the City and will not extend the Contract Time.

5.13.3 Contractor's Expense. Any structural or mechanical changes made necessary to accommodate substituted equipment under this paragraph shall be at the expense of the Contractor or Subcontractor responsible for the Work item.

5.13.3.1 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the City or the Engineer, unless such substitution was made at the written request or direction of the City or the Engineer.

5.13.3.2 All data to be provided by the Contractor in support of any proposed "or equal" or substitute item will be at the Contractor's expense.

5.13.4 Meeting Requirements. The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Engineer may require the Contractor to produce reasonable evidence that a material 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 Engineer, would lead to a reasonable certainty that any material 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 at the Contractor's expense.

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

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

5.13.7 Rejection of Deviations. 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 provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the Engineer, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the Engineer may reject such substitution or deviation without further investigation.

5.13.8 Consistent Character and Quality of Design. 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 Engineer shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Engineer will not approve as equal to materials specified proposed substitutes which, in the Engineer'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 Engineer, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, at no additional cost to the City.

5.13.9 Warranty. The warranties provided herein shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

5.13.10 Engineer's Approval. The Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed, or utilized without the Engineer's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. The City may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any "or equal" or substitute. The Engineer will record the time required by the Engineer and its consultants in evaluating substitutes proposed or submitted by the Contractor and in making changes in the Contract Documents (or in the provisions of any other direct contract with the City for work on the Project) occasioned thereby. Whether or not the Engineer accepts a substitute item so proposed or submitted by the Contractor, the Contractor shall reimburse the City for the charges of the Engineer and its consultants for evaluating each such proposed substitute item.

5.14 Substitute Construction Methods or Procedures

5.14.1 If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to the Engineer. The Contractor shall submit sufficient information to allow the Engineer, in the Engineer's sole discretion, to determine whether the substitute proposed is equivalent to that expressly called for by the Contract Documents.

5.15 Contractor's Progress Schedule

5.15.1 Before Starting Construction. Within ten (10) days after the date of the Notice to Proceed, the Contractor shall submit to the Engineer for review:

5.15.1.1 A preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work;

5.15.1.2 A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal;

5.15.1.3 A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Sum and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include and appropriate amount of overhead and profit applicable to each item of Work.

5.15.2 Review of Progress Schedule. At least ten (10) days prior to the commencement of construction, the Engineer, the Contractor, and any other appropriate persons will meet to review and discuss the acceptability to the Engineer of the progress schedule. The Contractor will have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedule. No progress payment shall be made to the Contractor until the schedule is submitted to and acceptable to the Engineer as provided below.

5.15.3 Acceptability of Progress Schedule. The progress schedule will be acceptable to the Engineer if, according to the Engineer, it provides an orderly progression of the Work to completion within any specified time frame, but such acceptance will neither impose on the Engineer responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve the Contractor from the Contractor's full responsibility therefor. The Contractor's schedule of Submittals must be acceptable to the Engineer if it provides a workable arrangement for reviewing and processing the required Submittals. The Contractor's schedule of values must be acceptable to the Engineer as to form and substance.

5.15.4 Sepia and Copies. After the Engineer has approved the schedule, the Contractor shall submit to the Engineer one (1) sepia and four (4) copies bearing the Contractor's stamp of approval as a representation to the City that the Contractor has determined or verified all data on that progress schedule and that the Contractor, the Subcontractors and Suppliers have reviewed and coordinated the sequences in that progress schedule with the requirements of the Work.

5.15.5 Adjustment of Schedule. The Contractor shall adhere to the established progress schedule which may be adjusted from time to time as follows: the Contractor shall submit to the Engineer for acceptance proposed adjustments in the progress schedule that will not change the Contract Time. Such adjustments will conform generally to the progress schedule then in effect and will comply with any provisions of the requirements applicable thereto.

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5.15.6 During Construction. The Contractor shall submit monthly progress schedules to the Engineer. The schedules shall stay current with the Contractor's approach to the Work remaining.

5.15.7 Schedule of Submittals. The Contractor shall prepare and keep current, for the Engineer's approval, a schedule of Submittals which is coordinated with the Contractor's construction schedule and allows the Engineer reasonable time to review Submittals.

5.16 Project Coordination

5.16.1 In General. The Contractor shall be responsible for the proper coordination of the Work of all of the trades.

5.16.2 Coordination with Subcontractors. The Contractor shall coordinate the work of each Subcontractor with the Work of every other Subcontractor whose Work affects the other.

5.16.3 Coordination with the City's Own Forces or Separate Contractors. The Contractor shall coordinate its operations with those of the City's own forces or separate contractors. The Contractor shall provide the City's own forces and separate contractors a reasonable opportunity for the handling, unloading and storage of their materials and equipment and execution of their work. The Contractor shall connect and coordinate its Work with theirs.

5.16.4 Coordination with Utility Companies. The Contractor shall coordinate its operations with all the appropriate utility companies to assure that the utilities required on the Project are available and functioning properly pursuant to the requirements of the Contract Documents.

5.17 Project Photographs

5.17.1 In General. The Contractor shall take, at its own expense, interior and exterior photographs at the site, from different vantages as directed by the Engineer or the City, before beginning any Work and thereafter on the first work day of each month until final completion of the Work, including final Site photos. The photographs shall be taken by a skilled commercial photographer. The number of photographs required shall be at the discretion of the City or the Engineer.

5.17.2 Prints and Negatives. Within fourteen (14) days after the photographs have been taken, the Contractor shall cause prints to be made and delivered to the City and the Engineer. All photographs shall be 8" x 10". Each print shall state the date of the photograph, the name of the Project, the description of the view and the name and address of the photographer. The City shall receive all the negatives and one glossy print. The Engineer shall receive one glossy print. Photographs shall be suitably mounted and with clear acetate cover with flap for binding. Binders shall be furnished in sufficient number to bind each set of photographs. Each photograph shall have a legible description or title indicating project name, Contractor's name, location of picture, date photograph taken, and sufficient description of subject.

5.17.3 Failure to Comply. Should the Contractor fail to adhere to any requirement set forth in the previous two paragraphs, the City may have the photographs taken at the Contractor's expense or receive a set-off against the Contractor's next application for payment.

5.18 Record Documents and Samples at the Site

5.18.1 The Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Modifications, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop

Drawings will be available to the Engineer for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered by the Contractor to the Engineer for the City.

5.19 Submittals

5.19.1 Purpose. The purpose of Submittals is to demonstrate for those portions of the Work for which Submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

5.19.2 Submittal Procedure. Within 7 days from the Notice to Proceed, the Contractor shall submit to the Engineer a completed Submittals schedule. The Contractor shall review, approve, and submit to the Engineer Submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action. The schedules shall be updated and resubmitted each month. All Submittals will be identified as the Engineer may require and in the number specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show the Engineer the materials and equipment that the Contractor proposes to provide and to enable the Engineer to review the information for the limited purposes stated below.

5.19.3 The Contractor shall submit promptly to the Engineer five copies of shop or setting drawings prepared in accordance with a predetermined schedule. After examination of such drawings by the Engineer and the return thereof, the Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer with five corrected copies. Regardless of corrections made in or approval given to such drawings by the Engineer, the Contractor will nevertheless be responsible for the accuracy of such drawings and for its conformity to the Contract Drawings and Specifications, unless he notifies the Engineer in writing of any deviations at the time he furnished such drawings.

5.19.4 Shop drawings of all fabricated work shall be submitted to the Engineer for approval and no work shall be fabricated by the Contractor save at its own risk until approval has been given.

5.19.5 **Contractor's Representations.** By approving and providing Submittals, the **Contractor** thereby represents that the **Contractor** has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted 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 Submittals, the **Engineer** shall be entitled to rely upon the **Contractor's** representation that such information is correct and accurate

5.19.6 All shop drawings submitted must bear the stamp of approval of the Contractor as evidence that the drawings have been checked by the Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to the Contractor for resubmission. If the shop drawings show variations from the requirements of the Contract Documents because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in its letter of transmittal in order that if acceptable, suitable action may be taken for proper adjustment; otherwise, the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract Documents even though such shop drawings have been approved.

5.19.7 Where shop drawings submitted by the Contractor indicate a departure from the Contract which the Engineer deems to be a minor adjustment in its interest and not involving a change in the Contract price or extension of time, the Engineer may approve the drawings, but the approval will contain in substance the following:

5.19.7.1 The modification shown on the attached drawings is approved in the interest of the City to effect an improvement for the project, and is ordered with the understanding that it does not involve any change in the Contract price or time; that it is subject generally to all Contract stipulations and covenants; and that it is without prejudice to any and all rights of the City under the Contract and Bond or Bonds; and

5.19.7.2 The approval of shop drawings will be general, and shall not relieve the Contractor from the responsibility for adherence to the Contract, nor shall it relieve the Contractor of the responsibility for any error, which may exist.

5.19.8 The Contractor agrees to hold the Engineer and the City harmless, and defend them against damages or claims for damage arising out of injury to others or property of third persons which result from errors on shop, working or setting drawings, whether or not the same have been approved by the Engineer, and/or the City.

5.19.9 ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS: The Contractor will be furnished additional instructions and detail drawings as necessary to carry out the work included in the Contract. The additional drawings and instructions thus supplied to the Contractor will be coordinated with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Owner will prepare jointly (a) a schedule fixing the dates at which special detail drawings will be required; such drawings, if any, to be furnished by the Owner in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of the work. Each such schedule shall be subject to change from time to time in accordance with the progress of the work.

5.19.10 Samples. The Contractor shall also submit Samples to the Engineer for review and approval in accordance with said accepted schedule of Submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which it is intended and otherwise as the Engineer may require to enable the Engineer to review the Submittal for the limited purposes stated below. The numbers of each Sample to be submitted will be as specified in the Specifications. Unless otherwise specified in the Specifications, three (3) specimens of each Sample shall be submitted.

5.19.10.1 The Samples shall be of sufficient size to permit proper evaluation of material. Where variations in color or other characteristics are to be expected, samples showing the minimum range of variation shall be submitted. Materials exceeding the range of variation of the approved Samples will not be approved on the Work.

5.19.10.2 All costs associated with delivery of Samples will be paid by the Contractor.

5.19.11 Contractor's Verifications. Before submitting each Submittal, the Contractor shall have determined and verified:

5.19.11.1 All field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

5.19.11.2 All materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

5.19.11.3 All information relative to the Contractor's sole responsibilities in respect of means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto.

5.19.12 Contractor's Representations. By approving and providing Submittals, the Contractor thereby represents that the Contractor has determined and verified all dimensions, quantities, field dimensions,

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relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted 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 Submittals, the Engineer shall be entitled to rely upon the Contractor's representation that such information is correct and accurate.

5.19.13 Coordination. The Contractor shall also have reviewed and coordinated each Submittal with other Submittals and with the requirements of the Work and the Contract Documents.

Stamp or Specific Written Indication. Each Submittal will bear a stamp or specific written indication that the Contractor has satisfied the Contractor's obligations under the Contract Documents with respect to the Contractor's review and approval of that Submittal.

5.19.14 Written Notice of Variations. At the time of each Submittal, the Contractor shall give the Engineer specific written notice of such variations, if any, that the Submittal may have from the requirements of the Contract Documents. Such notice is to be in a written communication separate from the Submittal. Moreover, the Contractor shall make a specific notation on each Submittal to the Engineer for review and approval of each such variation.

5.19.15 Review and Approval by the Engineer. The Contractor shall perform no portion of the Work requiring a Submittal until the respective Submittal has been approved by the Engineer. Such Work shall be in accordance with approved Submittals.

5.19.16 The Engineer will review and approve Submittals in accordance with the schedule of Submittals accepted by the Engineer as required above. The Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. The Engineer's review and approval will not extend to means, method, technique, sequences, or procedures of construction (except where a particular means, method, technique, sequences or procedures of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

5.19.17 Deviations. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of Submittal and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Engineer's approval thereof.

5.19.18 Revisions. The Contractor shall make corrections required by the Engineer and shall return the required number of corrected copies of Submittals and submit as required new Submittals for review and approval. The Contractor shall direct specific attention, in writing or on resubmitted Submittals, to revisions other than those requested by the Engineer on previous Submittals. Unless such written notice has been given, the Engineer's approval of a resubmitted Submittal shall not constitute approval of any changes not requested on the prior Submittal.

5.19.19 Related Work. Where a Submittal is required by the Contract Documents or the schedule of Submittals accepted by the Engineer, any related Work performed prior to the Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of the Contractor.

5.19.20 Informational Submittals. Informational Submittals upon which the Engineer is not expected to take responsive action may be so identified in the Contract Documents.

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5.19.21 Certification. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the City shall be entitled to rely upon such certifications, and neither the City nor the Engineer shall be expected to make any independent examination with respect thereto.

5.20 Continuing the Work

5.20.1 The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as otherwise provided herein or as the City and the Contractor may agree in writing.

5.20.2 Any work necessary to be performed after regular working hours on Saturdays, Sundays, or legal holidays, shall be performed by the Contractor without additional expense to the City.

5.21 Use of Site; Access to Work

5.21.1 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the City. The Contractor's right to entry and use thereof arises solely from the permission granted by the City under the Contract Documents. The Contractor shall confine the Contractor's apparatus, the storage of materials, and the operations of the Contractor's workers to limits indicated by law, ordinance, the Contract Documents and permits and/or directions of the Engineer and shall not unreasonably encumber the premises with the Contractor's materials. The City shall not be liable to the Contractor, the Subcontractors, Suppliers, or anyone else with respect to the conditions of the premises, except for a condition caused directly and solely by the negligence of the City.

5.21.2 At all times, the City and the Engineer shall have access to the Work.

5.22 Protection of Persons and Property

5.22.1 In General. The Contractor shall be responsible for initiating, maintaining, and supervising all health and safety precautions and programs in connection with the performance of the Contract. The Contractor is responsible for the implementation of all Federal, State, and local health and safety requirements.

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

5.22.2.1 Employees on the site and other persons who may be affected thereby;

5.22.2.2 The Work, materials, and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor, Subcontractors, or Sub-subcontractors;

5.22.2.3 Other property at the site or adjacent or in close proximity thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and

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

5.22.3 Notices and Compliance. The Contractor shall give notices and comply in all other respects with applicable laws, ordinances, rules, regulations, codes, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss. The Contractor shall notify

owners of adjacent and nearby properties of underground facilities and utility owners when prosecution of the Work may affect them and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

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

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

5.22.6 **Damage to Property.** The Contractor shall promptly remedy damage and loss to property referred to above. If the damage or loss is due in whole or in part to the Contractor's failure to take the precautions required herein, the Contractor shall bear the cost, subject to any reimbursement to which the Contractor is entitled under property insurance required by the Contract Documents. The Contractor shall be fully and solely responsible for all Work and other operations carried out on adjacent properties. The insurance required under Article 8 shall cover such Work or operations, and the Contractor shall indemnify and defend the City, the Engineer, and the owners of such adjacent or nearby properties from and against all claims, suits, losses, or costs arising out of such Work or operations.

5.22.7 **Fire Protection Equipment and Services.** 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.

5.22.8 **Protection of Excavations, Trenches, Etc.** 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.

5.22.9 **Snow and Ice Removal.** The Contractor shall remove snow and ice which might result in damage or delay.

5.22.10 **Safety Representative.** The Contractor shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

5.22.11 **Weather Protection.** (Reference: M.G.L. c. 149, §44F(1)). The Contractor shall install weather protection and furnish adequate heat in the protected area from November 1 through March 31. If in the opinion of the City any work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any subcontractors so to protect their work, or otherwise damaged by the negligence of the Contractor, subcontractors, or their agents or servants, or is otherwise defective, such materials shall be removed and replaced at the expense of the Contractor.

5.22.12 **Security.** The Contractor shall provide, within the Contract Sum, a sufficient number of security personnel at the Site at all times when the Contractor's personnel are not present, from commencement of the Work until Substantial Completion to assure that the Site, the facility, and the Work, and all materials and equipment stored at the Site are fully and completely protected against loss or damage due to vandalism, theft, or malicious mischief. If the Contractor elects, in addition, to use guard dogs for this purpose, each dog shall at all times be accompanied by an adult handler. If the Contractor fails to comply

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with the requirements of this paragraph, then the City may provide appropriate security and charge the cost thereof to the Contractor. The City's provision of such security, or failure to do so, shall not relieve the Contractor of its responsibility to pay for loss or damage due to vandalism, theft, or malicious mischief at the Site.

5.22.13 Hazard Communication Programs. The Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communications information required to be made available to or exchanged between or among employers at the site in accordance with laws, codes and regulations.

5.22.14 Noise Pollution Control. The Contractor shall comply with all applicable provisions of Cambridge Municipal Code Chapter 8.16.

5.22.15 Reporting. The Contractor and all subcontractors shall immediately report all accidents, injuries, or health hazards to the City or its designated representatives in writing for information purposes only. This shall not relieve the Contractor or all subcontractors from mandatory reporting requirements, or any other requirements under the Occupational Safety and Health Act of 1970.

5.22.16 Regulations. This project is subject to the Safety and Health regulations of the U.S. Department of Labor set forth in 29 CFR, Part 1926, and to the Massachusetts Department of Labor and Industries, Division of Industrial Safety "Rules and Regulations for the Prevention of Accidents in Construction Operations (Industrial Bulletin No. 12)." Contractors shall be familiar with the requirements of these regulations, and MUCTD and ADA safety requirements.

5.23 Cutting and Patching

5.23.1 In General. Unless otherwise provided in the Contract Documents, the Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly, including the work of the City or of separate contractors.

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

5.23.3 Damage Caused by Contractor. Should the Contractor cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of the Contractor's performance of Work at the Site be made by any separate contractor against the Contractor, the City, the Engineer, or any of the Engineer's consultants, the Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law. The Contractor shall, to the fullest extent permitted by laws and regulations, indemnify and hold harmless the City, the Engineer, and the Engineer's consultants from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, Engineers, attorneys and other professionals, and court and arbitration or mediation costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any separate contractor against the City, the Engineer, or any of the Engineer's consultants, to the extent based on a claim arising out of the Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of the Contractor or should the performance of work by any separate contractor at the site give rise to any other claim, the Contractor shall not institute any action, legal or equitable, against the City, the Engineer, or any of the Engineer's consultants, or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter

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which seeks to impose liability on or to recover damages from the City, the Engineer, or any of the Engineer's consultants, on account of any such damage or claim. If the Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor and the City and the Contractor are unable to agree as to the extent of any adjustment in the Contract Time attributable thereto, the Contractor may make a claim for an extension of time in accordance with Article 16. An extension of the Contract Time shall be the Contractor's exclusive remedy with respect to the City, the Engineer, and the Engineer's consultants, for any delay, disruption, interference, or hindrance caused by any separate contractor.

5.24 Cleaning Up

5.24.1 During the progress of the Work, the Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract or other debris. At the completion of the Work, the Contractor shall remove from and about the Project all waste materials, rubbish, debris, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall leave the site clean and ready for use by the City at Substantial Completion of the Work. Immediately prior to the Engineer'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 by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.

5.24.2 If the Contractor fails to clean up as provided herein, the City may do so and charge the cost thereof to the Contractor.

5.25 Royalties and Patents

5.25.1 The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and the Engineer from and against all claims, costs, losses, and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the work or resulting from the incorporation in the work of any invention, design, process, product, or device not specified in the Contract Documents. The Contractor shall hold and save the Engineer, the City, and their officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for or on account of any patented or un-patented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the City.

5.26 Contractor's Obligation to Perform

5.26.1 The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of the Contractor's obligation to perform the Work in accordance with the Contract Documents:

5.26.1.1 Observations by the Engineer;

5.26.1.2 Recommendation of any progress or final payment by the Engineer;

5.26.1.3 The issuance of a certificate of Substantial Completion or any payment by the City to the Contractor under the Contract Documents;

5.26.1.4 Use or occupancy of the Work, Project, or Site, or any part thereof, by the City;

5.26.1.5 Any acceptance by the City or any failure to do so;

5.26.1.6 Any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptance by the Engineer;

5.26.1.7 Any inspection, test, or approval by others; or

5.26.1.8 Any correction of defective Work by the City.

5.27 Indemnification and Covenant Not To Sue

5.27.1 To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and hold harmless the City, the Engineer, the Engineer's consultants and agents and employees of any of them from and against claims, damages, losses, and expenses, including, but not limited, to attorneys' fee, arising out of or resulting from 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 caused in whole or in part by alleged negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, 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.

5.27.2 In claims against any person or entity indemnified under the foregoing paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under the foregoing paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under Workers' Compensation laws, disability benefit acts or other employee benefit acts.

5.27.3 The obligations of the Contractor in this Article shall not extend to the liability of the Engineer, the Engineer's consultants, and agents or employees of any of them arising out of (1) the preparation of maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, or (2) directions or instructions given by the Engineer, the Engineer's consultants and agents or employees of any of them, provided such instructions or directions are the primary cause of the injury or damage.

5.27.4 The Contractor, or any successor, assign, or subrogate of the Contractor agrees not to bring any civil suit, action, or other proceeding in law, equity or arbitration against the Engineer, or the officers, employees, agents, or consultants of the Engineer, for the enforcement of any action which the Contractor may have arising out of or in any manner connected with the Work. The Contractor shall assure that this covenant not to sue is contained in all subcontracts and sub-subcontracts of every tier and shall assure its enforcement. The Engineer, its officers, employees, agents, and consultants are intended third-party beneficiaries of this covenant not to sue, and are entitled to enforce this covenant in law or equity.

5.28 Survival of Obligations

5.28.1 All representations, indemnifications, warranties, and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract

Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Contract.

5.29 Representations of Contractor

5.29.1 That the Contractor is financially solvent and that he is experienced and competent to perform the type of work or furnish the plant, material, supplies, or equipment to be performed or furnished by the Contractor; and

5.29.2 That the Contractor is familiar with all Federal, State, municipal, and department laws, O.S.H.A., safety, MUTCD, ADA, and confined space regulation, ordinances, orders, and other regulations which may in any way affect the work of those employed therein, including but not limited to any special acts relating to the work or to the project of which it is a part; and

5.29.3 That such temporary and permanent work required by the Contract Documents to be done by the Contractor can be satisfactorily constructed and used for the purpose for which it is intended, and that such construction will not injure any person or damage any property; and

5.29.4 That the Contractor has carefully examined the Drawings, Specifications, and Addendum (or Addenda) if any, and the site of the work, and that from the Contractor's own investigations is satisfied as to the nature and location of the work, the character, quality and quantity of surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the work, the general and local conditions, and all other materials which may in any way affect the work or its performance; and

5.29.5 That the Contractor is aware of the hazards involved in the work and the danger to life and property both evident and inherent, and that the work shall be conducted in a careful and safe manner without injury to persons or property.

ARTICLE 6 SUBCONTRACTORS

6.1 Use of Subcontractors

6.1.1 The Contractor shall use the Subcontractors named in the Contractor's Bid.

6.1.2 The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.

6.2 Substitution of Subcontractors

6.2.1 The Contractor shall not substitute another Subcontractor therefor without notice to the City and the City's prior written consent of such substitution.

6.3 Names of Subcontractors

6.3.1 Upon execution of the Contract with the City, the Contractor shall provide in writing to the City, through the Engineer, the names, addresses, telephone numbers, and fax numbers of all persons proposed for each principal portion of the Work.

6.4 Objections to Subcontractors

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AND CONDITIONS

6.4.1 The Contractor shall not use any Subcontractor against whom the City has a reasonable objection. The Contractor shall not be required to contract with any person or entity against whom it has a reasonable objection.

6.5 Form of the Subcontract

6.5.1 All Work performed by a Subcontractor shall be through an appropriate subcontract. The form of subcontract shall be submitted to the Purchasing Agent for her approval, which shall not be unreasonably withheld or delayed.

6.5.2 Appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the Contract and General Conditions, and other Contract Documents insofar as applicable to the work of subcontractors, and to give the Contractor the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provision of the Contract Documents.

6.5.3 Nothing contained in this Contract shall create any contractual relation between any subcontractor and the City.

6.6 Content of the Subcontract

6.6.1 In addition to all statutorily mandated provisions and provisions required elsewhere in the Contract Documents, each subcontract shall expressly provide that:

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

6.6.1.1.1 The assignment is effective only after termination of the Contract by the City or the Contractor and only for those subcontract agreements which the City accepts by notifying the Subcontractor in writing; and

6.6.1.1.2 The assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

6.6.1.2 Each Subcontractor is bound by the requirements of the Contract Documents for the express benefit of the City.

6.6.1.3 Each Subcontractor shall assume toward the Contractor all the obligations which the Contractor assumes toward the City and the Engineer, unless otherwise provided by law.

ARTICLE 7 PERFORMANCE AND PAYMENT BONDS

7.1 Form of Bonds

7.1.1 The performance and labor and material or payment bonds shall be in the form required by the City, copies of which are included in the Project Manual. The City reserves the right to reject any bond which does not conform to the City's requirements.

7.2 Furnished by the Contractor

7.2.1 (Reference: M.G.L. c. 30, §39M(c), M.G.L. c. 149, §29). The Contractor shall furnish a performance bond and a labor and materials or payment bond, each with a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the City and each in the sum of the

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AND CONDITIONS
00800-32

CAM 400/Alewife Floatables
Conformed Set

Contract Sum, the premiums for which are to be paid by the Contractor and are included in the Contract Sum. The bonds shall remain in effect until final payment is made. The sum of the performance bond shall increase each time the Contract Sum is increased as a result of a Change Order.

7.2.2 The Contractor shall furnish Surety Bonds (in SEXTUPLICATE) each in an amount equal to at least one hundred (100%) percent of the Contract price as security for the faithful performance of this Contract, and for the payment of all persons performing labor on the project under this Contract and furnishing materials, equipment, and all other incidentals in connection with this Contract. The Surety on such Bond shall be a duly authorized surety company satisfactory to the Owner, and the cost of same shall be paid by the Contractor. Before final acceptance, the Bonds must be approved by the City.

7.3 Submission to the City

7.3.1 The Contractor must submit the performance bond and labor and materials or payment bond to the City upon the Contractor's execution of the Agreement.

7.3.2 If at any time the City for justifiable cause shall be or become dissatisfied with the Surety or Sureties for the Performance and/or Payment Bonds, the Contractor shall within five (5) days after notice from the City to do so, substitute an acceptable bond (or bonds) in such form and sum, and signed by such other Surety or Sureties as may be satisfactory to the City. The premiums on such bond shall be paid by the Contractor. No further payments will be deemed due nor will be made until the new Surety or Sureties shall have furnished such an acceptable bond to the City.

ARTICLE 8 INSURANCE REQUIREMENTS

8.1 Worker's Compensation

8.1.1 (Reference: M.G.L. c. 149, §34A). Before commencing performance of the Contract, the Contractor shall 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 paragraph 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 City at least fifteen (15) days prior to the intended effective date thereof, which date shall be expressed in said notice.

8.2 Additional Insured

8.2.1 Each policy must list the City as an additional insured.

8.3 Insurance Rating

8.3.1 Any insurance carrier utilized to fulfill the insurance requirements of this Contract shall have a minimum A.M. Best rating of A-X.

8.4 Premiums

8.4.1 The Contractor must provide the required insurance at its own expense.

8.5 Notice of Occurrence

8.5.1 Notice of occurrence shall be given to the City Manager, City of Cambridge, City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139 and, at the option of the Contractor, any other City official permitted by law to receive notice.

8.6 Waiver of Subrogation

8.6.1 The Contractor and all Subcontractors waive subrogation rights against the City for all losses.

8.7 Coverage Period

8.7.1 Each insurance policy must cover the entire contract period.

8.8 Policies and Limits

8.8.1 The insurance required shall include all major division of coverage and shall be on a comprehensive general basis including Premises and Operations (including X-C-U), City's Protective (as a separate policy), Products and Completed Operations, and Owned, Non-owned, Leased, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or the following limits, whichever are greater:

Owner's Protective Liability (as a separate policy)	
Each Occurrence	\$1 Million
Aggregate	\$2 Million
Commercial Liability	
General Aggregate - per project	\$2 Million
Products Completed Operations	
Aggregate - per project	\$1 Million
Personal Injury and Advertising Limit	\$1 Million
Each Occurrence	\$1 Million

This policy shall include contractual liability coverage insuring the contractor's indemnity obligations under this Contract. The contractual and completed operations coverage shall be maintained on the City's and Indemnitees' behalf for a period of two (2) years after final completion and acceptance by City. If the Work includes work to be performed within 50 feet of a railroad, any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted.

This policy shall include City and any other party at interest requested by City as an additional insured with endorsements equivalent to ISO CG 20 10 for ongoing operations and to ISO CG 20 37 for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to an additional insured. The policy shall include endorsement equivalent to ISO CG 24 04, a Waiver of Subrogation in favor of City. The policy shall include endorsement CG 24 10, Coverage for injury to leased workers.

Railroad Protective Liability (if required by an abutter, permittee or other)

Each Occurrence	\$2 Million
Aggregate	\$6 Million
Automotive-for all owned, non-owned, hired and leased vehicles	
Combined single limit	\$1 Million
or	
Bodily injury - each person	\$100,000

- each accident \$1 Million
 Property damage-each occurrence \$1 Million

If hauling contaminants and/or pollutants, the policy shall include a CA 99 48 Broadened Pollution Endorsement. must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall contain coverage Form MCS-90. The policy shall name City as an additional insured. The policy shall contain a Waiver of Subrogation in favor of City.

Builder's Risk/Installation Floater (Value of the Contract)

The **Contractor** shall be required to purchase, maintain and furnish evidence satisfactory to the **City** property insurance generally described as Builders' Risk Insurance with an "all risk" type installation floater covering loss by fire and standard extended coverage in the completed value form in the amount of the total value of structures, materials, and equipment to be built and installed under the Contract on a replacement cost basis.

This provision, with respect to Builders' Risk Insurance, shall in no way relieve the **Contractor** of his obligation of completing the Work covered by the Contract.

Contractor Pollution Liability
 Combined single limit- per occurrence \$1 Million
 Annual aggregate \$3 Million

8.9 Excess Liability Insurance

8.9.1 The Contractor may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the limits of liability required for the insurance to be purchased and maintained in accordance with the requirements set forth above. Any such amounts must be in addition to the umbrella limits required, must list all underlying policies, and must list the City as an additional insured. Evidence of such excess liability shall be delivered to the City in the same form and manner as the required insurance policies.

8.10 Amendment of Insurance Requirements

8.10.1 The City reserves the right, at its sole discretion, to amend the insurance requirements contained herein.

8.11 Occurrence Basis

8.11.1 All insurance shall be written on an occurrence basis, unless the City approves in writing coverage on a claims-made basis. Coverages whether written on an occurrence or a claims-made basis shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment.

8.12 Certificates of Insurance

8.12.1 Certificates of Insurance acceptable to the City and confirming the insurance coverage required herein are attached to the Contract. The City shall have no obligation to execute the Contract and may award the Contract to the next lowest responsible and responsive bidder, if such insurance certificates have not been provided to the City within five (5) business days after presentation of the Contract to the Contractor for execution.

8.13 Endorsements

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

8.14 Property Insurance

8.14.1 The City does not intend to purchase property insurance covering the Project or the Work. The Contractor shall not be required to provide such insurance, but the Contractor may, if it so desires, procure property insurance which will protect the interests of the Contractor, Subcontractor and Sub-subcontractors in the Work. The Contractor understands that such property insurance is solely the Contractor's responsibility, and the Contractor, its Subcontractors and Sub-subcontractors shall have no claim against the City on account of the City's failure to provide such property insurance. The Contractor shall promptly replace all damaged Work in which it or its Subcontractors and Sub-subcontractors have an insurable interest, and all Work which is stolen, vandalized, or damaged due to the Contractor's failure to protect the site as required by Article 5, at no additional cost to the City, whether or not the Contractor procures property insurance with respect to such Work as hereinabove provided.

ARTICLE 9 TESTS AND INSPECTIONS

9.1 Access

9.1.1 The City, the Engineer, and all other persons designated by the City shall have access to the Work at reasonable times for observing, inspecting, and testing. The Contractor shall provide them with proper and safe conditions for such access and advise them of the Contractor's site safety procedures and programs so that they may comply therewith as applicable.

9.2 Tests and Inspections

9.2.1 The Contractor shall give the Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

9.2.2 Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the City, or with the appropriate public authority and shall bear all related costs of tests, inspections, and approvals. If the laws or regulations of any public body having jurisdiction require any Work or part thereof specifically to be inspected, tested, or approved by an employee or other representative of such public body, the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith and furnish the Engineer with the required certificates of inspection, testing, or approval.

9.2.3 The Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for the Engineer's acceptance of materials or equipment to be incorporated into the Work, or of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation into the Work.

9.2.4 If any Work that is to be inspected, tested, or approved is covered by the Contractor, Subcontractor, or Sub-subcontractor without the prior written consent of the Engineer, it must be uncovered for observation, inspection, testing, or approval, if requested by the Engineer. The Contractor must recover the Work at its own expense.

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

9.2.6 All materials and workmanship shall be subject to inspection, examination, and test by the City at any and all times during manufacture and/or construction, and at any and all places where such manufacture and/or construction are carried on to establish conformance with these Specifications and suitability for uses intended. The Contractor shall furnish promptly all reasonable facilities, labor and materials necessary to make tests so required safe and convenient; he shall also furnish evidence of conformance to any mill, factory, or such other tests based on the Standards and Tentative Standards of the American Society for Testing and Materials, or other national standards as required by the City.

ARTICLE 10 UNCOVERING AND CORRECTING WORK

10.1 Uncovering Work

10.1.1 If a portion of the Work is covered contrary to the Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Engineer, be uncovered for the Engineer's observation and be replaced, both at the Contractor's expense and without change in the Contract Time.

10.1.2 If a portion of the Work has been covered which the Engineer has not specifically requested to observe prior to its being covered, the Engineer may request to see such Work, and it shall be uncovered by the Contractor. If it is found that such Work is in accordance with the Contract Documents, costs of uncovering and replacing shall, by appropriate Change Order, be charged to the City. If it is found that such Work is defective or not in accordance with the Contract Documents, the Contractor shall pay all claims, costs, losses, and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection, and testing and of satisfactory replacement or reconstruction (including, but not limited to, all costs of repair or replacement of work of others); and the City shall be entitled to an appropriate decrease in the Contract Sum. The City may take such decrease by reducing the then current application for payment accordingly or subsequent applications, if necessary, until the decrease is paid in full.

10.2 Correcting Work

10.2.1 The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected Work including additional testing and inspections and compensation for the Engineer's services and expenses made necessary thereby and any cost, loss, or damages to the City resulting from such failure or defect.

10.2.2 If, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established in Article 15, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the City to do so, unless the City has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation to correct under this paragraph shall survive acceptance of the Work under the Contract and termination of the Contract. The City shall give such notice promptly after discovery of the condition.

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10.2.3 The Contractor shall correct, remove, or replace portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the City.

10.2.4 If the Contractor fails within a reasonable time to correct nonconforming Work, or to remove and replace rejected Work, or fails to perform the Work in accordance with the Contract Documents, the City may correct it in accordance with the provisions herein. If the Contractor does not proceed with correction, removal, or replacement of such nonconforming Work within seven (7) days from the date of written notice from the Engineer, the City may correct it and store any salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of any such removal and storage within ten (10) days after written notice, the City may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Engineer's services and expenses made necessary thereby. If such proceeds of sale do not cover all the costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the City.

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

10.2.6 Nothing contained in this paragraph shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one (1) year as described in the above paragraph related only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

10.2.7 All work and all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet the Engineer approval, they shall be forthwith reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at the Contractor's expense. Rejected material shall immediately be removed from the site. If in the opinion of the Engineer it is undesirable to replace any defective or damaged materials, or to reconstruct or correct any portion of the work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Engineer shall be equitable.

10.3 Acceptance of Nonconforming Work

10.3.1 If, instead of requiring correction or removal and replacement of defective or nonconforming Work, the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction, in which case the Contractor shall pay all claims, costs, losses, and damages attributable to the City's evaluation of and determination to accept such defective or nonconforming Work. The Contract Sum will be reduced as appropriate. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 11 CHANGES IN THE WORK

11.1 In General

11.1.1 The Contract Sum constitutes the total compensation (subject to authorized adjustments) payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at the Contractor's expense without any change in the Contract Sum.

11.1.2 Without invalidating the Contract and without notice to any surety, the City may, at any time or from time to time, order additions to, deletions from, or revisions in the Work. Such additions, deletions, or revisions will be authorized by a Change Order, a Modification or a Work Change Directive. Upon receipt of any such document, the Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

11.1.3 The Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified, or supplemented, except as otherwise provided herein.

11.2 Change Orders

11.2.1 (Reference: M.G.L. c. 30, §39I). The Contractor shall perform all the Work required by this Contract in conformity with the Drawings and Specifications contained herein. No willful and substantial deviation from said Drawings and Specifications shall be made unless authorized in writing by the Engineer and the City in charge of the Work who is duly authorized by the City to approve such deviations. In order to avoid delays in the prosecution of the Work required by such Contract, such deviation from the Drawings or Specifications may be authorized by a written order of the City or the Engineer so authorized to approve such deviation. Within thirty (30) days thereafter, such written order shall be confirmed by a certificate of the City stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures, or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the Project as a whole; (3) that either the work substituted for the Work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the City and the Contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the City.

11.3 Work Change Directive

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

11.3.2 Upon request of the City or the Engineer, the Contractor shall without cost to the City submit to the Engineer in such form as the Engineer may require, an accurate written estimate of the cost of any proposed extra work or change. The estimate shall indicate the quantity and unit cost of each item of materials, 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. Unit labor costs for the installation of each item of materials shall be shown if required by the Engineer. If required by the Engineer, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Engineer bona fide proposals from recognized Suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the Contractor's expense.

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11.3.3 The Contractor shall state in the estimate any extension of time required for the completion of the Work if the change or extra Work is ordered. The Contractor shall document, through a critical path analysis, or some other clearly delineated explanation, how the proposed change affects other aspects of the Work, and why it would require an extension of time. The Contractor shall promptly revise and resubmit such estimate if the Engineer determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors.

11.3.4 If the Work 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 City, selection of which does not require the consent of the Contractor:

11.3.4.1 By unit prices stated in the Contract Documents or otherwise mutually agreed upon.

11.3.4.2 By Cost and Percentages estimated by the Contractor as provided herein and accepted by the City; 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.

11.3.4.3 By actual Cost determined after the Work covered by the change is completed, plus Percentage.

11.3.4.4 By submission to arbitration or a court, which shall determine the fair value of the Work covered by the change.

11.3.5 As used in this paragraph, "Cost" shall mean the estimated or actual net increase or decrease in cost to the Contractor, Subcontractor, or Sub-subcontractor for performing the Work covered by the change, including actual payments for materials, equipment rentals, expendable items, wages, and associated benefits to the workers and to supervisors employed full time at the Site, 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 supervisory personnel not assigned full time to the Site, or any amount for profit or fee to the Contractor, Subcontractor, or Sub-subcontractor.

11.3.6 "Percentage" shall mean an allowance to be added to or subtracted from the Cost in lieu of overhead and profit and of any other expense which is not included in the Cost of the Work covered by the change, as defined above. Percentage for a Sub-subcontractor shall be 8% of any net increase or decrease of Cost of any Work performed by the Sub-subcontractor's own forces plus 4% of any net increase or decrease in Cost of any Work performed for the Sub-subcontractor by lower tier Sub-subcontractors. Percentage for a Subcontractor shall be 12% of any net increase or decrease of Cost of any Work performed by the Subcontractor's own forces plus 4% of the Cost of Work performed by Sub-subcontractors. Percentage for the Contractor shall be 20% of any net increase or decrease of Cost of any Work performed by the Contractor's own forces. When the Contractor is also performing Work as a Subcontractor or Sub-subcontractor, the Contractor shall only be entitled to a total of no more than 20% of any net increase or decrease of Cost of any Work.

11.3.7 When in the reasonable judgment of the Engineer a series of Work Change Directives or Change Orders effect a single change, Percentage shall be calculated on the cumulative net increase or decrease in Cost, if any.

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

11.3.9 If the City elects to determine the Cost of the Work as provided in paragraph 11.3.4.1 using unit prices stated in the Contract Documents or subsequently agreed upon, the unit prices shall be subject to the

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prior paragraph. Notwithstanding the inclusion of unit prices in the Contract Documents, it shall be the City's option to require the Cost of any given change to be determined by one of the other methods stated in 11.3.4. If the City elected to determine the Cost of the change by 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 Engineer for inspection, of the actual quantities of such Work put in place, and delivery receipts or other adequate evidence, acceptable to the Engineer, 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 Engineer, materials for use in unit price Work shall be stored apart from all other materials on the Project.

11.3.10 If the City elects to determine the Cost of the Work as provided in methods 11.3.4.3. or 11.3.4.4. or if the method of determining the Cost has not been established before the Work is begun, the Contractor shall keep detailed daily records of labor and material costs applicable to the Work.

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

11.3.12 A Work Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in the Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

11.3.13 If the Engineer and the Contractor do not agree with the adjustment in the Contract Time or the method for determining it, the adjustment or the method shall be referred to the Engineer for determination.

11.4 Minor Changes in the Work

11.4.1 The Engineer has the authority to order minor changes in the Work. "Minor changes" as used in this paragraph mean changes which are so insignificant as to not affect the Contract Sum or the Contract Time and which are not inconsistent with the intent of the Contract Documents. Any minor change shall be committed to a written order which shall be binding on both the City and the Contractor and which shall be promptly carried out by the Contractor.

11.5 Certificate of Appropriations

11.5.1 (Reference: M.G.L. c. 44, §31C). This Contract shall not be deemed to have been made until the City's auditor has certified thereon that an appropriation in the amount of this Contract is available therefor and that an officer or agent of the City has been authorized to execute said Contract and approve all requisitions and change orders. No order to the Contractor for a change in or addition to the Work, whether in the form of a drawing, plan, detail or any other written instruction, unless it is an order which the Contractor is willing to perform without any increase to the Contract price, shall be deemed to be given until the auditor has certified thereon that an appropriation in the amount of such order is available therefore; but such certificate shall not be construed as an admission by the City of its liability to pay for such work. The certificate of the auditor that an appropriation in the amount of this Contract or in the amount of such order is available shall bar any defense by the City on the grounds of insufficient appropriation.

ARTICLE 12 CHANGE IN THE CONTRACT TIME

12.1 Date of Commencement

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

12.2 Progress and Completion

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

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

12.2.3 At least ten (10) working days before the first application for payment, the Contractor shall submit to the Engineer a progress schedule showing for each class of Work included in the schedule of values, the percentage of completion to be obtained and the total dollar value of Work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of Work in place, but may include, at the Engineer's discretion, the value of materials delivered but not in place.

12.2.4 The progress 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 progress schedule will be reviewed by the Engineer for compliance with the requirements of this Article and will be accepted by the Engineer or returned to the Contractor for revision and resubmittal. Unless specifically required by law, no payment under this Contract shall be due until the progress schedule has been approved by the Engineer. The Engineer's review of the progress schedule shall not impose any duty on the Engineer or the City with respect to the timing, planning, scheduling, or execution of the Work. In particular, if the Contractor proposes a progress 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.

12.2.5 If in any Application for Payment, the total value of the completed Work in place, as certified by the Engineer, is less than 90% of the total value of the Work in place estimated in the progress schedule, the City may, at the City's option, require the Contractor to accelerate the progress of the Work without cost to the City by increasing the workforce or hours of Work or by other reasonable means approved by the Engineer.

12.2.6 If each of three successive applications, as certified by the Engineer, indicate that the actual Work completed is less than 90% of the values estimated in the progress schedule to be completed by the respective dates, the City may at the City's option, treat the Contractor's delinquency as a default justifying the action permitted under Article 18.

12.2.7 If the Engineer has determined that the Contractor should be permitted to extend the time for completion as provided below, the calendar dates in the progress schedule shall be adjusted accordingly to retain their same relationship to the adjusted date of Substantial Completion, and the dollar value of the Work to be completed as of the first of each month shall be adjusted pro rata.

12.2.8 If the Contractor fails to submit any application for payment in any month, the Engineer shall, for the purpose of this evaluation of progress, certify separately to the actual value of the Work in place completed as of the first of the month to the best of the Engineer's knowledge.

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

12.3 Delays and Extensions of Time

12.3.1 If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the City or the Engineer, or of an employee of either, or of a separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes (except weather) beyond the Contractor's control, or by delay authorized by the City, or by other causes which the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order or Work Change Directive for such reasonable time as the Engineer may determine.

12.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 16.

12.3.3 No claim for extension of time shall be allowed on account of failure of the Engineer to furnish Drawings, Specifications or instructions or to return Shop Drawings or Samples until fifteen (15) days after receipt by the Engineer by registered or certified mail of written demand for such instructions, Drawings, Specifications, or Samples, and then not unless such claim is reasonable.

12.3.4 No extensions of time shall be granted because of seasonal or abnormal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor, 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 therefrom.

12.3.5 The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the City or the Engineer 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 City, the Engineer, or otherwise, except as and to the extent expressly provided under M.G.L. c. 30, §39O, in the case of written orders by the City. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time as provided in this Article.

12.3.6 (Reference: M.G.L. c. 30, §39O). (a) The City 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 City, provided however that if there is a suspension, delay, or interruption for fifteen (15) days or more due to a failure of the City to act within the time specified in this Contract, the City 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 City shall not make adjustment in the Contract Price under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Contract price under any other Contract provisions.

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

In the event a suspension, delay, interruption, or failure to act of the City 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 its performance as provisions (a) and (b) give the Contractor against the City, 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.

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12.4 Liquidated Damages

12.4.1 If the Contractor shall fail to achieve Substantial Completion or Final Completion within the Contract Times, it shall be liable to pay the City the daily amount specified in the Agreement, not as a penalty, but as a fixed and agreed upon damages for breach of contract. The said amount is fixed and agreed upon because of the difficulty of ascertaining the City's actual damages. It is mutually understood that the said amount is a reasonable approximation or estimate thereof as of the date of the Agreement. The City may elect to withhold said amount from periodic or final payments due to the Contractor, in addition to retainage and other backcharges.

12.5 Changes in the Contract Time

12.5.1 How. The Contract Time may only be changed by a Change Order or a Modification. Any claim for an adjustment of the Contract Time shall be based on a written notice delivered to the party making the claim to the other party and to the Engineer promptly (but in no event later than seven (7) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by the Engineer in accordance with Article 16. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph.

12.5.2 Early Completion. The Contract Time shall not be changed due to a delay in the Contractor's early completion date.

ARTICLE 13 PAYMENTS

13.1 Schedule of Values

13.1.1 The Contractor shall submit to the Engineer a schedule of values as specified in paragraph 5.15 which shall subdivide the Work into its component parts and shall include quantities, direct craft labor worker hours, labor cost and material/equipment cost. Labor cost shall include an appropriate amount of construction equipment costs, supplemental costs, administrative expenses, contingencies, and profit. The Contractor shall prepare the schedule of values in such form and supported by such data to substantiate its accuracy as the Engineer may require and shall be revised if later found by the Engineer to be inaccurate. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Contractor's applications for payment.

13.2 Content and Submission of Applications for Payment

13.2.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Engineer six (6) copies of an itemized application for payment for Work completed in accordance with the schedule of values. Such application shall be in a form or format established or approved by the Engineer and shall be supported by documentation substantiating the Contractor's right to payment.

13.2.2 When Work Change Directives have set forth an adjustment to the Contract Sum but have not yet been included in Change Orders, the value established by the City may be included in the application.

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13.2.3 Applications covering Work of Subcontractors or Suppliers shall not include requests for payments of amounts the Contractor does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason. The Contractor shall not be paid for any Work performed by a Subcontractor unless and until the City receives for that Subcontractor a certificate of insurance which conforms to the requirements of the Contract Documents.

13.2.4 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site shall be conditioned upon the application for payment being accompanied by a bill of sale, an invoice, or other documentation warranting that the City has received the materials and equipment free and clear of all liens, claims, security interests, or encumbrances, hereinafter collectively referred to as "liens," and evidence that the materials and equipment are covered by appropriate insurance and other arrangements to protect the City's interest therein.

13.2.5 Each application for payment or periodic estimate requesting payment shall be accompanied by, at the City's option, a certificate from each Subcontractor stating that the Subcontractor has been paid all amounts due the Subcontractor on the basis of the previous periodic payment to the Contractor, 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 City through the Engineer. Such waiver or certificate shall be in a form acceptable to the City.

13.3 False Applications for Payment

13.3.1 (Reference: M.G.L. c. 93, §9B). Any person who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any employee, department, or agency, any claim upon or against any department or agency, knowing such claim to be false, fictitious or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, toll, account, claim, certificate, affidavit, or deposition knowing the same to contain any fraudulent or fictitious statement or entry, shall forfeit and pay to the City the sum of two thousand dollars (\$2,000.00) and, in addition, double the amount of damages which the City may have sustained by reason of the doing or committing of such act, together with the costs of the action.

13.4 Review of Applications for Payment

13.4.1 The Engineer shall review each application for payment and will reject any application that (1) is not accompanied by the required documentation or (2) contains errors, mathematical or otherwise.

13.4.2 Within five (5) business days after receipt of an application for payment, the Engineer will either (1) return the application to the Contractor with a written explanation as to why it was rejected or (2) issue to the City a certificate for payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due. In the event an application is returned to the Contractor, the date of receipt of the application shall be the date of receipt of the corrected application.

13.4.3 The Engineer or the City may make changes to any application submitted by the Contractor.

13.4.4 By recommending any payment, the Engineer will not thereby be deemed to have represented that: (1) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the Engineer in the Contract Documents or (2) that there may not be other matters or issues between the parties that might entitle the Contractor to be paid additionally by the City or entitle the City to withhold payment to the Contractor. The Engineer's approval of the application for payment and the accompanying documentation shall indicate that to the best of the

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Engineer's knowledge, information, and belief, the Work has progressed to the point indicated by the Contractor, and that the quality of the Work is in accordance with the Contract Documents, subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests specified in the Contract Documents, final determination of quantities and classifications for unit price work and any other qualifications so stated.

13.4.5 The Engineer's recommendation of any payment shall not mean that the Engineer is responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws and regulations applicable to the furnishing or performance of Work, or for any failure of the Contractor to perform or furnish Work in accordance with the Contract Documents.

13.4.6 No certificate given or payment made shall be evidence of the performance of this Contract, either wholly or in part and no payment, whether made upon the final certificate or otherwise, shall be construed as an acceptance of defective work or materials.

13.5 Decisions to Withhold Certification

13.5.1 The Engineer may refuse to recommend the whole or any part of any payment if, in the Engineer's opinion, it would be incorrect to make the representations to the City referred to above.

13.5.2 If the Contractor and the Engineer cannot agree on a revised amount, the Engineer will promptly approve a certificate for payment for the amount for which the Engineer is able to make such representations to the City. The Engineer 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, to such extent as may be necessary in the Engineer's opinion to protect the City from loss because of:

13.5.2.1 Defective Work not remedied;

13.5.2.2 Third party claims filed or reasonable evidence indicating probable filing of such claims;

13.5.2.3 Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

13.5.2.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

13.5.2.5 Damage to the City or another contractor;

13.5.2.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that retainage currently held by the City would not be adequate to cover actual or liquidated damage for the anticipated delay;

13.5.2.7 Persistent failure to carry out the Work in accordance with the Contract Documents; or

13.5.2.8 Failure the Contractor to comply with mandatory 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 Engineer before approval of the Contractor's monthly payment requisition.

13.5.3 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

13.6 Progress Payments

13.6.1 After the Engineer has issued a certificate for payment, the City shall make payment in the manner and within the time provided in the Contract Documents.

13.6.2 (Reference: M.G.L. c. 30, §39G). The City shall pay the amount due pursuant to any periodic, Substantial Completion or final estimate within thirty-five (35) days after receipt of written acceptance for such estimate from the Contractor. In the case of periodic payments, the City may deduct from its payment a retention based on its estimate of the fair value of its claims against the Contractor, a retention for direct payments to Subcontractors based on demands for same in accordance with M.G.L. c. 30, §39F and a retention to secure satisfactory performance of the contractual work, not exceeding five percent (5%) of the approved amount of any periodic payment, and the same right to retention shall apply to bonded Subcontractors entitled to direct payment under M.G.L. c. 30, §39F provided, that a five percent (5%) value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.

13.6.3 No periodic, Substantial Completion or final estimate or acceptance or payment thereof shall bar the Contractor from reserving all rights to dispute the quantity and amount of, or the failure of the City to approve a quantity and amount of, all or part of any Work item or extra Work item.

13.7 Final Payment

13.7.1 After final inspection and after the Contractor has completed all the required corrections to the satisfaction of the Engineer and the City and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, bonds, certificates, or other evidence of insurance, certificates of inspection, marked-up record documents, and all other documents called for in the Contract Documents, as well as any surplus materials requested by the City, the Contractor may make an application for final payment as provided below.

13.7.2 (Reference: M.G.L. c. 30, §39G). Within thirty (30) days after receipt by the City of a notice from the Contractor stating that all of the Work required by the Contract has been completed, the City shall prepare and forthwith send to the Contractor for acceptance a final estimate for the quantity and price of the Work done and all retainage on the Work less all payments made to date, unless the City's inspection shows that Work required by the Contract remains incomplete or unsatisfactory, or that documentation required by the Contract has not been completed.

13.7.3 The making and acceptance of final payment will constitute a waiver of all claims by the Contractor against the City other than those previously made in writing and still unsettled.

13.8 Payments to Subcontractors

13.8.1 Neither the City nor the Engineer shall have an obligation to pay or see to the payment of money to a Subcontractor, Sub-subcontractor, or Supplier except as may otherwise be required by law.

13.8.2 (Reference: M.G.L. c. 30, §39F) (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 its Work in accordance with the Drawings and Specifications, the entire balance due under the subcontract, less amounts retained by the City as the estimated cost of completing the incomplete and unsatisfactory items of

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Work, shall be due the Subcontractor; and the City shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the City less any amount specified in any court proceeding barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.

(c) Each payment made by the City to the Contractor pursuant to paragraphs (a) and (b) of M.G.L. c. 30, §39F(1), 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 City shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the City 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 include in a payment to the Contractor for payment to the Subcontractor as provided in paragraphs (a) and (b) of M.G.L. c. 30, §39F(1), the City shall act upon the demand as provided in M.G.L. c. 30, §39F.

(d) If, within seventy (70) days after the Subcontractor has substantially completed the subcontract Work, the Subcontractor has not received from the Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the City as the estimated cost of completing the incomplete and unsatisfactory items of Work, the Subcontractor may demand direct payment of that balance from the City. The demand shall be by a sworn statement delivered to or sent by certified mail to the City, 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. [The demand letter shall indicate the certified mail number assigned by the postal service or the date of delivery to the Contractor.] Any demand made after substantial completion of the subcontract Work shall be valid even if delivered or mailed prior to the seventieth day after the Subcontractor has substantially completed the subcontract Work. Within ten (10) days after the Subcontractor has delivered or so mailed the demand to the City 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 City, 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 (15) days after receipt of the demand by the City, but in no event prior to the seventieth day after substantial completion of the subcontract Work, the City 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 City 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 City 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 the previous paragraph. The City 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 paragraph.

(f) The City shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of the previous paragraph in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the City 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.

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(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 the previous paragraph 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 City to the Contractor to the extent of such payment.

(h) The City shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to paragraph (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.

(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, §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 City or which are on deposit pursuant to paragraph (g) shall be subordinate to the rights of all Subcontractors who are entitled to be paid under this section and who have not been paid in full.

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

(4) 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 City as provided in part (iii) of paragraph (e) and in paragraph (f) any amount held under a trustee writ or pursuant to a restraining order or injunction.

ARTICLE 14 SUBSTANTIAL COMPLETION

14.1 Substantial Completion

14.1.1 Upon Substantial Completion of the Work, the Contractor shall present in writing to the City its certification that the Work has been substantially completed and include in its certification (1) a list of items

to be completed or corrected, (2) all special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Engineer and (3) the permits and certificates referred to in 13.7.1., or elsewhere. The failure to include any item on the list mentioned in the preceding sentence does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Engineer on the basis of an inspection determines that the Work or designated portion thereof is substantially complete and the other conditions have been met, the Engineer will then prepare a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the City and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

14.1.2 Within twenty-one (21) days after receipt of the certification from the Contractor, the City shall present to the Contractor either a written declaration that the Work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the Contract sufficient to demonstrate that the Work has not been substantially completed. The City may include with such list a notice setting forth a reasonable time within which the Contractor must achieve Substantial Completion of the Work. If the City fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the Contractor's certification within the twenty-one (21) day period, the Contractor's certification shall take effect as the City's declaration that the Work has been substantially completed.

14.2 Partial Use or Occupancy of the Premises

14.2.1 The City may occupy or use any completed or partially completed portion of the Work at any stage. Such partial occupancy or use may begin whether or not the portion is substantially complete, provided that the respective responsibilities of the City and the Contractor with respect to payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, insurance, correction of the Work, and warranties shall be established by agreement of the City and the Contractor or, absent such agreement, shall be determined by the Engineer subject to the right of either party to contest such determination as provided in Article 16.

14.2.2 Immediately prior to such partial occupancy or use, the City, the Contractor and the Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

14.2.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

14.2.4 (Reference: M.G.L. c. 30, §39G). Within sixty-five (65) days after the effective date of a declaration of Substantial Completion, the City shall prepare and send to the Contractor for acceptance a Substantial Completion estimate for the quantity and price of the Work done and all but one percent (1%) retainage on that Work, including the quantity, price and all but one percent (1%) retainage for the undisputed part of each item and extra work item in dispute, but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory items and less the total periodic payments made to date for the Work. The City shall also deduct from the Substantial Completion estimate an amount equal to the sum of all demands for direct payment filed by Subcontractors and not yet paid to Subcontractors or deposited in joint accounts pursuant to M.G.L. c. 30, §39F.

14.2.5 (Reference: M.G.L. c. 30, §39G). If the City fails to prepare and send to the Contractor any Substantial Completion estimate required by the provisions herein on or before the date specified, the City shall pay to the Contractor interest on the amount which would have been due to the Contractor pursuant to such Substantial Completion estimate at the rate of three (3) percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the City sends that

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Substantial Completion estimate to the Contractor for acceptance or to the date of payment therefor, whichever occurs first. The City shall include the amount of such interest in the Substantial Completion estimate.

14.2.6 (Reference: M.G.L. c. 30, §39G). Within fifteen (15) days after the effective date of the declaration of Substantial Completion, the City shall send to the Contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory items, and unless delayed by causes beyond its control, the Contractor shall complete all such items within forty-five (45) days after the receipt of such list or before the date for final payment and acceptance, whichever is later. If the Contractor fails to complete such Work within such time, the City may, subsequent to seven (7) days' written notice to the Contractor by certified mail, return receipt requested, terminate the Contract and complete the incomplete or unsatisfactory items and charge the cost of same to the Contractor.

14.3 Final Inspection

14.3.1 Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the Engineer will make a final inspection with the City and the Contractor and will notify the Contractor in writing of all particulars which this inspection reveals that the Work is incomplete or defective. The Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

ARTICLE 15 GUARANTEES AND WARRANTIES

15.1 In General

15.1.1 All guarantees and warranties specifically called for by the Specifications shall expressly run to the benefit of the City.

15.2 Warranties

15.2.1 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.

15.2.2 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. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of material and equipment.

15.2.3 The Contractor warrants that title to all Work covered by an application for payment will pass to the City either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all 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 the lien rights shall not waive the Contractor's right to payment for such Work.

15.2.4 The Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any application for payment, whether incorporated in the Project or not, will pass to the City no later than the time of payment free and clear of all liens.

15.2.5 No materials or supplies for the Work shall be purchased by the Contractor or Subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to all materials and supplies used by it in the Work, free from all liens, claims and encumbrances.

15.2.6 The Contractor shall indemnify and hold the City harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workers, mechanics, material, persons, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall at the City's request, furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged, or waived. If the Contractor fails to do so, then the City may, after having served written notice on the Contractor either pay unpaid bills, of which the City has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations on the City to either the Contractor or its surety. In paying any unpaid bills of the Contractor, the City shall be deemed the agent of the Contractor and any payment so made by the City shall be considered as payment made under the Contract by the City to the Contractor and the City shall not be liable to the Contractor for any such payment made in good faith.

15.3 Extended Warranties and Guarantees

15.3.1 Any defective Work that is either corrected or replaced will be warranted and guaranteed for a period of one (1) year from the date of such correction or replacement.

ARTICLE 16 CLAIMS

16.1 In General

16.1.1 Written Notice. A Claim must be made by written notice to the other party.

16.1.2 Content of Notice. The notice must include all written supporting data.

16.1.3 Burden of Proof. The party making the Claim must substantiate the Claim.

16.2 Time Limits on Claims

16.2.1 Unless otherwise provided, all Claims must be made within twenty-one (21) days after the occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Any change or addition to a previously made Claim shall be made by a written notice within the twenty-one-day period in order to be valid.

16.3 Continuing Contract Performance

16.3.1 Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract Documents.

16.4 Types of Claims

16.4.1 Claims for Differing Subsurface or Latent Physical Conditions. (Reference: M.G.L. c. 30, §39N). If, during the progress of the Work, the Contractor or the City discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those shown on the Drawings or indicated in the Contract Documents, either the Contractor or the City may request an equitable adjustment in the Contract Sum 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 City shall make an investigation of such physical conditions, and if they differ substantially or materially from those shown on the Drawings 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 Drawings 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 City shall make an equitable adjustment in the Contract Sum and the Contract shall be modified in writing accordingly.

16.4.2 Claims for Additional Cost. If the Contractor claims that any acts or omissions of the City or the Engineer, including any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and the Contractor has not received a written acknowledgment by the City or the Engineer that extra payment will be made or time extended on account thereof, the Contractor shall promptly so notify the Engineer in writing of such Claim and shall proceed with the Work relating to such Claim and all rights of both parties with respect to such Claim shall be deemed to have been reserved. No Claim by the Contractor on account of such acts, omissions, instructions, or orders shall be valid unless the Contractor has so notified the Engineer before proceeding.

16.4.2.1 Under no circumstances shall a Claim be made for additional cost where adverse weather conditions are the basis for the Claim.

16.4.3 Claims for Additional Time. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time and shall furnish the Engineer with such documentation relating thereto as the Engineer may reasonably require. Under no circumstances shall the Contractor make a Claim for an increase in the Contract Time due to a change in the Contractor's early completion date. If the increase in the Contract Time extends beyond the Contract Time established by the City, only the time that so extends beyond the Contract Time shall be reviewed and considered. In the case of a continuing delay, only one Claim is necessary.

16.4.3.1 Under no circumstances shall a Claim be made for additional time where adverse weather conditions are the basis for the Claim.

16.4.4 Claims for Injury to Person or Damage to Property. Should either party to the Contract suffer injury to person or damage to property because of any error, omission, or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, a Claim will be made in writing to the other party within twenty-one (21) days of the occurrence of the act giving rise to the injury or damage.

16.5 Review of Claims

16.5.1 Initial Referral. All Claims, the bases of which arise prior to final payment or the earlier termination of the Contract, shall be referred initially to the Engineer for action as provided herein.

16.5.2 Time Period and Action. The Engineer shall review Claims and shall do one of the following within fourteen (14) days of receipt of the Claim:

16.5.2.1 Defer any action with respect to all or any part of a Claim for the purpose of requesting and receiving additional information from either party;

16.5.2.2 Decline in writing to render a decision for any reason which it deems appropriate (including, but not limited to, the fact that the Claim involves allegations of fault on the part of the Engineer); or

16.5.2.3 Render a decision on all or a part of the Claim.

16.5.3 If the Engineer requests additional information, the Engineer shall take action with respect to the Claim no later than fourteen (14) days after receipt of the additional information. The Engineer shall notify the parties in writing of its disposition of such Claim. If the Engineer renders a decision or declines to render a decision, either party may proceed in accordance with paragraph 16.7.

16.6 Decisions

16.6.1 Decisions by the City or the Engineer. (Reference: M.G.L. c. 30, §39P). In every case in which this Contract requires the City, any official, or its 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 fourteen (14) days after the written submission for decision; but if such decision requires extended investigation and study, the City, the official, or the Engineer shall, within fourteen (14) 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.

16.6.2 When Decision of the Engineer is Final and Binding. The decision of the Engineer shall be final and binding on the parties, unless a party files suit or a demand for arbitration within thirty (30) days after the date of the decision.

16.6.3 When Decision of the Engineer is Not Final and Binding. (Reference: M.G.L. c. 30, §39J). Notwithstanding any contrary provision of this Contract, no decision by the City or by the Engineer 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, arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

16.6.4 Resolved Claims. If a Claim is resolved, the Engineer shall obtain or prepare the appropriate documentation and provide the City and the Contractor with a copy of same.

16.7 Arbitration

16.7.1 Controversies and Claims Subject to Arbitration. Any controversy of Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any court having jurisdiction thereof, except controversies of Claims relating to aesthetic effect, subject to the provisions of paragraph 16.7.7. In any such arbitration in which the amount stated in the demand is \$100,000 or less, the American Arbitration

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Association shall appoint a single arbitrator in accordance with such Rules, who shall be a lawyer. In any such arbitration in which the amount stated in the demand is in excess of \$100,000, the demand shall include the name of an arbitrator appointed by the claimant. The respondent shall appoint a second arbitrator and shall notify the claimant in writing of such appointment within thirty (30) days of receipt of the demand, failing which the matter shall be decided by the arbitrator named in the claimant's demand. Within thirty (30) days after the claimant's receipt of notice of the appointment of the second arbitrator, the two arbitrators shall appoint a neutral arbitrator and shall notify the parties in writing of such appointment, failing which either party may apply to the American Arbitration Association to appoint such neutral arbitrator. If such neutral arbitrator is appointed by the American Arbitration Association, he or she shall be a lawyer.

16.7.2 Rules for Arbitration. If the neutral arbitrator is appointed by the American Arbitration Association, the said Association shall administer the arbitration and its Construction Industry Arbitration Rules shall govern all aspects of the proceeding including the enforcement of any award. If the neutral arbitrator is not appointed by the American Arbitration Association, then the panel of arbitrators shall act as the administrator of the arbitration but the Construction Industry Arbitration Rules of the Association shall nonetheless govern all aspects of the proceeding, including the enforcement of any award, provided however that the arbitration panel shall have all of the powers and duties conferred on the Association pursuant to said rules. In addition, the following rules shall govern the selection of arbitrators and the proceedings:

16.7.2.1 Neither party may appoint as arbitrator an employee or an owner of that party, nor the parent, spouse, or child of an employee or owner of that party.

16.7.2.2 After the neutral arbitrator has been appointed, neither party may engage in ex parte communication with any arbitrator.

16.7.3 When Arbitration May Be Demanded. Demand for arbitration of any Claim, the basis of which arises prior to final payment or the earlier termination of the Contract may not be made before the earlier of (1) the date on which the Engineer has rendered a written decision on the Claim or has notified the parties in writing that such decision will not be rendered or (2) forty-five (45) days following receipt by the Engineer of a written request for a decision sent by registered or certified mail to both the Engineer and the other party to this Contract.

16.7.3.1 In no event shall a demand for arbitration be made after the date when the institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

16.7.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, the Engineer, the Engineer's employees or consultants, except by written consent containing specific reference to the Contract and signed by the Engineer, the City, the Contractor, and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the City, the Contractor, a separate contractor, and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the City, the Contractor, or a separate contractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a dispute not described therein or with a person or entity so named or described herein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Contract shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

16.7.5 Claims and Timely Assertion of Claims. A party who files a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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When a party fails to include a Claim through oversight, inadvertence, or excusable neglect, or when a Claim has matured or been acquired subsequently, the arbitrator or arbitrators may permit amendment.

16.7.6 Award Final. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

16.7.7 The City's Reservation of Rights. Notwithstanding any provision contained in this Article 16 or elsewhere in the Contract Documents, the City reserves the following rights in connection with Claims between the City and the Contractor, which rights may be exercised by the City unilaterally, in the City's sole discretion, and without the consent of the Contractor:

16.7.7.1 The right to institute legal action against the Contractor in any court of competent jurisdiction in lieu of demanding arbitration, in which case the dispute or disputes which are the subject of such action shall be decided by such court, and not by arbitration;

16.7.7.2 The right to obtain from any court of competent jurisdiction a stay of any arbitration instituted by the Contractor, provided that the application for such stay is made before the appointment of the neutral arbitrator in such arbitration, in which case the dispute or disputes which are the subject of such arbitration shall be decided by such court and not by arbitration;

16.7.7.3 The right to require the Contractor to join as a party in any arbitration between the City and the Engineer relating to the Project, in which case the Contractor agrees to be bound by the decision of the arbitrator or arbitrators in such arbitration.

16.7.8 In case the City elects to proceed in accordance with 16.7.7.1. or 16.7.7.2. above, the word "litigation" shall be deemed to replace the word "arbitration" wherever the latter word appears in the Contract Documents.

ARTICLE 17 EMERGENCIES

17.1 In an emergency affecting the health and safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss.

17.2 In emergencies affecting the health, safety, or protection of persons, the Work or property at the Site or adjacent thereto, the Contractor, without special instruction or authorization from the City or the Engineer, is obligated to act to prevent threatened damage, injury, or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

ARTICLE 18 TERMINATION OR SUSPENSION OF THE CONTRACT

18.1 Suspension by the City

18.1.1 At any time and without cause, the City may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to the Contractor and the Engineer which will fix the date on which Work will be resumed. The Contractor shall resume Work on the date so fixed. The Contractor shall be allowed an adjustment in the Contract Sum or an extension of the Contract Time, or both, directly attributable to any such suspension if the Contractor makes an approved Claim therefor.

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18.1.2 If the Work is defective, if the Contractor fails to provide a sufficient number of skilled workers or suitable materials or equipment, or 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 City to begin and prosecute correction of such default or neglect with diligence and promptness, the City may correct such deficiencies, without prejudice to other remedies the City may have. In such case, an appropriate Work Change Directive shall be issued deducting from payments then or thereafter due to the Contractor the cost of correcting such deficiencies including compensation for the Engineer's additional services and expenses made necessary by such default, neglect, or failure and any and all direct, indirect, or consequential costs associated with the order to stop the Work. If such payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall immediately pay the difference to the City. The Contractor shall remain responsible for maintaining progress and shall not be entitled to any increase in the Contract Time or the Contract Sum.

18.2 Termination by the Contractor

18.2.1 If, through no act or fault of the Contractor, a Subcontractor, or a Sub-subcontractor, the Work is suspended for a period of more than ninety (90) days by the City, or under an order of court or other public authority, or the Engineer fails to act on any application for payment within thirty (30) days after it is submitted in proper form and content or the City fails for thirty (30) days to pay the Contractor any sum finally determined to be due, then the Contractor may terminate the Contract upon seven (7) days' written notice to the City, provided that the City does not remedy such suspension or failure within that time.

18.3 Termination by the City

18.3.1 If the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of the Contractor's creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if the Contractor fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction or disregards an instruction, order, or decision of the Engineer, or otherwise is guilty of substantial violation of any provision of the Contract, then the Contractor shall be in default, and the City 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 6.6.1.1 and finish the Work by whatever method the City may deem expedient. The City shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by the City on account of the Contractor's default, including without limitation additional services and expenses of the Engineer made necessary thereby. The City shall be entitled to hold all amounts due to the Contractor at the date of termination until all of the City's damages have been established, and to apply such amounts to such damages.

18.3.2 (Reference: Cambridge Municipal Code Chapter 2.117, Section 2.117.110C). In the event the Contractor or any of its agents or employees violates any provision of Cambridge Municipal Code Chapter 2.117 which is applicable to City contractors in connection with the awarding, administration, or performance of the Contract, the City may terminate the Contract.

ARTICLE 19 AMERICANS WITH DISABILITIES ACT (42 U.S. 12131)

19.1 On July 26, 1994, the Americans with Disabilities Act ("the Act") became effective for employers of fifteen or more employees.

19.2 The Act protects against discrimination of the basis of "disability," which is defined as a physical or mental impairment that substantially limits at least one "major life activity;" or discrimination against an individual who has a record of such impairment; or discrimination against an individual being regarded - even if inaccurately - as having such impairment. The Act also expressly prohibits job discrimination that is based on any individual's relationship or association with a disabled person.

19.3 If the Contractor is subject to the Act, it must comply with its provisions.

ARTICLE 20 WRITTEN NOTICE TO THE PARTIES

20.1 In General

20.1.1 All written communications from the Engineer to the Contractor shall be copied to the City. All written communications from the Contractor to the Engineer shall be copied to the City. All written communications from the Contractor to the City shall be copied to the Engineer.

20.2 Addresses

20.2.1 To the City. Written notice to the City shall be sent or hand-delivered to:

City Manager
City of Cambridge
Massachusetts Avenue
Cambridge, MA 02139

20.2.2 To the Contractor. Both the address given on the bid form upon which the Agreement is founded and the Contractor's office at or near the Site of the Work are hereby designated as places to either of which notices, letters, and other communications to the Contractor shall be certified, mailed, or delivered. Delivery of any notice, letter, or other communication to the Contractor at or depositing same in a postpaid wrapper directed to either place shall be deemed sufficient service thereof upon the Contractor. Written notice shall be deemed to have been duly served on the Contractor if it is sent or hand-delivered to any member or officer of the Contractor. The date of said service shall be the date of such delivery or mailing. The address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the City and to the Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or other communication upon the Contractor personally. Moreover, any notice, letter, or other communication required under the Contract may be served on the Contractor's representative at job meetings. The Contractor shall provide the City with its change of address seven (7) days prior to its effective date.

20.2.3 To the Engineer. Written notice to the Engineer shall be sent or hand-delivered to the address appearing on the Project Manual. Written notice shall be deemed to have been duly served on the Engineer if it is sent or hand-delivered to any member or officer of the Engineer.

ARTICLE 21 MISCELLANEOUS PROVISIONS

21.1 Governing Law

21.1.1 This Contract shall be governed by the laws of the Commonwealth of Massachusetts.

21.2 Venue

21.2.1 Venue for any court action or proceeding shall be Middlesex County in the Commonwealth of Massachusetts only. The Contractor, all Subcontractors, and Suppliers waive any and all jurisdictional and venue defenses.

21.3 Successors and Assigns

21.3.1 The Contractor shall not assign, in whole or in part, its rights and obligations under the Contract Documents without prior written consent of the City. An assignment without the prior written consent of the City shall not relieve the Contractor of its obligations thereunder.

21.3.2 The City and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents.

21.4 Statutory Limitation Period

21.4.1 It is expressly agreed that the obligations of the Contractor hereunder arise out of contractual duties, and that the failure of the Contractor to comply with the requirements of the Contract Documents shall constitute a breach of contract, not a tort, for the purpose of applicable statutes of limitations and repose. Any cause of action which the City may have on account of such failure shall be deemed to accrue only when the City has obtained actual knowledge of such failure, not before.

21.5 Rights and Remedies

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

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

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