

MODULAR SEASONAL HOUSING
NANTUCKET, MASSACHUSETTS

DOCUMENT 00700
GENERAL CONDITIONS

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GENERAL CONDITIONS

1. DEFINITIONS

1.1 **CONTRACT AND CONTRACT DOCUMENTS:** The project to be constructed pursuant to this Contract is subject to all applicable Federal, State and Town of Nantucket Laws and Regulations. The Contract comprises the following documents, including all additions, deletions and modifications incorporated therein before the execution of the Contract.

a. Legal and Procedural Documents

1. Request for Proposals
3. Price and Technical Proposals
4. Certifications of Proposers
5. Contract Agreement
6. Performance Bond
7. Payment Bond

b. General Conditions

c. Special Conditions

d. General Requirements

e. Technical Specifications and Drawings as enumerated in the Project Manual and otherwise

1.2 **ARCHITECT:** Winslow Architects, Inc., 89 Massachusetts Avenue, Arlington, MA 02474

1.3 **STATE:** The Commonwealth of Massachusetts.

1.4 **OWNER, TOWN, AWARDED AUTHORITY OR MUNICIPALITY:** The Town of Nantucket, acting through the _____, or any board, officer or agent duly authorized.

1.5 **CONTRACTOR:** The General Contractor, and is the Contractor named in the Contract Documents.

1.6 **SUBCONTRACTOR:** Any person, firm or corporation with a direct contract with the Contractor who acts for or in behalf of the Contractor in executing any part of the Contract, but does not include one who merely furnishes material.

1.7 **WORK ON (AT) THE PROJECT:** Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor.

1.8 **DIRECTED, REQUIRED, APPROVED, ACCEPTABLE:** Whenever the Contract Documents refer to the work or its performance, "Directed," "Required," "Permitted," "Ordered," "Designated," "Prescribed," and words of like import shall imply the direction, requirement, permission, order, designation or prescription of the Architect, and "Approved," "Acceptable," "Satisfactory," "In the judgment of" and words of like import shall mean approval by or acceptable to, or satisfactory to or in the judgment of the Architect.

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1.9 PROPOSAL: The technical and price proposals of the successful proposer to perform the work described by the Contract Documents when made out and submitted on the prescribed form properly signed and guaranteed.

1.10 PROPOSAL GUARANTEE: The bid deposit accompanying the proposal submitted by the bidder, as a guaranty that the bidder will enter into a Contract with the Owner for the construction of the work if the Contract is awarded to the bidder.

1.11 CONTRACT: The agreement covering the performance of the work described in the Contract Documents, including all supplemental agreements thereto and all general and special provisions pertaining to the work or materials therefore.

1.12 PERFORMANCE AND PAYMENT BONDS: The approved forms of security furnished by the Contractor and his Surety as a guarantee of good faith on the part of the Contractor to execute the work in accordance with the terms of the Contract, satisfactory to Owner and in the forms prescribed.

1.13 SURETY: The person, firm or corporation who executes the Contractor's Performance and Payment Bonds.

1.14 SPECIFICATIONS: The Legal and Procedural Documents, General Conditions, Special Conditions and Technical Specifications with all addenda thereto.

1.15 DRAWINGS: Those listed herein in the Special Conditions.

1.16 PROVIDE: Furnish and install.

1.17 SHOP DRAWINGS: Fabrication and erection drawings and instructions.

1.18 ACT OF GOD: An earthquake, flood, cyclone or other cataclysmic phenomenon of nature. Rain, Wind, Flood or other natural phenomena of normal intensity for the locality shall not be construed as an Act of God and no reparation shall be made to the Contractor for damages to the work resulting there from.

1.19 EXTRA WORK: Work other than that required either expressed or implied by the Contract in its present form.

1.20 SITE: The area upon or in which the Contractor's operations are carried on and such other areas adjacent thereto as may be designated as such by the Owner.

1.21 CHANGE ORDER: A written order issued by the Owner to the Contractor directing certain changes, additions or reductions in the work or in the materials or methods to be used.

1.22 SUBSTANTIAL COMPLETION: The point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not be evidence of Substantial Completion.

2. NOTICE

Written notice shall be considered as served when delivered in person or sent by certified mail to the individual, firm or corporation or the last business address known to him who serves the Notice. It shall be the duty of each party to advise the other parties to the Contract as to any change in his business address upon completion of the Contract.

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3. INTENT

3.1 The intent of the Contract Documents is that the Contractor shall provide and pay for all materials, labor, tools, equipment, water light, power, transportation, superintendence, temporary construction of every nature and all other services and facilities of every nature whatsoever necessary to execute, complete and deliver the work within the specified time.

3.2 Any work performed after regular working hours, on Saturdays, Sundays or legal holidays, shall be performed without additional expense to the Owner.

4. CODES, REGULATIONS AND ISSUE DATE OF STANDARD SPECIFICATIONS

Where standard specifications, codes, regulations and similar publications of governmental agencies, technical societies, manufacturer's associations and regulatory groups or bureaus are referred to in these specifications, the applicable portion thereof shall be of the same effect as if fully printed herein, and the work done in full accordance therewith. The edition current as of the date of issue of this specification shall be used except where publication date is specifically stated. No provision of any such standard, specification, manual, code, regulation and similar publications of governmental agencies, technical societies, manufacturer's associations and regulatory groups or bureaus shall be effective to change the duties or responsibilities of Owner, Contractor or Architect, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the Owner or Architect any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

5. DRAWINGS AND SPECIFICATIONS

5.1 Except as provided for otherwise, all required copies of Drawings and Specifications necessary for the execution of the work shall be furnished to the Contractor without charge. One complete set of Drawings and Specifications shall be maintained at the job site and shall be available to the Architect and the owner at all times.

5.2 All Drawings and Specifications and other data prepared by the Architect shall remain the property of the Town and they shall not be reused on other work.

5.3 Figured dimensions on the Plans will be used in preference to scaling the Drawings. Where the work of the Contractor is affected by finish dimensions, these shall be determined by the Contractor at the site, and he shall assume the responsibility thereof.

5.4 Any discrepancies found between the Drawings and Specifications and site conditions or any errors or omissions in the Drawings or Specifications shall be immediately reported to the Architect, who shall promptly correct such error or omission in writing. Any work done by the Contractor after his discovery of such discrepancies, errors or omissions without notifying the Architect shall be done at the Contractor's risk.

5.5 Further instruction may be issued by the Architect or the Owner during the progress of the work by means of Drawings or oral or written instructions to make more clear or specific the Drawings and Specifications or as may be necessary to explain or illustrate changes in the work to be done. The Contractor shall carry out the work in accordance with the additional Drawings and Instructions.

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6. CONFLICTING CONDITIONS

6.1 Anything shown on the Plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, shall have the same effect as if shown or mentioned respectively on both. In case of any conflict or inconsistency between the Plans and Specifications, the Specifications will govern. On the Plans, the dimensions shown shall govern in case of any discrepancy between a scaled distance and the figures shown. Neither party shall take advantage of any obvious error or omission in the Contract Documents. Any apparent discrepancies shall be submitted to the Architect for determination. The decision of the Architect thereupon shall be conclusive.

6.2 The fact that specific mention of a fixture, or of any part of the work is omitted in the Specifications, whether intentionally or otherwise, when the same is clearly shown or indicated on the Plans, or is usually and customarily required to complete fully such work as is specified herein, will not entitle the Contractor to consider action in the manner of any claim for extra compensation, but the said fixtures or work, or both, must be installed or done the same as if called for by both the Plans and Specifications.

7. SAMPLES

All samples called for in the specifications or required by the Architect shall be furnished by the Contractor at his expense and shall be submitted to the Architect for his approval. Samples shall be furnished so as not to delay fabrication, allowing the Architect reasonable time for the consideration of the samples submitted. Contractor shall furnish such samples of materials, and workmanship shall be in accordance with approved samples.

8. QUALITY OF EQUIPMENT AND MATERIALS

8.1 Everything furnished and provided shall be new, and all materials and equipment shall be of the quality specified. All unspecified materials and equipment shall be approved equal in grade and quality to specified materials. The Contractor shall furnish satisfactory evidence as to the kind and quality of all materials and shall abide by the Architect's judgment of the acceptability of unspecified materials.

8.2 In order to establish standards of quality, the Architect has, in the detailed specifications, referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design.

8.3 The Contractor shall furnish one complete list of proposed desired substitutions prior to signing of the Contract, provide catalog data and sketches, as the Architect may require.

8.4 The Contractor shall abide by the Architect's judgment when proposed substitute materials or items of equipment are judged to be unacceptable and shall furnish the specified materials or item of equipment in such cases. All proposals for substitutions shall be submitted in writing by the General Contractor and not by individual trades or material suppliers. The Architect will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute materials shall be used unless approved in writing.

9. SHOP DRAWINGS

9.1 The Contractor shall submit shop drawings and work drawings for all items fabricated or manufactured to be incorporated into the work, including but not limited to concrete reinforcement, structural details, piping layouts including hangers and supports, manholes and appurtenances, wiring, grates, traffic signal control equipment, materials fabricated especially for the Contract, all mechanical

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equipment without exception, and materials and equipment for which such drawings are specifically requested. The Contractor shall submit six (6) copies of the Shop Drawings. Where manufacturer's cuts, printed descriptive folders, and the like are submitted they shall be forwarded in a sufficient number of copies to permit the retention of four by the Architect.

9.2 Such Drawings shall show the principal dimensions, weight, structural and operating features, space required, clearances type and/or brand of finish or shop coat, grease fittings, etc., depending on the subject of the Drawings. When it is customary to do so, when the dimensions are of particular importance, or when so specified, the Drawings shall be certified by the manufacturer or fabricator as correct for the Contract.

9.3 When so specified or if considered by the Architect to be acceptable, manufacturer's specifications, catalog data, descriptive manner, illustrations, etc., may be submitted for approval in place of shop and working drawings. In such case the requirements shall be as specified for shop and working drawings, insofar as applicable.

9.4 The Contractor shall be responsible for the prompt and timely submittal of all shop and working drawings so that there shall be no delay to the work due to the absence of such drawings.

9.5 No material or equipment shall be purchased or fabricated especially for the Contract until the required shop and working drawings have been submitted as hereinabove provided and approved as conforming to the Contract requirements. All such materials and equipment and the work involved in their installation or incorporation into the work shall then be as shown on and represented by said drawings.

9.6 Until the necessary approval has been given, the Contractor shall not proceed with any portion of the work (such as the construction of foundations), the design of details of which are dependent upon the design or details of work, materials, equipment or other features for which approval is required.

9.7 All shop and working drawings shall be submitted to the Architect by and/or through the Contractor, who shall be responsible for obtaining shop and working drawings from his subcontractors and returning approved drawings to them. All drawings shall be clearly marked with the names of the Owner, Contractor and building, equipment or structure to which the drawing applies, and shall be suitably numbered. Each shipment of drawings shall be accompanied by a letter of transmittal giving a list of the drawing numbers and the names mentioned above.

9.8 Only drawings which have been checked and corrected by the fabricator should be submitted to the Contractor by his subcontractors and vendors. Prior to submitting drawings to the Architect, the Contractor shall check thoroughly all such drawings to satisfy himself that the subject matter thereof conforms to the Drawings and Specifications in all respects. **ALL DRAWINGS WHICH ARE CORRECT SHALL BE MARKED WITH THE DATE, CHECKER'S NAME, AND INDICATION OF THE CONTRACTOR'S APPROVAL, AND THEN SHALL BE SUBMITTED TO THE ARCHITECT; OTHER DRAWINGS SHALL BE RETURNED FOR CORRECTION.**

9.9 The approval of shop and working drawings, etc., will be general only and shall not relieve or in any respect diminish the responsibility of the Contractor for details of design, dimensions, etc., necessary for proper fitting and construction of the work as required by the Contract and for achieving the result and performance specified thereunder.

9.10 Should the Contractor submit for approval equipment that required modifications to the structures, conduit, geometrics, etc., detailed on the Drawings, he shall also submit for approval details

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of the proposed modifications. Any modifications to structures or substitute designs submitted for approval must carry the stamp of a Professional Architect registered in the Commonwealth of Massachusetts. If such equipment and modifications are approved, the Contractor at no additional cost to the Owner, shall do all work necessary to make such modifications.

10. EQUIPMENT AND MATERIAL APPROVED

10.1 As soon as practicable and within thirty (30) days after date of award of Contract and before any materials, fixtures or equipment are purchased, the Contractor shall furnish three copies of complete catalog data for every manufactured item of equipment and all components to be used in the work, including specific performance data, material description, rating and capacity. This submittal shall be compiled by the Contractor and approved by the Architect before any of the equipment is ordered. Each data sheet or catalog in the submittal shall be indexed according to Specification Item Number for easy reference.

10.2 If prior to the expiration of the above specified period or of any authorized extension thereof, the Contractor fails to submit a list of materials, fixtures and equipment as specified above, the Architect will select a complete line of materials, fixtures and equipment and the selection made by the Architect shall be final and binding and all items shall be furnished and installed by the Contractor without change in contract price or time of completion.

10.3 Where conformance to any standard is specified, the catalog data for that item shall state that the item conforms to that standard; or after the Architect's approval of the item subject to conformance to the standard, the Contractor shall furnish a notarized affidavit on the manufacturer's letterhead signed by an officer certifying compliance to the standard. The Contractor shall stamp all such affidavits by which it is understood that the item certified is the item provided.

10.4 After written approval, this submission shall become a part of the Contract, and may not be deviated from except upon written approval of the Architect.

11. REJECTED WORK AND MATERIALS

11.1 All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Architect, or are in any way unsatisfactory or unsuitable for the purpose for which they are intended, shall be rejected. Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed within ten (10) days after written notice is given by the Architect, and the work shall be re-executed by the Contractor. The fact that such defective work may not have been reported on previous inspections shall not constitute an acceptance of any part of it.

11.2 Should the Contractor fail to remove rejected work or materials within ten (10) days after written notice to do so, the Owner may remove them and may store the materials.

11.3 The removal of rejected materials and the re-execution of acceptable work by the Contractor shall be at the expense of the Contractor, and he shall pay the cost of replacing the work of other contractors destroyed or damaged by the removal of the rejected work or materials and the subsequent replacement with acceptable work.

11.4 Removal of rejected work or materials and storage of materials by the Owner shall be paid for by the Contractor within thirty (30) days after the written notice to pay is given by the Owner. If the Contractor does not pay the expenses of such removal and after ten (10) days written notice being given by the Owner of his intent to sell the materials, the Owner may sell the materials at auction or at private

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sale and shall pay the Contractor the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the Contractor.

12. SEPARATE CONTRACTS

The Owner may let other contracts in connection with the work of the Contractor. The Contractor shall cooperate with other contractors with regard to storage of materials and execution of their work. It shall be the Contractor's responsibility to inspect all work by other contractors affecting his work and to report to the Owner any irregularities, which will not permit him to complete his work in a satisfactory manner. His failure to notify the Owner of such irregularities shall indicate the work of other contractors has been satisfactorily completed to receive his work. The Contractor shall not be responsible for defects of which he could not have known which developed in the work of others after the work is completed. It shall be the responsibility of the Contractor to measure the completed work in place and report to the Owner immediately any difference between completed work by others and the Drawings.

13. RIGHTS OF VARIOUS INTERESTS

Wherever work being done by the Owner's forces or by other contractors is contiguous to work covered by the Contract, the respective rights of various interests involved shall be established by the Owner, to secure the completion of the various portions of the work in general harmony.

14. NOTICE TO PROCEED

Following the execution of the Contract by the Owner, written notice to proceed with the work shall be given to the Contractor. Computation of Contract Time shall commence on a date to be specified in the Notice to Proceed and every calendar day following, except as herein provided, shall be counted in the time for completion.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of beginning and the time for completion as specified in the information for Bidders of the work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in the Contract shall be commenced on a date to be specified in the Notice to Proceed.

15.2 The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

15.3 If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extensions thereof granted by the Owner, that the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Information for Bidders, not as a penalty but as liquidated damages for such breach of contract as herein set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the work.

15.4 The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount shall be retained from time to time by the Owner from current periodic estimates.

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15.5 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract; provided that the Contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- a. To any preference, priority or allocation order duly issued by the Government;
- b. To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and severe weather.

15.6 The Contractor shall within ten (10) days from the beginning of any such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

16 . THE CONTRACTOR'S DUTIES AND RIGHTS

16.1 The Contractor shall begin and shall prosecute the work regularly and uninterruptedly after Notice to Proceed has been given (unless otherwise directed in writing by the Owner) with such force as to secure the completion of the work, in an acceptable manner, within the time stated in the Proposal.

16.2 The Contractor shall submit at such times as may reasonably be requested by the Architect, schedules which shall show the order in which the Contractor proposes to carry on the work, with dates at which the Contractor will start the several parts of the work, and estimated dates of completion of the several parts.

16.3 The Contractor shall exercise due care when working around all property bounds. Should any damage to a bound result from the actions of the Contractor, it shall be replaced and/or realigned by the Contractor as directed by the Owner. No further compensation will be due to the Contractor for the materials and labor required to re-establish the bound in its proper orientation.

16.4 The Contractor shall give all notices and comply with all Federal, State and local laws, ordinances and regulations in any manner affecting the conduct of the work, and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work.

16.5 The Contractor shall not enter upon private property for any purpose without obtaining permission, and he shall be responsible for the preservation of all public property, trees, monuments, etc., along and adjacent to the street and/or right-of-way, and shall use every precaution necessary to prevent damage or injury thereto.

He shall use suitable precautions to prevent damage to pipes, conduits and other underground structures, and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

16.6 The Contractor shall provide adequate signs, barricades, watchmen and the like and shall take all necessary precautions for the protection of the work and the safety of the public.

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16.7 The Contractor shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements and regulations of the local and State Departments of Health and as directed by the Owner.

16.8 The Contractor shall maintain on the site a qualified superintendent who is acceptable to the Owner, and who shall give efficient supervision to the work until its completion. The superintendent shall have full authority to act in behalf of the Contractor, and all directions given to the Superintendent shall be considered given to the Contractor. In general, the Owner's instructions shall be confirmed in writing and always upon written request from the Contractor.

16.9 The Contractor shall be responsible for the conduct and discipline of his employees and/or any subcontractor or persons employed by subcontractors. All workmen must have sufficient knowledge, skill and experience to perform properly the work assigned to them. Any foreman or workman employed by the Contractor or subcontractor who, in the opinion of the Owner, does not perform his work in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of the Owner, be discharged immediately and shall not be employed again in any portion of the work without the approval of the Owner

16.10 The Contractor shall do all necessary cutting and patching of the work that may be required to properly receive the work of the various trades or as required by the Drawings and Specifications to complete the structure. He shall restore all such cut or patched work as directed by the Owner. Cutting of existing structure that shall endanger the work, adjacent property, workmen or the public shall not be done unless approved by the Owner and under their direction.

16.11 The Contractor shall keep the Owner's property free at all times from accumulations of waste materials or rubbish and shall remove from the Owner's property, and from all public and private property, all temporary structures, rubbish and waste materials resulting from his operation or caused by his employees, and shall remove all surplus materials resulting from his operation or caused by his employees, leaving the site smooth, clean and true to line and grade.

16.12 The Contractor shall at the termination of this Contract, before acceptance of the work by the Architect, remove all of his equipment, tools and supplies from the property of the Owner. Should the Contractor fail to remove such equipment, tools and supplies, the Owner shall have the right to remove them, and the Contractor shall pay all costs incurred by the Owner in removing them.

16.13 The Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract before the retained percentage or before the final Request for Payment is paid. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and a reasonable attorney's fee.

16.14 The Contractor shall warrant all material and equipment furnished and work performed by him for a period of one (1) year from the date of written acceptance of the work, and furnish all guarantees applicable to definite parts of the work as stipulated in the items of the Technical Specifications.

16.15 The Contractor shall have the right to suspend work or terminate the Contract upon ten (10) days written notice to the Owner, for any of the following reasons:

- a. If an order of any court, or other public authority caused the work to be stopped or suspended for a period of ninety (90) days through no act or fault of the Contractor or his employees.
- b. If the Architect should fail to act upon any Request for Payment within fifteen (15) days after it is presented in accordance with the General Conditions of the Contract.

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c. If the Owner should fail to act upon any Request for Payment within thirty (30) days after its approval by the Architect.

16.16 Upon suspension of the work or termination of the Contract by the Contractor, in accordance with the foregoing, the Contractor shall recover payment from the Owner for the work performed plus loss on plant and materials, plus established profit and damages, as approved by the Architect.

17. THE ARCHITECTS AUTHORITY

17.1 The Architect shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of Drawings and Specifications and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. All claims of the Owner or the Contractor shall be presented to the Architect for decision, which shall be made in writing within a reasonable time. All decisions of the Architect shall be final.

17.2 The Architect and the Owner shall have the authority to suspend the work, wholly or in part, for such period or periods, as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for prosecution of the work, or failure on the part of the Contractor to carry out the provisions of the Contract or to supply materials meeting the requirements of the Specifications.

17.3 In the event of temporary suspension of work or during inclement weather the Contractor will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Architect or the Owner, any work or materials shall have been damaged or injured from the weather, by reason of failure on the part of the Contractor or any of his subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor

17.4 The Architect as well as the Owner shall have the authority at all times to inspect all materials and each part or detail of the work and the Contractor will be held strictly to the true intent of the Specifications in regard to quality of materials, workmanship and the diligent execution of the Contract. Such inspection may include mill, plant or shop inspection, and any material furnished in these Specifications is subject to such inspections. The Architect as well as the Owner shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

17.5 The Architect as well as the Owner shall have the authority at any time before acceptance of the work to direct the Contractor to remove or uncover any portions of the finished work. After examination, the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, the cost of uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as Extra Work, but should the work so exposed or examined prove unacceptable, the uncovering, removing and replacing shall be at the Contractor's expense.

17.6 The Architect as well as the Owner shall have the authority to direct the Contractor not to correct work that has been damaged or that was not performed in accordance with the Contract Documents. An equitable deduction from the Contract Amount shall be made to compensate the Owner for the uncorrected work.

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17.7 The Architect shall have no authority over or responsibility for the means, methods, techniques, sequences or procedures selected by the construction contractor or for safety precautions and programs incident to the work of the Contractor.

18. THE OWNER'S DUTIES AND RIGHTS

18.1 The Owner will provide the lands shown on the Drawings upon which the work under the Contract is to be performed and to be used for rights-of-way for access.

18.2 The Owner shall have the right to suspend the work or any portion thereof at any time provided that he gives the Contractor five (5) days written notice of suspension which shall set forth the date on which work is to be resumed. The Contractor shall resume the work upon written notice from the Owner and within ten (10) days after the date set forth in the notice of suspension, the Contractor may abandon that portion of the work so suspended and shall be entitled to payment for all work done on the portions so abandoned, plus fifteen percent (15%) of the value of the abandoned work to compensate for overhead, plant expense and anticipated profit.

18.3 The Owner, shall have the authority to suspend the work, wholly or in part, for such period or periods, as may be deemed necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for prosecution of the work, or failure on the part of the Contractor to carry out the provisions of the Contract or to supply materials meeting the requirements of the Specifications. The Contractor shall not suspend operations due to unsuitable weather without the Owner's permission.

18.4 In the event of temporary suspension of work or during inclement weather or whenever the Owner, shall direct, the Contractor will and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the Owner, any work or materials shall have been damaged or injured from the weather, by reason of failure on the part of the Contractor or any of his subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the Contractor.

18.5 The Owner shall have the right to correct any deficiencies, without prejudice to any other remedy he may have, upon failure of the Contractor to perform the work in accordance with the Contract Documents, including any requirements with respect to the Schedule of Completion, after five (5) days written notice to the Contractor. The cost of the work so performed by the Owner shall be paid for by the Contractor.

18.6 The Owner, shall have the authority to direct the Contractor not to correct work that has been damaged, or that was not performed in accordance with the Contract Documents. An equitable deduction from the Contract Amount shall be made to compensate the Owner for the uncorrected work.

18.7 The Owner shall have the right to terminate the employment of the Contractor giving ten (10) days written notice of termination to the Contractor in the event of any default by the Contractor and upon certifying cause for such action in the event of such termination, the Owner may take possession of the work and of all materials, tools and equipment thereof and may finish the work by whatever method and means he may select. It shall be considered a default by the Contractor whenever he shall:

- a. Declare bankruptcy, become insolvent or assign his assets for the benefit of his creditors.
- b. Disregard or violate important provisions of the Contract Documents or Architect's instruction, or fail to prosecute the work according to the agreed Schedule of Completion, including extensions thereof.
- c. Fail to provide a qualified superintendent, competent workmen or subcontractors, or proper materials, or fail to make prompt payment therefore: if the right of the Contractor to proceed is so

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terminated, the Owner may take possession of and utilize in completing the work such materials, appliances, supplies, plant and equipment as may be on the site of the work, and necessary therefore. Upon termination of the Contract by the Owner, no further payments shall be due the Contractor until the work is completed. If the unpaid balance of the Contract Amount shall exceed the cost of completing the work including all overhead costs, the excess shall be paid to the Contractor. If the cost of completing the work shall exceed the unpaid balance, the Contractor and his sureties shall pay the difference to the Owner. The cost incurred by the Owner, as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Owner.

18.8 The Owner shall have the right to order changes in the work through additions, deletions or modifications without invalidating the Contract. Compensation and time of completion affected by the change shall be adjusted at the time of ordering such change.

18.9 The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portion may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted work or causes refinishing of completed work, the Contractor shall be entitled to such extra compensation, or extension of time or both, as the Owner may determine.

19. ASSIGNMENT

Neither the Contractor nor the Owner shall sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

20. ORAL AGREEMENTS

No oral order, objection, claim or notice by any party to the others shall affect or modify any of the terms or obligations contained in any of the terms or obligations contained in any of the Contract Documents, and none of the provisions of the Contract Documents shall be held to be waived or modified by reason of any act whatsoever other than by a definitely agreed waiver or modification thereof in writing, and no evidence shall be introduced in any proceeding of any other waiver or modification.

21. INSURANCE

The limits for the various types of insurance required under the Insurance Subsection of the General Conditions shall be as follows:

- a. For Workmen's Compensation, in accordance with M.G.L. c. 152;
- b. Employer's Liability \$1,000,000.
- c. U.S. Longshoremen's and Harbor Worker's Compensation \$1,000,000.
- d. Minimum Amounts of Public Liability, Bodily Injury Liability and Property Damage Liability Insurance are as follows:
 - Injury or death of one person \$1,000,000.
 - Injury to more than one person in a single accident \$1,000,000.
 - Property damage in one accident \$1,000,000.
 - Property damage in all accidents \$1,000,000.

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e. Minimum amounts of Automobile and Truck (Vehicular) Public Liability, Bodily Injury Liability, and Property Damage Liability are as follows:

Injury or death of one person	\$1,000,000.
Injury to more than one person in a single accident	\$1,000,000.
Property damage in one accident	\$1,000,000.
Property damage in all accidents	\$1,000,000.

f. Builder's Risk Insurance shall be procured and maintained during the life of this CONTRACT by the Contractor covering loss by fire and extended coverage in the completed value form in the amount of the total insurable value of all structures, materials, and equipment to be built and installed. The policy shall indicate the Owner, the Contractor, and all subcontractors as the named insured with loss payable to the Owner as Trustee. The policy shall provide for a thirty (30) day notice to the Owner of cancellation or restrictive amendment.

g. Workmen's Compensation and Employer's Liability Insurance: The Contractor shall take out and maintain during the life of this Contract, the statutory Workmen's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Workmen's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.

h. Bodily Injury Liability and Property Damage Liability Insurance: The Contractor shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance and Automobile Bodily Injury Liability and Automobile Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract for claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them.

i. Contractual Liability Insurance: The Contractor shall indemnify and save harmless the Owner and the Architect and their officers, agents, servants and employees from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, on account of bodily injury, sickness, disease or death sustained by any person or persons or injury or damage to or destruction of any property, directly or indirectly arising out of, relating to or in connection with the work, whether or not due or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of the Contractor, his offices, agents, servants or employees and/or any other person or persons, and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false or fraudulent; and the Contractor shall and does hereby assume and agree to pay for the defense of all such claims, demands, suits and proceedings, providing, however, that the Contractor shall not be required to indemnify the Architect, his officers, agents, servants or employees, against any such damages, occasioned solely by defects in maps, plans, drawings, designs or specifications prepared, acquired or used by the Architect and/or solely by the negligence or fault of the Architect; and provided further that the Contractor shall not be required to indemnify the Owner, his officers, agents, servants or employees, against any such damages occasioned solely by acts or omissions of the Owner other than supervisory acts or omissions of the Owner in connection with the work. The provisions of this paragraph shall survive the expiration or termination of this Contract.

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j. Special Coverage Insurance: Hazards resulting from storage and use of explosives and storage of highly flammable liquids shall be covered by riders to the insurance policies or by separate policies.

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.

All policies shall be so written that the Owner will be notified in writing of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

Renewal certificates must be furnished by the Contractor prior to the expiration date of any of the initial insurances.

A copy of the policy shall be furnished to the Owner and a Certificate of Insurance shall be furnished to the Architect.

The Builder's Risk Insurance shall be obtained before the work is started and shall be maintained until the date of completion of the work is stated in the final estimate, or until the Owner occupies or otherwise takes possession of the project, whichever occurs first.

Contractual Liability Insurance covering the liability assumed by the Contractor as outlined under Subsection 21.1 i. of the General Conditions to the amounts required under Section d. above.

The Contractor shall name the Town as additionally insured on all liability insurance policies required by Section 21 unless the Town waives this requirement by a written instrument signed by the Town Manager.

The Contractor shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been approved by the Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder. The amounts of such insurance shall be not less than those enumerated in the Limits of Insurance Section of the Special Conditions. Certificates from the Contractor's Insurance carriers stating the coverage's provided, the limits of liability and expiration dates shall be filed in triplicate with the Owner before operations are begun.

22. CONTRACT SECURITY

22.1 The Contractor shall furnish performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a labor and materials payment bond in an amount not less than one hundred percent (100%) of the Contract price as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract.

22.2 The sureties of all bonds shall be such surety company or companies as are approved by the Owner, and as are authorized to transact business in the Commonwealth of Massachusetts.

22.3 If at any time the Owner, for justifiable cause, shall be or become dissatisfied with any surety or sureties then upon the Performance of Payment Bonds, the Contractor shall within five (5) days after notice from the Owner 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 Owner. The premiums on such bond shall be paid by the Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such an acceptable bond to the Owner.

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23. EXTENSION OF CONTRACT TIME

When extra work is ordered at any time during the progress of work which, in the sole judgment of the Architect, unavoidably increases the time for the completion of the work, an extension of time shall be granted. A delay beyond the Contractor's control occasioned by an Act of God, an Act of Omission on the part of the Owner, or by strikes, lockouts, fires, etc., may entitle the Contractor to an extension of time in which to complete the work as determined by the Owner, provided, however that the Contractor shall immediately give written notice to the Owner of the cause of such delay, together with a statement of the portions of work so delayed. Delays in work for which necessary material has not been received by the Contractor will not be recognized or allowed until after receipt of such necessary material.

24. PROGRESS PAYMENTS

24.1 The contractor may submit periodically, but not more than once each month, a Request for Payment for work done. The Contractor shall furnish the Architect all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the work. Each Request of Payment shall be computed from the work completed on all items listed in the detailed breakdown of Contract Amount, less five percent (5%) to be retained until final completion and acceptance of the work, and less previous payments. If the Architect determines that the progress of the work will be benefited by the delivery to the site of certain materials and equipment, when available, in advance of actual requirement therefore and if such materials and equipment are delivered and properly stored and protected, the cost to the Contractor or Subcontractor as established by invoices or other suitable vouchers satisfactory to the Architect, less the retained percentages as above provided, may be included in the progress estimates; provided always that they be duly executed and delivered by these satisfactory to the Owner, transferring and assigning to the Owner full ownership and title to such materials or equipment.

24.2 Within fifteen (15) days of submission of any Request for Payment by the Contractor, the Architect shall:

- a. Approve the Request for Payment as submitted, or
- b. Approve such other amount as he shall decide is due the Contractor, informing the Contractor in writing of his reasons for approving the amended amount, or
- c. Withhold the Request for Payment, informing the Contractor in writing of his reasons for withholding it.

24.3 Within thirty (30) days from the date of approval of a Request for Payment by the Architect, the Owner shall:

- a. Pay the Request for Payment as approved, or
- b. May withhold payment in whole or in part on and approved Request for Payment to the extent necessary to protect himself from loss on account of any of the following causes discovered subsequent to approval of Request for Payment by the Architect, provided he informs the Contractor and the Architect in writing of his reasons for withholding payment in whole or in part:
 1. Defective work.
 2. Evidence indicating the probable filing of claims by other parties against the Contractor.
 3. Failure of the Contractor to make payments to Subcontractors, material suppliers or labor.
 4. Damage to another Contractor.

25. ACCEPTANCE AND FINAL PAYMENT

When the Contractor shall have completed the work in accordance with the terms of the Contract Documents, the Architect shall certify his acceptance to the Owner and his approval of the Contractor's final Request for Payment, less any money to be retained for repairs if so specified in the Special Conditions Section of these Contract Documents, which shall be the Contract Amount plus all approved additions less all approved deductions and less previous payments made. The Contractor shall furnish evidence that he has fully paid all debts for labor, materials, and equipment incurred in

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connection with the work, following which the Owner shall accept the work and release the Contractor except as to the conditions of the Performance Bond, any legal rights of the Owner, required guarantees, and Corrections of Faulty Work after final payment and shall pay the Contractor's Final Request for Payment. The Contractor must allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the Architect to assemble and check the necessary data.

26. CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT

The approval of the Final Request for Payment by the Architect and the making of the final payment by the Owner to the Contractor shall not relieve the Contractor of the responsibility for faulty materials or workmanship. The Owner shall promptly give notice of faulty materials or workmanship and the Contractor shall promptly replace any such defects discovered within one (1) year from the date of written acceptance of the work. The Architect shall decide all questions arising under this paragraph.

27. SUBSTITUTIONS AND DELETIONS

Substitutions and deletions in the work shall be accomplished by the Contractor upon written order from the Owner as approved by the Architect. This order shall state the reasons for original inclusion and subsequent elimination or substitution for materials, fixtures or equipment, and that the deviation does not materially injure the project as a whole, is in the best interest of the Owner and is of the same cost and quality as originally specified or giving the amount in dollars of any equitable adjustment to which the parties have agreed.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

29. PROTECTION OF LIVES AND HEALTH

In order to protect the lives and health of his employees under the Contract, the Contractor and his Subcontractors shall comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc. and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. He alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

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SPECIAL CONDITIONS

SUBSECTION

1. Inspection
2. Limits for Insurance
3. Money to be Retained for Repairs
4. Owner's Rights
5. Daily Clean-up
6. Qualifications for Employment
7. Equal Employment Opportunity
8. Anti-Kickback Act
9. Labor Registration
10. Wage Rates
11. Posting Minimum Wage Rates
12. Payment of Employees
13. Wage Under Payments and Adjustments
14. Contract Works Hours Standards Act-Overtime Compensation
15. Work Hours
16. Reports, Records and Data
17. Payrolls of the Contractor and Subcontractor
18. Weekly Affidavit with Respect to Payment of Wages
19. Convict Made and Foreign Materials
20. Compliance With Air and Water Acts
21. Prevailing Rates of Wages
22. Compliance with Local, State and Federal Law
23. List of Contract Drawings

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1. INSPECTION

The authorized representative and agents of the Owner shall have access to and be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records whenever these are in progress of preparation. The Contractor shall provide proper and necessary facilities for such access and inspection. For the purpose of observing work that affects their respective properties, inspectors for public agencies and the utility companies shall be permitted to the work, but all official orders and directives to the Contractor will be issued by the Architect.

2. LIMITS FOR INSURANCE

The limits for the various types of insurance required under the Insurance Subsection of the General Conditions shall be as follows:

a. For Workmen's Compensation, in accordance with M.G.L. c. 152;

b. Employer's Liability \$1,000,000.

c. U.S. Longshoremen's and Harbor Worker's Compensation \$1,000,000.

d. Minimum Amounts of Public Liability, Bodily Injury Liability and Property Damage Liability Insurance are as follows:

Injury or death of one person	\$1,000,000.
Injury to more than one person in a single accident	\$1,000,000.
Property damage in one accident	\$1,000,000.
Property damage in all accidents	\$1,000,000.

c. Minimum amounts of Automobile and Truck (Vehicular) Public Liability, Bodily Injury Liability, and Property Damage Liability are as follows:

Injury or death of one person	\$1,000,000.
Injury to more than one person in a single accident	\$1,000,000.
Property damage in one accident	\$1,000,000.
Property damage in all accidents	\$1,000,000.

d. Builder's Risk Insurance shall be procured and maintained by the Contractor covering loss by fire and extended coverage in the completed value form in the amount of the total insurable value of all structures, materials, and equipment to be built and installed. The policy shall indicate the Owner, the Contractor, and all subcontractors as the named insured with loss payable to the Owner as Trustee. The policy shall provide for a thirty (30) day notice to the Owner of cancellation or restrictive amendment.

A copy of the policy shall be furnished to the Owner and a Certificate of Insurance shall be furnished to the Architect.

The Builder's Risk Insurance shall be obtained before the work is started and shall be maintained until the date of completion of the work is stated in the final estimate, or until the Owner occupies or otherwise takes possession of the project, whichever occurs first.

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e. Contractual Liability Insurance covering the liability assumed by the Contractor as outlined under Subsection 21.1 d of the General Conditions to the amounts required under Section b. Above.

3. MONEY TO BE RETAINED FOR REPAIRS

3.1 The Contractor agrees that the Owner may retain out of the final payment due to the Contractor under this Contract, two percent (2%) of the amount thereof, and may expend the same, in the manner hereinafter provided, in making such repairs or replacements of said work as the Owner may deem expedient.

3.2 If, at any time within the one year period of guarantee, any part of the work constructed under the terms of this Contract requires repairing or replacement, the Owner may notify the Contractor in writing to make the required repairs or replacements. If the Contractor neglects to begin making such repairs or replacements within ten (10) days from the date of receipt of such notice, the Owner may employ other persons to make the same. The Owner shall pay the expense of the repairs out of the sum retained for that purpose. Upon the expiration of the one year period of guarantee, provided that the work at that time is in good order, the Contractor will be entitled to receive the whole or such part of the sum retained as may remain after the expense of making repairs or replacements has been paid.

3.3 For settlement of all claims arising out of this Contract against the Owner, its officers, or agents and for all expenses, losses, or damages incurred by the Owner by reasons of said claims, it is agreed that the Owner may keep the whole or any portion of the sum retained.

4. OWNER'S RIGHTS

Owner's rights to be exercised by the Town Engineer whenever in this Contract the Owner is to give or receive a notice or provisions are included for the exercise of rights and privileges and without limiting the generality thereof, the acts dealing with the Owner's prerogatives in the Contract shall be exercised by the Commissioner of Public Works or his authorized representative for and behalf of the Owner.

5. DAILY CLEAN UP

Before the completion of each day's work, the Contractor shall be responsible for cleaning up and removing or relocating all excavated material, debris, equipment and the like.

6. QUALIFICATIONS FOR EMPLOYMENT

No persons under the age of sixteen years shall be employed on the project under this Contract. No persons whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health or safety of others shall be employed on the project under this Contract; provided, that this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform. No person currently serving sentence in a Penal or Correctional Institution and no inmate of an Institution for mental defectives shall be employed in the project under this Contract.

7. EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246 AS AMENDED BY EXECUTIVE ORDER 11375)

During the Performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places,

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available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth policies, programs, and employment statistics of the Contractor and each subcontractor, and shall be in such form as the Secretary of Labor may prescribe.

Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous provisions of this Order, or any preceding similar Executive Order and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

Whenever the Contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Reports shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided that to the extent such information is within the exclusive possession of a labor union or agency shall refuse to furnish such information to the Contractor, the Contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

The contracting agency or the Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals with supporting information, to the effect that the signer's practices and policies do not discriminate on the ground of race, creed, or national origin, and the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Secretary of Labor may require.

8. ANTI-KICKBACK ACT

(Replace Section 1 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C., Sec. 276b) pursuant to the Act of June 25, 1948, 62 Stat. 862)

KICKBACKS FROM PUBLIC EMPLOYEES

Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work finances in whole or in part by loans or grants from the United States, to give up any part of compensation to which he is entitled under his contract of employment shall be fined not more than \$5,000.00 or imprisoned not more than five years, or both. Section 2 of the Act of June 13, 1934, as Amended (48 Stat. 948, 62 Sta. 862 63 Stat. 108, 72 Stat. 967, 40 U.S.C., Sec. 276c).

The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works, or buildings or States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 (United States Code) shall apply to such statements. Pursuant to the aforesaid Anti-Kickback Act, the Secretary of Labor, United States Department of Labor, has promulgated the regulations hereinafter set forth, which regulations are found in Title 29, Subtitle A, Code of Federal Regulations, Part 3. The term

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"this part", as used in the regulations hereinafter set forth, refers to Part 3 last above mentioned. Said regulations are as follows:

Contractors and Subcontractors on Public Building and Public Work and on building Work Financed in Whole or in Part by Loans and Grants from the United States.

9. LABOR REGISTRATION

In case the Owner elects, the Contractor shall require that workers on the project under this Contract must register at such times and places and in such manner as the Owner shall direct.

10. WAGE RATES

There shall be paid each laborer or mechanic of the Contractor or subcontractor engaged in work on the project under this Contract in the trade or occupation listed at the end of this Section, not less than the hourly wage rate set opposite the same, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. Minimum wage rates have been determined by the State Labor Department and the Contractor in payment of wages shall be bound by such schedules in the performance of the work herein provided.

Any laborer or mechanic employed to perform work on the project under this Contract, which work is not covered by any of the listed classifications, shall be paid not less than the minimum rate of wages specified herein for the classification which most nearly corresponds to the work to be performed by him, and such minimum wage rates shall be retroactive to the time of initial employment of such persons in such classification. In the event any dispute on that question cannot be adjusted by the Owner or its other authorized representatives, the questions and the information, together with recommendations of the Owner whose decision on the question shall be conclusive and binding on the parties to the Contract with the same effect as if the work performed by such laborer or mechanic has been classified and the minimum rate specified herein.

The scheduled wage rates are minimum rates only, and the Owner will not consider any claims for additional compensation made by the Contractor because of payment by the Contractor of any wage rate in excess of those specified in this Contract.

Except as may be otherwise required by law, all claims and disputes pertaining to the classification of labor employed on the project under this Contract shall be decided by the governing body or other duly designated official of the Owner.

11. POSTING MINIMUM WAGE RATES

The Contractor shall post appropriate conspicuous points at the site of the project a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

12. PAYMENT OF EMPLOYEES

The Contractor and each of his subcontractors shall pay each of his employees engaged in work on the project under this Contract to full (less deductions made mandatory by law) in cash and not less often than once a week provided, that when circumstances render payment by checks may be affected under consideration that funds are made available in a local bank and checks may be cashed without charge, trade requirements or inconvenience to the worker.

13. WAGE UNDER PAYMENTS AND ADJUSTMENTS

The Contractor agrees that, in case of underpayment of wages to any worker under this Contract by the Contractor or subcontractors, the Owner shall withhold from the Contractor out of payment due, an amount sufficient to pay such worker the difference between the wages required to be paid under this

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Contract and the wages actually paid such worker for the total number of hours worked and that the Owner may disburse such amount so withheld by it for and on account of the Contractor to the employee to whom such amount is due. The Contractor further agrees that the amounts to be withheld pursuant to this paragraph may be in addition to the percentages to be retained by the Owner pursuant to other provisions of this Contract.

14. CONTRACT WORK HOURS STANDARDS ACT-OVERTIME COMPENSATION

14.1 OVERTIME REQUIREMENTS: No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any worksheet in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in such work week, as the case may be.

14.2 VIOLATION: Liability for unpaid wages, liquidated damages. In the event of any violation of the clause set forth in subsection 14.1, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subsection 14.1 in the sum of ten (\$10.00) dollars for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subsection 14.1.

14.3 WITHHOLDING FOR LIQUIDATED DAMAGES: The Town may withhold or cause to be withheld from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of Contractor or subcontractor for liquidated damages as provided in the clause set forth in subsection 14.2.

14.4 SUBCONTRACTS: The Contractor shall insert in any subcontracts the clauses set forth in subsections 14.1, 14.2, 14.3 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

15. WORK HOURS

Work on this project is restricted to a normal 8-hour day, 5-day week, with the prime contractor and all subcontractors working on the same shift. The shift shall start no earlier than 7:30 AM. No work will be performed on Saturdays, Sundays, or Holidays unless permits are first obtained by the Contractor and written approval by the Owner.

No work will be permitted on Saturdays, Sundays, and Holidays except as noted above and it may become necessary because of unforeseen circumstances and only with the written approval of the Owner.

16. REPORTS, RECORDS AND DATA

The Contractor and each of his subcontractors shall submit to the Owner such schedules of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the Owner may request concerning work performed or to be performed under this Contract.

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17. PAYROLLS OF THE CONTRACTOR AND SUBCONTRACTOR

The Contractor and each subcontractor shall prepare his payrolls on forms satisfactory to and in accordance with instructions to be furnished by the Owner. Each such payroll shall show, among other things, the total number of persons and of that number the total number of minority persons, on the payroll at skilled, semi-skilled and unskilled classifications employed by the Contractor or the subcontractor (as the case may be) upon the work covered by his Contract, the amount of each payroll and total man-hours worked for each such indicated grouping. The Contractor shall submit weekly to the TOWN two certified copies of all payrolls of the Contractor and of the subcontractor. The certification with respect to each such payroll shall affirm that the payroll is correct and complete, that the wage rates contained therein for laborers and mechanics are not less than those applicable to such laborers and mechanics pursuant to this Contract, and that the classifications set forth for each laborer or mechanic conform with the work he performed. The payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this Contract shall be maintained during the course of the work and preserved for a period of three years thereafter. Such payroll records shall contain the name and addresses for each such employee, his correct classification, rate of pay, daily or weekly number of hours worked, deductions made and actual wages paid. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by the authorized representatives shall be permitted to interview employees of the Contractor of any subcontractor during working hours on the job.

18. WEEKLY AFFIDAVIT WITH RESPECT TO PAYMENT OF WAGES

As used in this paragraph, the term "Employee" shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees. Each Contractor or subcontractor shall furnish each week a sworn affidavit with respect to the wages paid each of the employees engaged on work covered by these regulations during the preceding weekly payroll period. The affidavit shall be executed and sworn to by the Contractor or subcontractor by an authorized officer or employee of the Contractor or subcontractor who supervises the payment of wages, and shall be in the following form:

TOWN of _____

County of _____

I, _____ (Name of party signing affidavit) _____

_____ (title), being duly sworn, do depose and say: That I pay or supervise the payments of the persons employed

by _____ (Contractor or subcontractor)

on _____ (building or work); that during the payroll period _____ commencing on

the _____ day of _____ 20__ and ending

the _____ day of 20__, all persons employed on said project have been _____ paid the full weekly wages earned, that no rebates have been or will be made _____ either directly or indirectly to or on behalf of said

_____ (Contractor or subcontractor) from the full weekly wages earned by any _____ person and that no deductions have been made either directly or indirectly _____ from the full weekly wages earned by any person, (other than permissible deductions as defined in the regulations under the Anti-Kickback Rules).

(Paragraph describing deductions, if any)

(Signature and title)

Sworn to before me this _____ day of _____, 20__.

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19. CONVICT MADE AND FOREIGN MATERIALS

No materials manufactured or produced in a penal or correctional institution shall be used; and only such unmanufactured articles, materials or supplies as have been manufactured in the United States of America substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States of America, shall be used. Exceptions to the foregoing shall be made only through a written change order.

20. COMPLIANCE WITH AIR AND WATER ACTS

Throughout the performance of this Contract, the Contractor agrees to comply with all existing and proposed rules and regulations of the Clean Air and Water Acts. The following are specifically to be complied with:

1. That any facility to be utilized in the performance of any non-exempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.

2. That the Contractor shall comply with all the requirements of Section 114 of the Clean Air Act as amended (47 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act as amended (33 USC 1318) relating to inspections, monitoring, entry, reports, and information as well as other requirements specified in said Section 114 and Section 308 and all regulations and guidelines issued thereunder.

3. That as a condition for the award of the Contract, prompt notices will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the EPA list of Violating Facilities.

4. That the Contractor will include or cause to be included the requirements and criteria in every non-exempt subcontractor and that the Contractor will take such action as the TOWN may direct as means of enforcing such provisions. The aforementioned pertains only to Contracts of \$100,000.00 or more.

21. PREVAILING RATES OF WAGES

A. MASSACHUSETTS WAGE RATE REQUIREMENTS: The Massachusetts General Laws, Chapter 149, Sections 26 to 27H inclusive establish Minimum Wage Rates and Welfare and Pension Fund Contributions for labor classifications as determined by the Department of Labor and Industries of the Commonwealth of Massachusetts and are hereinafter included. It shall be mandatory upon the Contractor to whom the contract is awarded and upon any Subcontractor under him to pay not less than said specified rates to all workmen employed by them in the execution of the contract.

22. COMPLIANCE WITH LOCAL, STATE AND FEDERAL LAWS

The Contractor shall comply with all applicable laws, ordinances, and codes of the State, local and federal governments, including Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 109 of the Housing and Community Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Executive Order 11246 and as amended, Executive Order 11063, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended National Environmental Policy Act of 1969, Energy Policy and Conservation Act (PL 94-163), OMB Circular A-102 "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments", OMB Circular A-87 "Cost Principles for State and Local Governments", Executive Order 11593, Archaeological and Historical Preservation Act of 1974, Davis-Bacon Act as amended, Contract Work Hours and Safety Standards Act, Architectural Barriers Act of 1968, Hatch Act, Flood Disaster Protection Act of 1973, Clean Air Act, Copeland "Anti-Kickback" Act, Federal Water Pollution Control Act, the Freedom of Information Act, the Administrative Procedures Act, Disaster Relief Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination in

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Employment Act of 1975, and all implementing regulations for the above mentioned laws, executive orders and circulars. The Contractor shall require any subcontractor to comply with the above cited Local, State, and Federal Laws, and shall incorporate these laws in any written agreement between the Contractor and a subcontractor.

END OF DOCUMENT

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