

WEST BOYLSTON MUNICIPAL LIGHTING PLANT

4 Crescent Street, West Boylston, Massachusetts 01583
Telephone (508) 835-3681 Fax (508) 835-2952

Date: _____

Project: _____

GENERAL TERMS AND CONDITIONS OF THE CONTRACT

1.0 GENERAL PROVISIONS

1.1 Scope of the Work. The Work comprises the completed project described in the Contract Documents and includes all labor, professional services, transportation, tools, materials, supplies, equipment, permits, approvals, documents, calculations, submittals, and certificates necessary to develop, perform, construct and complete the project in accordance with all applicable laws, ordinances, and regulations, and in accordance with the Contract Documents.

1.2 Interpretation. The Plans and Specifications and other Contract Documents are to be considered together and are intended to be mutually complementary, so that any work shown on the Plans though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is part of the Work to be performed by the Contractor. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Owner-Contractor Agreement.

1.3 Administrator. The term "Administrator" means the person appointed by the Awarding Authority to administer this Contract. The Contractor shall address mail to the Administrator c/o the Awarding Authority.

1.4 Written Authorization. Actions taken, and approvals and decisions made by the Awarding Authority under this Contract require the prior approval and signature of the Administrator. These include, but are not limited to, the following: changes in the Contract Price, time for completion, or any other provision of this Contract; written orders, notices, and approvals given by the Awarding Authority pursuant to the Contract Documents or pursuant to any laws applicable to this Contract, including approval of "or equal" submissions; issuance of stop work orders; approval of Contractor's applications for payment; and termination of the Contract. Work undertaken by the Contractor not authorized by the Administrator's signature prior to the start of such work shall be considered unauthorized work and shall not entitle the Contractor to any extra payment. The Contractor shall perform, at its own expense, corrective measures required by the Awarding Authority due to any failure to obtain the prior approval of the Administrator for any item of work.

1.3 Contractor's General Duties. The Contractor shall perform the Work in a competent manner in accordance with the Contract Documents and all applicable laws. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and coordination of all portions of the Work under this Contract. The Contractor shall provide and perform for the Contract Price all of the

duties and obligations set forth in the Contract Documents. Except as otherwise specified in this Contract, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable Laws. However, if the Contractor observes that portions of the Contract Documents are at variance with legal requirements, the Contractor shall promptly notify the Awarding Authority of that fact in writing. If the Contractor performs Work knowing it to be contrary to legal requirements, the Contractor shall be liable for all damages caused thereby, including the cost of correcting the Work.

1.4 Sales Tax Exemption and Other Taxes. To the extent that materials and supplies are used or incorporated in the performance of this Contract, the Contractor is considered an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966. The Contractor shall pay all taxes and tariffs of any sort related to the Work, subject to the applicable exemptions.

1.5 Permits, Fees and Notices. The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work. The Contractor shall coordinate all efforts required to obtain these permits unless otherwise directed in writing by the Awarding Authority. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, codes, and lawful orders of public authorities bearing on the performance of the Work.

1.6 Safety Requirements. The Contractor shall comply with all Federal, State, and local safety laws and regulations applicable to the Work.

1.7 Minimum Wage Rates. The Contractor shall comply with M.G.L. c. 149, §§26- 27H. The wage schedule found in Exhibit A to the Instructions to Bidders lists the minimum wage rates that must be paid to all workers employed in the Work throughout the term of this Contract, subject to the exceptions provided in M.G.L. c.149, §§ 26-27H.. The Awarding Authority is not responsible for any errors, omissions, or misprints in the said schedule. The Contractor shall not have any claim for extra compensation from the Awarding Authority arising from the fact that the actual wages paid to workers employed in the Work exceed the rates listed on the schedule or as otherwise provided by law. The Contractor shall cause a copy of the schedule to be posted in a conspicuous place at the Site during the term of the Contract. If reserve police officers are employed by the Contractor, they shall be paid the prevailing wage of regular police officers. (See M.G.L. c.149, §34B).

1.8 Corporate Disclosures. The Contractor, if a foreign corporation, shall comply with M.G.L. c. 181, s.3 and s. 5, and M.G.L. c. 30, s.39L.

1.9 Safety Requirements; OSHA Training[M.G.L. c. 30, s. 39S]. The Contractor shall comply and shall cause all subcontractors and persons employed on the Work to comply with all applicable safety requirements. By executing this contract the Contractor hereby certifies that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration. Any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety

and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.

1.10 Payroll Records and Statement of Compliance. The Contractor shall comply and shall cause its subcontractors to comply with Massachusetts General Law c. 149, s. 27B, which requires that a true and accurate record be kept of all persons employed on the a project for which the prevailing wage rates have been provided. The Contractor and all Subcontractors shall keep these records and preserve them for a period of six years from the date of completion of the Contract. Such records shall be open to inspection by any authorized representative of the Awarding Authority or the Owner at any reasonable time, and as often as may be necessary. The Contractor shall, and shall cause its subcontractors to, submit weekly copies of their weekly payroll records to the Awarding Authority. In addition, the Contractor and each Subcontractor shall furnish to the Executive Department of Labor within fifteen days after completion of its portion of the Work a signed statement in the form required by the Awarding Authority.

1.11 Workforce Qualifications. The Contractor shall: (i) employ competent workers; (ii) enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work; (iii) not permit employment of unfit persons or persons not skilled in tasks assigned to them. Whenever the Administrator shall notify the Contractor in writing that any worker is, in the Administrator's opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee shall be discharged from the Work and shall not again be employed on the Work except with the consent of the Administrator.

1.12 Affirmative Action, Non-Discrimination in Hiring and Employment. Pursuant to Executive Order #478, by signing this Contract the Contractor hereby certifies under the pains and penalties of perjury that the Contractor currently complies with and will continue to comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. Pursuant to Executive Order #390, the Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

1.13 Veterans Preference. In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the performance of Work in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined M.G.L. c.4, s.7 (34), and who are qualified to perform the work to which the employment relates and, within such preference, preference shall be given to service-disabled veterans; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.

1.14 Employment Eligibility Verification Requirements [8 U.S.C., ss. 1324a,1324b; M.G.L. c. 149, s. 19C; Executive Order No. 481]. The Contractor hereby certifies under

pains and penalties of perjury as a condition of receiving this Contract, that it shall not knowingly use undocumented workers in connection with the performance of the Work and that, pursuant to the requirements of federal law, the Contractor shall verify the immigration status of all workers employed in connection with the Work without engaging in unlawful discrimination, and that Contractor shall not knowingly or recklessly alter, falsify, or knowingly or recklessly accept altered or falsified documents of any worker. The Contractor shall cause all subcontractors to comply with this provision. The Contractor shall comply with Federal Department of Homeland Security Requirements in hiring any and all “employees” to be employed on the Work who are required to be listed in the certified payroll reports for the Work. Without limitation, such requirements shall include the good faith completion of the Federal Department of Homeland Security I-9 process by the Contractor for each of its employees. The Contractor shall execute a Certificate of Compliance with Employment Eligibility Verification Requirements (I-9 Certificate) simultaneously with the execution of this Contract. The contractor shall require each of its subcontractors and sub subcontractors to execute and provide to the Contractor an I-9 Certificate with the execution of each subcontract, and the Contractor shall immediately provide a copy to the Awarding Authority. The Contractor shall certify in each certified payroll report submitted to the Awarding Authority that the Form I-9 process was faithfully completed for all employees listed on the payroll report. Violation of this Section shall constitute a material breach of this Contract, subjecting the Contractor to sanctions including but not limited to monetary penalties, withholding of payments, contract suspension, or termination.

1.15 Weekly or Biweekly wage payments [M.G.L. c. 149, s. 148] The Contractor shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, s. 148 which requires the weekly or biweekly payment of employees within six days of the end of the pay period during which wages were earned if employed for five or six days of a calendar week, and within other periods of time under certain circumstances as set forth therein.

1.16 Anti-Boycott Covenant [Executive Order #130]. The Contractor warrants that during the time this Contract is in effect, neither it or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. c. 151E, s. 2. If there shall be a breach in the warranty, representation or agreement contained in this paragraph, then without limiting such other rights as it may have the Awarding Authority shall be entitled to rescind this contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the Ownership interests of the Contractor; or which directly or indirectly owns at least 51% of the Ownership interests of the Contractor.

1.17 Labor Harmony [M.G.L. c. 30, s. 39S]. By executing this contract the Contractor hereby certifies that (1) that Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work. The Contractor shall procure materials from such sources and shall manage its own forces and the forces of its Subcontractors and any sub-subcontractors in such a manner as will result in harmonious labor relations on the site. The Contractor shall cause persons to be employed

in the Work who will work in harmony with others so employed. Should the Work be stopped or materially delayed in the Awarding Authority's reasonable judgment due to a labor dispute, the Awarding Authority shall have the right to require the Contractor to employ substitutes acceptable to the Awarding Authority.

1.18 Risk of Loss. The Contractor shall bear the risk of loss with respect to any of its or its agents', employees' or subcontractors' vehicles, equipment or tools brought onto or left at the worksite and for any materials stored at the worksite.

1.19 Northern Ireland Certification [M.G.L. c. 7, s. 22C]. The Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

2.0 MATERIALS AND EQUIPMENT WARRANTY

Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices. The Contractor shall inform itself as to, and shall comply with, the provisions of M.G.L. c. 7, s. 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Work, including the provisions of M.G.L. c.7, s. 22, paragraph 17 which provides that there be "*a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and, second, of supplies and materials manufactured and sold elsewhere within the United States.*"

3.0 PROSECUTION OF THE WORK -- LIQUIDATED DAMAGES

3.1. Beginning, Progress Schedule. The Contract time shall commence upon the date specified in the Notice to Proceed executed by the Administrator and delivered to the Contractor after the execution of this Contract. The Contractor shall begin Work at the Site within ten days of said date unless otherwise ordered in writing by the Awarding Authority. Prior to commencing the Work, the Contractor shall meet with representatives of the Awarding Authority to discuss the quality assurance program, safety program, labor provisions, progress schedule, schedule of values, and other Contract procedures. Upon Approval by the Administrator, the progress schedule shall constitute the progress schedule for the Work. Upon approval by the Administrator, the schedule of values shall be the basis for payment for the Work. The Contractor shall at the end of each month, or more often if required, furnish to the Awarding Authority a schedule meeting the requirements of the Specifications showing the actual progress of the parts of the Work in comparison with the approved progress schedule.

3.2 Time for Completion of Work. Time is of the essence of this Contract. The Work shall be completed within the time specified in Article 2 of the Owner - Contractor Agreement subject only to extensions specifically permitted in accordance with the terms of this Contract.

3.3 Definition of "Substantial Completion." For the purposes of this Contract the term "Substantial Completion" shall occur when (1) the Contractor fully completes the Work or substantially completes the Work so that the value of the Work remaining to be done is, in the estimate of the Awarding Authority, less than one percent of the original Contract price, or (2) the Contractor substantially completes the work and the Awarding Authority takes possession for occupancy, whichever occurs first. For the purposes of the preceding sentences the term "substantially completes" means that the work required by the Contract has been completed except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Work.

3.4 Failure to Complete Work on Time - Liquidated Damages.

The Awarding Authority has determined that its damages as a result of Contractor's failure to complete the Work to Substantial Completion within the Contract time will be difficult or impracticable to ascertain. Accordingly, the Contractor shall pay to the Awarding Authority the sum designated as liquidated damages in the Contract for each and every calendar day that the Contractor is in default in completing the Work to Substantial Completion. Such moneys shall be paid as liquidated damages, and not as a penalty, to cover losses and expenses to the Awarding Authority resulting solely from the fact that the Work is not completed on time. Liquidated damages or a portion thereof may be waived by the Awarding Authority if the Contractor submits evidence satisfactory to the Awarding Authority that the delay was caused solely by conditions beyond the control of the Contractor and that the Awarding Authority has not suffered any damages as a result of said delay.

3.5 Collection of Liquidated Damages. The Awarding Authority may recover liquidated damages by deducting the amount thereof from any moneys due or that might become due the Contractor, and if such moneys shall be insufficient to cover the liquidated damages, then the Contractor or the Surety shall pay to the Awarding Authority the amount due.

3.6 Awarding Authority's Approvals and Interpretations. Decisions by the Awarding Authority regarding interpretation of the specifications, approval of equipment, material or any other approval, or progress of the Work, shall be made promptly and, in any event, no later than thirty days after the Contractor's written submission for decision; but if such decision requires extended investigation and study, the Awarding Authority shall, within thirty days after the receipt of the submission, give the Contractor 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.

3.7 Extension for Delays Caused by Awarding Authority. The only circumstances under which the Contract Price shall be increased due to delays caused by the Awarding Authority are those specified in M.G.L. c. 30, §390 appearing in Appendix A to these General Conditions of the Contract. In all other cases the Contractor shall be entitled neither to increase the Contract Price nor to receive damages on account of any hindrances or delays, avoidable or unavoidable, but if the delay is caused by the Awarding Authority, the Contractor shall be entitled to an extension of time to the extent provided in M.G.L. c. 30, §390. The Contractor must submit any claim under this paragraph to the Awarding

Authority in writing as soon as practicable after the end of the Awarding Authority's suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this Contract. Except for costs due to a suspension order, the Awarding Authority shall not approve any costs in the claim incurred more than 20 days before the Contractor notified the Awarding Authority in writing of the act or failure to act or the Awarding Authority that gave rise to the claim.

3.8 Awarding Authority's Right to Reject Defective Materials and Work. Except as otherwise provided herein, the Awarding Authority's inspection of the Work shall not relieve the Contractor of any of its responsibilities hereunder, and defective work shall be corrected. The Awarding Authority may reject unsuitable work, notwithstanding that such work and materials have been previously accepted for payment. If any part of the Work shall be found defective at any time before the final acceptance of the whole Work, the Contractor shall promptly correct such defect in a manner satisfactory to the Awarding Authority. If any material brought upon the site for use in the Work shall be rejected by the Awarding Authority as not in conformity with the Contract Documents, the Contractor shall promptly remove such materials from the site.

3.9 Substantial Completion of the Work; Final Completion; Awarding Authority's Remedies. When the Work has reached the point of Substantial Completion as shown on Approved payment request, the Contractor shall assist the Awarding Authority in the development of a punch list identifying those items of unfinished or unacceptable Work that remain to be performed or corrected under the Contract. The Contractor shall complete the punch list items to final completion within 30 days after the Awarding Authority's approval of the punch list. At any time after the value of the Work remaining to be done is, in the estimation of the Awarding Authority, less than 1 per cent of the adjusted Contract price, or the Awarding Authority has determined that the Contractor has substantially completed the work and the Awarding Authority has taken possession for occupancy, the Awarding Authority may send to the Contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The Contractor shall then complete all such work items within 30 days of receipt of such list or before the Contract completion date, whichever is later. If the Contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the Awarding Authority or before the Contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the Contractor by certified mail, return receipt requested, the Awarding Authority may terminate this Contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the Contractor and such termination shall be without prejudice to any other rights or remedies the Awarding Authority may have under this Contract.

4.0 CHANGES IN THE WORK

4.1 Changes within the Scope of the Work. A change order may be issued by the Awarding Authority for changes in the Work within the scope of the Contract, including but not limited to, changes in: (1) the Plans and Specifications; (2) the method or manner of performance of the Work; (3) the Awarding Authority-furnished facilities, equipment, materials, services, or Site; or (4) the schedule for performance of the Work. The

Contractor shall immediately perform any change order work that is ordered in writing by the Awarding Authority.

4.2. Request for Equitable Adjustment due to Change Order. Whenever a change order is issued by the Awarding Authority that will cause a change in the Contractor's cost or time for performance, the Contractor or the Awarding Authority may request an equitable adjustment in the Contract Price or the Contract time. A request for such an adjustment shall be in writing and shall be submitted by the party making such claim to the other party.

4.3. Latent Conditions. If, during the progress of the Work, the Contractor or the Awarding Authority discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those indicated in the Contract Documents, then either the Contractor or the Awarding Authority may request an equitable adjustment in the Contract Price in accordance with M.G.L. c.30, §39N appearing in Appendix A attached to these General Conditions of the Contract. Likewise if the latent or subsurface physical condition causes a change in the time for performing the Work, either the Contractor or the Awarding Authority may request an equitable adjustment of the time for the performance of the Work.

4.4 Computation of Equitable Adjustments. Equitable adjustments in the Contract Price shall be determined according to one of the following methods, or a combination thereof, as determined by the Awarding Authority: (1) fixed price basis, provided that the fixed price shall be inclusive of items (a) through (e) below and shall be computed in accordance with those provisions; (2) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all costs related to such equitable adjustment; (3) time and materials basis to be subsequently adjusted on the basis of actual costs (but subject to a predetermined "not to exceed limit") calculated as follows: (a) the direct cost (or credit) for labor at the minimum wage rates established for this Contract pursuant to M.G.L. c. 149, s 26-27H, and the direct cost for material and use of equipment; (b) plus (or minus) the cost of workmen's compensation insurance, liability Insurance, Federal Social Security and Massachusetts Unemployment Compensation, or as an alternative the Contractor may elect to use a flat 30% of the total labor rate computed in accordance with subparagraph (a) above; (c) plus an allowance equal to 20% of the amount of (a) above for overhead, superintendence and profit (said 20% allowance shall be paid to the Contractor and the Contractor and said subcontractors shall agree upon the distribution of this amount as a matter of contract between them)., (d) plus (or minus) the actual direct additional premium costs and expenses incurred as a result of collective bargaining agreements or other agreements between organized labor and employers, and plus (or minus) (e) the actual direct premium cost of payment and performance bonds required of Contractor and filed Subcontractors for this Contract. If the net change is an addition to the Contract Price, it shall include the Contractor's overhead, superintendence and profit. On any change that involves a net credit, no allowance for overhead, superintendence and profits shall be included. For any change that does not include labor performed or materials installed in the project, there will be no markup for the Contractor's overhead, superintendence, and profit, even though there may be a net increase in the Contract Price. Charges for small

tools known as “tools of the trade” are not to be computed in the amount of any change in the Contract Price.

4.4 Appeal Procedure. If the Contractor disputes a change, an equitable adjustment, or a Contract interpretation by the Awarding Authority, the Contractor shall follow the procedures set forth in M.G.L. c. 30, §39Q appearing in Appendix A to these General Conditions of the Contract.

5.0 PAYMENT PROVISIONS

5.1 Applications for Periodic Payments. Once each month, on a date established at the beginning of the Work, the Contractor shall deliver to the Awarding Authority an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Awarding Authority may require. The application shall reflect a minimum of 5% retainage and shall be subject to, and processed in accordance with, the provisions of M.G.L. c. 30, §39K appearing in Appendix A to these General Conditions. The Contractor may include in a periodic estimate the value of materials or equipment delivered at the Site (or at some location agreed to in writing) only upon delivery to the Awarding Authority of: (1) an acceptable transfer of title on the form provided by the Awarding Authority; (2) written certification by the Contractor (or applicable subcontractor) on the form provided by the Awarding Authority that the Contractor (or the Subcontractor which executed the transfer of title) is the lawful owner and that the materials or equipment are free from all encumbrances, accompanied by receipted invoices or other acceptable proof of prior payment for such materials; (3) a stored materials insurance binder that covers the materials for which payment is requested, that names the Owner as an insured party should the stored materials be subjected to any casualty, loss, or theft prior to their inclusion in the Work. The material(s) or equipment must, in the judgment of the Designer (1) meet the requirements of the Contract, including prior shop drawing, product data, and sample approval, (2) be ready for use, and (3) be properly stored by the Contractor and be adequately protected until incorporated into the Work. See also Article V.5.C of these General Conditions of the Contract concerning the cost of inspections.

5.2 Deductions by the Awarding Authority. The Awarding Authority may deduct from any application for a periodic payment submitted by the Contractor a retention based upon the value of its claims against the Contractor plus a retention of 5% of the approved amount of the Application for Payment and any other amounts authorized by M.G.L. c. 30, §39K.

5.3 Final Payment. Final Payment under this Contract shall be processed in accordance with the procedures set forth in M.G.L. c. 30, §39K. The acceptance by the Contractor of the last payment due under this Contract or the Contractor's execution of the Final Certificate of Completion, shall operate as a release to the Awarding Authority from all claims and liability related to this Contract.

6.0 WARRANTIES AND GUARANTEE

6.1 Warranty. The Contractor warrants to the Awarding Authority that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6.2 General Guaranty. If at any time during the period of one (1) year from the date of its substantial completion, as shown on an approved payment request, the Work or any part of the Work shall in the reasonable determination of the Awarding Authority require replacing or repairing due to the fact that it is broken, defective, or otherwise does not conform to the Contract Documents, the Awarding Authority will notify the Contractor to make the required repairs or replacement. If the Contractor shall neglect to commence such repairs or replacements to the satisfaction of the Awarding Authority within ten (10) days from the date of giving or mailing such notice, then the Awarding Authority may employ other persons to make said repairs or replacements. The Contractor agrees, upon demand, to pay to the Awarding Authority all amounts which the Awarding Authority expends for such repairs or replacements. For items of work completed after substantial completion, the one-year guarantee shall commence at the time the Awarding Authority approves of the completion of such items. This one-year guarantee shall not limit any express guaranty or warranty required to be assigned to the Awarding Authority pursuant to the terms of the Plans and Specifications.

7.0 INSURANCE REQUIREMENTS

7.1 Insurance Generally.

A. The Contractor shall purchase and maintain insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

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

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

- that the General Liability policy includes contractual liability
- that the General Liability policy includes the Owner and Awarding Authority as additional insureds for ongoing operations (CG 20 10) and for completed operations (CG 37 10) or equivalent endorsements.
- that the automobile liability, umbrella liability and pollution liability policies include the Owner and Awarding Authority as additional insureds
- that the General Liability policy includes endorsement CG 24 04 or equivalent, a Waiver of Subrogation in favor of the Owner and Awarding Authority
- that the Builders' Risk or Installation Floater is on an all risk basis including earthquake and flood, and includes the Owner and Awarding Authority, contractor,

subcontractors and suppliers of any tier as named insureds or loss payees as their interests may appear.

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

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

D. The Contractor shall file one certified complete copy of all policies and endorsements with the Awarding Authority within sixty days after Contract award. If the Awarding Authority or the Owner is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall be responsible for all costs and damages to the Owner attributable thereto.

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

F. The Contractor is responsible for the payment of any and all deductibles under all of the insurance required below. Neither the Owner nor the Awarding Authority shall in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.

7.2 Contractor's Commercial General Liability.

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

Bodily Injury &	\$1,000,000 each occurrence
Property Damage	\$2,000,000 general aggregate, per project
Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$10,000

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

C. This policy shall include contractual liability coverage.

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

- E. 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.
- F. This policy shall include the Owner and Awarding Authority and anyone else requested by the Awarding Authority as additional insureds via endorsements CG 20 10 for ongoing operations and CG 20 37 for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.
- G. The policy shall include endorsement CG 24 04, a Waiver of Subrogation in favor of the Awarding Authority and Owner.

7.3 Automobile Liability.

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

Bodily Injury & Property Damage \$1,000,000 combined single limit

- B. The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in Exhibit A. to the Owner – Contractor Agreement, the Contractor, if hauling contaminants and/or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.
- C. The policy shall name the Owner and Awarding Authority as Additional Insureds.
- D. The policy shall contain a Waiver of Subrogation in favor of the Awarding Authority and Owner.

7.4 Worker's Compensation.

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

Worker's Compensation	Statutory limits
Employer's Liability	\$ 500,000 each accident
	\$ 500,000 disease per employee
	\$ 500,000 disease policy aggregate

- B. If specified in Exhibit A to the Owner - Contractor Agreement the policy must be endorsed to cover United States Longshoremen & Harborworkers Act (USLHW), Maritime Liability for \$1,000,000/\$1,000,000, or Federal Employer's Liability Act liability.
- C. The policy shall contain a Waiver of Subrogation in favor of the Owner and the Awarding Authority.

7.5 Contractor's Pollution Liability.

If required by Exhibit A to the Owner - Contractor Agreement, the Contractor shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank

removal, removal of contaminated soil, etc. The insurance policy shall cover the liability of the Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-Site and off-Site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. The Awarding Authority and the Owner shall be named as an additional insured and coverage must be on an occurrence basis. The amount of coverage shall be \$1,000,000 per occurrence and \$3,000,000 in the aggregate unless a higher amount is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the additional coverage.

7.6 Builder's Risk/ Installation Floater/Stored Materials (If required by Exhibit A to the Owner – Contractor Agreement)

A. The Contractor shall purchase and maintain coverage against loss or damage on all Work included in this Contract in an amount equal to the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism (“certified” and “non-certified”), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in **C.** below.

B. When Work will be completed on existing buildings owned by the Owner, the Contractor shall provide an installation floater, in the full amount of the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in **C.** below.

C. The Contractor shall maintain insurance on delivered and/or stored material designated to be incorporated in the Work against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at an off Site location shall be forthwith replaced by the Contractor at no expense to the Awarding Authority.

D. The policy or policies shall specifically state that they are for the benefit of and payable to the Awarding Authority, Owner, the Contractor, and all persons furnishing labor or labor

and materials for the Contract Work, as their interests may appear. The policy or policies shall list the Awarding Authority, Owner, the Contractor, and Subcontractors of any tier as named insureds.

E. Coverage shall include any costs for work performed by the Designer or any consultant as the result of a loss experienced during the term of this Contract.

F. Coverage shall include permission for temporary occupancy and a Waiver of Subrogation in favor of the Owner and Awarding Authority.

G. Coverage shall be maintained until final acceptance by the Awarding Authority of the Contract and final payment has been made.

H. A loss under the property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds. The Contractor shall pay the subcontractors their just shares of insurance proceeds received by the Contractor and shall require subcontractors to make payments to their sub-subcontractors in similar manner.

7.7 Umbrella Coverage.

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

Limit of liability: \$1,000,000 per occurrence

7.8 Additional types of Insurance.

The Contractor shall provide such other types of insurance as may be required by Exhibit A to the Owner - Contractor Agreement.

8.0 INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the Awarding Authority and their officers, agents, divisions, agencies, employees, representatives, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to court costs and attorneys' fees, arising out of or resulting from the performance of the Work, including but not limited to those arising or resulting from: labor performed or furnished and/or materials used or employed in the performance of the Work; violations by Contractor, any Subcontractor, or by any person directly or indirectly employed or used by any of them in the performance of the Work or anyone for whose acts any of them may be liable (Contractor, subcontractor and all such persons herein collectively called "Contractor's Personnel") of any Laws; violations of any provision of this Contract by any of Contractor's Personnel; injuries to any persons or damage to any property in connection with the Work; any act, omission, or neglect of Contractor's Personnel. The Contractor shall be obligated as provided above, regardless of whether or not such claims, damages, losses and/or expenses, are caused in whole or in part by the actions or inactions of a party indemnified hereunder. In any and all claims by Contractor's Personnel against parties indemnified hereunder, the Contractor's indemnification obligation set forth above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Such obligation shall not be construed

to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article 8.

9.0 BONDS

The Contractor shall provide the Awarding Authority with a Performance Bond and a Payment or Labor and Materials Bond in the form provided by the Awarding Authority, executed by a surety company licensed by the Commonwealth of Massachusetts' Division of Insurance and whose name appears on United States Treasury Department Circular 570. Both the Performance Bond and the Payment Bonds shall be in an amount equal to the Contract Sum unless, with respect to the Payment Bond or Labor and Materials Bond a lesser amount of no less than one half the contract price is expressly specified in the Advertisement or Instructions to Bidders, or with respect to the Performance Bond no such bond is required as expressly set forth in the Advertisement or Instructions to Bidders.

10.0 TERMINATION

10.1 Termination for Cause.

The Awarding Authority may terminate this Contract for cause if it determines that any of the following circumstances have occurred:

- the Contractor is adjudged bankrupt or has made a general assignment for the benefit of its creditors;
- a receiver has been appointed of the Contractor's property;
- all or a part of the Work has been abandoned;
- the Contractor has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the Awarding Authority, except as provided in the Contract Documents;
- the Awarding Authority has determined that the rate of progress required on the project is not being met;
- the Contractor has substantially violated any provisions of this Contract.

The Awarding Authority may complete the Work or any part thereof, and charge its expense of so completing the work or part thereof, to the Contractor. The Awarding Authority may take possession of and use any materials, machinery, implements and tools found upon the site of said Work. The Awarding Authority shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the Contractor shall be solely responsible for their removal from the Project site after the Awarding Authority has no further use for them.

10.2 Termination for Convenience.

(a) In the event that this Contract is terminated by the Awarding Authority prior to the completion of construction and termination is not based on a reason listed in Paragraph 10.1, the Contractor shall be compensated for its costs incurred, including reasonable costs of de-mobilization, calculated on a percent completion basis covering the period of time between the last Approved application for payment and the date of termination.

(b) Payment by the Awarding Authority pursuant to Subparagraph 10.2(a) shall be deemed to fully compensate the Contractor for all claims and expenses directly or indirectly attributable to the termination, including any claims for lost profits.

11. NON-APPROPRIATION

The Awarding Authority certifies that at the time of the execution of this Contract, sufficient appropriations exist and shall be encumbered to fund the Contract Price. Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The Contractor shall not be obligated to perform, and may not perform, work outside the duration and scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional work. The Awarding Authority may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.

12. RECORDS AND LAWS

The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts, which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor. [M.G.L. c. 30, §39R(b)(1)-(2)]. Until the expiration of six years after final payment, the Office of the Inspector General, and the Commissioner of DCAM shall have the right to examine any books, documents, papers or records of the Contractor or of its subcontractors that directly pertain to, and involve transactions relating to, the Contractor or its subcontractors. [M.G.L. c. 30, §39R(b)(1)-(2)]. If this is a materials contract with a contract price of over \$100,000 the contractor shall also comply with M.G.L. c. 30, §39R(c). Furthermore, pursuant to Executive Order #195, the Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data or the Contractor which pertain to the performance and requirements of this Contract.

13. CHOICE OF LAW

This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which either the Commonwealth or the Awarding Authority is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

14. STATUTORY PROVISIONS INCORPORATED BY REFERENCE

The statutory provisions appearing in Appendix A attached hereto are incorporated into this Contract by reference.

In witness whereof, the parties hereto have caused this instrument to be executed in triplicate under seal as of the date set forth above.

CONTRACTOR:

By:

Name:

Title:

Date:

AWARDING AUTHORITY:

By:

Name:

Title:

Date:

APPENDIX A

Statutory Provisions Incorporated by Reference

Chapter 30: Section 39N. Construction contracts; equitable adjustment in contract price for differing subsurface or latent physical conditions.

Section 39N. Every contract subject to section forty-four A of chapter one hundred and forty-nine or subject to section thirty-nine M of chapter thirty shall contain the following paragraph in its entirety and an awarding authority may adopt reasonable rules or regulations in conformity with that paragraph concerning the filing, investigation and settlement of such claims:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

Chapter 30: Section 39O. Contracts for construction and materials; suspension, delay or interruption due to order of awarding authority; adjustment in contract price; required provisions.

Section 39O. Every contract subject to the provisions of section thirty-nine M of this chapter or subject to section forty-four A of chapter one hundred forty-nine shall contain the following provisions (a) and (b) in their entirety and, in the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the general contractor or the subcontractor may have against each other.

(a) The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The general contractor must submit the amount of a claim under provision (a) to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the

claim incurred more than twenty days before the general contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

Chapter 30: Section 39P. Contracts for construction and materials; decisions of awarding authority on interpretation of specifications, etc. required promptly upon submission; time limit; notice.

Section 39P. Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the awarding authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

Chapter 30: Section 39Q. Contracts for capital facility construction, etc.; contents; annual claims report.

Section 39Q. (1) Every contract awarded by any state agency as defined by section thirty-nine A of chapter seven for the construction, reconstruction, alteration, remodeling, repair or demolition of any capital facility as defined by the aforesaid section thirty-nine A shall contain the following subparagraphs (a) through (d) in their entirety:

(a) Disputes regarding changes in and interpretations of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures, which shall constitute the exclusive method for resolving such disputes. Written notice of the matter in dispute shall be submitted promptly by the claimant to the chief executive official of the state agency which awarded the contract or his designee. No person or business entity having a contract with a state agency shall delay, suspend, or curtail performance under that contract as a result of any dispute subject to this section. Any disputed order, decision or action by the agency or its authorized representative shall be fully performed or complied with pending resolution of the dispute.

(b) Within thirty days of submission of the dispute to the chief executive official of the state agency or his designee, he shall issue a written decision stating the reasons therefor, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within thirty days, he shall notify the parties to the dispute in writing of the reasons why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a decision within the thirty-day period or within the additional time period specified in such written notice shall be deemed to constitute a denial of the claim and shall authorize resort to the appeal procedure described below. The decision of the chief executive official or his designee shall be final and conclusive unless an appeal is taken as provided below.

(c) Within twenty-one calendar days of the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises his option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The hearing officer shall issue a final decision as expeditiously as possible, but in

no event more than one hundred and twenty calendar days after conclusion of the adjudicatory hearing, unless the decision is delayed by a request for extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, he shall notify all parties of the reasons for the delay and the date when the decision will issue. Failure to issue a decision within the one hundred and twenty-day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay.

(d) When the amount in dispute is less than ten thousand dollars, a contractor who is party to the dispute may elect to submit the appeal to a hearing officer experienced in construction law for expedited hearing in accordance with the informal rules of practice and procedure of the division of hearing officers. An expedited hearing under this subparagraph shall be available at the sole option of the contractor. The hearing officer shall issue a decision no later than sixty days following the conclusion of any hearing conducted pursuant to this subparagraph. The hearing officer's decision shall be final and conclusive, and shall not be set aside except in cases of fraud.

(2) The commissioner of administration shall require the division of hearings officers to prepare annually a report concerning the construction contract claims submitted to the division during the preceding twelve months, in such form as the commissioner shall prescribe. The report shall contain, at a minimum, the following information: the number of claims submitted; the names of all parties to each such claim; a brief description of the claim; the date of submission and of disposition of the claim; its disposition, whether by settlement, withdrawal, default or written decision; and the number of claims currently pending. The original of the report shall be submitted to the commissioner of administration by January fifteenth, and a copy shall be filed with the state librarian and shall be a public document.

Chapter 30: Section 39R. Definitions; contract provisions; management and financial statements; enforcement.

Section 39R. (a) The words defined herein shall have the meaning stated below whenever they appear in this section:

(1) "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to sections thirty-eight A %p1/2%p to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.

(2) "Contract" means any contract awarded or executed pursuant to sections thirty-eight A %p1/2%p to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A through forty-four H, inclusive, of chapter one hundred and forty-nine, which is for amount or estimated amount greater than one hundred thousand dollars.

(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.

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

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

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

(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.

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

(b) Subsection (a)(2) hereof notwithstanding, every agreement or contract awarded or executed pursuant to sections thirty-eight A %p1/2%p to thirty-eight O, inclusive, of chapter seven, or eleven C of chapter twenty-five A, and pursuant to section thirty-nine M of chapter thirty or to section forty-four A through H, inclusive, of chapter one hundred and forty-nine, shall provide that:

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

(2) until the expiration of six years after final payment, the office of inspector general, and the commissioner of capital asset management and maintenance shall have the right to examine any books, documents, papers or records of the contractor or of his subcontractors that directly pertain to, and involve transactions relating to, the contractor or his subcontractors, and

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

(4) if the agreement is a contract as defined herein, the contractor has filed a statement of management on internal accounting controls as set forth in paragraph (c) below prior to the execution of the contract, and

(5) if the agreement is a contract as defined herein, the contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph (d) below.

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

(1) transactions are executed in accordance with management's general and specific authorization;

(2) transactions are recorded as necessary

i. to permit preparation of financial statements in conformity with generally accepted accounting principles, and

ii. to maintain accountability for assets;

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

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

Every contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he has examined the statement of management on internal accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this paragraph and paragraph (b) above are consistent with the result of management's evaluation of the system of internal accounting controls; and

(2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.

(d) Every contractor awarded a contract by the commonwealth or by any political subdivision thereof shall annually file with the commissioner of capital asset management and maintenance during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the awarding authority upon request.

(e) The office of inspector general, the commissioner of capital asset management and maintenance and any other awarding authority shall enforce the provisions of this section. The commissioner of capital asset management and maintenance may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of chapter thirty A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations and guidelines may be applicable to all awarding authorities. A contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to section forty-four C of chapter one hundred and forty-nine.

(f) Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in section seven of chapter four and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of clause (2) of paragraph

APPENDIX B
Commonly-Used Forms
TBD