



**TOWN OF HOPKINTON
AGREEMENT**

THIS AGREEMENT, made this _____th day of _____ by and between the party of the first part, the Town of Hopkinton, Massachusetts hereinafter called "OWNER" or "AWARDING AUTHORITY", acting herein through its Select Board, and the party of the second part, _____, doing business as a corporation located in _____ the CITY/TOWN of _____, State of Massachusetts, hereinafter called the "CONTRACTOR"

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the project described as follows:

PROJECT NAME HERE

hereinafter called the "PROJECT" for the sum of

_____ Dollars (\$ _____)

The Contract Sum includes incorporation into the Contract of Alternate(s) 0 _____ as described in Section _____, ALTERNATES of the Specifications and all extra work in connection therewith, under the terms as stated in the Contract Documents; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in Document 00310, FORM FOR GENERAL BID; Document 00800, GENERAL CONDITIONS and all the BUILDING REQUIREMENTS, CONTRACT REQUIREMENTS and GENERAL REQUIREMENTS, as listed in the PROJECT MANUAL the plans, which include all maps, plates, blue prints [Document No. and names of documents here], and the specifications and Contract Documents as prepared by the OWNER all of which are attached hereto and incorporated by reference herein in their entirety.

The undersigned CONTRACTOR agrees to commence work on the Contract on or before the _____ (____th) day following the Notice of Award and to thereafter diligently and continuously carry out the work in such manner as to fully complete all the different elements of the work within _____ (____) days thereafter.

The CONTRACTOR further agrees to pay as liquidated damages the sum of _____ \$ _____ .00 Dollars for each calendar day thereafter as provided in the Liquidated Damages paragraph of Document GENERAL CONDITIONS (and all Addenda) attached hereto, and incorporated by reference herein in its entirety.

In accordance with M.G.L. c. 44, Section 31C, this is to certify that an appropriation in the amount of this Contract is available therefor and that the Town Manager has been authorized to execute the Contract and approve all requisitions and change orders.

By: _____
TOWN ACCOUNTANT

DOCUMENT 00800

GENERAL CONDITIONS

1.0 GENERAL PROVISIONS

1.1 Definitions.

1.1.1 Awarding Authority. Where the term “Awarding Authority” appears in any statutory provision, it shall mean “the Owner.”

1.1.2 Contracting Officer. The term “Contracting Officer” shall mean the town official so designated below, or the individual duly appointed by him for the performance of any of his functions or responsibilities under this Contract. The Work shall be carried out under the direction and subject to the approval and acceptance of the **Town of Hopkinton Select Board**, (hereinafter called the Contracting Officer).

1.2 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.

1.3 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.

1.4 Written Authorization. Actions taken, and approvals and decisions made by the Owner under this Contract require the prior approval and signature of the Contracting Officer. 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 Contracting Officer 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 Contracting

Officer'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 Owner due to any failure to obtain prior approval for any item of work.

- 1.5 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 Owner 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.
- 1.6 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.
- 1.7 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 Owner. 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.
- 1.7 Safety Requirements.** The Contractor shall comply with all Federal, State, and local safety laws and regulations applicable to the Work.
- 1.8 Minimum Wage Rates.** The Contractor shall comply with M.G.L. c. 149, §§ 26- 27H. The wage schedule found in Exhibit D 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 Owner 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 Owner 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).

- 1.9 **Corporate Disclosures.** The Contractor, if a foreign corporation, shall comply with M.G.L. c. 181, §§ 3 and 5, and M.G.L. c. 30, § 39L.
- 1.10 **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.
- 1.11 **Payroll Records and Statement of Compliance.** The Contractor shall comply and shall cause its subcontractors to comply with Massachusetts General Law c. 149, § 27B, which requires that a true and accurate record be kept of all persons employed on 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 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 Owner. 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 Owner.
- 1.12 **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 Contracting Officer shall notify the Contractor in writing that any worker is, in the Contracting Officer'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 Contracting Officer.
- 1.13 **Non-Discrimination in Hiring and Employment.** 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.

- 1.14 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, § 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.
- 1.15 Weekly or Biweekly wage payments [M.G.L. c. 149, § 148].** The Contractor shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, § 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 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 Owner's reasonable judgment due to a labor dispute, the Owner shall have the right to require the Contractor to employ substitutes acceptable to the Owner.
- 1.17 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.
- 1.18 CORI Checks.** No person shall be given access to the Site without first passing a Criminal Offender Record Information (CORI) check. Contractor shall provide Owner with proof, satisfactory to Owner, that each employee, agent, contractor, subcontractor and invitee ("Contractor Worker(s)") that visits the site has passed a CORI check. The Contractor shall see to it that no Contractor Worker shall perform any Work at the Site if

the Owner has objected to such person being at the site based upon information contained in the CORI check. The Contractor shall not allow any Contractor Worker on the site until the Owner has reviewed such worker's CORI check and has not objected within ten (10) days after the receipt of the CORI check to such worker being at the site on account of the CORI check, unless the Owner waives such requirement for advance review of a Contractor Worker's CORI check prior to that worker entering the site (which waiver shall only be effective as to the Contractor Worker(s) that the Contractor requests the Owner to provide such waiver in each instance). Notwithstanding the foregoing, the Contractor shall remain liable for the conduct of its workers, employees, subcontractors, agents and invitees on Site.

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, § 23A, as amended.

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 Contracting Officer and delivered to the Contractor after the execution of this Contract. Prior to commencing the Work, the Contractor shall meet with representatives of the Owner to discuss the quality assurance program, safety program, labor provisions, progress schedule, schedule of values, and other Contract procedures. Upon Approval by the Contracting Officer, the progress schedule shall constitute the progress schedule for the Work. Upon approval by the Contracting Officer, 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 Owner 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 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 Owner, less than one percent of the original Contract price, or (2) the Contractor substantially completes the work and the Owner 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.** Because both parties recognize (1) that the time for completion of this Contract is of the essence, (2) that the Owner will suffer loss if the work is not completed in accordance with the phasing requirements and within the contract time specified, plus any extensions thereof allowed in accordance with the provisions of this Contract, and (3) that there are significant delays, expense and difficulties associated with a legal proceeding to determine the actual loss suffered by the Owner if the work is not completed on time; therefore, it is agreed that the Contractor will pay the Owner, as liquidated damages, the sum of [REDACTED] (\$ [REDACTED].00) per calendar per day for each and every day thereafter that it fails to deliver such Work completed according to the requirements of the Contract Documents. Such liquidated damages shall be paid not as a penalty, but to partially cover losses and expenses to the Owner, including intangible costs and losses that are or may be impracticable to ascertain. Allowing the Contractor to continue to finish the work (or any portion of the work) after the time specified for completion of the Work shall not operate as a waiver on the part of the Owner of any of its rights under the Contract Documents or otherwise under law or equity. The Owner's right to impose liquidated damages shall in no way prohibit or restrict the Owner's right to bring legal action for damages in lieu of its option to impose liquidated damages from money due the Contractor, and if such money is insufficient to cover the liquidated damages, then the Contractor shall pay the amount due.
- 3.5 Collection of Liquidated Damages.** The Owner 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 Owner the amount due.
- 3.6 Owner's Approvals and Interpretations.** Decisions by the Owner 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 Owner 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 Owner.** The only circumstances under which the Contract Price shall be increased due to delays caused by the Owner are those specified in M.G.L. c. 30, § 39O. 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 Owner, the Contractor shall be entitled to an extension of time to the extent provided in M.G.L. c. 30, §39O. The Contractor must submit any claim under this paragraph to the Owner in writing as soon as practicable after the end of the Owner'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 Owner shall not approve any costs in the claim incurred

more than 20 days before the Contractor notified the Owner in writing of the act or failure to act or the Owner that gave rise to the claim.

3.8 Owner's Right to Reject Defective Materials and Work. Except as otherwise provided herein, the Owner's inspection of the Work shall not relieve the Contractor of any of its responsibilities hereunder, and defective work shall be corrected. The Owner 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 Owner. If any material brought upon the site for use in the Work shall be rejected by the Owner 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; Owner's Remedies. When the Work has reached the point of Substantial Completion as shown on Approved payment request, the Contractor shall assist the Owner 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 Owner'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 Owner, less than 1 per cent of the adjusted Contract price, or the Owner has determined that the Contractor has substantially completed the work and the Owner has taken possession for occupancy, the Owner 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 Owner 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 Owner 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 Owner 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 Owner 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 Owner-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 Owner.

4.2. Request for Equitable Adjustment due to Change Order. Whenever a change order is issued by the Owner that will cause a change in the Contractor's cost or time for performance, the Contractor or the Owner 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 Owner 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 Owner may request an equitable adjustment in the Contract Price in accordance with M.G.L. c. 30, § 39N. Likewise if the latent or subsurface physical condition causes a change in the time for performing the Work, either the Contractor or the Owner 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 Owner: (1) fixed price basis, provided that the fixed price shall be inclusive of items described in 4.4.1 below and shall be computed in accordance with that provision; (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:

4.4.1 Where the value of work performed directly by the Contractor under an change order is determined either by a lump sum proposal or by actual cost of work as it progresses, the Contractor will be allowed an additional amount of ten percent (10%) of the total cost of work plus an additional amount of two percent (2%) for the cost of bonds and insurance associated with the added work. Where such work is performed by a Subcontractor, the Contractor will be allowed an additional amount of five percent (5%) to the total payment made to the Subcontractor, plus an additional amount of two percent (2%) for the cost of bonds and insurance associated with the added work. The cost of work shall include the cost at the minimum wage rates established for this contract pursuant to M.G.L. c. 149, §§ 26-27H for direct labor, material and use of equipment, plus the cost of workmen's compensation insurance, liability insurance, federal social security and Massachusetts unemployment compensation. The cost of work may include the cost of added mobilization, engineering, layout, transit staging/scaffolding, lifting, hoisting, dumpster, handling, cleanup, street sweeping, safety protection, temporary weather protection, temporary heat and utilities, shipping/receiving, construction fences, police barricades and signs; provided, however, that such added costs may be included only to the extent that they are directly attributable to the added work and are properly substantiated as determined by the Owner and Architect, in their discretion. Mark-up for overhead, superintendence and profit shall include (and no

additional payment shall be made for) general conditions, management, supervision coordination, record drawings, small tools/computers, “tools of the trade”, administration, accounting, punch list, O&M manuals, estimator time, schedule updating, and certified payrolls. Contractor and Subcontractor mark-up of such rates for payroll costs associated FUI, SUI, MUI, worker’s compensation insurance and other direct payroll costs, shall only be calculated on the direct labor rate as computed above and shall not exceed 30%, except that a higher rate may be allowed for subcontractors only to the extent such higher rate is based on actual payroll costs of the subcontractor for which substantiating documentation of how such higher cost is calculated provided, and no other labor cost mark-ups other than those specified above will be allowed.

4.5 Timely Decision by the Owner. In accordance with M.G.L. c. 30, § 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.”

4.6 Work Performed Under Protest. The Contractor must perform any work required by the Owner. If it considers the work to be ‘extra’ and the Owner disagrees, the work must be performed under protest.

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 Owner an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner 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, which provides:

“Within fifteen days (30 days in the case of the commonwealth, including local housing authorities) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a

subcontractor has title and has authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances, but less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one per cent of the original contract price, or (b) the contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such a periodic estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.

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

A certificate of the architect to the effect that the contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.

Notwithstanding the provisions of this section, 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 general 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 general 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 general 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 general contractor by certified mail, return receipt requested, the awarding authority may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the general contractor and such termination shall be without prejudice to any other rights or remedies the awarding authority may have under the contract.

The awarding authority shall note any such termination in the evaluation form to be filed by the awarding authority pursuant to the provisions of section 44D of chapter 149.”

5.1.1 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 Owner of: (1) an acceptable transfer of title on the form provided by the Owner; (2) written certification by the Contractor (or applicable subcontractor) on the form provided by the Owner 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.

5.1.2 In submitting an Application for Payment, the Contractor warrants that title to all work covered by an application for payment will pass to the Owner either by incorporation into the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to in this article as 'liens.' The Contractor further agrees that the submission of any application for payment shall conclusively be deemed to waive all liens with respect to set work to which the Contractor may then be entitled, provided that such waiver of the lien rights shall not waive the Contractor's right to payment for such work.

5.1.3 Payment for materials stored off site shall be at the sole discretion of the Owner. Any additional costs to the Owner resulting from storage of material off site for which payment is requested, such as, but not limited to, travel expenses and time for inspectors, shall be charged to, and paid by, the Contractor.

5.2 **Deductions by the Owner.** The Owner may deduct from any application for a periodic payment submitted by the Contractor a retention based upon the value of its claims (including claims of defective work and liquidated damages) 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, §§ 39F, 39G and/or 39K, as applicable.

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, §§ 39F, 39G and/or 39K, as applicable. 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 Owner from all claims and liability related to this Contract.

5.4 **Payment of Subcontractors.** The Contractor shall make payment to subcontractors in accordance with M.G.L. c. 30, § 39F. For purposes of this Agreement, the word "forthwith" appearing in paragraph (1)(a) of M.G.L. c. 30, § 39F shall be deemed to mean "within five (5) business days." The Contractor shall, at the Owner's request, furnish satisfactory evidence that all such obligations have been paid, discharged, or waived.

6.0 WARRANTIES AND GUARANTEE

6.1 **Warranty.** The Contractor warrants to the Owner 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. The Contractor guarantees and warrants to the Owner that all labor furnished under this Agreement will be

competent to perform the tasks undertaken that the product of such labor will yield only first-class results.

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

6.3 All guarantees and warranties required in the various Sections of the Specifications that originate with a Subcontractor or Manufacturer must be delivered to the Owner before final payment to the Contractor may be made for the amount of the sub-trade or for the phase of work to which the guarantee or warranty relates. The failure to deliver a required guarantee or warranty shall constitute a failure of the Subcontractor to fully complete its work in accordance with the Contract Documents. The Contractor's obligation to correct work is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications.

7.0 INSURANCE REQUIREMENTS

7.1 The Contractor shall purchase from, and maintain in a company or companies lawfully authorized to do business in the Commonwealth of Massachusetts, and to which the Owner has no reasonable objection, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified herein.

7.2 The insurance required by the above shall be written for not less than the following amounts and shall be submitted on ACORD Certificate of Insurance Form 2.5-S (08/01) or other similar form acceptable to the Owner:

- 7.2.1** Commonwealth of Massachusetts Statutory Worker's Compensation and other benefits as required under the General Laws of Massachusetts, including Employer's Liability Part B: \$500,000/\$500,000/\$500,000.
 - 7.2.2** Broad form Commercial General Liability, written on a "per occurrence" basis with an aggregate cap no less than three (3) times the required limit: \$1,000,000 C.S.L. Property Damage Liability shall include coverage for X-C-U hazard of explosion, collapse, and damage to underground property.
 - 7.2.3** Umbrella or Excess Liability coverage following form of underlying General, Automobile and Employers' Liability Coverage: (a) Minimum of \$2,000,000 C.S.L. over primary insurance; (b) No more than \$10,000 Retention.
 - 7.2.4** Comprehensive Automobile Liability covering owned, non-owned, and hired or borrowed vehicles: \$1,000,000 C.S.L.
- 7.3** The above insurance policies shall also be subject to the following requirements:
- 7.3.1** Certificates of Insurance and copies of policies acceptable to the Owner shall be addressed to and filed with the Owner prior to commencement of the work. Renewal certificates shall be filed with the Owner at least thirty (30) days prior to the expiration date of required policies.
 - 7.3.2** No insurance coverage shall be subject to cancellation or non-renewal without at least thirty (30) days prior written notice forwarded by registered or certified mail to the Town. The Contractor shall notify the Town of the attachment of any restrictive amendments, material changes or impairment to the policies.
 - 7.3.3** All premium costs shall be included in Contractor's bid. The Contractor shall be responsible for the cost of any and all deductibles.
 - 7.3.4** The Town of Hopkinton (including its officials, employees, agents and representatives) shall be named as additional insured on Contractor's General Liability, Automobile Liability, and Umbrella or Excess Liability Insurance Policies.
- 7.4** Neither the Owner's authority to review certificates and policies of insurance nor its decision to raise or not to raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the Owner to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor, or Supplier, or any other party.
- 7.5** The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in the Contract Documents, and at all times after that when the Contractor may be correcting, removing or replacing defective Work. The Completed Operations insurance shall be maintained for three (3) years after Final Payment.
- 7.6** Insufficient insurance shall not release the Contractor from any liability for breach of its obligations under this Agreement.

8.0 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall defend, indemnify in whole or in part, defend, pay-on-behalf of and hold harmless the Owner, the Engineer, and the agents and employees of each from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and loss of use caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or 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 furnish a performance bond for the full amount of the Contract, and also a labor and materials payment bond for the full amount of the Contract, the form of which bonds are set forth in the Contract Documents, each of a surety company qualified to do business under State laws and satisfactory to the Owner, the premiums for which are to be included in the Contract Price and paid by the Contractor. These bonds shall (a) guarantee the faithful performance by the Contractor of all its obligations under this contract and (b) constitute the security required by M.G.L. c. 149, § 29 and M.G.L. c. 30, § 39A, as amended, for payment by the Contractor or its subcontractors used or employed in connection with the contract. Each bond shall incorporate by reference the terms of this contract. These bonds shall remain in effect for the entire guarantee period for each phase of the work, which shall commence on the date of Final Completion, as defined in the Contract Documents.

10.0 TERMINATION

10.1 Termination for Cause. If the Contractor is adjudged a bankrupt, or if the Contractor makes a general assignment for the benefit of the Contractor's creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor consistently or repeatedly refuses or fails, excepting cases of which extension of time is appropriated, to supply enough properly skilled workmen or proper materials, or if the Contractor fails to make prompt payment to the Subcontractors of for materials or labor, or persistently disregards law, ordinances, rules, regulations, or orders of any public authority having jurisdiction or disregards an instruction, order or decision of the Contracting Officer, or otherwise is guilty of a substantial violation of any provision of the contract, then the Contractor shall be in default, and the Owner may, without prejudice to any other right or remedy and upon written notice to the Contractor, take possession of all materials, tools, appliances, equipment, construction equipment, and machinery and vehicles, offices and other facilities on the project site and all material intended for the work, wherever stored, and seven (7) days after such notice, may terminate the employment of the Contractor, accept assignment of any or all Subcontractor's contracts pursuant to this Agreement, and furnish the work by whatever method the Owner may deem expedient. The Owner shall be entitled to collect from the Contractor all direct, indirect, and consequential damages suffered by the Owner of behalf of the Contractor's defaults. The Owner shall be entitled to hold all amounts due to Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such damages.

10.1.1 The Owner shall incur no liability by reason of such termination.

10.2 Termination for Convenience.

10.2.1 In the event that this Contract is terminated by the Owner 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.

10.2.2 Payment by the Owner pursuant to Subparagraph 10.2.1 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.

10.3 The Contractor shall not be relieved of liability to the Owner by virtue of any termination of this Contract, and any claim for damages against the Contractor relating to the Contractor's performance under this Contract shall survive any termination hereunder.

10.4 In the event of termination of this Contract, the Contractor shall promptly deliver to the Town all documents, work papers, calculations, computer programs, data, drawings, plans, and other tangible work product, or materials pertaining to the Services performed under this Contract to the time of termination.

11. NON-APPROPRIATION

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 Owner 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 comply with M.G.L. c. 30, § 39R. 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.

13. DISPUTE RESOLUTION

Claims, disputes or other matters in question between the parties to this Contract arising out of or relating to this Contract or breach thereof shall be subject to and decided by the Superior Court of Massachusetts in Middlesex County, if jurisdiction exists, and if jurisdiction does not exist in the Superior Court, said action shall be brought in the Suffolk District Court of Massachusetts. A claim, dispute or other matter may be submitted to mediation, in accordance with the provisions of the American Arbitration Association, at the sole discretion of the Owner.

12.1 In the event that the Owner elects to demand mediation to settle any claim, dispute or matter in question, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

14. 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 Owner 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.

15. NOTICES

Notices to the Contractor shall be deemed given when hand delivered to the Contractor's Representative in person, or when deposited in the U.S. mail addressed to the Contractor at the Contractor's address specified in the Owner - Contractor Agreement, or when delivered by courier to either location. Unless otherwise specified in writing by the Owner, notices and deliveries to the Owner shall be effective only when delivered to the Owner at the address specified in the Owner - Contractor Agreement and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by the Owner to receive official notices.