

NEWTON HOUSING AUTHORITY

***CONTRACT FOR HVAC & RELATED
MECHANICAL & PLUMBING SERVICES***

PROJECT MANUAL:

**SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND
RELATED MECHANICAL & PLUMBING SYSTEMS**

***INVITATION FOR BID
#OC-HVAC20180109***

Bid Opening Date: February 14, 2018 at 11:00 a.m.

JANUARY 2018

Amy Zarechian, Executive Director

NEWTON HOUSING AUTHORITY

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END OF SECTION

NEWTON HOUSING AUTHORITY - INVITATION FOR BID#OC-HVAC20180109

The Newton Housing Authority invites sealed bids from Contractors for SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND RELATED MECHANICAL & PLUMBING SYSTEMS

Bids will be received until **11:00 a.m., February 14, 2018** at the Newton Housing Authority, 82 Lincoln Street, Newton Highlands, MA 02461. Immediately following the deadline for bids all bids received within the time specified will be publicly opened and read aloud.

Contract Documents will be electronically available upon request by either emailing or calling Christine Long, Capital Improvement Coordinator at clong@newtonhousing.org or (617) 552-5501. Bidders are responsible for submitting their company Name, Address, Email address, Phone & Facsimile number and bid # (OC-HVAC20180109) with their request.

During the bidding period, the Newton Housing Authority shall make all facilities available for viewing between the hours of 10:00 a.m. - 3:00 p.m. by appointment with designated Authority personnel. **The Authority strongly encourages each bidder to visit each site; bidders will be responsible for all work under this Contract whether they visit the facilities or not.** Bidders may contact Christine Long to arrange viewing at (617) 552-5501.

The term of this contract shall extend from March 12, 2018 through March 11, 2019. The contract value is estimated to be \$95,000.

All bids must be accompanied by a bid deposit in an amount that is not less than **five percent (5%)** of the value of the bid, including all add alternates. Bid deposits, payable to the Newton Housing Authority, shall be either in the form of a bid bond, or cash, or a certified check, or a treasurer's or cashier's check issued by a responsible bank or trust company. Bidders are reminded that the bid deposit covers the Authority for damages when a bidder withdraws its bid after the bid submission date. **Please be advised that the Authority will retain all bid deposits for withdrawn bids to the extent permitted by the law.**

All bids shall be submitted as one ORIGINAL and one COPY.

All bids are subject to the provisions of M.G.L. Chapter 149, Section 44 A-J. **Wages are subject** to minimum wage rates determined by the Massachusetts Department of Labor and Industries pursuant to M.G.L. Chapter 149, Sec. 26 to 27H. The schedule of wage rates applicable to this contract is included in the bidding documents. In addition, the prevailing wage schedule will be updated annually for all public construction works lasting longer than one (1) year. ***You will be required to pay the rates set out in any updated prevailing wage schedule. Increases in prevailing wage schedules will not be the basis for change order requests.*** The successful bidder will be required to provide a Certificate of Insurance demonstrating current coverage of the type and amounts set forth in the Work Manual. The successful bidder will be required to furnish a **Performance and Labor and Materials Payment Bond each in the amount of 100%** of the contract total.

It is the sole responsibility of the bidder to ensure that they have received any and all addenda prior to the bid opening. Addenda will be available online by either requesting the document by telephone at (617) 552-5501 attention: Christine Long, Capital Improvement Coordinator or by email @ clong@newtonhousing.org.

The Authority will reject any and all bids in accordance with the above referenced General Laws. In addition, the Authority reserves the right to waive minor informalities in any or all bids or to reject any or all bids (in whole or in part) if it be in the public interest to do so.

By Its Executive Director,
Amy Zarechian

NEWTON HOUSING AUTHORITY

INSTRUCTIONS TO BIDDERS

ARTICLE 1 - BIDDER'S REPRESENTATION

- 1.1 Each General Bidder (hereinafter called the "Bidder") by making a bid (hereinafter called "bid") represents that:
 1. The Bidder has read and understands the Bidding Documents, Contract Forms, Conditions of the Contract, General Requirements and Work Specifications (collectively, referred to as the "Contract Documents") and the bid is made in accordance therewith.
 2. The Bidder has visited the work site(s) and is familiar with the local conditions under which the work has to be performed.
- 1.2 Failure to so examine the Contract Documents and work site(s) will not relieve any Bidder from any obligation under the bid as submitted.

ARTICLE 2 - REQUEST FOR INTERPRETATION

- 2.1 Bidders shall promptly notify the Authority of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site and local conditions.
- 2.2 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the Capital Improvement Coordinator by email to clong@newtonhousing.org or by facsimile at (617) 552-5507. The Authority will only answer such requests if received by **1:00 pm, Wednesday, January 31, 2018**.
- 2.3 Interpretation, correction, or change in the Contract Documents will be made by written addendum which will become part of the Contract Documents. The Authority will not be held accountable for any oral communication.
- 2.4 Addenda will be emailed to every individual or firm on record as having taken a set of Contract Documents.
- 2.5 Copies of addenda will be made available for inspection at the location listed in the Invitation for Bids where Contract Documents are on file.
- 2.6 Bidders or proposers contacting ANY AUTHORITY EMPLOYEE regarding an Invitation for Bid (IFB) or a Request for Proposal (RFP), outside of the CAPITAL IMPROVEMENT COORDINATOR and defined procurement process once an IFB or RFP has been released, may be disqualified as a bidder from the procurement process.

Bidders are solely responsible for obtaining any addenda prior to the bid opening. If the bidder makes itself known to the Capital Improvement Coordinator via facsimile (617) 552-5507 or by email at clong@newtonhousing.org, it shall be placed on the bidder's list. Bidders must provide the Capital Improvement Coordinator with their company's name, street address, city, state, zip, phone, fax, email address and **INVITATION FOR BID #OC-HVAC20180109**.

ARTICLE 3 – MINORITY BUSINESS ENTERPRISE PARTICIPATION

- 3.1 Notice is hereby given that all Commonwealth of Massachusetts programs certified by the Supplier Diversity Office (SDO) and formerly known as SOMWBA, that are in effect at the time of this solicitation are applicable to all Authority contracts for goods and services in excess of \$50,000.00.

ARTICLE 4 - PREPARATION AND SUBMISSION OF BIDS

- 4.1 Bids shall be submitted on the "Bid Form" as appropriate, furnished by the Authority.
- 4.2 All entries on the Bid Form shall be made by typewriter or in ink.

- 4.3 Where so indicated on the Bid Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall take precedence.
- 4.4 Bid Deposits shall be submitted in the amount specified in the Invitation for Bids. They shall be made payable to the Authority and shall be either in the form of cash, certified check, treasurer's or cashier's check issued by a responsible bank or trust company, or a bid bond issued by a surety licensed to do business in the Commonwealth of Massachusetts; and shall be conditioned upon the faithful performance by the principal of the agreements contained in the bid. Bidders are reminded that the bid deposit covers the Authority for damages when a bidder withdraws its bid after the bid submission date. **Please be advised that the Authority will retain all bid deposits for withdrawn bids to the extent permitted by law. Bid deposits of the three (3) lowest responsible and eligible Bidders shall be retained until the execution and delivery of the Authority-Contractor agreement**
- 4.5 .The Bid, including the bid deposit, shall be enclosed in a **sealed envelope** with the following plainly marked on the outside:
- * GENERAL BID FOR: **#OC-HVAC20180109 attn: Christine Long, Capital Improvement Coordinator**
 - * NAME OF WORK: **Servicing, Repairing & Maintenance of HVAC and Related Mechanical & Plumbing Systems**
 - * BIDDER'S NAME, BUSINESS ADDRESS, AND PHONE NUMBER
- 4.6 Date and time for receipt of bids is set forth in the Invitation for Bids.
- 4.7 Timely delivery of a bid at the location designated shall be the full responsibility of the Bidder. In the event that Newton Housing Authority is closed on the date or at the time that bids are due, the date and time for receipt of bids shall be on the next business day following that the Newton Housing Authority is open.
- 4.8 Bids shall be submitted with one **original** and one **copy**.
- 4.9 Please be advised that Massachusetts law now requires all those employees who work on Massachusetts public works construction sites to possess a minimum of 10 hours of OSHA-approved safety and health training. See Chapter 306 of the Acts of 2004, which became effective July 1, 2006.
1. This requirement will apply to any general bid or sub bid submitted.
 2. This law directs the Massachusetts Attorney General to restrain the award of construction contracts to any contractor who is in violation to this requirement and to restrain the performance of these contracts by non-complying contractors.
 3. The contractor and all subcontractors on this work will be required to provide certification of compliance with this requirement. Non-compliance with this law will disqualify you from bidding on public contracts.

ARTICLE 5 - ALTERNATES

- 5.1 Each Bidder shall acknowledge alternates (if any) in Section C on the Bid Form.
- 5.2 In the event an alternate does not involve a change in the amount of the base bid, the Bidder shall so indicate by writing "No Change", or "N/C" or "0" in the space provided for that alternate.
- 5.3 Bidders shall enter on the Bid Form a single amount for each alternate which shall consist of the amount for work performed by the Contractor.
- 5.4 The low Bidder shall be determined on the basis of the sum of the base bid and the accepted alternates.

ARTICLE 6 - WITHDRAWAL OF BIDS

- 6.1 Any bid may be withdrawn prior to the time designated for receipt of bids on written or electronic request. Electronic withdrawal of bids must be confirmed over the Bidder's signature by written notice postmarked on or before the date and time set for receipt of bids.
- 6.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.
- 6.3 No bids may be withdrawn within sixty (60) days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

ARTICLE 7 - CONTRACT AWARD

- 7.1 The Authority will award the contract to the lowest eligible and responsible Bidder within sixty (60) days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.
- 7.2 The Authority reserves the right to waive minor informalities in or to reject any or all Bids if it be in the public interest to do so.
- 7.3 As used herein, the term "lowest responsible and eligible Bidder" shall mean the Bidder (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who has met all the requirements of the invitation for bids; (3) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work..
- 7.4 Subsequent to the award and within five (5) days, Saturdays, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the Authority a contract in the form included in the Contract Documents in such number of counterparts as the Authority may require.
- 7.5 In the event that the Authority receives low bids in identical amount from two or more responsive and responsible Bidders, the Authority shall select the successful Bidder by a blind selection process chosen by the Authority such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process to ensure fairness and transparency.

ARTICLE 8 - TAXES

- 8.1 The Bidder shall not include in this bid any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.
- 8.2 The Authority is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid. The Newton Housing Authority's exemption Number is E-046-006-541.

END OF SECTION

**SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND RELATED
MECHANICAL & PLUMBING SYSTEMS GENERAL BID FORM #OC-HVAC20180109**

TO THE AWARDING AUTHORITY:

A. The undersigned proposes to furnish all labor and materials for SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND RELATED MECHANICAL SYSTEMS in Newton, Massachusetts in accordance with the accompanying plans and specifications prepared by the Newton Housing Authority for the contract price specified below, subject to additions and deductions according to the terms of the specifications.

B. This bid includes addenda number (s), if applicable.

C. The proposed contract price is:

\$ _____
(Total of Items 1 & 2 on the Itemized Bid Form, page 10)

DOLLARS (\$ _____)

For Alternate No. N/A Add \$ N/A ; Subtract \$ N/A

The undersigned has completed and submits herewith the following documents:

A five percent (5%) bid deposit/bid guarantee

Signed Bid Form, 2 pages

Certificate of Non-Collusion, 1 page

Debarment Letter, 1 page

IRS form W-9, 1 page

Itemized Bid Sheet, 1 page

A. Prompt Payment Discounts. Bidders are encouraged to offer discounts in exchange for an expedited payment. Payments may be issued earlier than the general goal of within 30 days of receipt of the invoice only when in exchange for discounted prices. Discounts will not be considered in determining the lowest responsible bidder.

Prompt Payment Discount _____ % _____ Days

Prompt Payment Discount _____ % _____ Days

Prompt Payment Discount _____ % _____ Days

B. The sub-division of the proposed contract price is as follows: N/A

Item 1. The work of the General Contractor, being all work other than that covered by Item 2

Total of Item 1: \$ N/A

Item 2. Sub-bids as follows:

Sub-Trade	Name of Sub-bidder	Amount	Bond Required (Yes or No)
<u>N/A</u>	<u>N/A</u>	<u>\$ N/A</u>	<u>N/A</u>

Total of Item 2: \$ N/A

The undersigned agrees that each of the above named sub-bidders will be used for the work indicated at the amount stated, unless a substitution is made. The undersigned further agrees to pay the premiums for the performance and payment bonds furnished by sub-bidders as requested herein and that all of the cost of all such premiums is included in the amount set forth in Item 1 of this bid.

The undersigned agrees that if s/he is selected as general contractor, s/he will promptly confer with the awarding authority on the question of sub-bidders; and that the awarding authority may substitute for any sub-bid listed above a sub-bid filed with the awarding authority by another sub-bidder for the sub-trade against whose standing and ability the undersigned makes no objection; and that the undersigned will use all such finally selected sub-bidders at the amounts named in their respective sub-bids and be in every way as responsible for them and their work as if they had been originally named in this general bid, the total contract price being adjusted to conform thereto.

C. The undersigned agrees that, if s/he is selected as general contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that s/he will comply fully with all laws and regulations applicable to awards made subject to section forty-four A of M.G.L. Chapter 30, s 39M.

The undersigned certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) 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 ("OSHA") 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 (3) 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 OSHA that is at least 10 hours in duration. The undersigned understands that 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.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____

(Name of General Bidder)

BY: _____
(Signature)

(Printed Name and Title of Signatory)

(Business Address)

(City, State Zip)

(Telephone)

(Fax)

(E-mail address)

NOTE: If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; and if an individual, give residential address if different from business address.

END OF SECTION

SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND RELATED MECHANICAL AND PLUMBING SYSTEMS - ITEMIZED BID SHEET #OC-HVAC20180109

Bidder submits the following itemized pricing for the maintenance and repair services described in the Work Manual.

All quantities shown below are estimates only of the Authority's requirements during the contract term. The Authority will direct the contractor to perform only that work which is actually required. The contractor will be compensated only for that work which is actually performed as agreed upon. A material allowance is built into the contract. Receipts for materials used when performing work shall be submitted to the Authority and paid at cost of materials plus a 10% markup (See page 71).

1. Standard Rate - (Para. 1.8 A)* (p. 71)

Standard Rate \$/HR_____X 450 HRS = \$_____

2. Premium Rate - (Para. 1.8 B)* (p. 71)

Premium Rate \$/HR_____X 150 HRS = \$_____

Allowance for materials (Para. 12.4-below)*

Grand Total (Items 1 & 2) = \$_____

COMPANY: _____

*See 12.4 Labor, Subcontract and Material/Equipment Costs:

12.4.1 The cost of the Work involved includes payroll costs for craft labor including foremen in the direct employ of the Contractor assigned to the site and engaged in furnishing and incorporating materials or equipment in the Work involved. Payroll costs shall include wages at the minimum wage rates for Contractor's personnel established for this Contract pursuant to M.G.L. Chapter 149, §§ 26-27H plus labor burdens, e.g. social security, unemployment, workers' compensation, health and retirement benefits, vacation and holiday pay, etc. When determining actual payroll costs per paragraph 12.3.5, daily time sheets certified by the Contractor and verified by the Architect will be the record upon which payroll costs shall be based. When determining actual payroll costs per paragraph 12.3.6, daily time sheets shall be valid only if they expressly correlate to the Work involved, and if developed when the Work involved was performed for the purposes of establishing payroll.

12.4.2 The cost of the Work involved includes payments by the Contractor to Suppliers for material and equipment used in the Work involved, including transportation, storage, and necessary Supplier's field services. All trade discounts, rebates and refunds and all returns from sale of surplus items shall accrue to the Authority, and the Contractor shall make provisions so that they may be obtained. If required by the Authority, the Contractor shall obtain bids for designated items of materials or equipment and nominate at least two (2) suppliers for selection by the Authority. When determining actual material and equipment costs, invoices segregating items associated with the Work involved shall be the record upon which to base actual costs.

12.4.3 The cost of the Work involved includes payments made by the Contractor to Subcontractors for the Work involved performed by the Subcontractors. When determining Subcontractors' cost of the Work involved, the methods to be used shall be those used to determine the Contractor's costs, except that the term "Subcontractor" shall replace the term "the Contractor" if the context will permit. If required by the Authority, the Contractor shall obtain detailed competitive sub-bids and nominate at least two (2) Subcontractors for the performance of any Work involved, subject to selection by the Authority.

END OF SECTION

NEWTON HOUSING AUTHORITY

BIDDER'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the Authority for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____
2. WHEN ORGANIZED: _____
3. INCORPORATED? _____ YES _____ NO DATE AND STATE OF INCORPORATION: _____
4. IS YOUR BUSINESS A **MBE**? _____ YES _____ NO **WBE**? _____ YES _____ NO or **MWBE**? _____ YES _____ NO
- * 5. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

- * 6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?
_____ YES _____ NO
IF YES, WHERE AND WHY?

- * 7. HAVE YOU EVER DEFAULTED ON A CONTRACT? _____ YES _____ NO
IF YES, PROVIDE DETAILS.

- * 8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:

- * 9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE WORK BEING BID. A MINIMUM OF FOUR (4) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

WORK _____ NAME: _____
OWNER: _____
CITY/STATE: _____

DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO WORK?: _____
(i.e., contract manager, purchasing agent, etc.)

WORK NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO WORK?: _____
(i.e., contract manager, purchasing agent, etc.)

WORK NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO WORK?: _____
(i.e., contract manager, purchasing agent, etc.)

WORK NAME: _____
OWNER: _____
CITY/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY BID? _____ YES _____ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO WORK?: _____
(i.e., contract manager, purchasing agent, etc.)

10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Authority in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: _____ BIDDER: _____

SIGNATURE: _____

PRINTED NAME: _____ TITLE: _____

END OF SECTION

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

(Signature of individual)

Name of Business

Newton Housing Authority
82 Lincoln Street
Newton Highlands, MA 02461

Tel: (617) 552-5501
Fax: (617) 552-5507
TD: (617) 332-3802

Amy Sutherland
Executive Director

Re: Debarment Letter for Invitation For **Bid #OC-HVAC20180109**

As a potential vendor on the above contract, the Authority requires that you provide a debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

Debarment:

Federal Executive Order (E.O.) 12549 “Debarment and Suspension“ requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.

I hereby certify under pains and penalties of perjury that neither I nor any principal(s) of the Company identified below is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

_____(Name)
_____(Company)
_____(Address)
_____(Address)
PHONE _____ FAX _____
EMAIL _____

_____Signature

Date _____

If you have questions, please contact Christine Long (617) 552-5501.

**Request for Taxpayer
Identification Number and Certification**

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Other (see instructions) ▶	<input checked="" type="checkbox"/> Exempt payee
Address (number, street, and apt)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
or

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶	Name
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

CONTRACT FORMS

The awarded bidder will be required to complete and submit documents substantially similar in form to the following.

These forms may need to be modified on account of changed circumstances, and are provided for informational purposes only.

AUTHORITY- CONTRACTOR
AGREEMENT CONTRACT NO. C

THIS AGREEMENT made this day of in the year 201 by and between the **NEWTON HOUSING AUTHORITY**, a duly organized public body politic existing under the laws of the Commonwealth of Massachusetts, Chapter 121B, hereinafter referred to as the **AUTHORITY**, acting through its Executive Director, but without personal liability to her, and , hereinafter referred to as the **CONTRACTOR**, for the sum of **Dollars.**

The parties hereto for the considerations hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The Contractor shall furnish all labor, materials and equipment, and perform all work required in strict accordance with the Contract Documents for the following work:

SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND RELATED MECHANICAL & PLUMBING SYSTEMS

- II. CONTRACT DOCUMENTS.** The Contract documents consist of the following documents which are either attached to this Agreement or are incorporated herein by referenced:

- a. This AUTHORITY-CONTRACTOR Agreement;
- b. The Authority's Invitation For Bid #OC-HVAC20180109 issued by the Executive Director; Amy Zarechian, or her designee.
- c. The Work Manual for **Servicing, Repairing, and Maintenance of HVAC and Related Mechanical & Plumbing Systems** including the Instructions to Bidders; General Conditions; Special Conditions; MBE Requirements, Wage Rate Requirements and Wage Rate Schedule(s) including any updated prevailing wage rate schedules if applicable; The Supplementary Special Conditions; General Requirements and Work Specifications; and Drawings, if included or referenced therein;
- d. Addendum, if any;
- e. The Bid Response of the CONTRACTOR submitted for this Work and accompanying documents and certifications;
- f. Certificate(s) of Insurance and surety bond(s) submitted by the CONTRACTOR in connection with this Work;
- g. Duly authorized and executed Amendments, Work Orders, or Change Orders issued by the AUTHORITY after execution of this AUTHORITY-CONTRACTOR Agreement.

This AUTHORITY-CONTRACTOR Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the AUTHORITY and the CONTRACTOR.

- III. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this AUTHORITY-CONTRACTOR Agreement and the Work Manual, the terms of this Agreement shall prevail.

- IV. APPLICABLE STATUTES.** All applicable federal, state and local laws and regulations are incorporated herein by reference and the Contractor agrees to comply with same.

- V. CONTRACT TERM & VALUE.** The term of this contract **shall extend for one year from March , 2018 Through March , 2019.** The Contract value is **Dollars.**
- VI. AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not constitute a notice to proceed or authorization to perform work. No work shall be commenced unless authorized by a written Work Order prepared by Newton Housing Authority, specifying the work to be performed. The Contractor will be paid for work performed in accordance with the provisions contained in the Work Manual and applicable state law.
- VII. RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** The Contractor shall take all responsibility for the work, and shall take all precautions for preventing injuries to persons and property in or about the work and shall defend, indemnify and hold the Authority harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The Contractor shall be responsible for any damage which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do.
- VIII. WARRANTY.** Except as may be otherwise provided in the Work Manual, the Contractor shall replace, repair or make good, without cost to the Authority, any defects or faults arising within one (1) year after date of acceptance of work and materials furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Contractor.
- IX. PATENT INDEMNIFICATION.** The Contractor agrees to assume the defense of and shall indemnify and save harmless the Authority and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Contractor, within a reasonable time, shall at its own expense, and as the Authority may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.
- X. ASSIGNMENT/SUB-CONTRACTING.** The Contractor agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the Authority.
- XI. TERMINATION.** If the work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be assigned or transferred, without the previous written consent of the Authority, or if the Contract or any claim hereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the Authority determines that the conditions herein specified as to the rate of progress are not fulfilled, or that the work or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this Contract, the Authority may terminate this Contract and/or notify the Contractor to discontinue such work or such part thereof as the Authority may designate, and the Authority may thereupon by agreement or otherwise, as it may determine, complete the work, or any part thereof; and for such completion the Authority for itself or for its Contractor may take possession of and use or cause to be used in the completion of the work thereof any of such materials, apparatus, machinery, implements, and tools of every description as may be found upon said work. Termination pursuant to this paragraph shall not entitle the Contractor to any claim for damages on account thereof, nor shall it relieve the Contractor of any liability under this Contract.
- XII. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- XIII. SEVERABILITY.** The provisions of this Contract are severable. If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Contract.

XIV. AMENDMENTS TO THIS CONTRACT. This Contract may not be amended except in writing executed in the same manner as this AUTHORITY-CONTRACTOR Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

NEWTON HOUSING AUTHORITY

By:

Date: _____

Date: _____

Affix Corporate Seal Here

WITNESSED BY: _____

Printed name: _____

Date: _____

CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of _____
(insert full name of Corporation)
2. corporation, and that _____
(insert the name of officer who signed the **contract and bonds**.)
3. is the duly elected _____
(insert the title of the officer in line 2)
4. of said corporation, and that on _____
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds**.)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. _____ the _____
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: _____ *AFFIX CORPORATE
SEAL HERE*
(Signature of **Clerk or Secretary**)*
7. Name: _____
(Please print or type name in line 6)*
8. Date: _____
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds**.)

* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

**NEWTON HOUSING AUTHORITY
MASSACHUSETTS PERFORMANCE BOND**

Know All Men By These Presents:

That we, _____, as PRINCIPAL, and _____, as SURETY, are held and firmly bound unto the Newton Housing Authority as Obligee in the sum of _____ dollars (\$ _____) to be paid to the Obligee, for which payments well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said PRINCIPAL has made a contract with the Obligee, bearing the date of February , 2018 for the **SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND RELATED MECHANICAL & PLUMBING SYSTEMS for Newton Housing Authority**, Newton, Massachusetts.

Now, the condition of this obligation is such that if the PRINCIPAL and all Sub-contractors under said contract shall well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of said contract on its part to be kept and performed during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the SURETY, and during the life and any guarantee required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions to said contract that may hereafter be made, notice to the SURETY of such modifications, alterations, changes or additions being hereby waived, then this obligation shall become null and void; otherwise, it shall remain in full force, virtue and effect.

In the event, that the contract is abandoned by the PRINCIPAL, or in the event that the Obligee terminates the employment of the PRINCIPAL or the authority of the PRINCIPAL to continue the work said SURETY hereby further agrees that said SURETY shall, if requested in writing by the Obligee, take such action as is necessary to complete said contract.

In Witness Whereof, the PRINCIPAL and SURETY have hereto set their hands and seals this ____ day of _____ 2017.

PRINCIPAL

SURETY

BY _____

BY _____

(SEAL)

(ATTORNEY-IN-FACT) (SEAL)

(Title)

ATTEST: _____

ATTEST: _____

NEWTON HOUSING AUTHORITY
MASSACHUSETTS PAYMENT BOND

Know All Men By These Presents:

That we, _____, as PRINCIPAL, and _____, as SURETY, are held and firmly bound unto the Newton Housing Authority as Obligee, in the sum of dollars (\$_____) to be paid to the Obligee, for which payments well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said PRINCIPAL has made a contract with the Obligee, bearing the date of February , 2018, for the **SERVICING, REPAIRING AND MAINTENANCE OF HVAC AND RELATED MECHANICAL & PLUMBING SYSTEMS for Newton Housing Authority** in Newton, Massachusetts.

Now, the conditions of this obligation are such that if the PRINCIPAL and all Sub-contractors under said contract shall pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the SURETY of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purposes or items set out in, and to be subject to, provisions of M.G.L. c. 30, sec. 39A, and M.G.L. c. 149 sec. 29, as amended, then this obligation shall become null and void; otherwise it shall remain in full force, virtue and effect.

In Witness Whereof, the PRINCIPAL and SURETY have hereto set their hands and seals this day of February 2018.

PRINCIPAL

SURETY

BY _____

BY _____

(SEAL)

(ATTORNEY-IN-FACT)(SEAL)

(Title)

ATTEST: _____

ATTEST: _____

GENERAL CONDITIONS

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NEWTON HOUSING AUTHORITY

(General Conditions For Authority Works Bid Under M.G.L. c. 149)

ARTICLE 1 - CONTRACT DOCUMENTS

1.1 Use of Terms:

The following terms used in this Section or elsewhere in the Contract Documents, shall have these meanings:

Addendum – A written modification, clarification, correction or other change to the Contract Documents issued by the Authority prior to the date stated for the receipt of bids.

Application for Payment - The form furnished by the **Authority** to be used by the **Contractor** in requesting payment, and which shall enclose the affidavit required in the Contract Documents.

Authority – The Newton Housing Authority, a duly organized corporation in the Commonwealth of Massachusetts, acting by its Executive Director or her authorized representative.

Business Day - Any day except Saturdays, Sundays and legal holidays observed by the Authority. The term "day" means a calendar day.

Change Authorization - A written order executed by the **Authority** directing the **Contractor** to make changes in the Work or giving the basis for a potential change in Contract Price or Contract Time for incorporation into the Contract Documents by Change Order.

Change Order - A written instrument which when fully executed by the **Authority** amends the Contract Documents to provide for changes in the Work, or in Contract Price or Contract Time.

Claim - A written demand of assertion by the **Authority** or **Contractor**, which is properly certified according to the requirements of Paragraph 15.2.1, seeking an adjustment in Contract Price and payment of monies due, an extension or shortening in Contract Time, the adjustment or interpretation of Contract terms, or any other relief arising under or relating to the Contract, after a determination by the **Authority** under the appropriate provision of the Contract Documents.

Contract/Contract Documents – This Agreement, fully executed; the Certificate of Authority; all Addenda; the Letter of Award; the Work Manual including MBE Requirements, Wage Rate Requirements and Wage Rate Schedule including any updated prevailing wage rate schedules as applicable, Supplementary Conditions; the General Conditions; the Drawings; the Specifications; the Invitation for Bids; the Contractor's bid; all bonds submitted; All Change Authorizations and Change Orders when fully executed.

Contract Time – The time commencing upon the date of execution of the Contract by the Executive Director of the Authority and continuing through the date of Final Completion.

Contract Price – The not to exceed lump sum price representing full compensation for everything furnished, done by or resulting to the **Contractor** in carrying out the Contract.

Contractor - Person or firm named "The Contractor" in the Agreement with whom the **Authority** has awarded and entered into the Authority-Contractor Agreement.

Correction Period - The period of time within which the **Contractor** shall in accordance with the Contract Documents, either correct, or if rejected, remove and replace, defective Work.

Date for Commencement of the Contract Time - The date when the Contract Time starts to run.

Day – A calendar day.

Defective Work - Work that is unsatisfactory, deficient or damaged, does not conform to the Contract Documents, or does not meet the requirements of any inspection, test or approval.

Drawings – The graphic and pictorial part of the Contract Documents depicting the Work including plans, elevations, sections, details, schedules and diagrams Drawings shall not serve nor be used as Shop Drawings.

Final Acceptance - The Authority's written notice to the **Contractor** accepting the Work, following the Authority's determination that the Work has been completed and is acceptable.

Laws - Laws, including statutes, by-laws, rules, regulations, codes, resolutions and ordinances, or orders.

M.G.L. - Massachusetts General Laws.

Notice of Claim – A clearly marked written notice that states the general nature of the Claim delivered by the party making the Claim to the other party no later than thirty (30) days after the determination giving rise to the Claim.

Authority – The Executive Director acting on behalf of the **Authority** in the execution of the Agreement, or his/her authorized representative.

Owner - The Newton Housing Authority: see definition for "Authority."

Partial Utilization - Use by the **Authority** of a portion of the Work before reaching Substantial Completion for all the Work.

Specifications - Parts of the Contract Documents consisting of written requirements for technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and performance of related services.

Sub-agreement – A subcontract or purchase order awarding part of the Work to a Subcontractor or Supplier.

Subcontractor - A person having a Sub-agreement for performing labor at the site, or for performing labor and furnishing materials/equipment. *Filed sub-bid Subcontractor* is one who performs a sub trade for which the Authority requested filed sub-bids.

Submittals - Includes Shop Drawings, cut sheets, brochures, samples, and all those other documents required for submission by the Contract Documents. The term *Shop Drawings* includes drawings, diagrams, illustrations, standard schedules, performance charts, instructions, and other data prepared by or for the **Contractor** to illustrate some part of the Work, or by a Supplier and submitted by the **Contractor** to illustrate items of materials or equipment.

Supplier - A manufacturer, fabricator, distributor, materialman or vendor having a Sub-agreement for furnishing materials and equipment and/or not for performing labor at the site.

Underground Utilities - All pipelines, conduits, ducts, cables, wells, tanks, tunnels, and appurtenances, or other similar facilities, installed underground to furnish: water, electricity, gases, steam, petroleum products, telephone, communications, cable TV, sewerage and drainage removal, traffic, or control systems.

Work - The entire completed work, or its various parts, as specified in the Contract Documents. Work is the result of performing and furnishing all services, obligations, responsibilities, labor, materials, equipment, temporary facilities, and incidentals necessary to complete the scope under the Contract Documents. Whenever the term "execution" is used with reference to the Work, it includes the performance and/or furnishing of the Work.

1.1.2 Any period of time in days will be computed to exclude the first and include the last day. If the last day falls on a non-Business Day, it shall be omitted from the computation. The term "registered mail" includes certified mail with return receipt requested. The term "person" means individuals, firms, partnerships, corporations, receivers, trustees, joint ventures, and any combinations of them. The term "State" or "Commonwealth" means the Commonwealth of Massachusetts.

1.1.3. Other terms used in this Section shall have the meanings assigned to them elsewhere in the Contract Documents, and if not assigned and where the context will permit, as used or defined in Massachusetts General Laws (M.G.L.).

1.2 Interpretations:

1.2.1. Whenever the term "the **Contractor**" is used concerning an action, obligation or event, it shall cover, even if not expressly stated, actions or obligations of, events involving, any Subcontractor, Supplier, or anyone for whom any of them may be liable, unless the context requires otherwise.

1.2.2. Whenever a provision obligates the **Contractor** to reimburse the **Authority** for certain costs incurred, the **Authority** is entitled to withhold a corresponding set-off against any payment, and to amend the Contract Price accordingly.

1.2.3. Whenever a provision covering delay, extension, or acceleration which in the Contract Documents covers delay, rescheduling, extended performance, disruption, interference, inefficiency, productivity, and production losses, acceleration, or hindrance and associated cost(s) for which the **Authority** is not responsible, or which is not unreasonable under the circumstances, or which was within the contemplation of the parties, specifies that "the **Authority** shall authorize the necessary change in Contract Time **only**," the authorized change in Contract Time shall be the **Contractor's** sole and exclusive remedy with respect to the **Authority** for any such delay, extension, or acceleration, however caused, resulting from the event contemplated by that provision.

1.2.4 A provision requiring the **Contractor** to "defend, indemnify and hold harmless the **Authority**" or covering claims against or liability of the **Authority** shall include the **Authority**, its respective consultants, agents, directors, officers, and employees and any combination of any of them. A provision requiring the **Contractor** to so defend, indemnify and hold harmless the **Authority** shall also require the **Contractor** to defend, indemnify and hold harmless the **Authority**, as interpreted, from and against all of the specified claims, including those caused in part by the negligence or other liability-creating conduct or omissions of the **Authority**. The **Contractor** shall not be required to indemnify the **Authority** against liability for loss or damage resulting from the sole negligence of the **Authority**.

1.2.5 Any reference to an Article or paragraph in these General Conditions, without identification of the particular Section, shall mean a reference to these General Conditions. Terms capitalized in these General Conditions include terms defined in paragraph 1.1.1 or paragraph 1.1.3.

1.2.6 Each Article in this Section contains sub-articles, numbered as this sub-article 1.2 is numbered; parts, numbered as this part 1.2.6 is numbered; and sub-parts - all of which are considered "paragraphs". A reference to a paragraph means a reference to the entire sub-article, a part, or a sub-part, or any combination of them, depending on the intent of the reference.

1.3 Applicable Law:

1.3.1 This Contract is made subject to all laws of the Commonwealth of Massachusetts.

1.3.2 If the Contract Documents contain any unlawful provisions, such unlawful provisions shall be of no effect. Upon the application of either party, the unlawful provision shall be considered stricken from the Contract Documents without affecting the remainder of the Contract Documents.

1.3.3 All provisions of law required to be inserted in the Contract Documents shall be and are inserted herein. If through mistake, neglect, oversight or otherwise, any such provision is not herein inserted or inserted in improper form, upon the application of either party, the Contract Documents shall be changed by the Authority, at no increase in Contract Price or extension in Contract Time, so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

1.4 Intent of the Contract Documents:

1.4.1 It is the intent of the Contract Documents to describe and provide for a functionally complete Work, or Work, to be constructed in accordance with the Contract Documents. In addition to the work expressly called for in the Drawings and Specifications, any other Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be provided, at no increase in Contract Price or extension in Contract Time, and without requiring any changes in the Work, whether or not specifically called for.

1.4.2 Except as otherwise provided in the Contract Documents, words which have an accepted technical or trade meaning used to describe any Work, materials or equipment, shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, whether specifically or by implication, shall mean the latest standard specification, manual, code in effect at the date established for receipt of Sub-Bids, unless otherwise expressly stated.

1.4.3 Except as provided by the requirements of M.G.L. Chapter 149, Section 44F, the Divisions and Sections of the Specifications and the identification of any Drawings shall (a) not control the **Contractor** in delineating Work to be performed by specific suppliers, and (b) be complementary, and anything mentioned or shown in a Division or in a specific Drawing shall be of like effect as if shown in all divisions of the specifications and all Drawings.

1.4.4 Whenever the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of similar effect are used to describe a requirement, direction, review or judgment of the **Authority** as to the Work, it is intended that the requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents. No use of any such term or adjective mentioned above, or provision of any standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the **Authority representing the Authority**, the **Contractor**, or any of the their consultants, agents or employees from those assigned in the Contract Documents, nor shall it be effective to assign to the Authority, or any of its consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents.

1.5 Priority of the Contract Documents:

1.5.1 The Contract Documents are complementary, and anything mentioned or shown in a part of the Contract Documents shall be of like effect as if shown in all parts of the Contract Documents. In resolving conflicts, the Contract Documents shall be given the priority determined by the **Authority**, with regard to matters affecting the design of the Work, as well as with regard to all other matters, to be consistent with their intent and necessary to produce the intended result. Subject to such interpretation by the **Authority**, the Contract Documents shall be interpreted on the basis of the following priorities, the first listed having the highest priority:

- .1 Change Orders, Change Authorizations, and written amendments to the Contract, those dated later taking precedent over those dated earlier;
- .2 Owner-Contractor Agreement;
- .3 General Conditions;
- .4 Technical Specifications; and
- .5 Drawings.

1.5.2 If the issue of priority involves the Technical Specifications and the Drawings, figured dimensions shall govern over scaled dimensions. Work not particularly shown, identified, sized, or located shall be the same as similar Work that is shown or specified. Detail Drawings shall govern over general Drawings, larger scale Drawings take precedence over smaller scale Drawings and Contract Drawings govern over Shop Drawings. Whenever notes, specifications, dimensions, details, or schedules in the Specifications or in the Drawings, or between the Specifications and the Drawings, or between Change Order or Change Authorization Drawings and Contract Drawings, conflict, the higher performance requirement shall be furnished by the **Contractor** at no increase in the Contract Price or the Contract Time.

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

1.6 Information and Instructions for Contract Documents:

1.6.1 The **Contractor** shall carefully study all contract Documents and other instructions from the **Authority** as they are delivered, and procure from the **Authority** such special information, detailed drawings, etc., as may be necessary for the proper performance of the Work.

1.6.2 Where drawings show outline or descriptive representations of repetitive features, the **Contractor** shall construe them in exact accordance with the corresponding features which are common to similar items or materials and which are completely drawn and specified.

1.6.3 Where the statement "Consult Drawing No. " or "Refer to Drawing No. " occurs in the Specifications, such references to a Drawing have been made solely for the convenience of the **Contractor** to help identify the item under consideration and to locate the typical detail of such item in the set of Contract Drawings. It is not the intention of such references, however, to list each and every Drawing on which a certain item may occur.

1.7 Ownership and Use of the Contract Documents:

1.7.1 Unless otherwise provided in the Supplementary Conditions, the **Authority** shall furnish to the **Contractor** one (1) copy of the Contract Documents at no cost.

1.7.2 Neither the **Contractor**, nor any Subcontractor or Supplier shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other Contract Documents, and they shall not reuse any of them on extensions of the Work or any other work without prior written consent of the **Authority**. The **Contractor**, Subcontractors and Suppliers are granted a limited license to use and reproduce portions of the Contract Documents as appropriate for use in the execution of the Work. Copies made under this license shall bear the copyright notice shown on the Contract Documents.

1.7.3 All work papers, questionnaires and other written material prepared or collected by the **Contractor** in the course of completing the Work to be performed under this Contract shall at all times be the exclusive property of the Authority. The **Contractor** shall not use such materials for any purposes other than the purpose of this Contract without the prior written consent of the **Authority**.

1.8 Relationship with the Authority:

1.8.1 The **Contractor** is retained solely for the purpose of and to the extent set forth in the Contract Documents. The **Contractor's** relationship to the **Authority** during the term of this Contract shall be that of an independent Contractor. The **Contractor** shall have no capacity to involve the **Authority** in any contract nor to incur any liability on the part of the Authority. The **Contractor**, its agents or employees shall not be considered as having the status or pension rights of an employee; provided that the **Contractor** shall be considered an employee for the purpose of M.G.L. Chapter 268A (the Conflict of Interest Law). The **Authority** shall not be liable for any personal injury to or death of the **Contractor**, its agents or employees.

1.8.2 The **Contractor** shall be solely responsible for construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work unless the Contract Documents give other specific instructions concerning these matters. Where the terms and conditions for the delivery or provision of goods or services by the **Contractor** to the Authority are expressly set forth in the Contract Documents or are incorporated herein by reference, those terms and conditions shall be complied with by the **Contractor**.

1.8.3. Before they can be binding on the Parties, all amendments to the Contract must be in writing and signed by the Executive Director and the **Contractor**, approved as to the availability of a sufficient appropriation and filed with the Authority, and signed by the Executive Director.

ARTICLE 2 - THE AUTHORITY- GENERAL PROVISIONS

2.1 The Authority May Stop the Work:

2.1.1 If the Contractor fails to correct work which is not in accordance with the requirements of the Contract Documents or, If the Work is *defective*, or the **Contractor** fails to provide sufficient skilled workers or suitable materials or equipment, or fails to execute Work so that in the judgment of the **Authority** the completed Work will conform to the Contract Documents, the **Authority** may order the **Contractor** to stop all or part of the Work in question, until the problem has been corrected. This right of the **Authority** to stop the Work shall not create or impose any duty on the **Authority** to exercise this right for the benefit of the **Contractor** or any other party. The **Contractor** shall remain responsible for maintaining progress, and shall not be entitled to any increase in Contract Time or Contract Price, and the **Contractor** shall reimburse the **Authority** for all direct, indirect or consequential costs incurred by the **Authority** and attributable to such an order to stop the Work.

2.2 Limitations on the Authority's Responsibilities

2.2.1 The **Authority** is not responsible for the **Contractor's** means, methods, techniques, sequences or procedures applicable to the Work; nor for safety precautions and programs related to safety. The **Authority** is not responsible for the **Contractor's** failure to execute the Work in accordance with the Contract Documents; nor for the acts or omissions of the **Contractor** or of any Subcontractor, any Supplier or anyone for whose acts the **Contractor** or any of the Subcontractors or Suppliers may be liable.

2.2.2 Neither the **Authority** nor the **Authority's** consultants are responsible for the acts or omissions of the **Contractor** or of any Subcontractor, any Supplier, or anyone for whose acts the **Contractor** or any of the Subcontractors or Suppliers may be liable.

2.2.3 Neither the **Authority's** authority to review the **Contractor's** certificates and policies of insurance as set forth in the Instructions to Bidders, nor the **Authority's** 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 **Authority** to exercise this authority for the benefit of the **Contractor**, any Subcontractor or Supplier, or any other party.

2.6 No Waiver of Legal Rights:

2.6.1 The **Authority** reserves the right to correct any error in any progress payment that may have been paid. The **Authority** reserves the right, should proof of *defective* Work be discovered after final payment, to claim, and recover from the **Contractor** and his surety, or either of them, sufficient sums to correct, or remove and replace, the *defective* Work.

2.6.2 Any waiver by the **Authority** of any provision of the Contract Documents shall be in writing, and shall apply only to the particular matter concerned and not to other similar or dissimilar matters. Any waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach.

2.7 Miscellaneous Provisions:

2.7.1 Written communications from the **Authority** to the **Contractor** will in general be issued directly to the **Contractor**. Written communications from the **Contractor** to the Authority shall be issued to the **Authority**.

2.7.2 Any written direction or interpretation issued by the **Authority** to the **Contractor** must contain the formal endorsement thereon by the **Authority** for it to be considered valid or effective.

2.7.3 The **Authority** shall make payments to the **Contractor** as provided in the Contract Documents, and as required by Law.

2.7.4 The **Authority** may issue unilaterally, or negotiate, at the **Authority's** discretion, Change Orders and Change Authorizations as provided in Article 11 of the General Conditions. Except as recognized under paragraph 11.1.3, only the **Authority** is empowered under the Contract Documents to order or cause changes in the Work.

2.7.5 The **Authority** may unilaterally delay all or any part of the Work and correspondingly adjust or negotiate adjustments in Contract Price or Contract Time, as provided in Article 11 of the General Conditions. Except as recognized in paragraph 7.5, only the **Authority** is empowered under the Contract Documents to order or cause Authority caused delays to all or any part of the Work.

2.7.6 Decisions for which the **Authority** is responsible under the Contract Documents shall be made promptly and, in any event, within thirty (30) days after receipt of written submission but if a decision requires extended investigation and study, it will be made as permitted by M.G.L. Chapter 30, Section 39P.

2.8 Rights to Data

2.8.1 All data consisting of, but not limited to plans, drawings designs, specifications, computer programs, technical reports and operating manuals delivered, developed or produced or paid under the requirements of the Contract Documents shall be the property of the **Authority**. The **Authority** maintains all rights to such data including the right to use, duplicate, and disclose, it in whole or in part, in any manner and for any purpose. If that data is copyrightable, the **Contractor** may copyright it subject to the right of the **Authority**. The **Authority** reserves a royalty-free, nonexclusive and irrevocable license to use, duplicate, publish and disclose such data, in whole or in part, and to authorize others to do so. The **Authority** shall include provisions to implement, maintain and effectuate the provisions of these rights in all Sub-agreements which produce copyrightable data.

ARTICLE 3-THE CONTRACTOR -GENERAL PROVISIONS

General Responsibility

3.1.1 The Contractor, all Subcontractors, and all parties employed on the Work, shall perform their Work in a good and workman like manner and in accordance with the Contract Documents.

3.1.2 The Contractor shall not assign the whole or any part of the work under this Contract or any monies due or to become due hereunder without prior written consent of the Authority. In the event that the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

3.1.3 The Contractor shall conform to all determinations and directions of the Authority in accordance with provisions of the Contract Documents concerning all questions which may arise relating to the Work.

3.1.4 The Contractor shall comply with and give all notices required by laws, ordinances, codes, rules and regulations and lawful orders of public authorities applicable to performance of the Work.

Supervision and Work Management

3.2.1. The Contractor shall supervise and direct the Work competently, applying the skills, expertise and attention necessary to perform the work as directed by the Authority. The Contractor shall be solely responsible for any means, methods, techniques, sequences and procedures applicable to the Work unless a specific means, method, technique, sequence or procedure is indicated by the Authority. The Contractor shall be responsible to the Authority for acts and omissions of the Contractors' employees, subcontractors and their agents and employees and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its subcontract agents. The Contractor shall be responsible to see that the finished Work complies with all applicable inspectional requirements as set forth in local and State laws and as is approved by the Authority.

3.2.2. The Contractor shall retain a competent resident foreman properly licensed, for the duration of any given work. If a specialty trade is required for such work a competent foreman shall be retained with all proper licensure provided, for the duration of the work. If the Authority objects to the Contractor's foreman assigned to any given work, whether initially or otherwise, the Contractor shall submit a replacement foreman at no increase in Contract Price or Contract Time as established by this Contract. The foreman shall be the Contractor's representative at the site and have authority to act on his behalf.

3.2.3. The Contractor's work foreman and similar authorized representatives of any Subcontractor, Supplier or other person or organization, shall attend all work meetings necessary as requested by the Authority at no increase in Contract Price.

3.2.4. The Contractor shall, upon written request of the Authority, remove all individuals from the Authority's premises in the Contractor's employ whom the Authority determines to be disorderly, careless or incompetent or to be employed in violation of the terms of the Contract Documents as outlined herein.

Personnel, Materials and Equipment:

3.3.1 The Contractor shall provide competent, properly licensed, suitably qualified and reliable personnel to survey and lay out the Work and furnish and perform the Work as required by the Contract Documents. The

Contractor shall at all times enforce strict discipline and maintain good order at the site.

3.3.2 Unless otherwise provided in the Contract Documents, the Contractor shall furnish, pay for and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water (including water for testing, flushing, and construction), sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

3.3.3. All materials and equipment shall be of good quality and new, unless otherwise allowed, and the Contractor shall furnish satisfactory evidence (including reports of required tests) as to their kind and quality. Materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned following the manufacturer's and Supplier's instructions, unless otherwise provided in the Contract Documents. All materials and equipment shall be properly protected against damage throughout the furnishing and performance of the Work so that they remain of good quality and in the as-new condition. For each item, the Contractor shall furnish complete information as to preventive maintenance and operating requirements, parts lists in sufficient detail to facilitate ordering replacements, and any applicable special condition. Should the manner or method of installation, specified performance or test results be contrary to the manufacturer's recommendations, the Contractor shall promptly notify the Authority in writing of that conflict before proceeding with that Work; otherwise, he shall be deemed to have certified that Specifications will be met by the materials or equipment.

Wage Rates:

3.4.1. The hourly wage rate to be paid to HVAC mechanics and apprentices, electricians, laborers, plumbers and any other trade employed for Work to be performed under this Contract shall be not less than the rate of wages in the schedule entitled "Schedule of Prevailing Wage Rates," as determined by the Department of Labor and Workforce Development of the Commonwealth of Massachusetts pertaining to State developments (see attached schedules). In addition, for work performed on all Federal sites under this contract those wage rates as determined by the Davis Bacon Act shall be applicable. These schedules shall continue to be the minimum wage rate for said employees during the life of this Contract. Attached are both wage rate documents applicable to this Contract.

Working Hours:

3.5.1. Unless otherwise required under this Contract, or directed in writing by the Authority, all Work shall be performed during the regular working hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. No work shall be performed on weekend days or Holidays unless an emergency occurs and such work is requested by the Authority.

Equal Employment Opportunity:

The Contractor shall assume, and shall require each Subcontractor to assume, the obligation to take whatever affirmative actions are necessary to ensure that employees and applicants for employment under this Contract are treated equally irrespective of race, color, religious creed, national origin, sex, gender identity, sexual orientation, age or ancestry. The term "treated" shall mean and include without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or otherwise; selected for training including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid-off; and terminated.

Neither the Contractor nor any Subcontractor shall discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, gender identity, sexual orientation, age, or ancestry.

The Contractor and all Subcontractors shall carry out the requirements pertaining to equal employment with the diligence that they apply to any other part of the Contract.

Preference in Employment:

The Contractor and each Subcontractor shall give hiring preference in the employment of mechanics, apprentices, and laborers, first to the 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 in M.G.L. Chapter 4, Section 7, clause 43, and who are qualified to perform the Work to which the employment relates; and secondly, to citizens on the Commonwealth generally, and if they cannot be obtained in sufficient numbers, then to citizens of the United States; and shall give preference to veterans and citizens who are residents of the Newton Housing Authority.

Substitutes or "Or-Equal" Items:

Whenever materials or equipment are described in the Contract Documents by using a brand name, make, manufacturer, supplier or specification, the naming or specification of the item is intended to denote the essential characteristics of the item desired pursuant to M.G.L. Chapter 30, Section 39M(b). Unless words indicating that no substitution is permitted are used, items from prospective suppliers may be accepted by the Authority if sufficient information is submitted by the Contractor in his written application for the substitution to allow the Authority to determine whether the material or equipment proposed (1) will perform at least equally well the functions and achieve the results called for by the general design concept, (2) is at least of equal materials of construction, quality and necessary essential design features, (3) is suited to the same use as that named or specified, (4) conforms substantially to the desired detailed requirements for that item, including but not limited to, durability, strength, appearance, aesthetics (where aesthetics are essential), safety, service, useful life, reliability, economy of operation and ease of maintenance, (5) evidences a proven record of performance, (6) will yield net savings to the Authority, and (7) will not impact the Construction Progress Schedule and will not extend any Contract Time(s).

3.8.2. Each application shall certify whether or not acceptance of the substitute will require a change in any of the Work or any of the means, methods, techniques, sequences or procedures applicable to the Work indicated in or required by the Contract Documents, or in work performed by the Authority or others, and whether or not incorporation or use of the substitute is subject to payment of any license fee or royalty. All variations of the substitute from the item named or specified shall be identified (operation, materials, or construction finish, thickness or gauge of material, dimensions, loads, tolerances, deleted/added features, etc.), and information regarding available maintenance, repair and replacement service will be indicated.

The application shall contain an itemized estimate of all costs that will result directly or indirectly from evaluation and acceptance of the proposed substitute, including, but not limited to costs and delays of redesign, or claims of other contractors affected by the substitute, and changes in operating, maintenance, repair, replacement or spare part costs. The Contractor is solely responsible for verifying that substitutes are in accordance with the Contract Documents, and that dimensions, arrangement, design and construction details, and all other features of substitutes are suited to the specified purpose. The Contractor assumes full responsibility for the time and cost required to make substitute items conform to the requirements of the Contract Documents, or to implement any changes in the Work or in other work which may be required because of or to accommodate the substitute, or both. If a substitute item differs from that named or specified, and that difference was not expressly identified in the Contractor's written application, or it results in changes to the Work or in the function or general design concept, the Authority shall determine whether to require removal and replacement of the substitute.

The Authority's decision regarding a substitution will be made within the time allowed in M.G.L. Chapter 30, Section 39P. A proposed substitute will be accepted as equivalent or "or-equal" to that named or specified if it meets the substitution criteria and if the deduction proposed by the Contractor reflects the net difference in cost, provided, however, that one hundred percent (100%) of the net savings benefits the Authority. No substitute shall be utilized, ordered, or installed without the Authority's prior written acceptance. The Contractor shall reimburse the Authority for any associated extra costs created as a result of the change whether or not the Authority accepts a proposed substitute,

An item will be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform in function at least equally or better imposed by the general design for the Work; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the Specifications, pursuant to M.G.L. Chapter 30, Section 39M (b).

Shop Drawings, Cut Sheets, Samples and Printed Data:

Shop Drawings or other technical Submittals consisting of drawings and specifications requiring professional engineering, land surveying or any other such related disciplines, shall only be prepared by those registered as such with the Commonwealth of Massachusetts.

Operating and Maintenance Instructions and Stock Items:

The Contractor shall provide all operating, service and maintenance instructions for all mechanical, electrical and manually operated equipment installed by them under the Contract Documents.

4.19.1 Upon the date of completion of each work order, the Contractor shall provide verbal instructions and demonstrations to the Authority's representatives at the site concerning maintenance of all applicable building features and equipment.

4.19.2 Upon the date of work completion, all maintenance stock items required to be supplied under this Contract shall be delivered to the job site by the Contractor. All maintenance stock shall be delivered to the job site in unopened containers and stored properly in accordance with manufacturer's instructions. The Contractor shall provide the Authority with storage instructions for all spare maintenance stock supplied.

4.20 Record Documents:

From the sets of Contract Documents furnished by the Authority, the Contractor shall reserve one set for record purposes.

The Contractor shall maintain at the site one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Change Authorizations, field orders, test records, construction photos, and written interpretations/clarifications, in good order and annotated in a neat and legible manner using a contrasting, reproducible color to show all revisions made and dimensions noted during execution of the Work.

4.21 Instruction Relating to Existing Conditions:

4.21.1 The Contractor represents that he has read the Contract Documents herein and is fully informed in regard to all provisions thereof, including without limitation, the drawings, Contract Time and the provisions for liquidated damages, and that he has visited the premises described in the Contract Documents and made his own examination of the place where the Work is to be performed and of all conditions pertaining to the Work and has made his own estimates. The Contractor agrees that he shall not hold the Authority, its agents or employees responsible for or bound by any schedule, time period, estimate, sounding, boring, or any plan of any thereof and shall assume all liability for the prosecution of the Work and shall bear all losses resulting to him in such prosecution of the Work. No claim for an increase in Contract Price or other damages or any other claim other than for an extension in Contract Time shall be made or asserted against the Authority by reason of any delays unless specifically allowed by the Contract Documents or required by law. The Contractor shall not be entitled to an increase in the Contract Price or to compensation of any kind from the Authority including extended site and home office overhead, for direct, indirect, consequential impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption or interference from any cause whatsoever. This provision shall not preclude recovery of damages by the Contractor for hindrances or delay due solely to fraud or bad faith on the part of the Authority or its agents. Otherwise, the Contractor shall be entitled only to a non-compensable extension to the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent provided above.

4.22 Materials, Inspection, Disposition and Suitable Storage:

4.22.1 Unless otherwise stated in the Specifications, or noted on any Drawings, all materials and equipment shall be new and in manufacturer's original containers, clearly marked as to contents. Upon delivery of materials, copies of the delivery receipts shall be given to the Authority.

4.22.2 The Contractor shall allow the Authority's representative to examine materials prior to installation, and he shall furnish labor and equipment to assist in such examination with no change in Contract Price.

4.22.3 The Contractor shall store all delivered materials in proper locations as directed by the Authority's representative which will not interfere with the Work. If any stored materials are rejected, a notice of rejection will be given to the Contractor by the Authority in writing. Upon receipt of a rejection notice, the Contractor shall, within twenty-four (24) hours thereafter, proceed to remove all such rejected materials from the site, and completely remove such materials within five (5) working days.

4.22.4 Should the Contractor or any Subcontractor install, or permit the installation of, any materials which have not been inspected prior to installation, the Contractor shall be held fully responsible therefor, and if such installed materials are rejected after inspection by the Authority, the Contractor shall, take remove all portions of the Work containing rejected materials, remove all such materials from the site, and immediately replace the rejected materials accordingly at no increase in Contract Price.

4.22.5 The Contractor shall provide for the protection and orderly storage of materials, and shall provide sufficient heat and cooling to prevent damage to said materials.

4.22.6 In no event shall materials and/or equipment be considered delivered and suitably stored at the site, or some other location approved in writing by the Authority unless the materials and/or equipment are actually scheduled for prompt use, meet the requirements of the Contract Documents, and that the Contractor can and will, at his expense, adequately protect and insure the materials and/or equipment until they are incorporated into the Work. No payment will be made by the Authority for related storage charges, insurance and/or costs and expenses.

4.23 Existing Utilities:

4.23.1 If existing utility lines, which are indicated in the Contract Documents are damaged by the Contractor or any Subcontractor, including without limitation, cables, ducts, conduits and piping, they shall be immediately repaired, protected, and maintained in use until relocation of same has been completed, or shall be cut or capped or prepared for service connections, as the Contract Documents require, unless they are to be abandoned in accordance with the Contract Documents.

4.23.2 The Contractor shall notify the Authority if it is necessary to locate any Underground Utilities in advance of any excavation whether shown in any Contract Documents or indicated by exposed components. No excavation work shall be scheduled or performed prior to or within the 72 hour period starting from the time which the Authority has contacted Dig Safe per MGL Chapter 82 Sec. 40-40E. Once Dig Safe has completed marking off all utility lines within the area to be excavated, the Authority will notify the Contractor that work shall be allowed to safely commence.

4.23.3 The Contractor shall notify the Authority in writing, not less than three (3) business days in advance of the proposed time for shutting down or interrupting any utilities, services, or facilities which may affect the operation of other buildings, services or facilities of the Authority or other contractors. In no case shall any shutdown or interruption of any utilities, services, or facilities be made without the prior written approval by the Authority. Unless otherwise authorized in writing by the Authority, the Contractor shall so schedule and coordinate his work that such interruption will occur on weekends, holidays, or before or after the normal working day of the Authority's Facilities. All costs and expenses, including outage costs and back charge costs, shall be borne by the Contractor.

4.24 Maintenance of Site:

4.24.1 At all times prior to Final Completion, the Contractor shall keep the site free from accumulation of waste materials or rubbish.

4.24.2 The Contractor shall be responsible for the protection of all completed Work, and for repairing, replacing or cleaning any such Work which has been damaged by other trades or by any other cause, so that all Work is in perfect condition in accordance with the Contract Documents at the time of Substantial Completion.

4.24.3 At the completion of each work order, the Contractor shall thoroughly clean the site of all rubbish and debris of any nature, and remove such debris from the site. Specific cleaning requirements, prior to final inspection, shall be as set forth in Division 1 of the Technical Specifications.

4.24.4 Immediately prior to final inspection by the Authority, the Contractor shall thoroughly clean the entire Work area to the satisfaction of the Authority.

4.24.5 The Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to those areas identified in and permitted by the Contract Documents, and shall not unreasonably encumber the premises with construction equipment, materials or equipment. The Contractor shall assume full responsibility for any damage to those lands including properties and fixtures, rights-of-way and easements or to the owners or occupants of any adjacent lands or access, resulting from execution of the Work. The Contractor shall defend, indemnify and hold harmless the Authority from and against all claims arising out of or resulting from any damage to any such land, or to any adjacent lands, including loss of use.

4.24.6 The Contractor shall perform daily clean up to keep the premises safe and free from accumulations of waste materials, rubbish and other debris in the event a work order takes longer than a day to complete. Upon the completion of the Work, the Contractor shall remove waste and surplus materials, rubbish, debris, tools and construction equipment, and shall leave the site clean and ready for occupancy by the Authority. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents including, but not limited to walks, roadways, paved or landscaped areas used during execution of the Work. If the Contractor fails to comply with this requirement, the Authority shall impose charges that will be deducted from the price of an individual work contract so as to be reimbursed for costs incurred to perform such cleanup.

4.25 Inspection and Testing of the Work:

4.25.1 All materials, equipment and workmanship shall be subject to inspection and testing by the Authority and its authorized representatives, for conformance with the requirements of the Contract Documents.

4.25.2 If the Contract Documents, laws, codes, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, the Contractor shall give the Authority timely written notice of its readiness and of the date arranged so that the Authority may be present to observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals unless otherwise provided in the Contract Documents.

4.25.3 Inspection and testing by the Authority, or its representative, shall in no event reduce or remove the Contractor's responsibility for compliance with the full intent and requirements of the Contract Documents.

4.25.4 The Contractor must anticipate any and all time required for the testing, inspection and approval of material before incorporation into the Work. No increases in Contract Price or Time will be permitted for losses or delays attributable thereto.

4.25.5 After testing or inspection should any materials or portion of the Work be found *defective* and not conforming to the Contract Documents, such materials or portion of the Work shall be promptly removed, replaced and made to conform to the requirements of the Contract Documents by the Contractor at no increase in Contract Price or Contract Time.

4.25.6 If after Commencement of the Work, the Authority determines, in its sole discretion, that any of the Work requires special inspection, testing or approval, not otherwise provided for in the Contract Documents, the Authority may instruct the Contractor in writing to order such special inspection, testing or approval. The Contractor shall give the Authority seventy-two (72) hours advance written notice of the time and place of such inspection, testing or approval. In the event that such special inspection or testing shows that the Work or part of the Work does not conform to the requirements of the regulations or orders of any public authority having jurisdiction, the Contractor shall pay all costs of such inspection, testing or approval, otherwise the Authority shall bear such costs.

4.25.7 Examinations of questioned Work may be ordered at any time and from time to time by the Authority, and if so ordered, the Contractor shall uncover the Work. If such Work is found to be in accordance with the Contract Documents, the Authority will pay the reasonable costs of examination and replacement. If such Work is found to be not in accordance with the Contract Documents, the Contractor shall pay all costs of examination, replacement, and all related testing.

4.26 Claims by the Contractor for Loss or Injury:

4.26.1 If the Contractor claims any loss or injury resulting to him from any act, omission, or neglect of the Authority, its agents or employees, the Contractor shall in strict compliance with all of the requirements of these Contract Documents and in any event no later than thirty (30) days after the loss or injury that gives rise to the claim, deliver to the Authority a written statement of the loss or injury in the form of a clearly marked Notice of Claim. Under no circumstances will any reimbursement be made to the Contractor unless the Contractor shall have delivered the timely written Notice of Claim in accordance with the requirements of this paragraph and other related sections of this Contract.

4.26.2 The Contractor shall have no right to recover damages for any claims or any loss or injury resulting from Work not being performed in conformance with the Contract Documents.

4.26.3 The Contractor shall bear all losses resulting from any cause both before a work order is completed and if the Work or any part of the Work fails to conform to the work detailed in the Contract Documents.

4.27 Responsibility for Labor, Material and Equipment Costs:

4.27.1 The Contractor shall pay and be exclusively responsible for all debts for labor and material contracted for by the Contractor, for the rental of any appliance or equipment hired by the Contractor and/or for any expense incurred on account of the Work.

4.28 Conflict of Interest:

4.28.1 The Contractor's attention is called to M.G.L. Chapter 268A the Conflict of Interest Law. The Contractor shall not act in collusion with any Authority's officer, agent, employee or any other party, nor shall the Contractor make gifts regarding this Contract or any other matter in which the Authority has a direct and substantial interest.

4.29 Emergencies:

4.29.1 In emergencies affecting the safety or protection of persons or the Work or property at or adjacent to the site, the Contractor, without special instructions or authorization from the Authority, is obligated to act to prevent threatened damage, death, injury, or loss. The Contractor shall give the Authority written notice within forty-eight (48) hours of any changes in the Work resulting from the action taken. If the Authority concurs, the Authority shall authorize the required changes in accordance with provisions found within this Contract unless the emergency was due in whole or in part to the fault or negligence of the Contractor, correspondingly adjust the Contract Price or the Contract Time.

4.30 Miscellaneous Provisions:

4.30.1 The Contractor shall inspect Work already in-place to verify that it is in proper condition to receive dependent Work. The Contractor shall be responsible for all cutting and patching which may be necessary to complete the Work and to make its several parts fit together properly, whether or not that Work is expressly specified in the Contract Documents.

4.30.2 The Contractor shall initiate, maintain and supervise all weather precaution programs applicable to the Work. In the event of severe weather, the Contractor shall immediately inspect the Work and the site, and take all necessary actions to ensure that public access and safety are maintained.

4.30.3 Any damaged Work corrected by the Contractor shall be corrected so as to be equal in all respects including quality, appearance, function, finish, etc. to non-damaged like Work.

4.30.4 The Contractor shall, prior to final inspection, mark in a permanent and readily identifiable manner, all reference points provided by the Authority.

4.30.5 The Contractor shall take whatever steps, procedures or means are required to prevent any dust nuisance due to his operations, and he shall maintain dust control measures at all times in accordance with the requirements of the Authority and any public governmental body with jurisdiction. Dumping of spoil or waste material on land or property obtained by the Contractor shall be in strict conformance with all applicable Laws.

4.30.6 The Contractor shall not obstruct access to Authority or municipal structures, hydrants, valves, manholes, fire alarms, etc., nor shall he make any connections to, operate valves or otherwise interfere with the operation of the water system without first securing the necessary approvals and permits.

4.30.7 The Contractor shall prosecute Work in the manner which will cause the least practicable interference with and avoid prolonged interruption of or damage to existing facilities, including underground utilities and overhead utilities. The Contractor shall obtain written approval from the Authority prior to performing any Work involving connection to or interruption of existing facilities, and shall perform that Work during those periods of time which cause the least interference or annoyance.

4.31 Related Work at Site:

4.31.1 The Authority may perform other work at the Site with the Authority's own forces or have other work performed by other persons. If the Contract Documents did not note that other work is to be performed, written notice will be given to the Contractor prior to starting that other work.

4.31.2 Wherever Work to be performed by the Contractor is dependent upon the work of others; the Contractor shall coordinate his Work with the dependent work to the same extent that he is required to coordinate dependent work. Subcontractor work under provisions defined within this Contract, Installation of Work by the Contractor or by any Subcontractor in any given area shall constitute acceptance by the Contractor or that Subcontractor of all previously placed dependent work.

4.31.3 If the Authority contracts with others for other work, the person or organization that will have the authority and responsibility for coordinating the activities of the Contractor and those others will be identified in the Supplementary Conditions. Unless otherwise specifically stated, neither the Authority shall have any authority or responsibility for coordination of the activities of the Contractor and those others.

4.32 Mutual Duties and Responsibilities:

4.32.1 If the Contractor causes damage to the work or property of others, or if a claim arising out of the Contractor's execution of Work is made by a person against the Contractor, or the Authority the Contractor shall promptly attempt to settle with that person by agreement or otherwise resolve the claim. The Contractor shall defend, indemnify and hold harmless the Authority from and against all claims, causes of action, lawsuits, damages, losses and expenses, whether direct, indirect or consequential, including but not limited to charges of engineers, attorneys and other professionals and costs of both defense and appeal, if any, arising out of or resulting from damage by the Contractor to the work or property of others or from the Contractor's execution of the Work.

4.32.2 If another person causes damage to the Work or property of the Contractor, or if the performance of other work results in any other claim by the Contractor, the Contractor shall promptly attempt to settle with that person by agreement or otherwise resolve the claim. The Contractor shall not institute any action against the Authority or its agents or employees, or permit any action against them to be maintained in the Contractor's name or for his benefit in any court or before any tribunal, which action seeks to impose liability or recover damages from the Authority for such claim.

4.32.3 If another person performing other work causes delay, extension or acceleration that postpones, extends or in any other manner alters the schedule or completion of all or part of the Work, the Authority shall negotiate with the Contractor, an adjustment in Contract Price or Contract Time for any increases in the Contractor's cost or the time required to perform the Work. The Contractor assumes responsibility for any delay, extension or acceleration caused by other work which is reasonable under the Contract Documents.

If another person performing other work is granted an extension in Contract Time on account of causes warranting said extension but without compensation, and said Contract Time is coterminous with a Contract Time under this Contract, and if the Authority concludes that said extension requires a change in the coterminous Contract Time, the Authority shall authorize the necessary change in Contract Time only.

ARTICLE 5 - SUBCONTRACTORS AND SUPPLIERS

5.1 Use of Subcontractors:

5.1.1 The **Contractor** shall not assign, delegate, subcontract or in any way transfer any interest in this Contract without prior written consent of the **Authority**.

5.3 The Contractor's Continuing Responsibilities:

5.3.1 The Contractor shall be fully responsible to the Authority for all acts and omissions of all the Subcontractors and Suppliers, at any tier, to the same extent as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Authority and any Subcontractor or Supplier, nor create any express or implied duty or obligation on the part of the Authority to any Subcontractor or Supplier or the Contractor's sureties, to pay or to see to the payment of any monies owed to any of them.

5.4 Sub-agreements:

5.4.1 Work performed by a Subcontractor or Supplier shall be through an appropriate sub-agreement which expressly binds the Subcontractor or Supplier to the requirements of the Contract Documents for the express benefit of the Authority, and which requires each of them to assume toward the Contractor all the obligations which the Contractor assumes toward the Authority and contains waiver provisions as required by the provisions of this Contract Document.. The Contractor shall pay each Subcontractor and Supplier as their interests may appear, a proportionate share of any funds received on account of losses under insurance policies issued.

5.4.1 Within seven (7) days after receipt of a written request from the **Authority**, the **Contractor** shall submit an exact copy of each sub-agreement identified in the request. Such request shall not constitute approval of any Subcontractor by the **Authority**. Time periods as allowed by the **Authority** for making determinations on proposals, payments or claims shall be automatically extended if those sub-agreement(s) are not submitted within seven (7) days after receipt of a written request from the Authority.

Subject to prior rights, if any, of the **Contractor's** surety, the **Contractor** assigns to the **Authority** each sub-agreement, which the **Authority** assumes by notifying the Subcontractor or Supplier in writing, upon a termination action determined by the Authority.

ARTICLE 7 - PROSECUTION AND COMPLETION

7.1 Progress and Completion:

7.1.1 The Date for Commencement of any given work order shall be by written work order only, issued by the Authority.

The **Contractor** shall commence the Work no earlier than the date of execution of the work order issued by the Authority. The Contractor shall prosecute and complete the Work regularly, diligently, and uninterruptedly at such rate or progress as will ensure timely completion of all works so as not to unnecessarily interrupt or inconvenience those tenants affected by such work.

7.1.2 Neither the **Contractor** nor the **Authority** shall be liable for any damages sustained by either party due to a failure to

perform the Work under the terms of this Contract if such failure is in fact caused by the occurrence of a contingency the nonoccurrence of which was a basic assumption under which this Contract was made, including but not necessarily limited to a natural disaster (flood, hurricane, or earthquake); a state of war, an imminent security threat, acts of enemies, embargoes, labor strikes, provided that the **Contractor** has notified the **Authority** in writing of such cause within fourteen (14) days after its occurrence.

7.1.3 Before any Work is started, the Contractor shall deliver to the Authority all of the licenses, permits, certificates of insurance, and bonds required by the Contract Documents. All certificates of insurance shall clearly state ON THE FACE OF THE CERTIFICATE that: the Authority and any other entity required by the Contract are Additional Insureds on all required policies except Workers' Compensation for the covered work; that Waiver of Subrogation is included with respect to all policies and coverages listed above; that the above insurance is primary and non-contributory over any other insurance available to the Authority; that such insurance extends to contractual liability; and that should any of the above policies be cancelled before the expiration thereof the issuing insurer will mail written notice to the Authority as certificate holder thirty (30) days in advance. The following statement affirming that coverage completely complies with the contract requirements shall be included in the Special Items section of the certificate of insurance or in an attached Special Items Addendum Page: The aforementioned insurance coverages must comply with General Conditions insurance requirements as detailed within this Contract unless otherwise authorized by the Authority.

7.1.4 The **Contractor** shall start performance and furnishing of the Work on the Date of Commencement of the Contract Time. No Work shall be done at the site prior to the date on which the corresponding work is scheduled to commence.

7.2 Compliance with Contract Time Requirements:

7.2.1 The **Contractor** shall prosecute the Work with the diligence necessary to ensure its completion within the time the work is expected to take to complete. The **Contractor** shall provide sufficient labor, materials and equipment, and shall promptly undertake appropriate action to recover a schedule, as may be necessary to comply with the Contract Time requirements. Except as otherwise may be permitted by the Contract Documents, all Work at the site shall be performed during normal working hours, unless the **Contractor** has obtained the **Authority's** prior written consent.

ARTICLE 8 - PROGRESS PAYMENTS, FINAL PAYMENT & ACCEPTANCE

8.1 Application for Payment

Invoices submitted by the Contractor to the Authority for payment of work performed will be paid promptly upon receipt provided that no unresolved issues pertaining to work is outstanding at the time of the submittal.

An Application for Payment covering Work of Subcontractors or Suppliers shall exclude amounts the Contractor or a Subcontractor does not intend to pay to Subcontractors or Suppliers for any reason. The Contractor will not be paid for any Work performed by a Subcontractor until all required evidence of insurance for that Subcontractor has been received and reviewed by the Authority, if such information has been requested by the Authority. The Contractor and the Subcontractors shall promptly pay the amounts due to each Subcontractor and Supplier, upon receipt of payment from the Authority.

8.1.0 Review of Applications for Payment:

The **Authority's** review of an Application for Payment will be based on on-site observations by the Authority's representative based upon the information and belief that the Work performed meets the quality of the Work is in accordance with the Contract Documents, subject to an evaluation of the Work as a functioning whole prior to or upon completion of the work.

8.1.1 The Authority may make changes in any Application for Payment submitted by the **Contractor**, and the payment due on said invoice shall be computed in accordance with the changes so made, but such changes or any requirement for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment shall be computed in accordance with the changes made as provided herein; provided that the Authority may, within seven (7) days after receipt, return to the **Contractor** for correction to any invoice which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such Application shall be the date of receipt of the corrected invoice submitted in the proper form and with arithmetically correct computations.

8.2 Refusal to Make Payment:

The **Authority** may withhold from any payment an amount based on the **Authority's** estimate of the fair value of any outstanding claims against the **Contractor**, including but not limited to, any liquidated damages that would become or have been determined to be due; claims made against the **Authority** on account of the **Contractor's** performance or furnishing of the Work; direct payments due to Subcontractors in accordance with the provisions of M.G.L. Chapter 30, §39F; subsequently discovered evidence or other items entitling the **Authority** to a withholding or set-off against the amount recommended. The **Authority** will give the **Contractor** immediate written notice stating the reasons for such action.

8.2.1. Payment for Labor and Materials by Contractors and Subcontractors:

8.2.2. The **Contractor** agrees that he and all Subcontractors performing the Work shall pay for all Labor performed or furnished and materials used or employed in the performance of the Work including lumber so employed which is not incorporated in the Work and is not wholly or necessarily consumed or made so worthless as to lose its identity, but only to the extent of its purchase price less its full salvage value, and including also any material specially fabricated at the order of the **Contractor** or Subcontractor for use as a component part of the Work so as to be unsuitable for use elsewhere, even though such material has not been delivered and incorporated into the Work, but only to the extent that such specially fabricated materials is in conformity with the Contract Documents, or any charges for materials used or employed therein which are consigned to the **Contractor** or to a Subcontractor who has a direct contractual relationship with the **Contractor**, and shall pay all sums due for the rental or hire of vehicles, steam shovels, roller propelled by steam or other power, concrete mixers, tools, and other appliances and equipment employed in the Work; and shall pay the transportation charges directly related to such rental or hire; and shall pay all sums due trustees or other persons authorized to collect such payments from the **Contractor** or Subcontractors based upon the labor performed or furnished as aforesaid for a maximum of one-hundred twenty (120) consecutive calendar days, for health and welfare plans and other fringe benefits which are payable in cash, and provided for in collective bargaining agreements between organized labor and the **Contractor** or Subcontractors.

8.2.3. In the event that the Contract Documents provide for reimbursement by the **Authority** to the **Contractor** for travel or other expenses, the **Contractor** shall submit such proposed expenses to the **Authority** for approval prior to the incurrence of such expenses.

8.10 Penalties for False Claims:

8.10.1 The attention of the **Contractor** and all Subcontractors is directed to each of the following sections of the M.G.L. regarding penalties for presentation to the **Authority** of what the **Contractor** or Subcontractor knows to be a false claim or claims.

8.10.1.1 M.G.L. Chapter 266, §67B provides for criminal penalties of a fine of not more than Ten Thousand Dollars (\$10,000.00) or for imprisonment for not more than five years in State Prison or for not more than two and one half years in the House of Correction, or both; M.G.L. Chapter 12, §5B provides for civil penalties of not less than Five Thousand Dollars (\$5,000.00) and not more than Ten Thousand Dollars (\$10,000.00) per violation, plus three times the amount of damages sustained by the **Authority** as well as the cost to recover said damages; and M.G.L. Chapter 29, §29F provides for debarment from bidding on all public work for a specified period of time that may be imposed for willfully supplying materially false information incident to performing any public contract or subcontract.

8.11 Contractor's Continuing Obligation:

8.11.1 The **Contractor's** obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following constitutes acceptance of Work not in accordance with the Contract Documents or a release of the **Contractor's** obligation to perform the Work in accordance with the Contract Documents: (a) any payment by the **Authority** to the **Contractor**, (b) any act of acceptance by the **Authority** nor any failure to do so, (c) any review and approval of a Shop Drawing, sample, test procedure, or other Submittal, (d) any inspections, tests or approvals, (e) any correction of *defective* Work by the **Authority**.

ARTICLE 9 - PROTECTION OF PERSONS AND PROPERTY

9.1 General:

9.1.1 The **Contractor** shall be responsible for all Site security and he shall protect everything on, in, or at the site from injury by water, frost, wind, fire, accident, theft, vandalism or other cause, and any interference; take charge of, protect, and be liable for any loss of or damage to the materials for use under this Contract delivered at or in the vicinity of the Site, and whether or not suitably stored at the Site, or at some other location agreed upon in writing by the **Authority**, pursuant to this Section by whomever furnished; take all proper precautions to protect the **Authority's** property or adjoining property from damage or unnecessary interference; provide proper means of access to the property and replace or put in a good condition every public or private way, conduit, catch basin, fence, trees, or other things damaged by the **Contractor** in performing the Work, unless permanently done away with on approval of the **Authority**, for the proper performance of the Work; take all proper precautions to protect persons from injury, unnecessary interference or inconvenience, and be responsible for the results of any failure in doing so; leave an obstructed way along public and private places for pedestrians and vehicular traffic and leave direct access to hydrants; provide proper walks over and around any obstruction made in public places in the performance of the Work; maintain from the beginning of twilight through the whole of every night, on or near the obstruction, sufficient lights and guards to protect travelers from injury thereby; when the Work is suspended keep all roadways and sidewalks in proper condition, and put and leave the same in safe condition at the completion of the Work, all to the satisfaction of the **Authority or its representative**.

9.1.2 Any additional requirements for protection of persons and property shall be as set forth in these General Conditions and in the Supplementary Conditions.

9.2 Safety and Protection:

9.2.1 The **Contractor** shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs necessary to complete each work order. The **Contractor** shall take all necessary precautions for the safety of, and shall erect and maintain all necessary safeguards and provide the necessary protection to prevent damage, injury or loss to: (a) all employees on the Work, (b) other persons who may be affected, (c) all the Work and materials and equipment to be incorporated into the Work whether in storage on or off the Site and (d) other property at or adjacent to the Site including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Utilities not designated for removal, relocation or replacement. Unless otherwise stated in writing by the **Contractor** to the **Authority**, the **Contractor's** safety representative at the site shall be the job foreman.

9.2.2 The **Contractor** shall, and shall require all Subcontractors to comply with all State, Federal and local regulations governing the safety and protection of persons or property, including but not limited to (a) the Occupational Safety and Health Act and the Hazard Communication Act, as promulgated by the Federal Government and as adopted by the Commonwealth of Massachusetts, and (b) all applicable State health and safety requirements. The **Contractor** shall be responsible for all fines and penalties imposed for any related violation(s) of Federal, State and local health and safety requirements.

9.2.3 The **Contractor** shall notify owners of adjacent property, including Underground Utility owners, in writing seventy-two hours in advance when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. The **Contractor** shall simultaneously notify the Authority or its representative of any notice given to owners of adjacent property. All damage, injury or loss to that property caused, directly or indirectly, in whole or in part, by the **Contractor**, any Subcontractor or Supplier shall be remedied by the **Contractor**, except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the **Authority**, and not directly or indirectly attributable, in whole or in part, to the fault or negligence of the **Contractor**. The **Contractor** shall shore up, brace, underpin, and protect as may be necessary, all foundations and other parts of all existing structures adjacent to the Site. These **Contractor's** duties and responsibilities shall continue until the **Authority** has issued written notice to the **Contractor** that the Work is acceptable.

9.2.4 Except as otherwise may be provided in the technical specifications, if the **Contractor** encounters material at the site reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the **Contractor** shall immediately stop all affected Work, report the condition to the **Authority** in writing and take appropriate health and safety precautions. Upon receipt of any such notice, the Authority will investigate the conditions. If in fact the material is asbestos or PCBs which have not been rendered harmless, the **Authority** shall suspend all affected Work and proceed to have the asbestos or PCB material removed or rendered harmless by either negotiating a Change Order or Change Authorization with the **Contractor**, by means of separate contract or as the **Authority** may otherwise deem expedient, or in the alternative, terminate the affected Work or the entire Agreement for convenience.

9.2.5 Once the material has been removed or rendered harmless, the affected Work shall be resumed as directed by the **Authority**. If any such incident causes or will cause delay, extension or acceleration that postpones, extends or in any other manner alters

the schedule or completion of all or part of the Work, the **Authority** shall make or negotiate an adjustment in work price with the **Contractor** for any increases in the **Contractor's** actual documented cost or the time required to perform the Work. The **Contractor** assumes responsibility for any related delay, extension or acceleration that is reasonable under the Contract Documents.

9.3 Accident Prevention:

9.3.1 The **Contractor** shall comply with all recommendations and requirements for accident prevention of the Associated General Contractors of America and the provisions for accident prevention included in the Commonwealth of Massachusetts, 454, CMR 10.0 "Construction Industry Rules and Regulations." The **Contractor** should note that these aforementioned recommendations and requirements are the minimum standards that are to be adhered to.

9.3.2 Neither the **Authority** nor any of its officers, agents or employees shall be responsible for providing safe working places, safety measures, means or techniques for the **Contractor**, Subcontractors or their employees or any individual.

9.4 Fire Protection and Prevention:

9.4.1 The **Contractor** will ensure that the requirements in the Contract Documents and any and all permits issued regarding Fire Protection and Prevention, including firewatch, are strictly adhered to during the entire execution of any given work order.

9.4.2 If the **Contractor** fails to provide sufficient security as called for within the provisions found in this Contract Document, the **Authority** may elect to provide such sufficient security as required, and charge the associated costs to the **Contractor**.

9.5 Welding and Cutting:

9.5.1 All welding and cutting shall be in accordance with Newton Fire Department and all other pertinent local and State regulations. Torch cutting and/or welding operations by Subcontractors shall have the approval of the **Contractor** prior to start of such operations. In addition to the requirements of this Article, wherever electric or gas welding or cutting work is done in the vicinity of combustible material, or over areas where persons may be found, interposed shields of fireproof material shall be used to protect against fire damage or injury. Personnel with suitable fire extinguishing equipment shall be stationed near welding and cutting operations to prevent the sparks from lodging in floor cracks or passing through floor or wall openings and from lodging in combustible materials. Chemical extinguishers shall be available and ready for use in all locations where torch cutting and/or welding operations are in progress.

9.6 Overloading:

9.6.1 The **Contractor** shall neither cause nor allow the design live load of any or all parts of the structure to be exceeded at any time during the performance of the Work.

9.7 Noise and Pollution Control:

9.8 All Work performed under the Contract Documents shall conform to the requirements of: M.G.L. Chapter 111, §§ 31C and 142D; Rules and Regulations adopted by the Commonwealth of Massachusetts Department of Public Health, Division of Environmental Health; the Newton Inspectional Services Department; the Newton Health and Human Services Department; and all other regulatory agencies having jurisdiction.

9.9 Weather Protection:

9.9.1 "Weather Protection" shall mean the temporary protection of that Work adversely affected by moisture, wind and cold, by covering, enclosing and/or heating. This protection shall provide adequate working areas during the months of November through March as determined by the Authority and consistent with the approved Progress Schedule to permit the continuous progress of all Work necessary to maintain an orderly and efficient sequence of construction operations. The Contractor shall furnish and install all "weather protection" material and be responsible for all costs, including heating required to maintain a minimum temperature of 40 degrees Fahrenheit at the working surface. This provision does not supersede any specific requirements for methods of construction, curing of materials or the applicable general conditions set forth in the Contract Documents with added regard to performance obligations of the Contract, the

Contractor shall submit to the Authority the required number of copies of his proposed methods for "Weather Protection."

- 9.9.2** Weather protection and heating devices shall comply with safety regulations, including provisions for adequate ventilation and fire protection devices. Heating devices that may cause damage to finish surfaces shall not be used.

ARTICLE 10 - LEGAL REQUIREMENTS AND INSURANCE

10.1 Laws; Permits and Licenses:

10.1.1 The **Contractor** shall become familiar with and comply with all applicable Laws, and shall give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to the performance of the Work. Unless otherwise expressly stated, references in the Contract Documents to Laws shall mean the current version or edition of the Law. Unless expressly required by Law, the **Authority** shall be responsible for monitoring the **Contractor's** compliance with any Laws. If the **Contractor** believes the Contract Documents deviate from the requirements of any permits, codes or Laws, the **Contractor** shall give the **Authority** prompt written notice. If the **Contractor** performs any Work knowing or having reason to know it is contrary to any permits, codes or Laws, the **Contractor** shall bear responsibility for all resulting cost and delay. Except as provided in paragraph 10.1.3, the **Contractor** shall bear responsibility for all costs and delays arising from these obligations.

10.2 Patent Fees and Royalties:

10.2.1 The **Contractor** shall pay all license fees and royalties and bear all costs incident to the use, in the performance of the Work or the incorporation into the Work, of any invention, design, process, product or device covered by patent rights or copyrights. If a particular item is specified in the Contract Documents or is selected by the **Contractor** for use in the performance of the Work, and its use is subject to patent rights or copyrights calling for the payment of any license fees or royalties, it shall remain the responsibility of the **Contractor** to assume all costs incident to its use.

10.3 M.G.L. Chapter 64, §6(f) exempts, from Massachusetts sales tax, materials and supplies consumed, employed or expended in the Work, materials and supplies physically incorporated in the Work, and rental charges for construction vehicles and equipment rented specifically for use on the Work or while being used exclusively for the transportation of materials for the Work.

10.4 Performance, Payment and Other Bonds:

10.4.1 The **Contractor** shall furnish Performance and Payment Bonds with good and sufficient surety, each in an amount equal to the Contract Price, as the security required by M.G.L. Chapter 149. All bonds shall be in the forms specified in the Contract Documents, and shall only be issued by a surety currently licensed to do business by the Commonwealth of Massachusetts Division of Insurance and appearing on the current U.S. Treasury Circular 570 List of Approved Sureties and remain in effect until the end of the Correction Period. Attorneys-in-Fact who sign Bonds shall attach a certified copy of their Power of Attorney to conduct business in the Commonwealth of Massachusetts.

10.5 The Contractor's Insurance-General:

10.5.1 The insurance the **Contractor** shall purchase and maintain at his expense shall include the coverage required by the laws of the Commonwealth of Massachusetts as well as that specified in this Article, and be written for not less than the limits of coverage required in this Article or as required by the laws of the Commonwealth of Massachusetts. Deductible amounts shall be reduced or eliminated upon the **Authority's** written request. The insurer's costs of providing the insured(s) a defense and appeal, including attorney's fees, may not be included in, and shall be in addition to, the limits of the policy coverages. Certificates of Insurance must be delivered to the **Authority** before any work is started, and shall be in the form required by Paragraph 7.1.4 and in the coverages and minimum policy limits required in this Article.

10.5.2 The **Contractor** shall not start or continue to perform any Work unless he has in full force and effect all required insurance; nor shall he allow any Subcontractor or Supplier to perform any Work until that Subcontractor or Supplier has in full force and effect all required insurance or the **Contractor's** insurance has been endorsed to add that Subcontractor or Supplier as an additional insured.

10.5.3 Insurance shall only be provided by insurers licensed to transact business in the Commonwealth of Massachusetts.

10.5.4 Deductible amounts shall be reduced or eliminated upon the **Authority's** written request. **The insurer's costs of providing the insureds a defense and appeal, including attorney's fees, may not be included, and shall be in addition to, the limits of the coverage provided.**

10.5.5 All the policies of insurance shall be endorsed to provide that the coverage afforded will not be canceled, adversely changed or renewal refused until the expiration of at least thirty (30) days prior written notice to the **Authority** by registered mail. Should any coverage approach expiration during the period in which it is to remain in full force and effect, it shall be renewed prior to its expiration, and a renewal certificate filed with the **Authority** at least fifteen (15) days prior to expiration.

10.5.6 If any of the **Contractor's** sureties or insurers is declared bankrupt or placed into receivership, ceases to meet the requirements of the Contract Documents, or its license to do business in the Commonwealth of Massachusetts is terminated, the **Contractor** shall immediately substitute other bonds/sureties or insurers/policies, which shall conform to the requirements of the Contract Documents, and shall file the appropriate bonds or certificates of insurance with the **Authority**.

10.5.7 The required insurance coverages shall be placed with insurance companies licensed by the Commonwealth of Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of "A"; shall be taken out before the Contract Time commences and be kept in full force and effect throughout the term of the Contract; shall be primary and non-contributory to any coverages maintained by the Authority; and shall require that the **Authority** be given thirty (30) days advance notice in the event of any cancellation or any materially adverse change in coverage. All such insurance, with the possible exception of Pollution Liability Insurance, shall be written on an occurrence basis form as opposed to a claims-made basis form. The **Newton Housing Authority** shall be named as an additional insured under the Commercial General Liability, Umbrella, Automobile Liability, Pollution Liability and Builders Risk policies. Additional insured form ISO CG 20-10 11/85 or equivalent, and Waiver of Subrogation in Favor of Owner form ISO CG2404 is required under the General Liability and Umbrella policies. The Workers' Compensation and Employers' Liability policies shall include a waiver of subrogation in favor of the Authority. All such insurance as is required of the **Contractor** shall be provided by or on behalf of all Subcontractors to cover their operations. The **Contractor** shall be held responsible for any modifications, deviations or omissions in compliance with these requirements by the Subcontractors. At the inception of the Contract and throughout the term of the Contract the Authority shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide the coverages required.

10.6 The Contractor's Liability Insurance:

10.6.1 The **Contractor** shall purchase and maintain commercial general liability and other insurance appropriate for the Work and which will provide protection from claims itemized below which may arise out of or result from the **Contractor's** performance and furnishing of the Work and the **Contractor's** other obligations under the Contract Documents, whether the Work and other obligations will be performed or furnished by the **Contractor**, any Subcontractor or Supplier. The amounts of the commercial general liability insurance policy shall be as follows:

- | | |
|------------------------------------|---|
| 1. Bodily Injury | \$1,000,000 each occurrence |
| 2. Property Damage | \$2,000,000 general aggregate(per development site) |
| 3. Products & Completed Operations | \$1,000,000 annual aggregate |
| 4. Personal & Advertising Injury | \$1,000,000 each occurrence |
| 5. Medical Expenses | \$10,000 |

The commercial general liability policy shall include coverage relating to explosion, collapse, and underground property damage.

The **Contractor** shall also provide insurance 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 **Authority** shall be named as an additional insured and the amount of coverage shall be \$1,000,000 per occurrence and \$2,000,000 aggregate.

10.6.1.1 Claims under worker's compensation, disability benefits, and other applicable similar employee benefits acts; claims for damages because of bodily injury, occupational sickness or disease, or death of the **Contractor's** employees.

10.6.1.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the **Contractor's** employees; claims for damages insured by personal injury liability coverage sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the **Contractor**, or (b) by any other person for any other reason; claims for damages because of injury to or destruction of tangible property wherever located, including loss of use resulting from any such injury or destruction.

10.6.1.3 Claims arising out of operation of laws for damages because of bodily injury or death of any person or for damage to property.

10.6.1.4 Claims for damages because of bodily injury or death of any person, or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any owned, hired or non-owned motor vehicle used in the Work, including employee non-ownership use. The combined single limit shall be \$1,000,000 and shall include a CA9948 Pollution Endorsement and shall name the **Authority** as an additional insured.

10.6.2 The **Contractor's** liability insurance shall include contractual liability coverage sufficient to cover to the **Contractor's** indemnification obligations under the Contract Documents. The **Contractor** agrees to pay on behalf of the **Authority**, and to provide and pay a defense for all claims covered by the **Contractor's** obligations under the indemnification provisions.

10.6.3 The **Contractor's** liability insurance shall be endorsed to include the **Authority** as an additional insured, and respective directors, officers, agents or employees as additional insureds. The insurance afforded to the **Authority** and those other parties shall be primary insurance, and neither the coverage nor the amount of insurance provided under the **Contractor's** policies shall be reduced or prorated by the existence of any other insurance applicable to any loss the **Authority** or those other parties may have sustained.

10.6.4 The **Contractor's** liability insurance shall remain in effect until the end of the Contract Period and at all times after that when the **Contractor** may be correcting, or removing and replacing *defective* Work. The Products and Completed operations insurance shall be maintained for two (2) years after final payment. Evidence of insurance shall be furnished to the **Authority** upon request and no less frequently than yearly.

10.6.5 These requirements shall not be construed to limit the liability of the **Contractor** or his insurers. The **Authority** does not represent that the specified coverages or limits of insurance are sufficient to protect the **Contractor's** interests or liabilities.

10.6.6 If the **Authority** or the **Contractor** suffers injury or damage to person or property because of error, omission or act of the other, any of the other's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observation of that injury or damage. This provision is not and shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

10.7 The Owner's Liability Insurance:

10.7.1 The **Contractor** shall purchase and maintain owners' contractor's protective liability insurance specifically for and appropriate for the Work and which will provide protection for the **Authority** against those claims which may arise out of or result from operations under the Contract; or the **Contractor** shall be required to endorse the **Contractor's** commercial liability insurance to show that the limits of liability apply per work order and per location. If the **Contractor** furnishes owner's and contractor's protective liability insurance, the parties designated in paragraph 10.6.3 shall be included as additional insureds by endorsement.

10.9 Waiver of Rights:

10.9.1 The **Authority** and the **Contractor** waive all rights against each other for all losses and damages caused by any of the perils covered by the insurance provided in response to paragraphs 10.6, 10.7 and 10.8 and any other insurance applicable to the Work and also waive all such rights against the **Authority**, and all other persons named as insureds or additional insureds in such policies for losses and damages so caused. Each Sub-agreement shall contain similar waiver provisions by the Subcontractor or Supplier in favor of the Authority and all other parties named as insureds or additional insureds. None of these waivers shall extend to the rights that any of the insured may have to the proceeds of insurance held by the **Authority** as trustee or otherwise payable under a policy so issued.

10.11 The **Authority** and the **Contractor** intend that any policies of insurance shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered. Accordingly, all such policies shall be endorsed to provide that in the event of payment of any loss or damage the insurer will have no rights of subrogation or other recovery against any of the parties named as insured or additional insured, and if the insurers require separate

waiver forms to be signed by the Authority, the **Authority** will obtain separate waiver forms, and if such forms are required of any Subcontractor or Supplier, the **Contractor** will obtain them.

10.11.1 To the fullest extent permitted by law the **Contractor** shall assume the defense of and hold the Authority and its officers, agents and employees harmless from all suits and claims against them, or any arising from the use of any invention, patent or patent right, and by or from any act or omission or neglect for the **Contractor**, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

10.11.2 For any and all claims against the **Authority** or any of its officers, agents, or employees by an employee of the **Contractor**, and Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of the **Contractor** shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the **Contractor** under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

10.11.3 To the fullest extent permitted by law the **Contractor** shall defend, indemnify and hold harmless the **Authority** from and against all claims for bodily injury, sickness, disease, or death, or injury to or destruction of property, including loss of use, which claims arise out of, relate to, or are in any way connected with: the Work; the failure of the **Contractor** or any Subcontractor to provide a safe work place; or noncompliance with Law by the **Contractor**, any Subcontractor or Supplier. With respect to all claims against the **Authority** or employee of the **Contractor**, the indemnification obligation under this paragraph 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**, any Subcontractor or Supplier under worker's compensation, disability benefit or other employee benefit acts.

10.13 Non-Conforming Bonds or Insurance:

10.13.1 If any of the **Contractor's** surety(ies) or insurer(s) is declared bankrupt, placed into receivership or otherwise becomes insolvent, or ceases to meet the requirements of the Contract Documents, or its license to do business in the Commonwealth is terminated, the **Contractor** shall at once substitute another bond and surety, or insurer and policy, which shall conform to the requirements of the Contract Documents.

10.14 Medical and Sanitary Requirements:

10.14.1 The **Contractor** shall promptly and fully comply with all sanitary and medical requirements as may from time to time be promulgated so that the health of all workers, local communities and persons residing on or near the Work may be preserved and safeguarded. The **Contractor** shall dismiss, and shall not rehire, any person who violates sanitary and medical requirements.

10.14.2 The Contractor shall rigorously prohibit the committing of nuisances upon the lands of the Authority or upon adjacent property. Structures for the sanitary necessities of all persons employed on the Work shall be provided and maintained by the Contractor.

10.14.3 As to health and sanitation, the **Contractor** shall promptly and fully comply with the Laws and Regulations of the State Department of Public Health, and those of all other local Authorities. The **Contractor** shall provide all articles necessary for first aid, and he shall make proper and satisfactory provisions for the transportation of sick and injured employees to, and their care at, established hospitals in the vicinity of the Work.

10.15 Required Provisions, Chapter 30, §39R:

10.15.1 The **Contractor** shall make, and keep for at least six (6) years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the **Contractor**, and until the expiration of six (6) years after final payment, the Office of the Commonwealth's Inspector General and the Deputy Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the **Contractor** or of any Subcontractor that directly pertain to, and involve transactions relating to, the **Contractor** or that Subcontractor. The **Contractor** shall describe any change in the method of maintaining records or recording transactions that materially affect any statements filed with the **Authority**, and the date of the change and reasons for the change, and shall accompany the description with a letter from the **Contractor's** Independent Certified Public Accountant approving or otherwise commenting on the changes. The Contractor certifies that prior to executing the Contract, the **Contractor** has filed a statement of management of Internal Accounting Controls and an audited financial statement for the most recent completed fiscal year, and he will continue to file such statements annually.

10.15.2 The **Contractor** shall file with the **Authority** a statement of management as to whether his and his subsidiaries system of Internal Accounting Controls 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 is taken with respect to any difference.

10.15.3 The **Contractor** shall also file with the **Authority** a statement prepared and signed by an Independent Certified Public Accountant, stating that s/he has examined the statement of management of internal accounting controls and expressing an opinion as to whether: (1) the representations of management in response to this paragraph 10.15 are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) 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.

10.15.4 Failure by the **Contractor** to satisfy any of the requirement of M.G.L. Chapter 30, §39R, or to comply with any such rules, regulations and guidelines as may be promulgated from time to time, may be grounds for debarment pursuant to M.G.L. Chapter 149, §44C.

10.15.5 Records and statements required to be made, kept or filed under these provisions shall not be public records as defined in M.G.L. Chapter 4, §7, and shall not be open to public inspection; provided, however, that such records and statements shall be made available as stated in paragraph 10.14.1.

10.16 No Conflict with Laws or Regulations:

10.16.1 The duties, obligations, criteria or procedures imposed by these General Conditions and the rights and remedies made available are in addition to, and not in any way a limitation of, any rights and remedies which are otherwise made available or imposed by Laws or Regulations, except that in the event a specific part or detailed requirement of a provision, criterion or procedure in these General Conditions and a specific part or detailed requirement of a provision, criterion or procedure imposed or available by Laws or Regulations conflict, the specific part or detailed requirement of such provision, criterion or procedure imposed or available by Laws or Regulations in conflict shall govern. All other specific parts or detailed requirements in the provisions, criteria or procedures of the applicable Laws or Regulations and these General Conditions not in conflict shall remain in full force and effect and be read with the controlling specific part or detailed requirement. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

10.17 Notice and Service:

10.17.1 Unless otherwise specified in the Contract Documents, any notice or communication shall be in writing, and shall be deemed to have been given as of the time of actual receipt.

10.17.2. Any notice or other communication to the **Contractor** shall be sufficiently given if delivered to the intended individual, officer or partner of the **Contractor** in person or at the office of the **Contractor** designated in the Contract.

10.17.3 All notices or other communication to the **Authority** shall, unless otherwise specified in writing to the **Contractor**, be sufficiently given if delivered to the intended individual in person or at the office designated in the Contract.

ARTICLE 11 - CHANGES IN THE WORK

11.1 Changes in the Work:

11.1.1 Without invalidating the Agreement and without notice to any surety, the **Authority** may, at any time, by Change Order or Change Authorization, order changes in the Work (a) consisting of additions, deletions or other revisions within the scope of the Work in the requirements of the Specifications and Drawings, the means, methods, techniques or sequences applicable to the Work, the **Authority** furnished lands, equipment, materials, or services, or (b) directing acceleration of the Work, and unilaterally make or provide the basis for making an adjustment in the work order reflecting the Contract Price or Contract Time. Upon receipt of any such unilateral order, the **Contractor** shall promptly proceed or continue with the Work involved as directed. Any such unilateral adjustment in Contract Price or Contract Time made by Change Order, or authorized by Change Authorization, shall be final and binding on the **Contractor** unless the **Contractor** delivers to the **Authority** written Notice of Claim, in strict compliance with all of the requirements of Article 15, within thirty (30) days after receipt of the unilateral order.

11.1.2 The **Authority** reserves the right to negotiate with the **Contractor** changes under in the Work by delivering to the **Contractor** an unsigned Change Authorization describing the change under consideration and requesting that the **Contractor** submit a proposal for an adjustment in Contract Price or Contract Time.

11.1.3 Any other written or oral order from the **Authority**, including statement or conduct, instruction, interpretation, determination, or approval that causes a change shall be treated as a change in the Work; but only if the **Contractor** or the **Authority** gives prompt written notice to the other by means of an unsigned Change Authorization detailing the circumstances, and the scope and character of the Work involved.

11.1.4 If after evaluation of an unsigned Change Authorization received under paragraph 11.1.3, the **Authority** concludes that changes in the Work have been ordered, the **Authority** shall by Change Order or Change Authorization signed by the **Authority** correspondingly amend the work order. If the **Authority**, on the other hand, concludes that a change has not been ordered, the **Authority's** determination shall be final and binding on the **Contractor** unless the **Contractor** delivers to the **Authority** written Notice of Claim within thirty (30) days from receipt of that decision.

11.1.5 Except as provided in this paragraph, no written or oral order from the **Authority**, shall be treated as a change in the Work or entitle the **Contractor** to an increase in Contract Price or Contract Time under this paragraph.

11.1.6 Adjustments in Contract Price or Contract Time made necessary by changes in the Work ordered or negotiated under this paragraph shall be based on changes, as specified in Articles 7 and 12, in the **Contractor's** cost or the time required to perform any part of the Work, except that no increase in Contract Price or Contract Time shall be due under this paragraph if excluded by another provision of the Contract Documents.

11.1.7 No proposal nor claim by the **Contractor** on account of changes under paragraph 11.1.3 shall be allowed for any costs or delay incurred more than twenty (20) days before the **Contractor** gives written notice as required.

11.2 Changes Due to Differing Site Conditions:

11.2.1 If the **Contractor** or the **Authority** discovers that the actual subsurface or latent physical conditions encountered at the Site differ materially from those shown or indicated on the Contract Documents, or from those ordinarily encountered and recognized as inherent in the Work of the character and scope provided, or that any reference points need correction to enable the **Contractor** to proceed with the Work, either the **Contractor** or the **Authority** shall notify the other party in writing. A notice from the **Contractor** shall be delivered promptly and before the conditions are disturbed. A notice from the **Authority** shall be delivered as soon as possible after the conditions are discovered.

11.2.2 Upon receipt or delivery of any such notice, the **Authority** shall investigate the conditions. If the **Authority** concludes that conditions on which the **Contractor** is entitled to rely do materially differ, the **Authority** shall order the necessary changes and correspondingly adjust Contract Time or Contract Price, as provided herein unless excluded by another provision of the Contract Documents.

11.2.3 If the **Authority** decides that the Contract Documents do not need amending or decides to make or not to make a change in work order Contract Price or Contract Time, or that a change in reference points is not required, any such decision shall be final and binding on the **Contractor** unless he delivers written Notice of Claim that complies within thirty (30) days of receipt of that decision.

11.2.4 Except in the case of newly-discovered underground utilities all costs involved and time required to perform the specified **Contractor's** responsibilities for underground utilities shall be considered as having been included in the Contract Price and in the **Contractor's** schedule for performing the Work within the Contract Time.

11.2.5 If Underground Utilities cause or will cause delays which postpone, extend or in any other manner alter the schedule or the completion of all or part of the Work, the **Contractor** shall assume all of the **Contractor's** related delay, extension or acceleration costs, however caused; except that, if the **Authority** believes that the delays require a change in Contract Time, the **Authority** shall authorize the necessary change in Contract Time only.

11.2.6 At least twenty (20) days, plus the time required by the **Contractor** to deliver a proposal shall be allowed to the **Authority** to resolve any report of differing site conditions.

11.2.7 No proposal nor claim by the **Contractor** due to differing site conditions shall be allowed unless the **Contractor** has given written notice as required by this Article or Article 15.

11.3 Changes Due to Overruns or Underruns in Quantities:

11.3.1 For all Unit Price Work the Contract Price includes an amount equal to the sum of the unit prices Bid for each item of Unit Price Work times its estimated quantity. Each unit price will be deemed to include an amount sufficient to cover all costs, including supplemental and administrative costs, and profit. Prior to final payment, a Change Order will be issued as recommended by the Authority to reflect actual quantities for Unit Price Work, and to correspond accordingly to the adjustment to the Contract Price.

11.3.2 The **Contractor** shall promptly, before proceeding with any affected Work, notify the **Authority** in writing whenever the actual quantity for a significant item of Unit Price Work, differs materially from its estimated quantity, and request a re-evaluation of that item's unit price or the Contract Time, or inform the **Authority** that a re-evaluation is not warranted. Promptly after receipt of the notice, the **Authority** will review conditions about that item of Work and evaluate their effect on the unit prices and the Contract Time(s). If the **Authority** consents to quantities so varying from those estimated, or does not make written objection, the **Contractor** shall proceed with the affected Unit Price Work as directed by the **Authority**.

11.3.3 If the **Authority** determines that the additional or reduced quantities for such an item of Unit Price Work justify an adjustment in the unit price, or in Contract Time, or both, the **Authority** shall authorize a revised unit price applicable to actual quantities for that item above one hundred twenty percent (120%) or below eighty percent (80%) of the estimated quantity, or a change in Contract Time, or both; except that, no adjustment shall be provided unless the variation between actual and estimated quantities for all Unit Price Work results in an increase or decrease in the Contract Price by more than ten percent (10%). If the **Authority** decides that the unit prices are valid even for the additional or reduced quantities, or that no adjustment in the Contract Time is warranted, solely due to the variation in quantities, or both, that decision shall be final and binding on the **Contractor** unless he delivers to the **Authority** a written Notice of Claim within thirty (30) days from receipt of that decision pursuant to the requirement as stated within this Contract..

11.3.4 In evaluating unit prices, or changes in Contract Time due to quantity variations, the **Contractor** and the **Authority** shall take into account increases or decreases in the **Contractor's** costs to perform the Work involved solely as result of the variation in quantities, as opposed to the **Contractor's** fault or negligence, errors in the **Contractor's** Bid, or other similar factors.

11.4 Change Orders; Change Authorizations:

11.4.1 A Change Order or Change Authorization executed by the **Authority** and also by the **Contractor** without a **Contractor's** notice of reservation of rights to claim additional adjustments constitutes an all-inclusive settlement for all changes and for all direct, supplemental, indirect, consequential and cumulative costs and delays, including the Contractor's overhead and profit, and the **Contractor's** signature represents a waiver of any and all rights to file a claim on account of that instrument, the Work or the Work involved in that instrument and all prior Change Orders.

11.4.2 A Change Order or Change Authorization, signed by the **Authority**, and also by the **Contractor**, with a notice of reservation of rights to claim additional compensation, shall become final and binding on the **Contractor**, without consideration of his reservation of rights, unless the **Contractor** delivers to the **Authority** a clearly marked written Notice of Claim within thirty (30) days after the date when a Notice of Claim on account of the Change Order or Change Authorization executed by the **Authority** becomes due in strict compliance with the requirements of this Contract, and in any event no later than thirty (30) days after the date the **Contractor** signs the Change Order containing a notice of reservation of rights to claim additional compensation.

11.4.3 The **Authority** and the **Contractor** shall sign Change Orders with reasonable promptness covering changes in the Work including any necessary adjustments in Contract Price or Contract Time ordered or agreed to by the parties, changes in Contract Price or Contract Time which are agreed to in total or in part or previously executed Change Authorizations. Amounts for Work involved in a Change Order may be included in Application for Payment only after it has been completely executed by the **Authority**.

11.4.4 When signed by the **Authority**, the **Authority** may use Change Order Authorizations to order changes in the Work, provide the basis for a subsequent adjustment in Contract Price or Contract Time, order changes not warranting an adjustment in Contract Price or Contract Time, or authorize minor deviations. Amounts for Work involved in a Change Authorization are not allowable for payment until that Change Authorization has been incorporated into a Change Order that has been approved and signed by the **Authority**..

11.4.5 The **Authority** reserves the right to decrease the adjustments made in any Change Order if, upon an audit of the **Contractor's** records including but not limited to records pertaining to all cost and pricing data used by the **Contractor** in estimating the **Contractor's Bid** for the work and in monitoring costs incurred, that audit reveals that the **Contractor** provided false or inaccurate cost and pricing data in negotiating that Change Order.

11.5 Deviations:

11.5.1 In accordance with M.G.L. Chapter 30, §39I, every **Contractor** having a contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public building or public works for the Commonwealth, or of any political subdivision thereof, shall perform all the work required by such contract in conformity with the Plans and Specifications contained therein. No willful and substantial deviation from said Plans and Specifications shall be made unless authorized in writing by the **Authority** in charge of the work who is duly authorized by the **Authority** to approve such deviations. In order to avoid delays in the execution of the work, such deviation from the Plans and Specifications may be authorized by a written order of the **Authority** so authorized to approve such deviation. Within 30 days thereafter, such written order shall be confirmed by a certificate of the **Authority** stating: (1) if such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination and, if the deviation is of any other nature, the reason for such deviation giving justification therefor; (2) that the specified deviation does not materially damage the Work order as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the **Authority** and the **Contractor**, and the amount in dollars of said adjustment; and (4) that the deviation in the best interest of the **Authority**. Such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the Work. Whoever violates any provision of this paragraph willfully and with intent to defraud shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than 6 months, or both.

11.6 Delay and Waiver Provisions:

11.6.1 At least twenty (20) days plus the time required by the **Contractor** to deliver a proposal shall be allowed to the **Authority** to negotiate and resolve any changes in the Work, any changes in unit prices or any report of differing site conditions.

11.6.2 If a change in the Work, a case of differing site conditions or a case of variation in quantities causes or will cause delay, extension or acceleration that postpones, extends or in any other manner alters the schedule or completion of all or part of the Work, the **Authority** shall make or negotiate with the **Contractor**, an adjustment in work order Contract Price or work order Contract Time, in accordance with the provisions of this Contract Document, for any increase in the **Contractor's cost or the time required** to perform the Work. The **Contractor** assumes responsibility for any related delay, extension or acceleration caused by or resulting to the Contractor.

11.6.3

11.6.4 No proposal nor claim by the **Contractor** on account of changes in the Work, differing site conditions or variation in quantities shall be allowed if made after final payment.

ARTICLE 12 - CHANGES IN CONTRACT PRICE OR CONTRACT TIME

12.1 Changes in Contract Price or Contract Time:

12.1.1 The Contract Price or Contract Time shall be changed only by Change Order. The basis for a subsequent change in work order Contract Price or Contract Time may also be authorized by a Change Authorization signed by the **Authority**.

12.2 Proposals or Claims Substantiating Adjustments:

12.2.1 All **Contractor** proposals must at a minimum contain the reasons for the proposed change; the effect of the proposed change on the work order Schedule; the effect on the work order Contract Time and the proposed price for the change, all in sufficient detail to be evaluated by the Authority. All **Contractor** proposals shall be due within twenty (20) days after receipt of the **Authority's** written notice requesting a proposal or delivery to the **Authority** of the **Contractor's** written notice of the occurrence of an event which the **Contractor** believes justifies a change in Contract Price or Contract Time. Any delay in the submittal of a **Contractor's** proposal will not justify or constitute basis for an increase in Contract Price or Contract Time. If no Contractor proposal has been received by the **Authority** within the twenty (20) day period allowed by this Article, or if the **Contractor's** proposal does not contain the information required, then the **Authority**, in his sole discretion, will use any of the methods described in Article 12.3 to determine the adjustment, if any, in the Contract Price.

12.2.2 Contractor proposals shall cover all aspects of the Work involved, and shall be fully documented and itemized as to all costs, as specified in this Article, quantities, and Fee which shall segregate percentages for profit and administrative costs. Proposals shall certify in writing that the amounts would be or were necessarily incurred despite reasonable mitigation efforts. Amounts for Subcontractors or Suppliers shall be equally supported, and must be reviewed by the Contractor before being submitted to the **Authority**.

12.2.3 Where the change in Contract Price arises from changes in the time required to perform any Work, or where a change in Contract Time is sought, the **Contractor's** itemized estimates shall in addition detail all productivity and production data, and include a detailed analysis of the Progress Schedule.

12.3 Methods for Determining Adjustments in Contract Price:

12.3.1 The methods to be used to determine an adjustment in Contract Price necessitated by changes ordered or under negotiation, delay ordered, caused or under negotiation or Work covered by any proposal or claim, all pursuant to these General Conditions are referred to collectively as "the Work involved", and are limited to the following:

12.3.2 Where the Work involved is covered by lump sum prices or unit prices in the Contract Documents, on the basis of those lump sum prices or unit prices, respectively;

12.3.3 Where the Work involved is not covered by lump sum prices or unit prices, by mutual acceptance of a lump sum price negotiated on the basis of the **Contractor's** itemized good faith estimate of the anticipated cost of the Work involved as specified in this Article.

12.3.4 Where the Work involved is not covered by either of the first two methods, and **Authority** and the **Contractor** cannot agree, on the basis of the **Authority's** estimate of the cost of the Work involved plus a fee for the Work involved of eighty-five percent (85%) of the maximum fee allowed by this Contract.

Where the **Authority** and the **Contractor** cannot agree, and the **Authority** directs the **Contractor** to proceed with the Work involved with payments to be made per actual costs, on the basis of an itemized breakdown of the actual cost of the Work involved as specified in this Article plus a fee for the Work involved of seventy percent (70%) of the maximum fee allowed by this Contract. Where the **Authority** and the **Contractor** agree and the **Authority** directs the **Contractor** to proceed with the Work involved with payment to be made per actual costs on a time and materials basis, on the basis of an itemized breakdown of the actual cost of the Work involved as specified in this Article, plus a fee for the Work involved of one hundred percent (100%) of the maximum fee allowed by Contract.

12.3.5 Where the Work involved is not covered by any of the preceding methods, and if payment is to be determined by a court of competent jurisdiction and appropriate venue, it is agreed that the actual cost and fee methods allowed within the provisions of these Contract Documents shall be the only appropriate method for determining the cost and the fee of the Work involved.

12.3.6 In computing the cost of the Work involved, costs shall be in amounts no higher than those prevailing in the locality of the Work order, and include only the appropriate items for labor, material or equipment, construction equipment, and supplemental costs specified in this Article.

12.4 Labor, Subcontract and Material/Equipment Costs:

12.4.1 The cost of the Work involved includes payroll costs for craft labor including foremen in the direct employ of the **Contractor** assigned to the site and engaged in furnishing and incorporating materials or equipment in the Work involved. Payroll costs shall include wages at the minimum wage rates for Contractor's personnel established for this Contract pursuant to M.G.L. Chapter 149, §§ 26-27H plus labor burdens, e.g. social security, unemployment, workers' compensation, health and retirement benefits, vacation and holiday pay, etc.

12.4.2 The cost of the Work involved includes payments by the **Contractor** to Suppliers for material and equipment used in the Work involved, including transportation, storage, and necessary Supplier's field services. All trade discounts, rebates and refunds and all returns from sale of surplus items shall accrue to the **Authority**, and the **Contractor** shall make provisions so that they may be obtained. If required by the **Authority**, the **Contractor** shall obtain bids for designated items of materials or equipment and nominate at least two (2) suppliers for selection by the **Authority**. When determining actual material and equipment costs, invoices segregating items associated with the Work involved shall be the record upon which to base actual costs.

12.4.3 The cost of the Work involved includes payments made by the **Contractor** to Subcontractors for the Work involved performed by the Subcontractors. When determining Subcontractors' cost of the Work involved, the methods to be used shall be those used to determine the **Contractor's** costs, except that the term "Subcontractor" shall replace the term "the **Contractor**" if the context will permit. If required by the **Authority**, the **Contractor** shall obtain detailed competitive sub-bids and nominate at least two (2) Subcontractors for the performance of any Work involved, subject to selection by the **Authority**.

12.7 Owned Equipment:

12.7.1 For equipment owned by the **Contractor**, or by his affiliates, the **Contractor** shall be entitled to costs based on billings established by his normal accounting practices, but in no event shall those costs exceed the rates listed in the Custom Cost Evaluator published by Equipment Watch, Inc. for the region covering the Boston metropolitan area. The owned equipment hourly rate plus the estimated operation cost per hour from the Custom Cost Evaluator will be the basis for determining owned equipment costs. For shift Work, the equipment rate shall not exceed the shift Work hourly costs in the Custom Cost Evaluator.

12.8 Supplemental Costs:

12.8.1 The cost of the Work involved includes a proportion of necessary supplemental costs, to the extent those supplemental costs increase or decrease on account of (a) labor, material/equipment, Subcontract or equipment costs of the Work involved, or (b) an extension in Contract Time, including:

12.8.1.1 Payroll costs, and subsistence expenses, for the **Contractor's** payroll costs for other personnel in the employ of the **Contractor** engaged in Site activities and listed in the schedule of indirect personnel classifications agreed to by the **Authority**, if those costs arise solely from an extension in work Time.

12.8.1.2 Costs not exceeding two percent (2%) of the labor costs under paragraph 12.4.1 excluding burdens of field supplies consumed in the performance of the Work involved, and purchase costs not exceeding two percent (2%) of the labor costs under paragraph 12.4.1, less burdens; tools individually valued at less than \$500.00 and not owned by the workers which are used and consumed in the performance of the Work involved, and purchase cost less market value if used but not consumed.

12.8.1.3 Taxes related to the Work involved, and for which the **Contractor** is liable, and fees for permits and licenses, if they related solely to the Work involved.

12.8.1.4 Physical losses, damages and expenses to the Work involved not compensated by property insurance or otherwise, sustained by the **Contractor** in the performance and furnishing of the Work, except losses and damages within the deductible amounts of property insurance, but only if the losses, damages and expenses result from causes beyond the control and not due to the fault or negligence of the **Contractor**.

12.8.1.5 The actual documented cost of premiums for increases in bonds and insurance required solely because of the Work involved will be paid based on invoices from the surety.

12.9 Limitation on Equipment and Supplemental Costs:

12.9.1 The **Contractor** shall not be allowed to recover construction equipment or supplemental costs not attributable to the performance of the Work involved. Payroll costs for the full-time resident superintendent are an example of costs that are not recoverable.

12.10 Costs Covered by the Fee for the Work Involved:

12.10.1 The Cost of the Work involved **shall not include** any of the following costs that are considered administrative costs or contingencies covered by the Fee for the Work involved:

12.10.1.1 Payroll costs and other compensation of (a) the **Contractor's** executives, general and administrative managers, work managers, estimators, claim consultants, attorneys, accountants, labor relation coordinators, contract and subcontract administrators, purchasers, expeditors, and other administrative staff, whether employed at the site or in his principal or branch offices.

12.10.1.2 The market value of small tools used but not consumed.

12.10.1.3 Any part of the **Contractor's** capital expenses, including interest on capital for the Work involved, lost interest, on unpaid retainage, and charges for delinquent payments.

12.10.1.4 Costs associated with the preparation of Change Orders or Change Authorizations whether or not ultimately authorized by the **Authority**, or the preparation or filing of claims.

12.10.1.5 Costs of consultants or attorneys, in the direct employ of the **Contractor** or otherwise, utilized for services related to the Work.

12.10.1.6 Other administrative expense(s), lost profits, lost interest on unpaid retainage, and the costs of any item not specifically and expressly included in this Article 12.

12.10.1.7 Expenses of the **Contractor's** principal and branch offices, including, but not limited to storage and yard facilities.

12.11 Fee for the Work Involved:

12.11.1 Any adjustment in Contract Price for Work involved shall also include a Fee for costs under paragraph 12.10 and negotiated profit, shall not exceed the following amounts:

12.11.1.1 For Work involved performed by the **Contractor**, the **Contractor's** Fee shall not exceed fifteen percent (15%) of the Cost of the Work involved, less supplemental costs. For Work involved performed by a Subcontractor, the Subcontractor shall receive a Fee of ten percent (10%) of the Cost of the Work involved, less supplemental costs.

12.11.1.2 In addition to the Fee(s) specified in paragraph 12.11.1.1, for Work involved that is performed by Subcontractors, the **Contractor** shall receive a mark-up Fee of five percent (5%) of the performing Subcontractors' costs. No Fee shall be payable to the **Contractor** on the basis of the performing Subcontractors' Fee or supplemental costs.

12.11.1.3 The credit to be allowed to the **Authority** for any adjustment in Contract Price yielding a net decrease in cost, *i.e.* the cost of the Work involved is negative, shall be the amount of the net decrease together with a Fee credit equal to one-third of the Fee which would be allowed under paragraphs 12.11.1.1 and 12.11.1.2.

12.11.1.4 When more than one individual adjustment in Contract Price, each resulting in a net increase or decrease in the Cost of the Work involved, is covered in one specific Change Order or Change Authorization or proposal or claim, the combined Fee shall be computed as the sum of the individual Fees.

12.12 Payment for Extension in Contract Time:

12.12.1 Subject to the applicable requirements of the Contract Documents, an extension in work Contract Time may be combined with an increase in Contract Price to cover costs solely associated with the time extension in the case of changes in the Work, differing site conditions, or significant variation in quantities. No such adjustment in Contract Price shall be made to the extent that performance would have been extended by any other cause, including fault or negligence of the **Contractor**, Subcontractors, or Suppliers, or for which an adjustment is excluded by any other provision of the Contract Documents.

12.12.2 The cost of the Work involved arising from an extension in Contract Time, shall exclude amounts not solely related to the extension in work order Contract Time, such as: operating costs of construction equipment assigned to the Work on a continuing basis but primarily used in the furnishing and incorporating of materials and equipment into the Work; owned, or rental, costs plus operating costs of construction equipment used solely in the furnishing and incorporating of materials or equipment into the Work such as crane costs for specific lifts and concrete pump truck costs; supplemental costs unaffected by the increase in Contract Time, or otherwise allocable to Work other than the Work involved e.g. small tools, site facilities fully paid for in previous payments, etc.

12.13 Criteria for Determining Adjustments in Contract Time:

12.13.1 The criteria to be used to determine an adjustment in Contract Time necessitated by changes ordered or under negotiation as provided in these General Conditions, or Work covered by a proposal or a claim, are limited to the following:

12.14 An extension in Contract Time, if any granted, shall be the Contractor's sole and exclusive remedy for any delay, disruption, interference, or hindrance and associated costs, however caused, resulting from such delay.

12.15 Negotiating Changes in Contract Price or Contract Time:

12.15.1 In addition to the notice requirements within this Contract, the **Contractor** shall give written notice to the **Authority** of any written or oral order of the **Authority** which justifies a change in Contract Price or Contract Time by delivering a proposed Change Authorization itemizing in sufficient detail the related circumstances and the justification for the adjustments proposed. If the **Authority** concludes that a change in Contract Price or Contract Time is warranted, the **Authority** shall make or negotiate with the **Contractor** the appropriate adjustments. If the **Authority** finds otherwise, the **Authority's** decision shall be final and binding on the **Contractor** unless the **Contractor** delivers to the **Authority** a clearly marked written Notice of Claim within thirty (30) days from receipt of that decision in strict compliance with the requirements of this Contract Document.

12.15.2 The **Authority** may notify the **Contractor** of proposed changes in Contract Price or Contract Time by delivering to the **Contractor** an unsigned Change Authorization requesting that the **Contractor** signoff on the proposed changes in work order Contract Price or Contract Time or submit an alternate proposal.

12.15.3 If the **Authority** makes the decision to order any changes in Contract Price or Contract Time, whether unilaterally or in negotiations with the **Contractor**, those changes in Contract Price or Contract Time shall be binding on the **Contractor**, unless the **Contractor** delivers to the **Authority** clearly marked written Notice of Claim within thirty (30) days from receipt of that decision in strict compliance with the provisions stated within this Contract Document.

12.15.4 If the **Contractor** is directed or ordered to stop the Work, or any part of the Work by any **Authority** or public agency, other than the **Authority** the **Contractor** is required to so inform the **Authority** within two (2) hours of such action.

ARTICLE 13 - GUARANTEES

13.1 General Guarantees:

13.1.1 In consideration of the execution of this Contract by the **Authority** and the Contract Price herein stipulated to be paid and received for the performance of the work, the **Contractor** binds and obligates himself and agrees to bring all portions of the Work under this Contract to completion in accordance with the Contract Documents and within the Contract Time, free of all defects of material and workmanship, and guarantees that the Work shall remain free of all defects of material and workmanship for a period of one year from the date of work order completion. The **Contractor** guarantees, on written notice from the **Authority**, to immediately repair and make good, or cause to be repaired and made good, at the **Contractor's** expense, all defects of material or workmanship in the Work and to pay for or cause to be paid for any damage to other work resulting therefrom, or from the repair thereof which may develop during the period of one year from the date of each work order completion.

13.1.2 Warranties for all specified or substitute items of materials and equipment shall include a certification endorsed by the **Contractor** warranting their merchantability, and that they are functionally suitable and fit for their intended purpose.

13.1.3 The warranties, guarantees and obligations for correction of Work specified in this Article are in addition to and not in limitation of any other specific remedies provided in the Contract Documents or by Laws or Regulations.

13.2 Tests and Inspections:

13.2.1 The **Authority** or its representatives, testing agencies and Public Authorities or Agencies with jurisdiction shall be permitted access to the Work for their observation, inspection and testing. The **Contractor** shall provide proper and safe conditions for such access. The **Contractor** shall give the **Authority** timely notice of readiness of, and access to, the Work for all required inspections, tests, or approvals. Test, inspections or approvals shall not in any way relieve the **Contractor** from his obligations to perform the Work in accordance with the Contract Documents, or to warrant and guarantee the Work as provided in the Contract Documents.

13.2.2 If a Public Authority or Agency enforces testing, inspection or approval differing from those specified, or if not specified, from those enacted on or before the date of Bid opening, necessitating an amendment to the Contract Documents, the **Authority** shall authorize the required changes in the Work, together with any adjustment in Contract Price necessitated by the changes. If the Changed testing, inspection or approval causes or will cause delays which postpone, extend or in any manner alter the schedule or the completion of all or part of the Work, the **Contractor** shall absorb all of the **Contractor's** related delay, extension or acceleration costs, however caused; except that if the **Authority** and the **Contractor** believe that the delays require a change in Contract Time, the **Authority** shall authorize the necessary change in work order Contract Time **only**.

13.2.3 If any testing, inspection or approval reveals failure of any part of the Work, the **Contractor** shall not be allowed to recover any associated costs, and he shall reimburse the **Authority** for all of direct, indirect and consequential costs made necessary by that failure including those of repeated procedures.

13.2.4 Tests, inspections or approvals shall not in any way relieve the **Contractor** from the **Contractor's** obligations to perform the Work in accordance with the Contract Documents and to warrant and guarantee the Work as provided in the Contract Documents

13.3 Special Guarantees:

13.3.1 It is expressly agreed and understood that the general guarantee set forth under this Article is in addition to and not in substitution of such guarantees as may be required under any other Section of the Contract Documents.

13.3.2 All guarantees required in the Contract Documents, including those which originate with any Subcontractor, Supplier or other person, shall be in the form set forth by the **Authority** and must be delivered to the **Authority** before final payment to the **Contractor** will be made.

13.3.3 The **Contractor** and Subcontractors shall be jointly and severally liable to the **Authority** under the terms of all guarantees originating with any Subcontractor.

13.3.4 The failure to deliver a required guarantee shall be held to constitute a failure of the **Contractor** or Subcontractor to fully complete his work in accordance with the Contract Documents.

13.3.5 The period of all special guarantees, unless otherwise specified, shall be one year from the date of each work order Completion.

13.4 Correction or Removal, or Acceptance of Defective Work:

13.4.1 If required by the **Authority**, the **Contractor** shall promptly, as directed, either correct all *defective Work*, whether or not fabricated, installed or completed, or, if the Work has been rejected by the **Authority** or if any testing, inspection or approval of all or part the Work reveals failure of that part of the Work to comply with the requirements of the Contract Documents, remove it from the site and replace it at the **Contractor's** expense. If, instead of requiring correction or removal and replacement of *defective Work*, the **Authority** prefers to accept it, the **Authority** may do so, in which case the **Contractor** shall not be entitled to any increase in Contract Time or Contract Price, and he shall reimburse the **Authority** for all direct, indirect and consequential costs of the **Authority** incurred because of the correction or removal of or due to the **Authority's** evaluation and determination to accept *defective Work*.

13.4.2 If the **Authority's** acceptance of *defective Work* occurs prior to the **Authority's** recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents; and the **Authority** shall be entitled to an appropriate decrease in the Contract Price. If the acceptance occurs after that recommendation, an appropriate amount shall be deducted from the final payment, or if the final payment has been made, an appropriate amount shall be paid by the **Contractor** to the **Authority**.

13.5 The Authority May Correct Defective Work:

13.5.1 If the **Contractor** fails within a reasonable time after written notice of the **Authority** to proceed to correct *defective Work* or to remove and replace rejected Work as required by the **Authority**, or if the **Contractor** fails to perform the Work in accordance with the Contract Documents, or if the **Contractor** fails to comply with any other provision of the Contract Documents, the **Authority** may, after seven (7) days' written notice to the **Contractor**, correct and remedy any such deficiency. To the extent necessary to complete corrective action, the **Authority** shall have full power and authority to exclude the **Contractor** from all or part of the site, and to exercise all of the rights and remedies in paragraph 14.1 The **Contractor** shall allow the **Authority**, the **Authority's** representatives, agents and employees whatever access to the site that may be necessary to enable the **Authority** to exercise the rights and remedies under this paragraph. The **Contractor** shall not be allowed an extension in Contract Time or increase in Contract Price because of any delay in performance of the Work attributable to the exercise by the **Authority** of these rights and remedies, and he shall reimburse the **Authority** for all direct, indirect and consequential costs of the **Authority** in exercising such rights and remedies, such costs to include, but not be limited to, all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of defective Work, and a Change Order will be issued incorporating the necessary changes.

13.6 Uncovering Work:

13.6.1 If Work that is to be observed by the **Authority** or inspected, tested or approved is covered without written concurrence or contrary to the written request of the **Authority**, it shall when requested by the **Authority**, be uncovered, exposed or otherwise made available for observation, testing, inspection or approval, as the **Authority** may require and if necessary, replaced at the **Contractor's** expense.

13.6.2 The **Contractor**, at the **Authority's** request, shall uncover, expose or otherwise make available for observation, inspection or testing as the **Authority** may require, any covered Work if the **Authority** considers it advisable that such covered Work be observed by the **Authority** or inspected or tested by others.

13.6.3 The **Contractor** shall not be entitled to an increase in Contract Price or Contract Time, and he shall reimburse the **Authority** for all direct, indirect and consequential costs incurred by the **Authority** due to any uncovering or exposure, including but not limited to, the costs of that uncovering or exposure, observation, inspection, testing and satisfactory reconstruction, whenever Work covered without the written concurrence or contrary to the written request of the **Authority** under paragraph 13.6.1 is uncovered, or whenever covered Work uncovered at the **Authority's** request under paragraph 13.6.2 is found to be *defective*. If Work is uncovered or exposed under paragraph 13.6.2 and not found to be *defective*, the **Contractor** shall be entitled to an increase in Contract Price or Contract Time, either or both, directly attributable to such uncovering.

13.7 Correction Period:

13.7.1 The Correction Period shall commence on the date of Substantial Completion of the Work order, or a later date if so specified in the work order Documents.

13.7.2 If within the designated Correction Period, the Work, or any part of the Work is discovered to be *defective*, the **Contractor** shall promptly, without an adjustment in Contract Price and in accordance with the **Authority's** written instructions, either correct that *defective* Work, or if it has been rejected by the **Authority**, remove it from the site and replace it with *non-defective* Work. If circumstances warrant it, including, but not limited to, in an emergency, the **Authority** may have the *defective* Work corrected or the rejected Work removed and replaced. In that event, the **Contractor** shall not be allowed to recover any associated costs, and he shall reimburse the **Authority** for all of the **Authority's** reasonable direct, indirect and consequential costs so incurred. If that event takes place after final payment and the **Contractor** fails to pay such costs to the **Authority** within thirty (30) days after presentation for payment, the **Authority** will give written notice to the **Contractor** of a claim as detailed within this Contract Document.

13.7.3 The specified warranties and guarantees and the **Contractor's** obligations for correction of Work specified in this Article are in addition to and not in limitation of any other specific remedies provided in the Contract Documents or by Law. Nothing contained in this paragraph or this Article shall be construed as establishing a period of limitation for or limiting the obligations of the **Contractor** under the Contract Documents.

13.8 Extended Warranties and Guarantees:

13.8.1 Following written notice to the Contractor, the **Authority** may in its sole discretion advance or defer the date for commencement of the Correction Period, in which case the **Contractor** shall maintain the warranties and guarantees until the revised date for commencement of the Correction Period. If such advancement or deferral in the date for commencement of the Correction Period causes an increase or decrease in the cost of the warranties and guarantees provided by the **Contractor**, the **Authority** shall make an adjustment in Contract Price or Contract Time as provided within this Contract Document.

13.8.2 Any *defective* Work that is either corrected or rejected and replaced will be warranted and guaranteed in accordance with the provisions of this Article 13 for a period of one (1) year from the date of such correction or removal and replacement. If within such extended Correction Period, that Work is once again found to be *defective*, the **Authority** may exercise any of the **Authority's** rights and remedies under the provisions found within this Contract Document.

13.9 Special Maintenance Requirements:

13.9.1 In special circumstances where the Work, or a designated part, progresses to Substantial Completion or Partial Completion but is not placed in continuous service until the commencement of the Correction Period, the **Contractor** shall maintain the Work, or designated part, in good order and in proper working condition and take all other actions as are necessary for its protection during the period between the applicable Substantial or Partial Completion date and the date of commencement of the Correction Period, and for such maintenance the **Contractor** shall receive no adjustment in Contract Price.

13.9.2. If the Work suffers loss or damage, however caused, the **Contractor** shall rebuild, repair, restore and make good without an increase in Contract Price all losses or damages to any portion of any Work. The occurrence of **Authority** caused delay or the granting of an extension in Contract Time for any cause shall not relieve the **Contractor** of his responsibility for the Work, or designated part, as specified in this paragraph.

ARTICLE 14 - TERMINATION

14.1 Notice of Intention to Terminate for Cause:

14.1.1. If at any time reasonable doubt of the **Contractor's** due performance arises, the **Authority** may demand adequate, written assurance of due performance. In addition, the **Authority**, acting on knowledge or belief, may include with the demand for assurance a written notice to the **Contractor** and surety of the **Authority's** intent to terminate the **Contractor's** right to complete the Work within seven (7) days, or sooner if safety to persons or property is in question, because of occurrence of any of the following events, which constitute lack of due performance and are reasonable grounds for terminating the **Contractor**.

14.1.1.1 The **Contractor** fails to complete the Work, or separable part, within the corresponding Contract Time; fails or refuses to prosecute the Work, or separable part of the Work, with the diligence required for completion within the corresponding Contract Time; or fails or refuses to supply sufficient skilled workers, materials or equipment in adherence to the Progress Schedule, as revised from time to time;

14.1.1.2 The **Contractor** admits in writing, or the **Authority** otherwise establishes, the **Contractor's** inability to pay his debts generally as they become due; or in response to the **Authority's** demand, fails to promptly provide adequate, written assurance, the adequacy of which the **Authority** shall be the sole judge, of due performance in accordance with the Contract Documents;

14.1.1.3 A trustee, receiver, custodian or agent of the **Contractor** is appointed under applicable Law or under contract, whose appointment or authority to take charge of property of the **Contractor** is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the **Contractor's** creditors; or

14.1.1.4 The **Contractor** disregards the authority of the **Authority**, otherwise violates in any substantial way any provision of the Contract Documents, fails to perform the Work in accordance with the Contract Documents, with the Contract Documents, or disregards the Laws, ordinances, codes, rules or regulations of any public governmental entity with jurisdiction.

14.1.1.5 The **Contractor** is guilty of a substantial breach of a provision of the Contract Documents.

14.1.2. Promptly after the **Contractor** receives either a demand for assurance or a notice of termination, the **Contractor** and surety shall meet with the **Authority** and present the plan they intend to follow to give adequate assurance of due performance to the **Authority** and to avoid or cure any default. If at or after the meeting, the **Authority** decides to allow the **Contractor** to continue prosecution of the Work to completion, that decision shall not waive the **Authority's** right to declare the **Contractor** in default subsequently nor affect any rights or remedies of the **Authority** against the **Contractor** or surety, or both, then existing or which may accrue in the future.

14.2 Termination for Cause:

14.2.1. If the **Contractor** at any time refuses or neglects to supply a sufficient number of properly skilled workers or of materials of the proper quality, or fails in any respect to perform the Work, or separable part of the Work, with promptness and diligence, or fails in the performance of any of the agreements herein contained, and such refusal, neglect or failure has been certified to by the **Authority**, the **Authority** shall have full power and authority to give written notice to the **Contractor** and the surety of the **Authority's** intention to terminate the services of the **Contractor** seven (7) days after giving notice, or sooner if safety to persons or property is in question.

14.2.2 If the **Contractor** seeks relief in bankruptcy, or if he makes a general assignment for the benefit of his creditors, or if a receiver of his property is appointed, or if the Work to be done under this Contract is abandoned, or if this Contract or any part thereof is sublet or assigned without the previous written consent of the **Authority**, or if the **Contractor** becomes insolvent, or if at any time the **Authority** shall certify in writing that the **Contractor** has refused or neglected to supply a sufficient number of properly skilled workers or of materials of the proper quality, or has failed in any respect to perform the Work with promptness and diligence, or has failed in the performance of any agreements herein contained, the **Authority** and at its discretion, may without prejudice to any right or remedy, and after giving the **Contractor** and his surety seven (7) days prior written notice, notify the **Contractor** to terminate the Work and the **Authority** at its discretion, and without prejudice to any other remedies that the **Authority** may have, may thereupon by contract or otherwise, complete the Work and charge the entire expense of so completing the Work to the **Contractor**; and the **Contractor** shall not be entitled to receive any further payment under this Contract until Final Completion of the Work, at which time, if the unpaid balance of the amount to be paid under this Contract shall exceed the expense incurred by the **Authority**, such excess shall be paid by the **Authority** to the **Contractor**. If the expense of completing the Work exceeds such unpaid balance, an appropriate credit Change Order shall be issued deducting from the Contract an amount then or thereafter due to the Contractor equal to the actual cost of correcting such deficiencies, including the

City's expenses and compensation for the additional services of the Authority made necessary by such failure, refusal or default. For the purpose of completing the Work, the **Authority** may take possession of and use, or cause to be used, any materials, implements, machinery and tools of every description as may be found upon the site of the work.

14.3 Termination for Convenience:

14.3.1 Upon not less than seven (7) days written notice to the **Contractor** and the surety, or sooner if reasonable under the circumstances; the **Authority** may, without cause and without prejudice to any other right or remedy, elect to terminate any part of the Work, or the Contract in whole or in part as the **Authority** may deem appropriate for its convenience. Upon receipt of any such termination notice, the **Contractor** shall immediately proceed in accordance with any specific provisions or instructions, protect and maintain the Work, and make reasonable and diligent efforts to mitigate costs associated with the termination.

14.3.2 In any such termination for the convenience of the **Authority**, the **Contractor** shall be paid for Work completed in accordance with the Contract Documents prior to receipt of the notice of termination, and for reasonable termination settlement costs relating to commitments which had become firm prior to the termination, based solely on supporting documentation that is provided to the **Authority** by the **Contractor**, the adequacy of which will be determined by the **Authority** in its sole discretion; provided, however, that the payment to the **Contractor** will exclude any and all anticipated supplemental costs, administrative expenses and profit on uncompleted work; and provided, further, that if no agreement can be reached as to reasonable termination costs, the parties will follow the provisions in the Federal Acquisition Regulations, clause 52.249-2 found in 48 CFR PART 52.

14.3.3 If, after notice of termination of the services of the **Contractor** for any of the causes listed in paragraph 14.1, it is determined that the **Contractor** was not in default, the termination shall be deemed to have been for the convenience for the **Authority**. In such event the **Contractor** may recover from the **Authority** payment in accordance with this paragraph 14.3.

14.3.4 Upon any such termination for convenience, the **Authority** shall have full power and authority to take possession of the Work, assume any Sub-agreements with Subcontractors and Suppliers which the **Authority** so selects, and prosecute the Work to completion by contract or as the **Authority** may deem expedient.

14.4 Surety Default:

14.4.1 If upon receipt of a notice of termination for cause, the surety fails to perform its obligations under the Performance Bond with reasonable promptness, the **Authority** shall declare the surety in default under the Performance Bond in accordance with the provisions of this paragraph.

14.4.1.1 No default of the surety under the Performance Bond shall be declared however, until the expiration of seven (7) days after receipt by the surety of a written notice from the **Authority** demanding that the surety perform its obligations under the Performance Bond.

14.4.1.2 If the **Authority** declares the surety in default, the **Authority** shall have full power and authority to exclude the surety and **Contractor** from the site, assume any Sub-agreements which the **Authority** so selects and take possession of the Work and of all the surety's and **Contractor's** tools, appliances, plant and office, and construction equipment at the site and (a) use the same to the full extent they could be used by the surety and **Contractor** (without liability to the surety or **Contractor** for trespass, rent or conversion), (b) incorporate into the Work all materials and equipment stored at the site or for which the **Authority** has paid the **Contractor** but which are stored elsewhere, and (c) prosecute the Work to completion by contract or as the **Authority** otherwise may deem expedient.

14.4.2 If the **Authority** has terminated the **Contractor** or defaulted the surety, any such termination or default will not affect any rights or remedies of the **Authority** against the **Contractor** or surety, or both, then existing or which may accrue after termination. Any retention or payment of monies due the **Contractor** or surety by the **Authority** will not release the **Contractor** or surety from any liability. All provisions of the Contract Documents that by their nature survive final acceptance of the Work shall remain in full force and effect after a termination for cause of the **Contractor** or default of the surety, or both, as applicable.

14.4.3 The **Authority** may, in its sole discretion, permit the **Contractor** or surety to continue to perform Work when the **Contractor** or surety has been terminated or declared in default for any reason. Such decision by the **Authority** shall in no way operate as a waiver of any of the **Authority's** rights under the Contract Documents or the Performance Bond, nor in the event of a subsequent default, entitle the **Contractor** or surety to continue to perform or prosecute the Work to completion.

14.5 The Contractor May Stop Work or Terminate:

14.5.1 To the extent permitted by Law, if through no act or fault of the **Contractor**, the **Authority** fails to act on any Application for Payment within thirty (30) days after it is submitted, or the **Authority** fails for ninety (90) days to pay the **Contractor** any Application for Payment sum finally determined by the **Authority** to be due, then the **Contractor** may, upon thirty (30) additional days written notice to the **Authority** of a suspension of work, suspend the Work.

14.5.2 If the **Authority** fails to correct the conditions, if any, which under this paragraph justify the **Contractor's** suspension of the Work within ninety (90) days from the commencement of the suspension, the **Contractor** may upon thirty (30) days additional written notice to the **Authority** to terminate the Contract and recover from the **Authority** payment in accordance with paragraph 14.4.2 Except as specifically provided in this paragraph, these provisions shall not relieve the **Contractor** of the obligations under this Contract to carry on the Work without delay during disputes and disagreements with the **Authority**.

ARTICLE 15 - DISPUTES

15.1 Claims Under This Article:

15.1.1 All Notices of Claims, Claims and any other matters in dispute between the **Authority** and the **Contractor** arising from or related to the Contract Documents or a claimed breach thereof, shall be subject to, processed and resolved as provided in this Article 15.

15.1.2 A "Claim" under this Article 15 shall mean a written demand or assertion by the **Authority** or **Contractor**, which is properly certified according to the requirements of Paragraph 15.2.1, seeking an adjustment in Contract Price and payment of monies due, an extension or shortening in Contract Time, the adjustment or interpretation of Contract terms, or any other relief arising under or relating to the Contract, after a determination by the **Authority** under the appropriate provision of the Contract Documents.

15.1.3 A Claim arising under the Contract is a Claim that can be resolved under a provision within the Contract Documents that provides for or excludes the relief sought by the claimant. Such Claims shall be resolved in accordance with the applicable provisions.

15.1.4 No Claim shall be valid unless it is based upon the prior submission of a clearly marked written "Notice of Claim" that states the general nature of the Claim delivered by the party making the Claim to other party promptly, but in no event later than thirty (30) days after the **Authority's** determination giving rise to the Claim. The receipt by the **Authority** of a timely Notice of Claim shall be a condition precedent to the **Authority** receiving a valid a Claim submitted from the **Contractor** for evaluation. The clearly marked written "Claim" itself together with all supporting data shall be delivered within sixty (60) days after the determination. The responsibility to substantiate Claims shall rest with the party making the Claim. Notwithstanding anything to the contrary in this Article, the **Authority** shall not be required to deliver notice of any Claim for liquidated damages or involving retention until sixty (60) days after the final acceptance.

15.1.5 A Claim by the **Contractor** shall be submitted to the **Authority** for a written decision. The **Authority** will provide the **Contractor** with a written acknowledgement of receipt of the Claim within seventy-two (72) hours, and will notify the **Contractor** as to the status of the Claim within thirty (30) days of receipt.

15.1.6 Once given, the **Authority's** final decision on a Claim submitted by the **Contractor** shall be final and binding on the **Contractor** unless the **Contractor** files suit within thirty (30) days after receipt of the **Authority's** decision.

15.2 Requirements for Contractor Claims:

15.2.1 For all **Contractor** Claims seeking an increase in Contract Price or Contract Time, the **Contractor** shall submit a statement signed under the penalties of perjury and executed by an officer or partner in charge, or by a responsible senior officer or general managing partner of the **Contractor** certifying that the Claim is made in good faith; the amount claimed accurately reflects the adjustments in Contract Price or Contract Time for which the **Contractor** believes the **Authority** is liable, and covers all costs and delays to which the **Contractor** is entitled from the occurrence of the claimed event; and supporting costs and pricing data are current, accurate, complete and represent the best of the **Contractor's** knowledge and belief.

15.3 Determination on a Claim:

15.3.1 Pending final resolution of any Claim, including litigation, the **Contractor** shall proceed diligently with the Work, and comply with any decision of the **Authority**.

15.3.2 After settlement or final adjudication of any Claim under this Article if, upon demand, payment by the **Contractor** is not made to the **Authority**, the **Authority** may offset the appropriate amounts against (a) payments due to the **Contractor** under any other contract between the **Authority** and the **Contractor**, or (b) any amounts for which the **Authority** may be obligated to the **Contractor** in any capacity.

15.4 Venue:

15.4.1 The **Contractor**, the **Contractor's** sureties, and the Subcontractors and Suppliers agree, consent and submit to the service of process at the address and in the manner specified in Article 10.17.

15.4.2 The **Contractor**, the **Contractor's** sureties, and the Subcontractors and Suppliers waive jurisdiction and venue and shall submit to the jurisdiction of the County of Middlesex only, regardless of residence or domicile, with respect to any actions or suits at law or in equity arising under or related to the bidding, award, performance, or completion of the Work, payment for work performed, or any Claim.

15.4.3 The **Contractor** shall insert a provision containing the venue and service of process requirements of paragraph 15.4.1 and 15.4.2 in all sub-agreements and agreements between the **Contractor** and his sureties and insurers, altering the provisions only as necessary to properly identify the contracting parties.

END OF GENERAL CONDITIONS

NEWTON HOUSING AUTHORITY

WAGE RATE REQUIREMENTS

1. GENERAL

- A.** This section summarizes the requirements for the payment of wages to laborers and mechanics employed under the Contract.
- B.** Other duties and requirements of law which may not be specified in this section apply and are inherently part of the Contract.

2. WAGE RATES

- A.** The rate per hour to be paid to mechanics, apprentices, teamsters, chauffeurs, and laborers employed on the Work shall not be less than the rate of wages in the attached "Minimum Wage Rates" as determined by the Commissioner of Labor and Industries. The schedule of prevailing wage rates will be updated annually for all public construction work orders lasting longer than one (1) year. The contractor shall pay the prevailing wage rate set out in the applicable prevailing wage rate schedule. Increases in prevailing wage rates shall not be the basis for a change order.
- B.** Keep posted on the site a legible copy of said schedule. Keep on file the wage rates and classifications of labor employed on this Work in order that they may be available for inspection by the Owner, Administrator, or the Authority.
- C.** Apprentices employed pursuant to this determination of wage rates must be registered and approved by the State Apprenticeship Council wherever rates for journeymen or apprentices are not listed.
- D.** Pay reserve police officers employed on the Work the prevailing rate of wages paid to regular police officers as required by M.G.L. c 149, Sec. 34B, as amended. Such police officers shall be covered by Workmen's Compensation Insurance and Employers Liability Insurance by the Contractor.
- E.** The Contractor and all subcontractors shall, on a weekly basis throughout the term of the contract, provide to the Newton Housing Authority certified payroll affidavits verifying compliance with M.G.L. c.149, Sec. 27, 27A and 27B and the US Department of Labor, Davis Bacon Act.
- F.** The Contractor and all subcontractors shall provide a Statement of Compliance within 15 days of the completion of its portion of the work. This statement shall be submitted to the Owner on the form found elsewhere in this section.
- G.** The Contractor shall maintain accurate and complete records, including payroll records, during the Contract term and for three years thereafter. Filings made by the Contractor pursuant to Clauses 47, 48 and 49 of the General Conditions shall be deemed to constitute compliance with State filing requirements under the Massachusetts Prevailing Wage Law and US Department of Labor, Davis Bacon Act.

END OF SECTION

The Massachusetts Prevailing Wage Law M.G.L. ch. 149, §§ 26 – 27

NOTICE TO CONTRACTORS

- The enclosed wage schedules, and any updated schedule, must be posted in a conspicuous place at the work site during the life of the project.
- The wages listed on the enclosed wage schedule must be paid to employees on public works projects regardless of whether they are employed by the prime contractor, a filed sub-bidder, or any sub-contractor.
- The enclosed wage schedule applies to all phases of the project including the final clean-up. Contractors whose only role is to perform final clean-up must pay their employees according to this wage schedule.
- All apprentices must be registered with the Massachusetts Division of Apprentice Training in order to be paid at the reduced apprentice rates. If a worker is not registered with the Division of Apprentice Training, they must be paid the “total rate” listed on the wage schedule regardless of experience or skill level. For further information, please call (617) 727-3486 or write to the Division of Apprentice Training, 399 Washington Street, 4th Floor, Boston, MA 02108

**SPECIFICATIONS FOR ON- CALL SERVICING, REPAIRING AND MAINTENANCE
OF HVAC & RELATED MECHANICAL & PLUMBING SYSTEMS**

**THIS SERVICE CONTRACT IS SUBJECT TO THE MASSACHUSETTS
PREVAILING WAGE LAW (MGL c 149, ss 26-27H) AND WAGES
SHALL BE PAID IN ACCORDANCE WITH THE FOLLOWING WAGE
CLASSIFICATIONS:**

HVAC (ALL), PIPEFITTERS, PLUMBERS & GASFITTERS

PART I - GENERAL

1.1 DESCRIPTION

A. Work included:

Provide all the on-call labor, materials, equipment, transportation, and supervision necessary for the satisfactory servicing, repairing, and maintenance of all HVAC & Related Mechanical & Plumbing Systems and equipment, at Authority buildings, all as listed in these Specifications, as directed by Authority for the period of February 12, 2018 through February 11, 2019.

B. HVAC and all related mechanical & plumbing systems equipment:

(These Specifications include, *but are not limited to*, the following types of equipment in each facility, where applicable.)

Bath Room Sinks
Boilers & Furnaces
Cold Water Supply Lines
Compressed Air Systems
Custodial Closet Sinks
Domestic Hot Water Storage Tank
Drinking Fountains, both refrigerated and non-
electric Hot Water Tanks
Emergency Eye Wash
Emergency Shower Station
Faucets

Floor Drain Covers
Floor Drain Lines
Flushometers
Garbage Disposals
Hose Bibb
Hot Water Circulation Pumps
Hot Water Mixing Valves
Hot Water Supply Lines
HVAC systems – all types
Kitchen Sinks
Laundry Sinks
Natural Gas Hot Water Tanks
Natural Gas Piping
Roof Drain Piping
Roof Drains
Sanitary Waste Piping
Shower Heads
Showers
Solar Panel Piping
Solar Storage Tank

Sump Pumps
Supply Valve Shutoff
Toilets
Urinals
Water Meter Piping

C. Typical Repairs/Replacements to be completed:

Unplug Clogged roof drains and related systems
Clean and repair waste systems
Repair/Replace Flushometers
Repair/Replace Leaking Hot and Cold Supply Lines
Repair/Replace Leaking Waste Lines
Repair/Replace Toilets
HVAC system repairs/replacements (largest percentage of calls reported regarding no heat/hot water)
Unplug Clogged Drain Lines
Repair/Replace Sinks
Repair/Replace Urinals
Repair/Replace Faucets
Repair/Replace Valves
Repair/Replace Mixing Valves
Repair/Replace Shower Heads
Repair/Replace Showers
Repair/Replace Bath Tubs
Repair/Replace Drinking Fountains and related equipment
Replace/Install Drinking Fountain Refrigerant
Repair/Replace Eye Wash Station
Repair/Replace Emergency Shower
Repair/Replace Pipe Fittings
Repair/Replace Non Asbestos Pipe Insulation
Repair/Replace Hot Water Tank
Repair/Replace Hot Water Storage Tank
Repair/Replace Solar Hot Water Storage Tank
Repair/Replace Solar Hot Water Piping
Repair/Replace Hot Water Circulation Pumps

D. Additional Work at Authority's Option (Preventative Maintenance)

This work is to be done at selected locations throughout the Authority in accordance with a schedule and type of work to be determined by the Authority in consultation with this Contractor. The general order of work shall be determined by the condition of the various items of equipment, usage patterns of the Authority buildings for purposes of access to the items and seasonal considerations. It is anticipated that some of this work can be accomplished as "fill-in" work scheduled around other repair and servicing operations.

E. Existing Conditions

During the bidding period, the Newton Housing Authority shall make available, between the hours of 8:00 a.m. - 3:00 p.m., all facilities for all bidders to visit the facilities with designated Authority personnel; bidders will be responsible for all work under this Contract whether they visit the facilities or not.

F. The successful bidder shall be responsible to make repair to all equipment within the Facilities listed within this Contract Document and any others as may be added during the course of this contract. Should a repair be requested that cannot be accomplished by the successful bidder, it will be the successful bidders responsibility to coordinate with other contractors to have such repair done. The cost of such repair shall not exceed the rates as submitted on the bid form.

G. Location of Equipment

LIST OF NEWTON HOUSING AUTHORITY DEVELOPMENTS

The following is a description of the Newton Housing Authority housing developments and the type of units found at each development. There are a total of 524 units.

State Elderly/Disabled Program (DHCD): This development consists of 298 one bedroom units.

Locations:

Parker House: 21 Parker Street, Newton Centre	33 units
Jackson Gardens: JFK and Green Street, Newton	64 units
Horace Mann: Walter St./Brookside Ave/676 Watertown Street	72 units
Norumbega Gardens: Ash St/Auburn Street, Auburndale	57 units
Echo Ridge: Thurston Road, N. Upper Falls	36 units
Nonantum Village: 239 Watertown Street, Nonantum	36 units

State Family Program (DHCD): Consists of 79 two, three and four bedroom units.

Locations:

Beaconwood, Wilson Circle/Hargrave Circle	20 units
Oak Street/1175 Chestnut Street	18 units
Scattered Sites	41 units

State Elderly/Disabled Program (DHCD): Consists of 60 one bedroom units.

Locations:

Hamilton Grove, 541 Grove Street, Newton	42 units
Centenary Village, 234 Central Street, Auburndale	12 units
Scattered Sites, Pettee Street/Florence Street	6 units

State Special Needs Housing (DHCD): Consists of 41 units, 20 of which are leased to vendors who operate residential programs for special needs clients.

Locations:

New Hyde School, 82 Lincoln Street	24 units
Walnut Street, 515 Walnut Street	10 units
Central Street, 234 Central Street	7 units

Management Units: The Newton Housing Authority owns and operates 57 units of managed housing. These include single room occupancy, one, two and three bedroom units and located throughout the City of Newton.

Total: 57 units

1.2 QUALITY ASSURANCE

A. Qualifications of Workmen:

- a. This Contract will be awarded to a contractor whose primary business is heating, ventilation and air conditioning mechanical system maintenance, repair, and service of equipment of the magnitude as covered under this Contract, and who has employees regularly under his employ who perform all required mechanical/electrical maintenance service and repair functions as required.
- b. The Contractor shall have been in the HVAC &/ Related Mechanical & Plumbing Maintenance service and repair business for at least five (5) years, and must have at least three (3) similar customers who can be used as references
- c. The Contractor shall assign a minimum of three (3) Full Time personnel to the Authority to ensure all requests for service are responded to within the required time parameters

B. Rejection:

In the acceptance or rejection of plumbing/mechanical system maintenance, repair, and service operations and results, no allowance will be made for lack of skill on the part of workmen.

C. Codes and Standards:

Comply with all applicable codes, standards and regulations.

The Contractor shall acquire and maintain all service manuals for the various pieces of equipment covered under this Contract.

1.3 SAFETY

Take the necessary precautions for the safety of employees on the work, and comply with applicable OSHA provisions to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed.

1.4 SUBMITTALS

No initial submittals required.

Submit two copies of maintenance and operation manuals for any new equipment installed; Deliver one to location of equipment and one to Authority's Capital Improvement Coordinator.

See 1.07 B below.

1.5 PRODUCT HANDLING

A. Protection:

Use appropriate means necessary to protect materials before, during and after installation and to protect adjacent existing surfaces.

B. Replacements:

In the event of damage to Authority property, immediately make repairs and replacements necessary to the approval of the Authority and at no additional cost to the Authority.

1.6 JOB CONDITIONS

A. Scheduling:

The Contractor shall provide the phone number of a dispatcher, regularly employed by him; This number shall be manned twenty-four hours a day, seven days per week; recorded message taking devices are not acceptable.

After receiving a service call from the Authority, commence work within the following time limits:

1. Emergency work requests must start within 1 (one) hour.
2. All other work requests must start within two (2) workdays unless extended by Public Buildings Department.

Before commencing work, contact the Authority's Maintenance Department (phone 617-552-5501) to determine the exact location and extent of the required work.

The Building Maintenance Foreman will provide access and electrical outlets to all areas where the servicing is required.

B. Notification:

Within twenty-four (24) hours after services have been completed, notify the Authority by phone or e-mail that the required work has been completed.

C. Work Results Required:

All service call problems shall be eliminated on the first call; first call-back for the same problem will be paid for at 25% of the Contract service rate; second call-back for the same problem will and any subsequent call-backs will not be paid for by the Newton Housing Authority.

1.7 PROCEDURES

A. Work Order:

The Contractor shall have with him, on each service call, a Work Order listing the type and quantity of material used and the time consumed for that call;

This Work Order must be signed by the Authority's representative as evidence of the number of hours on the job.

A copy of the signed order shall be attached to its appropriate invoice.

The Contractor can use his own Work Order Form or one supplied by the Authority, sample of which is shown at the end of these Contract Documents.

B. Invoicing:

Invoices, one for each work order, must be mailed in duplicate within five (5) days after each service call has been completed to:

Newton Housing Authority
82 Lincoln Street
Newton Highlands, MA 02461
Attn.: Capital Improvement Coordinator

Failure to invoice within the above mentioned three (3) day period shall be grounds for termination.

Each invoice must reflect the Building Work Order Number assigned to that service call.

Each invoice will be based on time and materials, labor costs will be reflected separately and will be billed in accordance with the applicable contract hourly rates. Material used will be reflected on the invoice by quantity and unit costs including applicable surcharge. Each invoice shall have a complete break-out of labor, materials and any other miscellaneous charges. Bill labor charges on the **actual** time used to perform the required Work. **Labor charges shall not be billed on a portal to portal basis. All charges for mileage, tolls, etc. shall be included within the hourly rate as submitted on the bid form.**

In addition, each invoice shall be supplemented with a written service report (in duplicate) reflecting:

1. Location and date
2. Time of start and finish of work
3. Number of workmen
4. Brief description of work performed
5. Name and number of parts replaced, with a statement if rebuilt or new parts or components were used.
6. Recommendation or comments pertaining to the repair work

C. Materials:

All removed parts and components shall be replaced by new parts. Used materials without trade-in allowance to the Newton Housing Authority must be left at the building with the NHA maintenance representative in charge; used materials with trade-in allowance shall be returned to the vendor and credit shown on the invoice.

D. Meetings and Estimates

The Contractor shall agree to meet with the Authority, when requested, for the discussion and review of various problems encountered, and to provide a written status report at each meeting.

The Contractor shall, at the request of the Authority, investigate and offer estimates and quotations of work to be done, at no cost to the Authority.

1.8 CONTRACT RATES

A. Repairs, Standard Rate:

The Standard Rate shall apply to any repair that does not meet the criteria for Premium Rate.

The Contractor shall perform routine repairs as directed by the Authority during the term of this contract. ***The Contractor shall be compensated for such repairs at the Standard Rate shown on the bid form. Materials used during routine repairs will be reimbursed at Contractor's cost plus 10%.***

B. Repairs, Premium Rate:

The Premium Rate shall apply to any repair which the Authority requests the Contractor to commence between 5:00 p.m. and 8:00 a.m. Monday through Friday, and anytime on Saturday, Sunday or a legal holiday.

The Contractor shall be compensated for Premium Rate repairs at the Premium Rate shown on the bid form. Materials used during Premium Rate repairs will be reimbursed at Contractor's cost plus 10%.

Under no circumstances shall any work performed by the Contractor be compensated at the Premium Rate unless the Authority has given prior authorization to treat the work as a Premium Rate repair.

PART 2 - PRODUCTS

2.01 REPAIR AND REPLACEMENT MATERIALS

All repair and replacement materials used shall be first quality with preference given to replacement parts as manufactured by the original equipment manufacturer (OEM); use these parts whenever available and always when a manufacturer's warranty still in effect would otherwise be voided.

In the event new major parts or components costing over three hundred and fifty dollars (\$750.00) should be required, the Contractor shall advise the Authority in writing and obtain the Authority's written approval prior to performing said Work. In an emergency situation, Authority approval may be obtained by telephone (617) 552-5501.

The Authority reserves the right to purchase items costing over fifteen-hundred dollars (\$1,500.00) direct if it be in its best interest to do so.

PART 3 - EXECUTION

3.01 REPAIR AND REPLACEMENT

A. Repair

On any repair call vendor shall examine the unit for causes, which may have led to the failure; repair not only the failed portion, but also rehabilitate any other elements which appear to be in need of preventative maintenance; comply firstly with the servicing techniques required and/or recommended by the manufacturer of the item and secondly with generally accepted repair practices for the class of items to which the unit belongs. In particular, for any item still believed to be under warranty, conform exactly to manufacturers requirements; advise the Authority of any recourse it may have with the original equipment manufacturer.

As a part of repair, check all field-adjustable settings and field-measurable tolerances. Reset these to original factory compliance; advise the Authority of any such settings/tolerances that cannot be repaired or for which the cost of repairs suggests that a replacement unit be considered.

B. Replacement:

Notify the Authority immediately upon initial examination of any unit that cannot be repaired or for which the cost of repairs suggests that a replacement unit be considered.

Furnish only either the duplicate item from the original manufacturer or a first-quality similar item from an established manufacturer who maintains a dealer/service network of support in the Greater Boston area.

Replacement units must be either an exact physical and functional equal or have only acceptable differences from the original -- coordinate with Public Buildings Department Facilities Manager in this case before providing the replacement unit.

C. Guarantee

All labor, materials and replacement furnished under the contract shall be fully guaranteed, including the cost of removal and reinstallation (if part of the original work order) for one (1) year. In the event of failure, provide warranty service immediately upon notification.