

MBTA General Provisions

GENERAL CONDITIONS

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SECTION 00700

GENERAL CONDITIONS

PART 1 - DEFINITION OF TERMS

1.1 DEFINITION OF TERMS

- A. Wherever in the Bid or Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning shall be as follows:
1. Acceptance - Formal written acceptance by the Authority of the completed Work.
 2. Addenda - Written interpretations of and/or revisions to the Bid Documents issued by the Authority prior to opening of Bids.
 3. Alteration - A change or substitution in the form, character, or detail of the Work done or to be done within the original scope of the Contract.
 4. Authority - Massachusetts Bay Transportation Authority, created by Chapter 563, Section 18 of the Acts of 1964, of the Commonwealth, the Party of the First Part to the Contract.
 5. Award - Award by the Authority of a Contract.
 6. Bid - Offer of the Bidder for the Work when submitted on the prescribed Bid Form, properly signed, dated, and guaranteed, and which includes the schedule of bid items.
 7. Bid Documents - Documents provided by the Authority for the purpose of soliciting Bids for the Work. Bid Documents will include, as applicable, Standard Specifications, Contract Specifications, Contract Drawings, MBTA Geotechnical Data Reports, Bid Form, and Addenda.
 8. Bid Form - Forms issued by the Authority requesting bids for a specific Contract and includes the Notice to Bidders, Instructions to Bidders, and Form for Bid.
 9. Bid Security (Bid Guaranty) - The cash, cashier's or treasurer's check, certified check, or Bidder's Bond accompanying the Bid submitted by the Bidder, as a guaranty that the Bidder will enter into a Contract with the Authority for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to the Bidder.
 10. Bidder - An individual, firm, partnership, corporation, or combination thereof, submitting a Bid for the Work on the prescribed Bid Form.
 11. Chairman of the Board of Directors of the Authority - Chief Executive Officer or designee, such designee acting within the scope of the particular duties entrusted to him.
 12. Change Order - A document executed and issued to the Contractor by the Authority amending the Contract.
 13. Commonwealth - Commonwealth of Massachusetts.

14. Contract Documents - The Standard Specifications, Contract Specifications, Bid, and Contract Drawings revised to incorporate all changes made during the Bid period by Addenda and to incorporate information included in the Bid accepted by the Authority and all authorized changes to the Contract issued subsequent to the execution of the Contract.
15. Contract - The written agreement executed by the Authority and the Contractor, setting forth the obligations of the Parties there under.
16. Contract Administrator - Manager of the Office of Contract Administration or his designee.
17. Contract Bonds –
 - a. Performance Bond - A bond executed by the Contractor and the Contractor's Sureties in the full amount of the contract to ensure the faithful performance of the contract.
 - b. Labor and Materials Payment Bond - A bond executed by the Contractor and the Contractor's Sureties in the full amount of the Contract to ensure the payment of labor, materials, and rental of equipment.
18. Contract Drawings - Plans, profiles, typical cross sections, general cross sections, elevations, and details list as referenced on the Drawing Index, or amendments thereto, and working drawings and shop drawings approved by the Engineer, all of which show locations, character, dimensions, and details of the Work.
19. Contract Item - A specifically described unit of work for which a price is provided in the Contract.
20. Contract Specifications - A set of documents issued by the Authority for the intended Work which includes the Notice to Bidders, Instructions to Bidders, Bid Form, Contract Forms, Contract Bond Forms, Supplementary Conditions, technical provisions, and other requirements, forms and exhibits identified therein.
21. Contract Time - Number of calendar days allowed or specified date(s) for completion of the Contract.
22. Contractor - The individual, firm, partnership, corporation, or combination thereof, private, municipal or public, including joint ventures, which, as an independent contractor, has entered into Contract with the Authority, as Party or Parties of the Second Part, and who is referred to throughout the Contract Documents by singular number.
23. Days - Every day shown on the calendar, Saturdays, Sundays and holidays included.
24. Engineer - The General Manager of the Authority or designee acting within the scope of the particular duties entrusted to this person.
 - a. Design Engineer and/or Consultant (name of Consultant firm) has been retained by the Authority as engineering consultant during the construction of (name of project). The terms "Design Engineer" and "Consultant" are at times interchangeable.
25. Engineer's Estimate of Quantities - List of quantities of work estimated to be performed as contained in the Bid.

26. Extra Work - Work which is not included in the Contract as awarded but found to be necessary for the satisfactory completion of the Contract within its intended scope, and bears a reasonable subsidiary relation to the full execution of the Work originally described in the Contract.
27. Extra Work Order - An order in writing issued by the Engineer to the Contractor prior to performing the Extra Work, setting forth the Extra Work to be done, the basis of payment and time adjustments, if any. Following the issuance of an Extra Work Order, a Change Order will be executed to amend the Contract Documents.
28. Form for Bid - see Bid Form.
29. General Manager - Shall be the Chief Executive Officer of the Authority, and shall have general direction, supervision and control of the conduct of the business, property, personnel and affairs of the Authority except as may be otherwise prescribed by law or by the regulations of the Board of Directors.
30. General Terms - Wherever the words "required," "determined," "directed," "specified," "authorized," "ordered," "given," "designated," "considered necessary," "deemed necessary," "Permitted," "reserved," "suspended," "established approval," "approved," "disapproved," "acceptable," "unacceptable," "suitable," "accepted," "satisfactory," "unsatisfactory," "sufficient," "insufficient," "rejected," "condemned," or words of like import are used, they shall be understood to imply "by the Engineer" or "to the Engineer," unless the context clearly indicates a different meaning.
31. Indicated - A term meaning as shown on the Contract Drawings, as described in the Specifications, or as required by other Contract Documents.
32. Manager of Contract Administration - the Manager of the Office of Contract Administration for the Massachusetts Bay Transportation Authority or his designee.
33. MBTA Transit System - Authority Transit System, including right-of-way, pavement, tracks, facilities, structures, equipment, appurtenances, and other property of the Authority.
34. Non-System facilities - Facilities which are not a part of the MBTA Transit System.
35. Notice to Bidders - That portion of the Bid which advertises for Bids for a specific Contract. Notice to Bidders will indicate time and place for submitting and for opening of Bids, location of the Work, a brief description of the Work to be provided, and bid security required.
36. Notice to Proceed - Written notice from the Authority to the Contractor to proceed with the Work.
37. Project - That specific portion of MBTA Transit System indicated in the Contract Documents.
38. Provide - In reference to work to be performed by the Contractor, "provide" means furnish, install, and (as applicable) test complete in place.
39. Reference Utility Standards - Drawings and specifications, published by municipalities, utility companies, and railroads which are included or referenced in the Contract Documents.

40. Specifications - Directions, provisions, and requirements contained in the Contract Specifications.
41. Subcontractor - The individual, firm, partnership, corporation, vendor, supplier, or combination thereof to whom the Contractor, with written approval of the Authority, sublets any part of the contract.
42. Supplementary Conditions - Supplements and additions to the General Conditions.
43. Surety - Corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all legal debts pertaining to the Work, and who executed the Contract Bonds.
44. U.S. Department of Transportation (DOT) - Secretary of the U.S. Department of Transportation, and other person authorized to perform the functions of that office, including representatives of the Federal Transportation Administration (FTA).
45. Value Engineering - The systematic application of recognized techniques which identify the function of a product or service, and provide the necessary function or service reliably at lower overall cost.
46. Work - All the construction, materials, equipment, and contractual requirements as specified, shown, or indicated in the Contract Documents, including all alterations, amendments, or extensions thereto made by authorized changes.
47. Working Drawings and Shop Drawings - Any supplementary drawings or similar data which the Contractor is required to submit to the Engineer for approval, including but not necessarily limited to erection, falsework, and formwork drawings; dewatering; bending diagrams and bar schedules for reinforcing steel; calculations; and manufacturers' catalog information and data.

PART 2 - SCOPE OF WORK

2.1 INTENT OF THE CONTRACT

- A. Intent of the Contract is to provide for the construction and completion in every detail of the Work. The Contractor shall complete the Work to the satisfaction of the Engineer at the prices set forth and agreed upon. Where portions of the Work are described in general terms, but not in complete detail, the best general practice shall be followed. Only materials and workmanship of best standard quality shall be used. The Contractor shall, unless otherwise specified, furnish all labor, superintendence, materials, tools, equipment and incidentals necessary to complete the Work in a proper, thorough, and workmanlike manner.
- B. Work consists of

2.2 CHANGES IN THE WORK

- A. The Authority reserves the right at any time during the progress of the Work to make alterations to, deviations from, additions, to, and deletions from the Contract Drawings and Specifications. Such changes shall not invalidate the Contract nor release the surety. The Contractor agrees to accept the Work as changed, the same as if it had been a part of the original Contract. Such changes will be authorized in writing by the Engineer. The Contractor shall accept as full

compensation for Work, except as specified in Paragraphs B. and C., the Contract unit prices stipulated in the Contract for the actual quantity of work provided in an acceptable manner. Such changes shall not invalidate the Contract, nor any part thereof.

- B. Wherever an alteration, deviation, addition, or deletion involves a change in the nature of design or in the type of construction which increases or decreases the cost of performance of the Work or requires the Contractor to furnish materials or provide work of a kind not susceptible of classification for payment under any of the items scheduled in the Bid, the Authority and the Contractor may enter into Supplementary Agreements covering the work to be done and -the manner and method of payment therefor. If the Contractor and the Authority disagree on increased or decreased costs, the changes shall be by a Change Order.
- C. If the changes, in the opinion of the Engineer, are of sufficient magnitude as to require additional time to complete the Contract, such time adjustment may be made in accordance with the provisions of Article 6.8.

2.3 EXTRA WORK

- A. The Contractor shall do any work not herein provided for when and as ordered in writing by the Engineer, such written order to contain particular preference to this Article and to designate the work to be done as Extra Work.
- B. Unless specifically noted in the Change Order, Extra Work will not extend the time of completion of the Contract as stipulated in Article 6.8 A.6.
- C. Determination of the Engineer will be final upon all questions concerning the amount and value of Extra Work (except as provided in Article 5.19).
- D. Payment for Extra Work will be as specified in Section 01150 - MEASUREMENT AND PAYMENT.

2.4 CONTRACTOR COST REDUCTION PROPOSALS VALUE ENGINEERING (APPLICABLE TO CONTRACTS IN EXCESS OF \$200,000)

- A. The Contractor may submit cost reduction Proposals for changing the Contract requirements. The Proposals shall be based upon a sound study made by the Contractor indicating that the Proposal:
 - 1. Will result in a net reduction in the total Contract cost to the Authority;
 - 2. Will not impair any essential form, fit, function, or characteristic of the Work, such as safety, service life, reliability, economy of operation, ease of maintenance, and necessary standardized features;
 - 3. Will not require an unacceptable extension of the Contract completion time; and
 - 4. Will require a Change Order to the Contract.
- B. Cost reduction or Value Engineering Proposals shall be processed in the same manner as prescribed for any Contract initiated Proposal which would necessitate issuance of a Change Order. The Contractor shall submit the following information as a minimum, with each Cost reduction Proposal:
 - 1. A description of the difference between the existing Contract requirements and the proposed change, and the comparative advantages and disadvantages of each;
 - 2. An itemization of the-requirements of the Contract which must be changed if the Proposal is adopted and a recommendation as how to make such change (e.g., suggested revision);

3. An estimate of the reduction in Contract performance costs that will result from adoption of the Proposal, taking into account the cost of implementation by the Contractor (including any amount attributable to subcontracts in accordance with Paragraph E. below and the basis for the estimate).
 4. A statement of the time by which a Change Order must be issued so as to obtain the maximum cost reduction during the remainder of this Contract, noting any effect of the Contract delivery schedule.
- C. The Authority will not be liable for any delay in acting upon, or for failure to act upon, any Value Engineering Proposal submitted pursuant to this Article. The decision of the Authority as to the acceptance of any such Proposal shall be final. The Authority may accept in whole or in part, any Proposal submitted pursuant to this Article by issuing a Change Order. Unless and until a Change Order is issued, the Contractor shall remain obligated to perform in accordance with the terms of the Contract.
- D. If a Value Engineering (cost reduction) Proposal is accepted and applied, an equitable adjustment in the Contract price and in any other affected provisions will be made. The equitable adjustment in the Contract price will be established by determining the total estimated decrease in the Contractor's cost of performance resulting from the accepted changes, taking into account the Contractor's cost of implementing the change (including any amount attributable to subcontracts in accordance with Paragraph E. below). The Contract price shall be reduced by such total estimated decrease in the cost of performance minus 50 percent of the difference between the amount of such total estimated decrease and any ascertainable collateral costs to the Authority which must reasonably be incurred as a result of application of the cost reduction Bid.
- E. The Contractor shall include appropriate value engineering arrangements in any subcontract which, in the judgment of the Contractor, is of such a size and nature as to offer reasonable likelihood of cost reductions. In computing any equitable adjustment in the Contract price under Paragraph D., the Contractor's cost of implementation of a Value Engineering Proposal which is accepted shall include any implementation cost of a Subcontractor and any value engineering incentive payments to a Subcontractor, which clearly pertain to such Proposal and which are incurred, paid or accrued in the performance of a subcontract.
- F. The Contractor may restrict the Authority's right to see any portion of the Contractor's Proposal by marking it with the following requirement:
1. This data, furnished pursuant to Article 2.4 of the General Conditions of Contract No. _____ may not be duplicated, used or disclosed, in whole or in part, for any purpose except for evaluation, unless the Proposal is accepted by the Authority. This restriction does not limit the Authority's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. When this Proposal is accepted by the Authority, the Authority will have the right to duplicate, use, and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Authority contract.
- G. Contract modifications made as a result of this Article will state that they are made pursuant to it.

2.5 ~~INCREASED OR DECREASED CONTRACT QUANTITIES~~

- A. When the accepted quantities of work vary from the quantities in the Bid Form, the Contractor shall accept as payment in full, so far as Contract Items are concerned, payment at the original contract unit prices for the accepted quantities of work done. An adjustment, as determined by the Engineer, will be made by means of a Change Order to credit the Authority with any reduction in

cost or to compensate the Contractor for any increase in cost resulting from such change in quantity.

- B. The Engineer may order omitted from the Work any items or portions of Work. Such omission shall not operate as a waiver of any conditions of the Contract nor invalidate any of the provisions thereof, nor shall the Contractor have any claim for anticipated profit (also see Section 01150 - MEASUREMENT AND PAYMENT).
- C. Except as specified herein, no allowance will be made for any increased expenses, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly or indirectly from such increased or decreased quantities or from unbalanced allocation, among the Contract Items of overhead expense on the part of the Contractor and subsequent loss of expected reimbursement therefor, or from any other cause.

2.6 RIGHTS IN THE USE OF MATERIALS FOUND ON THE WORK.

- A. Contractor, with prior written approval of the Engineer, may take suitable ledge, gravel, sand, loam, clay, or other material from within the location lines of the Contract and use it on the same Contract for other purposes than for forming embankments. If such use necessitates securing additional material for forming embankments, the Contractor shall replace, at no additional expense to the Authority, material of at least similar quality. The Contractor shall not excavate or remove any material which is not within the excavation as indicated by the Contract Documents without written approval. Excavated material suitable for use shall not be wasted, unless otherwise directed.

2.7 ARCHEOLOGICAL AND PALEONTOLOGICAL SALVAGE

- A. The Contractor's attention is directed to the United States Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 7, Chapter 7, Section 4, subject "Archaeological and Paleontological Salvage", incorporating Policy and Procedure Memorandum 20-7, dated March 31, 1979, and to the Commonwealth of Massachusetts, Acts of 1973, Chapter 1155.
- B. In compliance with these procedures and legislation, the Contractor shall exercise special care during his operations to avoid injury to underground prehistoric and historic archaeological remains or paleontological remains. Should any archaeological or paleontological remains be encountered during any phase of construction, the Contractor shall immediately suspend all work in the area and shall notify the Engineer. The Engineer shall immediately notify the State Archaeologist and the Massachusetts Historical Commission. All construction work in that area will be temporarily delayed while the State Archaeologist and representatives of Massachusetts Historical Commission inspect the site to determine the importance of the discovery. Areas of prehistorical, historical, or paleontological significance shall be carefully protected in accordance with the above referenced manual and shall not be disturbed by the Contractor until so directed by the Engineer.
- C. Contractor shall receive no extra compensation for such special care, unless said compensation is authorized in writing by the Engineer as specified under Section 01150 - MEASUREMENT AND PAYMENT, Part 1 "Payment for Extra Work" Article. Material from such areas shall be carefully protected, and if necessary to remove specimens, the Contractor shall do so only at the Engineer's direction, and after an authorized agent has witnessed or otherwise referenced their locations.

2.8 WARRANTY OF WORK

- A. Neither final acceptance, final payment nor any provision in the Contract Documents nor partial or entire use or occupancy of the premises by the Authority shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability with respect to any express warranties or responsibility for faulty materials or workmanship.
- B. Except where longer periods of warranty are specified for certain items, the Contractor warrants all work done under the Contract to be free from faulty materials and workmanship for a period of one year from date of acceptance thereof.
- C. Upon receiving notification from the Authority, the Contractor shall immediately make the required repairs or replacements to any work found defective. If repairs or replacements are not started within 10 days from the date of notification and prosecuted to completion, the Authority reserves the right to employ others to complete the Work. The Contractor agrees, upon demand, to pay the Authority all amounts which it expends for such repairs or replacements.
- D. All remedied Work shall carry the same warranty as the original work starting with the date of acceptable replacement or repair.

2.9 CHANGED CONDITIONS

In accordance with Chapter 30, Section 39N of the General Laws of the Commonwealth, as amended, the following paragraph shall apply to the Contract:

- A. If during the progress of the Work, the Contractor or the Awarding Authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those indicated in the Contract Documents either the Contractor or the Authority may request an equitable adjustment in the Contract price of the Contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the Authority will make an investigation of such physical conditions, and, if they differ substantially or materially from those indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents-and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the Authority will make an equitable adjustment in the Contract price and the Contract will be modified in writing accordingly.
 - 1. Filing, investigation, and settlement of all claims made under said Chapter and Section shall be as follows:
 - a. The Contractor shall promptly and before such conditions are disturbed, notify the Engineer in writing describing in full detail the subsurface or latent physical conditions at the site where it is maintained, that conditions differ substantially or materially from those conditions indicated in the Contract Documents. The Engineer will promptly investigate the conditions and will promptly submit a written report of its findings and determinations to the Contractor, and if it is found that such conditions as have been described in detail by the Contractor do exist and in fact do so differ materially or substantially, an equitable adjustment will be made and the Contract modified in writing accordingly. No such claim of the Contractor will be allowed unless the Contractor has given the detailed notice specified, or shall it be allowed if such conditions are disturbed prior their investigation by the Engineer.

- b. No adjustment or allowance of any kind except as provided in Article 6.8 will be made to the Contractor due to delay or suspension of the Work or any portion thereof where the actual subsurface or latent physical conditions encountered at the site differ substantially and materially from those indicated in the Contract Documents.
 - c. No claim will be approved and no adjustment or allowance made when encountering subsurface or latent physical conditions at the site that differ substantially and materially from those indicated in the Contract Documents unless such conditions were in existence at the time of the Award of the Contract.
 - d. Any dispute concerning a question of fact under the Subsection which is not disposed of by agreement shall be decided by the engineer.
 - e. If as provided in (a) of this Subsection an equitable adjustment is to be made or contemplated, the Contractor shall submit promptly in writing to the Engineer an itemized statement of the details and amount of work together with his estimated costs for the same and the Engineer shall require the Contractor to keep actual costs and certify the same to the Authority in writing.
- B.** If the Contractor and the Authority fail to agree on an equitable adjustment to be made under this Article, then the Contractor shall accept as full payment for the Work in dispute an amount determined in accordance with Section 01150 - MEASUREMENT AND PAYMENT.

2.10 CONTRACTOR PROPOSED CHANGES

- A.** Contractor may at any time submit to the Engineer for the Engineer's review and approval or denial, proposed changes to the Contract Documents which will benefit the Authority. Upon acceptance of the proposed changes, the provisions of Article 2.2 and 2.4 (as applicable) shall apply. Denial of a proposed change shall neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities.

2.11 COMMUNITY RELATIONS

- A.** The Contractor shall establish and maintain a continuing liaison with persons residing or doing business in the vicinity of the Project site, for the purpose of minimizing inconveniences resulting from construction, and shall appoint a representative, acceptable to the Engineer, for community relations. The representative shall have the authority to act directly, or through the Contractor's approved Superintendent, regarding all valid requests or complaints. Information as to their disposition by the Contractor, shall be furnished to the Engineer. The name and telephone number of the Contractor's community relations representative shall be furnished to those residents or businessmen in the community who might reasonably be expected to be affected by the construction.

PART 3 - CONTROL OF WORK

3.1 AUTHORITY OF THE ENGINEER

- A.** The Engineer will decide all questions relating to interpretation of the Contract Documents, and may alter, adjust, and approve same when necessary; all questions relating to quality, quantity, value, and acceptability of materials to be furnished and work provided or to be provided; all questions relating to progress of the Work and need for and manner of correcting same, and also the need for and terms of delays and suspensions; all questions relating to the need for and terms of Extra work; all questions relating to the supervision, control and direction of Work on the site

and the use thereof; and all questions as to the acceptable fulfillment of the Contract by the Contractor.

B. Attention of the Contractor is directed to the following limitations on the scope of the duties entrusted to the Engineer.

1. The Regulations of the Authority's Board of Directors state that the General Manager is authorized to approve, without prior authorization of the Board, issuance of Change Orders or Extra Work Orders, pursuant to any Agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$500,000.00 above the contract price of such Agreement, whichever is greater; provided that if the issuance of any such Change Order or Extra Work Order would result in exceeding said 7% or \$500,000.00 limitation or if the issuance of any one such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$500,000.00, it shall not be issued without prior authorization of the Board.
2. The General Manager, as provided by the Regulations of the Board of Directors, has delegated to the Assistant General Manager for Design and Construction the power to approve, without prior authorization of the General Manager or the Board, the issuance of Change Orders or Extra Work Orders, pursuant to any agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$100,000.00 above the contract price of such agreement, whichever is greater; provided that if the issuance of any such Change Order or Extra Work Order would result in exceeding said 7% or \$100,000.00 limitation or if the issuance of any one such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$100,000.00, it shall not be issued without prior authorization.
3. The General Manager, as provided by the Regulations of the Board of Directors, has delegated to the Chief of Engineering and Construction the power to approve, without prior authorization of the General Manager or the Board, the issuance of Change Orders or Extra Work Orders, pursuant to any agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$50,000.00 above the contract price of such agreement, whichever is greater; provided that if the issuance of any such Change Order or Extra Work Order would result in exceeding said 7% or \$50,000.00 limitation or if the issuance of any one such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$50,000.00, it shall not be issued without prior authorization.
4. The General Manager, as provided by the Regulations of the Board of Directors, has delegated to the Directors of Design and Construction, the power to approve, without prior authorization of the General Manager or the Board, the issuance of Change Orders or Extra Work Orders, pursuant to any Contract or other Agreement previously authorized by the Board or the General Manager, in a total amount not exceeding 7% or \$25,000.00 above the contract price of such agreement, whichever is greater; provided that if the issuance of any such Change Order or Extra Work Order would result in exceeding said 7% or \$25,000.00 limitation or if the issuance of any such Change Order or Extra Work Order would require an expenditure by the Authority of an amount exceeding \$25,000.00, it shall not be issued, without prior authorization.
5. Employees of the Authority are not authorized to request work to be performed or service to be provided other than as specified above. The Authority will not accept any responsibility whatsoever for extra work performed for which there is no specific proper authorization.

3.2 CONTRACT DRAWINGS

- A. Contract Drawings showing the general arrangement and such details as necessary to give a comprehensive idea of the construction contemplated will be furnished by the Authority. As work progresses, the Contract Drawings may be supplemented by the Engineer as required to amplify or control the work. The Contractor shall perform the work required by such supplements without additional compensation, except as provided by the Contract.

3.3 CONFORMITY WITH DRAWINGS AND SPECIFICATIONS

- A. Attention is directed to Chapter 30, Section 391 of the General Laws of the Commonwealth which provides that no willful and substantial deviation from Contract Drawings and Specifications shall be made unless directed in writing by the Engineer duly authorized by the Authority to approve such deviation. Chapter 30, Section 391 further provides that in order to avoid delays in the prosecution of the Work, such deviation may be authorized by a written order of the Engineer authorized to approve such deviation, and that within 30 days thereafter such -written order shall be confirmed by a certificate of the Authority.
- B. All work provided and all materials furnished shall be in conformity with the lines, grades, cross sections, dimensions, details, gradations, physical, and chemical characteristics of materials and other specific requirements of the Contract. Where the terms "in conformity with" "in agreement with" "in compliance with" or terms of like exactness occur in the Contract Documents, they shall be understood to imply "in reasonable close conformity with".
- C. Where definite tolerances are specified in the Contract, such tolerances shall fix the limits of conformity. Where tolerances are not specified in the Contract, the Engineer will determine the limits of conformity in each individual case and such determination shall be final and conclusive and mutually accepted by all parties.
- D. If materials or the finished product in which the materials are used are not within conformity with the Contract Documents, but acceptable work has been produced, the Engineer will make a determination whether the work shall be accepted and remain in place. The Engineer will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract price for such work or materials as he deems necessary to conform to his determination based on engineering judgment, and in accordance with current construction practices.
- E. If the Engineer finds the materials, or the finished product in which the materials are used or the work provided, are not in conformity with the Contract Documents and have resulted in an inferior or unsatisfactory product. The work or materials shall be removed and replaced or otherwise corrected by the Contractor and at no additional expense to the Authority.
- F. Deviations from the Contract Drawings and approved Shop or Working drawings, that may be required by the need of the construction, will be determined by the Engineer and authorized by him in writing.

3.4 COORDINATION OF CONTRACT DRAWINGS, CONTRACT SPECIFICATIONS, AND STANDARD SPECIFICATIONS

- A. Contract Drawings (including Authority Standards as may be referenced therein), Contract Specifications, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In the event of any discrepancy

between a Drawing and figures written thereon, the figures, unless obviously incorrect, are to govern over scaled dimensions. Contract Drawings will govern over Contract Specifications. Where work is to be accepted by a municipality, railroad, or utility company, the Reference Utility Standards which apply to their materials and workmanship will govern.

- B. The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. If the Contractor discovers, such an error or omission, the Engineer shall be notified immediately. The Engineer will then make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract.

3.5 COOPERATION BY CONTRACTOR

- A. The Contractor will be given three copies of the Contract Documents. The Contractor may request and the Authority may approve furnishing additional copies of Contract Drawings, either full or half-size. The Contractor shall have one copy of The Contract Documents on the work site and available for reference at all times during the prosecution of the Work.
- B. Prior to starting Work the Contractor shall designate in writing the name, title, qualifications, and experience of his proposed representative who, upon approval by the Engineer, shall have complete authority to represent and to act for the Contractor. A facsimile of the authorized representative's signature shall be furnished to the Engineer. The authorized representative or a substitute acceptable to the Engineer shall be present at the work site at all times while work is actually in progress on the Project. Arrangements for responsible supervision acceptable to the Engineer shall be made for emergency work which may be required during periods when Work is suspended. The Contractor shall notify the Engineer, in writing, of any proposed change of his representative, and shall provide identical information for approval of the new representative.
- C. The Contractor shall ascertain that the materials and workmanship are in accordance with the Contract Documents. The Contractor shall preserve baseline monuments, benchmarks, and other controls for the Work.
- D. The Contractor shall carry on his work under the direction of the Engineer such that representatives of Utility Owners, State, or Municipal Departments may enter on the work site without interference to make changes in their facilities which may be affected by the Work. The Contractor shall have no claim for, or use of any delay which may be due to or result from work of Utility Owners, State or Municipal Departments. No allowance of any kind will be made except as provided in Article 6.8. Nothing contained herein shall be construed to hold the Contractor responsible for any acts or omissions by such Utility Owners, State or Municipal Departments, or their contractors.

3.6 ADJACENT CONTRACTS

- A. The Authority reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract. The intent of this Article is to provide for the cooperation of contractors where the Authority deems it expedient or necessary and in the best interest of the Authority to let separate contracts for the performance of other work on or near the location of the Work being performed under the Contract, but it is not intended to indicate an intention on the part of the Authority to let separate contracts for work within the scope of or necessary for the successful completion of the Contract.
- B. When separate contracts are let within the limits of any one project (either prior to Award of Contract, as specified in the Bid, or as specified above), each contractor shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by

other contractors. Contractors working on the same project shall cooperate with each other as directed.

- C. Each contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and save harmless the Authority from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other contractors working within the limits of the same project. No allowance of any kind will be made except as provided in Article 6.8.
- D. The Contractor shall arrange the work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors within the limits of the same Project. The Contractor shall join the work with that of others in an acceptable manner and perform the work in proper sequence to that of others.

3.7 **LINE AND GRADE**

- A. The Authority will establish primary control for the Work, both horizontal and vertical. The Authority will provide the Contract or Project centerline and such benchmarks and basic tie-in points on or near construction site as in its judgment are necessary for the proper control of the Work. Monuments, stakes, and marks set by the Authority shall be preserved by the Contractor. If such monuments, stakes, or marks are destroyed or damaged, they may be replaced by the Authority. The Contractor will be charged the cost of replacing monuments, stakes, or marks destroyed or damaged by reason of his operations. The replacement cost will be deducted from payment for the Work.
- B. The Contractor shall proceed from the controls established by the Authority to make all surveys and layouts necessary to conform all of the work to the requirements of the Contract Documents; shall provide qualified engineering and other personnel for the purpose; and shall be solely responsible for the accuracy of the line and grade features of his Work.
- C. The Authority will make such checks, as necessary, of the control work established by the Contractor as the Work progresses. The Contractor will be informed of results of such checks but the Authority by so doing will in no way relieve the Contractor of responsibility for accuracy of the Contract control. The Contractor shall provide such assistance as may be required for checking purposes when requested by the Authority.
- D. The Contractor shall notify the Authority a reasonable time in advance of his needs, of the time and place the Contractor plans to provide the Work for which such primary control will be needed. The Authority will furnish the Contractor with such primary lines, grades, and elevations as it deems necessary by such time so as not to delay the Contractor's operations. The Authority, however, will not be held responsible for any delay resulting from lack of such information if the Contractor fails to notify the Authority sufficiently in advance of the Contractor's needs.

3.8 **AUTHORITY AND DUTIES OF ENGINEER'S ASSISTANTS**

- A. The Engineer may appoint assistants and representatives. The assistants and representatives are authorized to inspect work and materials, to give directions pertaining to the Work or to the safety and convenience of the public, to approve or reject materials and to make measurements of quantities.
- B. In case of any dispute arising between the Contractor and the Engineer's assistants, as to materials furnished or the manner of providing work, the Engineer's assistants are authorized to reject materials or to suspend work until the dispute is referred to and decided by the Engineer.

- C. The Engineer's assistants are not authorized to revoke, alter, enlarge, relax, or release any requirements of these Specifications nor to issue instructions contrary to the Contract Drawings and Specifications.
- D. The Engineer's assistants will not act as foremen or perform other duties for the Contractor.

3.9 INSPECTION OF WORK

- A. All materials and each part or detail of the Work shall be subject to inspection by the Engineer. The Engineer shall at all times have access to the Work and be furnished with information and assistance by the Contractor as required to make a complete and detailed inspection.
- B. The Contractor, if requested by the Engineer, shall before acceptance of the Work, remove or uncover such portions of the finished Work as directed. After examination, the Contractor shall restore said work to the standard required by the Contract Documents. Should Work exposed or examined prove accessible, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should Work exposed or examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed, will be at no additional expense to the Authority.
- C. Any Work done or materials used without authorization by the Engineer may be ordered removed and replaced at no additional expense to the Authority.
- D. The Contractor shall furnish written information to the Engineer stating the original sources of supply of all materials manufactured away from the Work site. This information shall be furnished at least two weeks (or as otherwise required by the Engineer) in advance of the incorporation in the Work of such materials.
- E. When any unit of government or critical subdivision is to pay a portion of the Cost of the Work, its respective representatives shall have the right to inspect the Work. Such inspection shall in no sense make any unit of government or political subdivision a party to this Contract, and shall in no way interfere with the rights of either party hereunder.
- F. Inspection of Work shall not relieve the Contractor of any of his obligations to fulfill the requirements of the Contract Documents.
- G. Failure to reject any defective Work or materials shall not in any way prevent later rejection when such defect is discovered, nor obligate the Authority to make final acceptance.
- H. The Contractor shall give prior notice to the Engineer when Work on the various items is to be performed by him or his subcontractors. If Work is suspended on any item, prior notice shall be given to the Engineer before resumption of such Work. Except in the case of an unforeseen emergency, neither the Contractor nor any subcontractor shall perform any Work requiring inspection at hours other than during the normal workday without prior approval of the Engineer.

3.10 ~~REMOVAL OF DEFECTIVE OR UNAUTHORIZED WORK~~

- A. Defective Work shall be promptly remedied, or removed and replaced, notwithstanding that such Work has previously been inspected and approved or estimated for payment. If the Work or any part thereof shall be found defective at any time, the Contractor shall, at no additional expense to the Authority, make good such defect in a satisfactory manner.

- B. Work performed beyond the lines and grades shown on the Contract Drawings or established by the Engineer, and extra Work done without written authorization, will be considered unauthorized Work and the Contractor will receive no compensation therefor. If required by the Engineer, unauthorized work shall be remedied, removed, or replaced at no additional expense to the Authority.
- C. Upon failure of the Contractor to remedy, remove, or replace defective or unauthorized Work, or to comply promptly with any requirement of the engineer made under this Article 3.10, the Authority may cause defective or unauthorized Work to be remedied, removed, or replaced by others and deduct the costs thereof from any monies due or to become due to the Contractor.

3.11 FINAL ACCEPTANCE (ALSO SEE ARTICLE 5.24)

- A. Upon substantial completion of the Work, the Contractor shall present, in writing, to the Authority its certification that the Work has been substantially completed. Within 21 days thereafter, the Authority as a result of its inspection of the Work will present to the Contractor either a Written declaration that the Work has been substantially completed or an itemized list of incomplete or unsatisfactory Work items required by the Contract sufficient to demonstrate that the Work has not been substantially completed. The Authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the Contract completion date, within which the Contractor must achieve substantial completion of the Work. If the Authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the Contractor's certification within the 21-day period, the Contractor's certification shall take effect as the Authority's declaration that the Work has been substantially completed.
- B. If the Work or any part thereof is not acceptable to the Engineer at the time of the inspection, the Contractor will be notified in writing of the particular defects or parts to be remedied before final acceptance. If the Contractor has not arranged within a period of five days after the date of transmittal of such notice of nonacceptability, to complete the Work as directed by the Engineer, the Authority may, without further notice and without in any way affecting the Contract, make such other arrangements as may be considered necessary to insure satisfactory completion of the Contract. The cost of completing such Work will be deducted from any moneys due or which may become due to the Contractor under the Contract.
- C. Substantial completion, for the purposes of this Article, shall mean either that the Work required by the Contract has been completed except for Work having a Contract price of less than one percent of the then adjusted total contract price, or substantially all of the Work has been completed and opened to public use except for minor incomplete or unsatisfactory Work items that do not materially impair the usefulness of the Work required by the Contract.
 - 1. See Section 01150 - MEASUREMENT AND PAYMENT, for Final Acceptance and Final Payment.

PART 4 - CONTROL OF MATERIALS

4.1 TRADE NAMES AND ALTERNATIVES

- A. An item equal to that named or described in the specifications may be furnished by the Contractor, and the naming of any commercial name, trademark, or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition, but shall establish a standard of equality only. 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, safety, reliability, operability, maintainability, and design;
 2. it will perform at least equally the function imposed by the general design for the Work being contracted for; and
 3. it conforms substantially, even with deviations to the detailed requirements for the item specified.
- B.** For each item of material the specifications shall provide for either a minimum of three brands of material or a description of material which can be met by a minimum of three manufacturers or producers and for the equal of any one of said named or described materials.
- C.** Burden of proof as to the quality and suitability of alternatives shall be upon the Contractor. The Contractor shall furnish, in writing, all information necessary as required by the Engineer at no additional cost to the Authority. Requests for review of alternative materials will not be accepted by the Engineer from anyone other than the Contractor. The Engineer will be the sole judge as to the quality and suitability of alternative materials and the Engineer's decision will be final.
- D.** Information furnished shall state whether or not acceptance of the alternative material for use in the Work will require a change in the Contract Drawings or Specifications to adapt the design to the alternative and whether or not incorporation or use of the alternative in connection with the Work is subject to payment of any license fee or royalty. The Authority does not pay license fees or royalties. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material and the Contractor shall pay charges incurred by the Authority for such redesign or change.
- E.** No tests nor action relating to the approval of alternative materials will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work, but such requests need not be made less than 30 days after receipt of Notice to Proceed.
- F.** Whenever classification, rating, or other certification by a body, such as UL, NEMA, or AREA, is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with specification requirements.
- G.** The Contractor shall pay costs of testing required to prove equality of the material proposed.
- H.** Approval of an alternative material shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any Contract requirement, or to establish a basis for subsequent approval for material to be used on any other phase of the Work of the Massachusetts Bay Transportation Authority Transit System.

4.2 CERTIFICATES OF COMPLIANCE

- A.** The use of certain materials on the basis of a notarized certificate of compliance may be allowed under the following conditions: Before such materials are incorporated into the Work, the Contractor shall submit to the Engineer, for approval, copies of the manufacturer's or supplier's statement for each kind of such material furnished. The statement shall contain the following information:
1. Contract to which the material is consigned;
 2. Name of the Contractor to which the material is supplied;

3. Kind of material supplied;
4. Quantity of material represented by the certificate;
5. Means of identifying the consignment, such as label, marking, seal number, etc.;
6. Date and method of shipment;
7. Statement to the effect that the material has been tested and found in conformity with the pertinent parts of the Contract;
8. Results of all required tests including the chemical analysis in the case of metal; or in lieu of furnishing the results a statement that the results of all required tests pertinent to the certificate and not submitted shall be maintained available by the undersigned for a period of not less than 3 years from date of final acceptance;
9. Signature of a person having legal authority to bind the supplier.

B. If the Contractor has new materials purchased for use on a previous Authority contract which have never been used and which comply with the Contract Documents, these materials may be furnished and installed in the Work provided the Contractor submits his own sworn statement certifying that such materials were purchased for use on a previous contract (name and identifying such contract) and that certificates of compliance were furnished for such materials on the previous contract, to which reference can be made.

1. Costs involved in furnishing the certificates shall be borne by the Contractor.
2. Materials used on the basis of a certificate of compliance may be sample and tested at any time. The fact that material is used on the basis of a certificate of compliance shall not relieve the Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the Contract Documents and Specifications and any such material not conforming to such requirements will be subject to rejection, whether in place or not.
3. The Engineer reserves the right to refuse to permit the use of materials on the basis of a certificate of compliance alone.

C. Certification of specification compliance shall be furnished for all materials and installation of the same as specified throughout the construction specifications. (See sample Certificate of Compliance included on page SC-)

4.3 AUTHORITY-FURNISHED MATERIALS

A. Materials furnished by the Authority will be available at locations designated in Supplementary Conditions of the Contract Specifications or, if not so designated, they will be delivered to the Work site. Authority-furnished materials shall be stored and transported to the place of use by the Contractor at his expense, including all necessary loading and unloading. The Contractor's costs of storing, handling, and installing Authority furnished material shall be considered as included in the Contract price paid for the Item involving such Authority-furnished material.

B. Contractor shall be responsible for all materials furnished to him, and shall pay all demurrage and storage charges as a result of his failure to take delivery of Authority-furnished material. The Contractor shall be liable to the Authority for the cost of replacing or repairing Authority-furnished material lost or damaged from any cause whatsoever after receipt by the Contractor. The costs will be deducted from any moneys due or to become due the Contractor, except those amounts when covered under any claims' payments made under insurance policies furnished by the Authority.

4.4 DEFECTIVE MATERIALS

- A. Contractor furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the site of the Work unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approved in writing by the Engineer. If the Contractor fails to comply promptly with a request by the Engineer, made under the provisions of this Article, the Engineer may cause the removal and replacement of rejected material and the cost thereof will be deducted from any moneys due or to become due the Contractor.

4.5 ASBESTOS MATERIALS

- A. Contractor shall not furnish or install asbestos or any material containing asbestos under this Contract.

4.6 BANNED MATERIALS

- A. Lead Paints: Contractor shall not furnish or install lead containing paint on any surfaces within the limits of this Contract. A lead containing paint is defined by the Consumer Product Safety Commission's Paint Poisoning Prevention Act of 1979 as any coating whose dried film contains greater than 0.06% by weight of lead.

PART 5 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

5.1 LAWS TO BE OBSERVED

- A. The Contractor shall keep fully informed concerning all requirements of law, including all state and federal laws, county and municipal ordinances, and regulations which in any manner affect those engaged or employed in the Work, or the materials used in the Work, or such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall protect, indemnify and hold harmless the Authority and the Engineer, and all of their officers, agents, and employees against all claims and liabilities arising from or based on the violation of any such requirement of law whether by the Contractor, his employees, agents, or subcontractors. If any discrepancy or inconsistency is discovered in the Contract Documents in relation to any such requirements of law, the Contractor shall immediately report the facts to the Engineer in writing. The Contract shall be governed by the laws of the Commonwealth.
- B. The Contractor, if a foreign corporation (a corporation established, organized, or chartered under laws other than those of the Commonwealth) shall comply with the provisions of Chapter 181 of the General Laws as amended. The Contractor shall file with the Authority a certificate of the State Secretary stating that such corporation has complied with Chapter 181 and the date of such compliance.
- C. Other out-of-state business organizations, such as individual proprietorship, partnership, and joint ventures, shall appoint an agent in this Commonwealth for the service of legal process and furnish a copy of such appointment to the State Secretary prior to the issuance of a contract by the Authority.
- D. Work shall be in accordance with the Massachusetts State Building Code.

1. The Contractor shall protect and indemnify the Authority and its representatives against any claim or liability arising from or based on the violation of any law, ordinance, safety code, regulation, order or decree whether caused by the Contractor, its employees or its subcontractors employed on the Project.
2. Such laws, ordinances, codes, regulations, orders, or decrees may restrict and limit the Contractor's working hours or use of certain types of equipment on the Project. The Contractor shall become familiar with such restrictions and limitations prior to submitting a Bid.
3. The Contractor shall give all necessary notices, obtain all permits as required and pay all government taxes, fees, and other costs in connection with the Work. The Contractor shall file all necessary drawings, prepare all documents, and obtain all necessary approvals of all governmental departments which have jurisdiction. The Contractor shall obtain all required Certificates of Inspection prior to acceptance and final payment for the Work. Compensation for conforming to all provisions of this Article 5.1, except as may be provided otherwise in Supplementary Conditions, shall be considered as included in the prices for the various Contract Items of Work and no additional compensation will be allowed therefor.

E. Without limiting the Contractor's responsibility for ascertaining and complying with all applicable laws, ordinances, regulations, orders, and decrees, the Contractor's attention is called particularly to Division 1, General Requirements, Section 01560 - TEMPORARY CONTROLS.

5.2 PERMITS AND LICENSES

A. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes and give all notice necessary and incidental to the due and lawful prosecution of the Work.

5.3 MOTOR VEHICLES

- A. Motor vehicles (except vehicles used solely for transporting employees to and from the Contract location) used wholly or in part within the Commonwealth by the Contractor or a subcontractor, or by a person directly or indirectly employed by them in the execution of the Contract, shall be registered in the Commonwealth and bear Massachusetts registration plates.
- B. Motor vehicles used solely for transporting employees to and from the Contract location shall be registered as required under General Laws, Chapter 90, Section 3, of the Commonwealth, as amended.
- C. A vehicle shall not be driven on any way, as defined in Section I of Chapter 90 of the General laws of the Commonwealth, unless it is constructed or loaded so as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on such a way in cleaning or maintaining the same. (General Laws, Chapter 85, Section 30, of the Commonwealth as amended.)
- D. All Diesel Construction Equipment must have emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.

5.4 INSURANCE REQUIREMENTS

- A. The Contractor shall carry Commercial General Liability Insurance for personal injury, bodily injury and property damage with limits not less than \$1,000,000 per occurrence, \$1,000,000 aggregate covering all work performed under this Contract. The insurance should include the following:
1. All operations.
 2. Contractual liability.
 3. Coverage for the so-called "X, C, U" hazards, i.e., collapse of building, blasting, and damage to underground property.
 4. Completed operations hazard for a period of at least two years following acceptance by the Authority of the completed Contract.
 5. Use of watercraft, aircraft when applicable.
- B. Pollution Liability Insurance (Incorporate when applicable, otherwise delete provisions and specify "PLI is not applicable to this Contract")
1. The Contractor or his designated Subcontractor shall carry Pollution Liability in an amount not less than \$1,000,000 per occurrence and \$5,000,000 aggregate, for sudden and gradual occurrences arising out of the work being performed under this Contract including, but not limited to, all hazardous material identified under this Contract.
 2. The Contractor shall designate the disposal site and furnish a Certificate of Insurance from the Disposal Facility for Environmental Impairment Liability insurance covering liability for sudden and accidental occurrences in the amount of not less than \$3,000,000 per occurrence and \$6,000,000 aggregate and shall also include liability for non sudden occurrences in the amount of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate.
 3. The Contractor shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with endorsement MCS90 for the liability arising out of the transportation of hazardous material with an amount not less than \$5,000,000 annual aggregate.
 4. Certificates of Insurance shall clearly state the hazardous materials exposure identified under the contract.
- C. Automobile Liability Insurance - including the use of all vehicles; owned, leased, hired and non-owned, with limits not less than \$1,000,000 combined single limit covering all work performed under the Contract.
- D. Railroad Protective Insurance (Incorporate when applicable, otherwise delete provisions and specify "RPI is not applicable to this Contract")
1. The Contractor shall furnish, with respect to the operations of the Contractor or any of the Contractor's subcontractors performing within the Railroad right-of-way, broad form Railroad Protective Liability Insurance covering all work performed under this Contract in the amount of not less than \$2,000,000 per occurrence, \$6,000,000 aggregate combined bodily injury and property damage.
 2. The insurance hereinbefore shall be written on an occurrence basis.
 3. The MBTA and applicable railroads shall be named insured on the insurance hereinbefore.
 4. The Contractor shall furnish to the MBTA and railroad companies a signed original of the policy for Railroad Protective Liability prior to entry upon the railroad right-of-way.
 5. All certificates shall be endorsed to provide 30 days notice to each named insured by the insurance company before any change or cancellation of the policies.

6. The required Railroad Protective Insurance provided herein must be in the form commonly referred to as the AAR-AASHTO- Form (not Oregon).
7. Original policies and certificates shall be made out to the MBTA and applicable railroads and mailed to:

MBTA: Treasurer-Controller
Massachusetts Bay Transportation Authority
10 Park Plaza
Boston, MA 02116
Tel. (617) 222-3064

(Change/revise to proper railroad[s])

AMTRAK: General Superintendent
230 Congress Street
Boston, MA 02110
Tel. (617) 654-2020

CSXT: General Manager
CSX Transportation
1 Bell Crossing Road
RD. #2, Box 145
Selkirk, NY 12158-9618
Tel. (518) 767-6111

- E. The Contractor shall carry Worker's Compensation Insurance, including Employers Liability Insurance as provided by Massachusetts General Laws, Chapter 152, as amended, covering all work performed by him under the Contract.
- F. The Contractor shall carry Umbrella Liability Coverage with limits of not less than \$10,000,000 per occurrence, covering all work performed by him under this Contract.
- G. The Contractor shall carry Builder's Risk Insurance (All Risks' form) on a 100 percent completed value basis for the full insurable portion of such Work for the benefit of the Authority, the Contractor and all Subcontractors.
- H. The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability Insurance, shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella, Pollution Liability, and Builder's Risk Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA which precludes these insurers from being able to make any subrogation claims against the MBTA. All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of

2002. All such insurance as is required of the Contractor shall be provided by or on behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. The following statement affirming that coverage completely complies with contract requirements shall be included in the special items section of the certificate or in an attached special items addendum page:

The aforementioned insurance coverages completely comply with Article 5.4
Insurance Requirements Paragraphs A - I of MBTA Contract No. _____.

- I. In the event it is determined during excavation or construction that an asbestos condition does exist, a Licensed Asbestos Specialist shall be employed by the Contractor to perform the asbestos containment and abatement work. Prior to asbestos containment and abatement work, the Contractor shall, through the Licensed Asbestos Specialists, obtain insurance in amounts and types specified by the Authority, naming the MBTA as an additional insured as its interest appears under this Contract. Payment for this work will be made in accordance with Division 1 - General Requirements, Section 01150, Article 1.5. PAYMENT FOR EXTRA WORK.

5.5 PATENTED DEVICES, MATERIALS, AND PROCESSES

- A. The Contractor shall indemnify and save harmless the Authority and all persons acting for or on behalf of the Authority from all claims and liability of any nature or kind, and all damages, costs and expenses, including attorney's fees, arising from or occasioned by an infringement or alleged infringement of any patents or patent rights on any invention, process, material, equipment, article, or apparatus, or any part thereof, furnished and installed by the Contractor, or arising from or occasioned by the use of manufacture thereof, including their use by the Authority. In case such materials, equipment, devices, or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense, shall:
 - 1. Secure for the Authority the right to continue using said materials, equipment, devices, or processes by suspension of the injunction or by procuring a license or licenses; or
 - 2. Replace such materials, equipment, devices, or processes with noninfringing materials, equipment, devices, or processes; or
 - 3. Modify them so that they become noninfringing, or remove the enjoined materials, equipment, devices, or processes and refund the sums paid therefor without prejudice to any other rights of the Authority or the Engineer.
- B. When Federal Funds are involved, patent rights to any patentable result arising out of the Work, as well as all information, designs, specifications, know-how, data, and findings, shall be made available to the Government for public use, unless the Federal Department involved shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.

5.6 RESTORATION OF SURFACES OPENED BY PERMIT

- A. Contractor shall not allow any party to make an opening in a street or highway for any purpose except upon the direction of the Engineer and the presentation of a duly authorized permit or other instrument. The holder of such a permit or instrument shall be considered in the same class as a contractor on an adjacent contract, and the provisions of Articles 3.5 and 3.6 shall apply.

5.7 FEDERAL PARTICIPATION

- A. (Applicable only to contracts where the cost of any portion thereof is paid out of federal funds). Attention is directed to the provisions of the Federal Transportation Act of 1964 (U.S. Public Law 88-365), as modified or amended, and any other provisions of law, or amendments thereto whereby such federal participation is authorized, and any regulations properly and lawfully promulgated thereunder, under which the United States shall aid the individual states in the development of efficient and coordinated mass transportation systems. When the United States government is to pay any portion of the cost of the Contract, the above act of Congress provides that the construction work and labor in each State shall be done in accordance with the laws of that State and applicable federal laws. The Work embraced in the Contract will, therefore, be subject to such inspection by representatives of the U.S. Department of Transportation or other such Federal Agency as may be necessary to meet the above requirements. Such inspection shall, however, in no sense make the United States government a party to the Contract, and will in no way interfere with the rights of either party hereunder.

5.8 RELATIONS WITH RAILROAD AND RESPONSIBILITY FOR DAMAGE TO RAILROAD

- A. Provisions in these General Conditions, which require the Contractor to protect property against damage, and which place upon the Contractor all responsibility for damage to property, injury to persons, and loss, expense, and delay to the owners of property and others, shall also apply to railway lines or railroads, their tenants, licenses, and utility companies which jointly own or use facilities with a railroad company (hereinafter collectively and severally referred to as "Railroad"), the same as in connection with other kinds of property.
- B. General and special requirements concerning the Contractor's relations with Railroad will be set forth in the Supplementary Conditions. The Contractor shall conform to those requirements in the conduct of his work under the Contract.
- C. The Contractor shall be solely and directly responsible to the owners and operators of such properties for any damage, injury, expense, loss, or delay which may result from the carrying out of the work to be done under the Contract; and if specified in the Supplementary Conditions, the Contractor shall give bond or insurance of the kind and in the amount therein specified to each corporation, company, partnership, or individual owning or operating any of the properties affected, in guarantee of this responsibility. Any extension of time granted the Contractor in which to complete the Contract shall not relieve him or his surety from this responsibility.
- D. If any of the Work required to be done by the Contractor may obstruct the tracks of a Railroad or in any way endanger the operation of its trains and the services of a flagman or flagmen or other railroad protective personnel are required by the Chief Engineer of the Railroad and men are assigned by him for the protection of the property and traffic of the Railroad against hazards capable of being caused by the Contractor, the cost of all such flagging and protective services shall be borne by the Contractor and no compensation therefor will be made other than that provided by the Contract unit prices. The provisions of this paragraph do not apply to the tracks of the MBTA or to the operations of its trains thereon. Required flagmen and other protective personnel for such purposes will ordinarily be furnished by the Authority at no cost to the Contractor.

5.9 USE OF EXPLOSIVES

- A. Explosives, when necessary for use in the Work, shall not be brought within the Contract limits or onto property under the jurisdiction of the Authority, without the prior approval of the Authority.

- B. Explosives shall be stored safely under lock and key. The storage places shall be marked conspicuously DANGEROUS EXPLOSIVES and be in the care of a competent watchman at all times. Storage, handling, and use of explosives shall conform to the regulations of the Massachusetts Department of Public Safety, federal regulations and local ordinances relating thereto.
- C. The Contractor shall be responsible for all damages resulting from the use of explosives. The Contractor shall exercise care not to endanger life and property, including new Work. When directed, the number and size of the charges shall be reduced. Flagmen shall be provided, when directed, to warn and keep traffic from the danger area. All persons within the danger area shall be warned and given time to withdraw.
- D. Prior to start of the blasting, the Contractor shall give at least a 48-hour notice and a schedule of his operations thereof to the operating official, company, or companies leasing, owning, or responsible for pipes, conduits, poles, wires, railroad tracks, or any other public or private utility which may be endangered by the blasting in order that a representative of said owner or lessee may be present at the site. The Contractor shall take proper precautions to prevent injury to said properties during all blasting operations.

5.10 PROTECTION AND RESTORATION OF PROPERTY

- A. The Contractor shall, at no additional expense to the Authority, preserve and protect from injury all property either public or private along and adjacent to the proposed Work. The Contractor shall be responsible for and shall repair at no additional expense to the Authority any and all damage and injury thereto, arising out of or in consequence of any act or omission, neglect or misconduct in the execution of the Work, or in consequence of the nonexecution thereof by the Contractor or his employees or subcontractors in the performance of the Work covered by the Contract prior to completion and acceptance thereof. The Contractor shall be solely responsible for any trespass upon adjacent property or injury thereto, resulting from or in connection with his operations. The Contractor shall be liable for any claims that may be made on account of the felling of trees or the deposit of debris of any kind upon private property. Special care shall be exercised during blasting operations to avoid injury to underground structures and utilities.
- B. Written notice shall be given by the Contractor to all public service corporations or officials owning or having charge of public or private utilities of his intention to commence operations affecting such utilities at least five days, exclusive of Saturdays, Sundays, and legal holidays in advance of the start of such operations in accordance with Chapter 82, Section 40 of the General Laws of the Commonwealth, as amended. The Contractor shall, at the same time, file a copy of said notice with the Engineer.
- C. Although the Contract Drawings may indicate the approximate location of existing subsurface utilities in the vicinity of the Work, accuracy and completeness of the information is not guaranteed by the Authority. Before commencing any work or operations which may endanger or damage subsurface structures, the Contractor shall carefully locate all such structures and conduct his operations in such manner as to avoid damage thereto. When necessary, the Contractor shall cooperate with representatives of public service and utility companies in order to avoid damage to their structures by furnishing and erecting suitable supports, props, shoring, or other means of protection. The Contractor shall not interrupt live services until new services have been provided. All abandoned services shall be plugged or otherwise made safe and secure. Compensation for conforming to all provisions of this Article 5.10, unless compensation is authorized in writing by the Engineer, as specified in Article 2.3, Extra Work, or as may be Conditions, shall be considered as included in the prices for the various Contract items of Work and no additional compensation will be allowed therefor.

- D. If the Contractor desires to temporarily relocate a utility, other than those contemplated by the Authority, he shall make the necessary arrangement with the appropriate utility company and make reimbursement for the cost thereof at no additional expense to the Authority.
- E. Access to fire hydrants and fire alarm boxes shall be maintained by the Contractor throughout the prosecution of the Work. Hydrants, alarm boxes, and standpipe connections shall be kept clear of obstructions and kept visible at all times. If visibility cannot be maintained, the Contractor shall provide clearly visible signs and lights showing the locations of fire hydrants, fire alarm boxes, or standpipe connections. Utility companies and municipal agencies having facilities within the limits of the Work shall have access to their facilities at all times for inspection and repair.
- F. Land monuments and property marks shall be carefully protected by the Contractor and if necessary to remove the same, he shall do so only at the Engineer's direction and after an authorized agent has witnessed or otherwise referenced their location.
- G. The Contractor shall protect and preserve natural surroundings and roadside growth either within or adjacent to the project site from damage or injury due to these operations. The Contractor shall not, except by written permission of the Engineer, remove, destroy, or trim roadside trees or shrubs. Trees or landscape features carelessly scarred or damaged by the Contractor's operations shall be removed and replaced or neatly trimmed and restored to their original condition as required by the Engineer. The Contractor shall be responsible for all damage to roadside growth due to his operations and shall, without compensation, satisfactorily repair or replace all such damaged growth. Scars on trees shall be painted as soon as possible with an approved tree paint.
- H. The Contractor shall protect existing structures, shall provide lights and fences and take all other precautions that may be necessary to protect life and property at no additional expense to the Authority. The Contractor shall carry on all operations and use equipment of such types that noise resulting from construction operations will be kept to a minimum. Barriers and bridges shall be provided for the protection and use of the public and for the protection of the Work as necessary. The Contractor shall provide and maintain access for occupant and customer entrance to and exit from all adjacent buildings and property at all times. All temporary facilities required for the general protection of the public and the Work shall be subject to approval of the Authority.
- I. Prior to commencing Work, the Contractor shall record the existing condition of abutting property. The Contractor shall obtain the necessary permission for entry and cause a detailed examination to be made of such abutting property as the Contractor deems necessary, as required in the Supplementary Conditions, or as directed by the Engineer. The Contractor shall invite the owner, in writing or by registered mail, to be present during the examination. A representative of the Authority shall also be invited. A complete report of the existing conditions, including photographs, if required, shall be made in triplicate, and signed by the Contractor. One copy shall be delivered to the owner, one to the Authority and one shall be retained by the Contractor.
1. In the event that the Contractor cannot obtain from the owner of such abutting property permission to enter upon the property for such examination, the Contractor shall immediately notify the Authority.
 2. For these detailed examinations, the Contractor shall employ an independent person who has had previous experience in examining or surveying the conditions of the property and who shall be approved by the Authority.

- J. The Contractor shall conform to all requirements of this Article and shall serve written notice to all Utility Owners or officials and to all others concerned with or having charge of public or private-owned utilities, of his intention to commence operations affecting such utilities at least one week in advance of the beginning of such operations. The Contractor shall at the same time file a copy of said notices with the Engineer.
- K. The Contractor shall confine his movements and operations insofar as possible to the area within the limits of the Work, and the area outside the limits of the Work shall not be disturbed except as directed.
- L. All costs of work included in this subsection shall be borne by the Contractor and no separate payment will be made to the Contractor.

5.11 FOREST PROTECTION

- A. In the execution of any Work within or adjacent to any State or National forest, park, or other public or private lands, the Contractor shall comply with all of the regulations of the appropriate authorities having jurisdiction over such forest, park, or lands. The Contractor shall keep the areas in his construction operations in an orderly condition and properly dispose of all refuse and discarded materials.
- B. The Contractor shall obtain construction permits which may be required for Contract operations, not a part of the Contract, in accordance with the requirements of the regulations of the appropriate authorities.
- C. The Contractor shall take all reasonable precautions to prevent and suppress open fires in any area involved in his construction operations or occupied by him as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing any open forest fires.

5.12 PROTECTION OF FENCES

- A. By constructing temporary fences, or by other adequate means, the Contractor shall restrain stock from leaving the lands wherein they are confined or from trespassing which would be made possible by, or which might result from, the removal or destruction of existing fences or the carrying out of any part of the Work under the Contract. The Contractor shall be responsible for all loss, injury, or damage that may result from the Contractor's failure to restrain stock as above provided. Compensation for erecting and maintaining temporary fences and for otherwise providing for the restraint of stock shall be considered as included in the prices for the various Contract Items and no additional compensation will be allowed therefor.
- B. If the Contractor is ordered by the Engineer to construct new right of way fences or to move and reconstruct existing fences, such Work shall be paid for at the unit price bid for same, or as Extra Work.
- C. The Contractor shall use care to avoid damaging existing fences. The Contractor shall repair or replace at no additional expense to the Authority, and to the satisfaction of the Engineer, all fences which are in any way damaged by Contract operations.
- D. Tearing down and removal of fences occurring within the right-of-way limits shall be considered to be a part of the clearing and grubbing work as set forth in the Contract Specifications, and payment therefor included in the payment for clearing and grubbing.

5.13 SAFEGUARDING OF EXCAVATIONS

- A. Contractor shall provide safeguards and protection around and in the vicinity of excavations necessary to prevent and avoid the occurrence of damage, loss, injury, and death to property, animals, and persons because of such excavations. Liability for any such damage, loss, injury, or death shall rest with the Contractor.

5.14 DISPOSAL OF MATERIALS OUTSIDE THE WORK SITE

- A. Unless otherwise specified in the Contract Specifications, the Contractor shall make his own arrangements for disposing of waste and excess materials outside the work site at no additional expense to the Authority.
- B. Prior to disposing of material outside the Work site, the Contractor shall obtain written permission from the owner on whose property the disposal is to be made. The Contractor shall file with the Engineer the permit, or a certified copy thereof, together with a written release from the property owner absolving the Authority from any and all responsibility in connection with the disposal of material on said property.
- C. When material is disposed of as provided in Paragraph B. and the disposal location is visible from an MBTA System track or a public highway, the Contractor shall dispose of the material in a manner to the satisfaction of the Engineer and the Owner.
- D. Unless otherwise provided in the Contract Specifications, full compensation for all costs involved in disposing of materials as above specified, including all costs of hauling, shall be considered as included in the price paid for the Contract Item involving such materials and no additional compensation will be allowed therefor.

5.15 SAFETY AND FIRST AID REQUIREMENTS

- A. The Contractor shall have a full-time (all working hours/one each shift) on-site experienced Safety Supervisor/Representative, whose sole responsibility is on-site safety management. The Contractor shall submit, within five (5) working days after receipt of notification of contract award, to the Engineer (Authority Resident Engineer) a detailed site-specific Safety Program, including the name, experience, and qualifications of the Contractor's full-time, on site Safety Supervisor/Representative and alternate. In the absence of the Safety Representative (e.g. vacation, sick leave, short term shift work not exceeding two weeks) the contractor must assign a full time Authority approved alternate Safety Supervisor/Representative to this contract. All safety submittals must be approved by the Engineer (MBTA Safety Department) prior to the start of construction. No work at the job site shall begin until the Engineer has reviewed and commented on the Contractor's safety program and safety representatives. Implementation and enforcement of the safety program for the forces of the Contractor and all subcontractors shall be the responsibility of the General Contractor.
- B. The Contractor's full-time Safety Supervisor/Representative shall have a thorough knowledge of construction safety and OSHA regulations. If, in the opinion of the Engineer, the Contractor's safety representative is not effective in carrying out the assigned duties as described below, the Engineer may request, in writing, that the Contractor replace the safety representative.

Contractors Safety Supervisors/Representatives and alternate are classified into levels with their qualifications based upon the extent of their construction safety supervisory experience and capabilities, and the nature of each individual contract. All contracts require a Class III Full-time

Safety Supervisor/Representative unless otherwise specified. Qualifications for each classification shall include, at minimum:

Class I

Basic safety and health training (minimum requirement: successful completion of OSHA 10 hour Construction Safety and Health training course):

- Two years experience as a construction safety supervisor where safety was 100% of the position responsibility
- Working knowledge of safety regulations and hazard control measures
- Demonstrated ability to conduct safety training
- Working knowledge of safety specific contract hazardous work procedures Physically able to perform the job.

Class II

Five years experience as a construction safety supervisor, three of which include full-time on-site construction safety experience (minimum requirement: successful completion of OSHA 30 hour Construction Safety and Health training course):

- Specialized safety training relevant to the project
- Demonstrated ability in creating a safe work environment
- Working knowledge of safety regulations and hazard control measures
- Demonstrated ability to conduct safety training
- Working knowledge of safety specific contract hazardous work procedures
- Physically able to perform the job.

Class III

Seven years experience as a construction safety supervisor, five of which include full-time on-site construction safety experience (minimum requirement: successful completion OSHA 30 hour Construction Safety and Health or OSHA's Instructor #500 Training course):

- # Specialized safety training relevant to the project
- # Demonstrated ability in creating a safe work environment.
- # Working knowledge of safety regulations and hazard control measures.
- # Demonstrated ability to conduct safety training.
- # Working knowledge of safety specific contract hazardous work procedures.
- # Physically able to perform the job.

- C. The duties of the Safety Supervisor/Representative shall include maintenance of the Contractor's safety program, enforcement of safe practices, and the use of safety equipment and personal protective equipment, and other such activities as may be required by OSHA and the Engineer to maintain job safety and accident prevention. The safety representative shall not be replaced, terminated, nor reassigned without the written approval of the Engineer. A minimum transition of two weeks shall occur. Vacancies in these positions must be filled within two weeks of the vacancy occurring. The Safety Representative shall be assigned full-time to the contract and shall not be utilized concurrently on any other MBTA contract or any other projects outside this MBTA contract.
- D. Attention of the Contractor is, specifically directed to the General and Supplementary Conditions of this Contract, which shall be made a condition of each subcontract entered into pursuant to the Contract. Further, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1518, Published in the Federal Register on April 17, 1971) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96). This contract will require all contractors and subcontractors to comply one hundred percent (100%) with OSHA's fall protection standard.
- E. The Authority may stop any work that it considers to be unsafe.
- F. The Contractor shall notify the Engineer 48 hours prior to bringing in any hoisting equipment (cranes, etc.) on the Authority's property. Equipment must be inspected by the Engineer (MBTA Safety Department) before being used on the work site.
- G. The Contractor shall assume full responsibility for the safety of all his work. He shall perform work in a manner that will insure the safety of personnel and the work; and not expose personnel and equipment to hazardous or potentially hazardous conditions. All work in the construction of the project shall comply with the requirements of the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) provisions, as well as those of State and local regulations. Safe breathing levels must conform to the Massachusetts Department of Environmental Protection (DEP) standards. In the case of conflict of regulations, the most stringent regulations shall apply.
- H. The Contractor shall provide at the site such equipment and medical facilities as are necessary to supply first-aid service to any person who may be injured in the progress of the work. At least one individual member of the contractor's staff, properly qualified with current certification (Red Cross or equivalent) in basic first aid and cardiopulmonary resuscitation (CPR), must be continuously present, on the site at all times when work is in progress. This individual must also have a general knowledge regarding blood borne pathogens. First-aid equipment shall be complete in all respects. The Contractor shall also have standing arrangements for the removal and hospital treatment of any employee who may be injured or who may become ill.
- I. The Contractor shall promptly report in writing to the Authority all accidents whatsoever arising out of or in connection with the performance of the work, whether on or adjacent to the site, which cause death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death, or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone to the Authority.

J. If any claim is made by any third person against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the fact in writing to the Authority, giving full details of the claim.

K. REQUIRED TRAINING

1. All workers employed by the Contractor or subcontractors who work within the MBTA property limits i.e. (Authority's stations, track area right-of-way on and/or adjacent to the power traction system, etc.) shall be required to attend a four (4) hour safety awareness course at the Authority's Safety School. A Fifty dollar (\$50.00) Administrative Service cost will be charged per attendee. This Administrative/Service cost will be directly invoiced to the contractor by the Safety Department at the end of each month. The contractor shall remit this fee to the Authority within thirty (30) days of said invoice. The location and the time of such school will be at the sole discretion of the Authority. The purpose of this course is to make the Contractor's personnel aware of the particular hazards related to the Authority's operations. Re-certification is required every three years. This class is separate and in addition to the eight (8) hour Subway Operations Right-of-Way Safety Training.
2. The Contractor shall certify that all employees to be employed at the worksite shall have successfully completed a course in construction safety and health. The course must be approved by the United States Occupational Safety and Health Administration, and it must be at least 10 hours in duration per MGL 30.39S. The Contractor shall submit documentation of successful completion of said course with the first certified payroll report for each employee.
3. All workers employed by the Contractor or subcontractors who work within the MBTA property limits i.e. (Authority's stations, track area right-of-way on and/or adjacent to the power traction system, etc.) shall be required to attend a one-day, eight-hour training class conducted by Subway Operations Training and the Safety Department. Attendees must successfully complete the Right of Way Safety Training in order to receive a Right of Way license. The license is valid for a two-year period after which the person must attend the Authority's Right of Way re-certification class. To register for the "Right of Way Safety" class, contact:

Supervisor and Chief Rules Examiner of Training
Cabot RTL Training
275 Dorchester Avenue, 2nd floor
Telephone: (617) 222-5377

4. All personnel working on the project site, within the MBTA construction project limits are required to wear high visibility reflective orange safety vests, similar to the standard MBTA equipment. In addition, all personnel working in the MBTA track area or on the platform will require the use of MBTA flagman.
- M.** Work activities necessitating the traction power system (third rail and trolley wire) deenergization will require the services of an Authority power lineman on site at all times.
- N.** The Contractor will be required to comply with the applicable requirements of the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants, Part 51, Chapter 1, Title 40, Code of Federal Regulations, Subpart B, effective April 6, 1973, and as amended October 5, 1975 (Published October 14, 1975, in the Federal Register), and also subpart M published in June 1984.

- O. All equipment used by the contractor on Authority property must be inspected by the Engineer (MBTA System wide maintenance and Improvement representative) prior to use on the work site and shall not be used if considered unsafe or not conforming to Authority specifications. All contractor/subcontractor equipment (including hi-rail) operators must be trained, certified, and properly licensed for each specific piece of equipment they will operate. The contractor/subcontractor must keep a copy of the Manufacturers Operating Manual or instructions onboard the hi-rail equipment at all times. The contractor/subcontractor hi-rail vehicles must be equipped with and exhaust gas purifier, and the hi-rail equipment used shall comply with requirements of the hi-rail equipment manufacturer. Documentation of same must be readily available and provided to the Authority upon inspection. If the contractor/subcontractor equipment is involved in a derailment or a near miss incident or accident which caused injury or exposed personnel to injury and/or caused damage to Authority property, that equipment is subject to the Authority's Impound Policy/Procedure. Contractor equipment to be used on or in the vicinity of the tracks shall be in first-class condition, so as to positively prevent any failure that would cause delay in Authority operations or damage to its property or compromise the health and safety of personnel working on the project. Equipment shall not be placed or operated within fouling distance (15' from the centerline) of track without first obtaining the permission of the Authority.
- P. The Authority will not compensate the Contractor for delays or denials to work when the Contractor is in violation of the above regulations.
- Q. Heavy Equipment used in tunnel operations must utilize Fire Resistant hydraulic fluids and conform to OSHA 20 CFR 1926.800 (m)(8), and the Massachusetts Fire Prevention Regulations {527 CMR 1.03 (8)} and the Boston Fire Prevention Code {Section 1.05 (b)}.

5.16 RESPONSIBILITY FOR DAMAGE CLAIMS

- A. The Contractor shall indemnify, defend, and save harmless the Authority and all its officers, agents, and employees against all suits, claims, or liability of every name and nature, for or due to any injuries to persons or damage to property arising out of or in consequence of the arts of the Contractor in the performance of the Work covered by the Contract or failure to comply with the terms and conditions of said Contract, whether by the Contractor or the Contractor's employees or subcontractors.
- B. The Contractor shall be held responsible for any and all claims for damage to underground structures and utilities due to the Contractor's operations or to the operations of any of the Contractor's subcontractors.
- C. The Authority agrees to indemnify the Contractor against loss by reason of the liability to pay damages to others for entry upon any land included within and adjoining the boundaries of the area within which the Work is to be provided as set forth in the Contract Documents applying to such Contract or any approved changes thereof or for damage sustained upon any lands adjoining said land by reason of the flowage or drainage of water thereto or therefrom, in any case wherein such damages and interest or easement in such adjoining area, provided that the Authority acting by an authorized representative thereof has issued a notice in writing to the Contractor prior to the making of any entry upon such premises directing or permitting the Contractor to proceed with the Contract and to make such entry upon the premises for the purpose of providing the Work required by said Contract. or any approved alteration thereof, and provided, further, that the Contractor has given notice in writing to the Authority within 15 days after receiving notice of any claim to come in and settle the same and upon the commencement of any action against the Contractor to come in and defend said action, but in no event shall any such damage claim be compromised or adjusted without the written consent of the Authority. The provisions of this Article shall in no way relieve the Contractor from any liability for damage to property of others

caused by the Contractor's negligence or that of the Contractor's employees nor shall they be construed to require the Authority to indemnify the Contractor against any loss resulting from such acts of negligence.

5.17 CLAIMS AGAINST CONTRACTOR FOR PAYMENT OF LABOR AND MATERIALS

- A. The Contractor shall be responsible for prompt payment for all services, labor, equipment, and materials furnished by or through the Contractor for purposes of the Contract.
1. Forthwith after the Contractor receives payment for a periodic estimate, the Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
 2. Not later than the sixty-fifth day after each subcontractor substantially completes its work in accordance with the Contract Documents, the entire balance due under the subcontract less amounts retained by the Authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Authority will pay that amount to the Contractor. The Contractor shall forthwith pay to the subcontractor the full amount received from the Authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
 3. Each payment made by the Authority to the Contractor pursuant to subparagraphs 1. and 2. of this Article for the labor performed and the materials furnished by a subcontractor shall be made to the Contractor for the account of that subcontractor; and the Authority will take reasonable steps to compel the Contractor to make each such payment to each such subcontractor. If the Authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the subcontractor as provided in subparagraphs 1. and 2., the Authority shall act upon the demand as provided in this Article.
 4. If, within 70 days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the Contractor the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Authority as the estimated cost of completing the incomplete and unsatisfactory items of Work, the subcontractor may demand direct payment of that balance from the Authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the Authority, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within 10 days after the subcontractor has delivered or so mailed the demand to the Authority and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain detailed breakdown of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the subcontractor.
 5. Within 15 days after receipt of the demand by the Authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Authority will make direct payment to the subcontractor of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less

any amount (1) retained by the Authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (2) specified in any court proceedings barring such payment, or (3) disputed by the Contractor in the sworn reply; provided, that the Authority will not deduct from a direct payment any amount as provided in part (3) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph 4. The Authority will make further direct payment to the subcontractor forthwith after the removal of the basis for the deductions from direct payments made as provided in parts (1) and (2) of this subparagraph.

6. The Authority will forthwith deposit the amount deducted from a direct payment as provided in part (3) of subparagraph 5. in an interest-bearing joint account in the names of the Contractor and the subcontractor in a bank in Massachusetts selected by the Authority or agreed upon by the Contractor and the subcontractor and shall notify the Contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.
7. All direct payments and all deductions from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to subparagraph 6, shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later became payable to the Contractor and in the order of receipt of such demands from subcontractors. All direct payments will discharge the obligation of the Authority to the Contractor to the extent of such payment.
8. The Authority will deduct from payments to the Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph 6, are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall be right in such deductions prior to any claims against such amounts by creditors of the Contractor. Subcontractor, for contracts awarded as provided in paragraph (a) of Section Thirty-Nine M, Chapter Thirty shall mean a person approved by the Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor.

5.18 PAYMENT OF TAXES

- A. Contract prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay whether imposed by federal, state, or local government, including, without being limited to, federal excise tax.
- B. However, attention is directed to the Massachusetts Sales Tax, Chapter 64H, Section 6 and the Massachusetts Use Tax, Chapter 64I, Section 7, which state that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in construction projects of the Authority. This exemption is also applicable to rental charges for construction vehicles, equipment, and machinery rented, specifically for use on the site of the Authority's construction projects. Bidders are directed to exclude any allowance for Sales or Use Tax from their Bid Form as said tax would relate to the foregoing specific categories. The MBTA Sales Tax Exemption Number is E-042-323-989.

5.19 CLAIMS OF CONTRACTOR FOR COMPENSATION

- A. No person or corporation, other than the signer of the Contract as Contractor, now has any interest hereunder, and no claim shall be made or be valid; and neither the Authority nor any member, agent, or employee thereof, shall be liable for, or be held to pay, any money except as provided in

Article 2.2, 2.3, 2.4, 2.5, and Section 01150 - MEASUREMENT AND PAYMENT, of these Standard Specifications and Clause 3 of the Contract.

- B. All claims of the Contractor for compensation other than as provided for in the Contract due to any act of omission or commission by the Authority or its agents must be made in writing to the Engineer within 10 days after the beginning of any work or the sustaining of any damage due to such act. Such written statement shall contain a description of the nature of the Work provided or damage sustained; and the Contractor, shall on or before the fifteenth day of the month succeeding that in which such Work is performed or damage sustained file with the Engineer an itemized statement of the details and amount of such work or damage. Unless such statement shall be made as required, the claim for compensation shall be forfeited and invalidated, and the Contractor shall not be entitled to payment due to any such work or damage. Such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed as proving the validity of the claim. The provisions of this paragraph shall not apply to changes in quantities as provided under Article 2.5 or to Extra Work ordered by the Engineer in writing.
- C. On the basis of information provided in writing by the Contractor's own employees, servants, or agents, the Contractor shall certify, in writing, that the Work for which he is claiming payment, other than as provided for in the Contract, is work actually performed, and the costs as shown are the amounts legally due for providing such Work for which payment is claimed.
- D. The Engineer will determine all questions as to the amount and value of such Work, and the fact and extent of such damage and will notify the Contractor in writing of this determination.
- E. Acceptance by the Contractor of the final payment made under the provisions of Section 01150 - MEASUREMENT AND PAYMENT shall operate as and shall be a release to the Authority and every member, agent, and employee thereof, from all claim and liability to the Contractor for anything done or furnished for, or relating to, the Work, or for any act or neglect of the Authority or of any person relating to or affecting the Work except the claim against the Authority for the remainder, if any there be, of the amounts kept or retained as provided in Article 5.17. For claims for extensions of time, see Article 6.8.

5.20 OPENING PORTIONS OF CONTRACT FOR OPERATION

- A. Any portion of the Work which is in acceptable condition for operation may be opened for MBTA Transit System operation as directed in writing by the Engineer, but such opening for operation shall not be construed as an acceptance of the Work or part thereof, nor shall it act as a waiver of any of the provisions of the Contract Specifications or of the Contract; provided, however, that on such portions of the Contract as are opened for such use, the Contractor shall not be required to assume any expense entailed in maintaining the MBTA Transit System for operation. The Authority will be responsible for maintenance and any damage to the Work caused solely by MBTA Transit System operation on any portion of the Contract which has been opened to operation as stipulated above, and it may order the Contractor to repair or replace such damage, where upon the Contractor shall make such repairs at Contract unit prices so far as the same are applicable, or as Extra Work under the provisions of Article 2.3, if there are no applicable items in the Contract.
- B. If the Contractor is dilatory in completing shoulders, drainage structures, or other features of the nontransit system portion of the Work, the Engineer may order all or a portion of the nontransit system portion of the Work open to traffic, but in such event the Contractor shall not be relieved of his liability and responsibility during the period the Work is so opened prior to final acceptance. The Contractor shall conduct the remainder of his construction operations so as to cause the least obstruction to traffic.

5.21 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

- A. Until final written acceptance of the Work, the Contractor shall have the charge and care of the Work. The Contractor shall take every necessary precaution against injury or damage to the Work by action of the elements, or from any other cause, whether arising from the execution or the nonexecution of the Work, and especially when blasting is to be done.
- B. Except as provided in Article 2.9, the Contractor shall bear all losses resulting from or due to the amount or the character of the work or because the nature of the land in or on which the Work is done is different from that which was estimated or expected, or due to bad weather or other causes.
- C. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and final acceptance, and all bear the expense thereof, except damage to the Work due to war, whether or not declared civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, to "Acts of God" (limited to hurricane, tornado, cyclone and earthquake as classified by the United States Weather Bureau for the particular locality and for the particular season of the year and in addition thereto, damages resulting directly from flooding from any of the aforementioned "Acts of God"). The repair of such damages shall be done by the Contractor and paid for at the respective Contract unit prices for the quantity and items of Work involved. In any case in which the estimate for replacing such Work or repairing such damage caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to the foregoing, or an "Act of God" combined with any previously authorized Extra Work results in a change of such magnitude as to be incompatible with competitive bid status, the Authority reserves the right to terminate the Contract and to call for new bids and award a new Contract for such Work. In the event a Contract is terminated for such reason, the Authority will pay the Contractor such sum as may be due for Work performed up to the date of the "Act of God", or of damage directly due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing and will also take over and pay for any material stored at the site of the Work provided said material was intended to be and could have been incorporated into the Work; the Authority will also take over and pay for any material which was being especially fabricated for incorporation into the Work, provided, however, that as a condition precedent to the Authority's liability for such material, the Contractor is legally liable therefor and the material was intended to be and could have been incorporated in the Work.
- D. Issuance of an estimate on any part of the Work done will not be construed as final acceptance of any Work completed up to that time.
- E. Should the Contractor fail to take prompt action whenever conditions make it necessary, the Authority will make emergency repairs or cause the same to be made, with the stipulation that the costs for such repairs shall be charged against the Contractor and deducted from moneys due the Contractor.
- F. In case of suspension of Work from any cause whatever, the Contractor shall be responsible for the Contract and shall take such precautions as may be necessary to prevent damage to the Work, provide suitable drainage and shall erect any necessary temporary structures, signs, or other facilities at no additional expense to the Authority. The Contractor shall also maintain in an acceptable growing condition all living material in newly established plantings, seeding, and sodding furnished under the Work, and take adequate precautions to protect new tree growth and other important vegetative growth against injury.

5.22 CONFLICT OF INTEREST

- A.** It is understood and agreed that no gift, loan, or other thing of value has been or shall be given to any employee, agent, or officer of the Authority in connection with the award or performance of the Contract. Also no employment shall be given to and no renting, leasing, or purchasing of equipment, supplies, or materials shall be arranged or made with or through any employee, agent, or officer of the Authority by the Contractor.
- B.** No Board Member, officer or employee of the Authority, officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, officer, employee or elected official of the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town within the Commonwealth of Massachusetts, officer, employee or elected official of any city, county or town authority within the Commonwealth of Massachusetts, during his/her tenure and for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.
- C.** No member of or delegate to the Congress of the United States shall be admitted to any share or part of this contract or to any benefit arising therefrom.

5.23 PERSONAL LIABILITY OF AUTHORITY OFFICIALS

- A.** In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Directors, Engineer, or their authorized representatives, either personally or as officials of the Authority, it being understood that in all such matters they act solely as agents and representatives of the Authority.

5.24 NO WAIVER OF LEGAL RIGHTS

- A.** Authority shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work provided and materials furnished by the Contractor, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, nor that the Work or materials do not in fact conform to the Contract. The Authority shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or the Contractor's sureties, or both, such damage as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Authority, or any representative of the Authority, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Authority, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. Any remedy provided in the Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided; and the Authority shall also be entitled as of right to writ of injunction against any breach of any of the provisions of the Contract.

5.25 LABOR, LODGING, BOARD, MAXIMUM HOURS OF EMPLOYMENT, KEEPING OF PAYROLL RECORDS

- A.** Every employee in public work shall lodge, board, and trade where and with whom the employee elects; and no person or person's agents or employees under contract with the Authority for the doing of public work, shall directly or indirectly require as a condition of employment therein, that

the employee shall lodge, board, or trade at a particular place or with a particular person (Chapter 149, Section 25 of the General Laws of the Commonwealth).

- B. No laborer, workman, mechanic, foreman, or inspector working within this Commonwealth, in the employ of the Contractor, subcontractor, or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be required or permitted to work more than 8 hours in any one day or more than 48 hours in any one week, or more than six days in any one week, except in cases of emergency. The Authority or the Contractor or any subcontractor may employ laborers, workmen, mechanics, foremen, and inspectors for more than 8 hours in any one day in the work to be done or under the Contract when, in the opinion of the Commissioner of Labor and Industries, public necessity so requires. (Chapter 149, Section 34 of the General Laws of the Commonwealth, as amended.)
- C. Upon request of the Engineer or the Massachusetts Department of Labor and Industries, the Contractor shall furnish certified copies of any or all payrolls for the Contract, showing the name, address, and occupational classification of each employee on said Works, and the hours worked by, and the wages paid to each such employee. Such payroll shall also include the rates paid for rented trucks or rental equipment of any kind used on the Work. This requirement shall also apply to the work of any subcontractor, having a subcontract for any of the Work performed on the Contract. Such records shall be kept in such manner as the Commissioner of Labor and Industries shall prescribe, and shall be open to inspection by the Engineer or any authorized representative of the Department of Labor and Industries at any reasonable time and as often as may be necessary.
- D. In case the Work covered by the Contract is financed from federal funds, the above provisions relative to the hours of employment shall be subject to such revision and amendment as are required by the Rules and Regulations controlling the expenditures of such federal funds.

5.26 EQUAL OPPORTUNITY CLAUSE

- A. During the performance of the Contract, the Contractor agrees as follows:
- B. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment, without regard to race, creed, color, religion, sex, or national origin.
- D. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

- F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of the said rules, regulations or orders, the Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- H. The Contractor shall include the portion of the sentence immediately preceding paragraph A. and the provisions of paragraphs A. through G. in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- I. Applicable Massachusetts and Federal Anti-Discrimination Requirements are contained in the Appendix to the Bid Conditions, Affirmative Action Requirements, Equal Employment Opportunity of the Supplementary Conditions.

5.27 REQUIREMENTS OF CHAPTER 30, SECTION 39R OF GENERAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS

- A. The words defined below shall have the meaning stated whenever they appear in this subsection:
 1. "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to Section 39M of Chapter 30.
 2. "Contract" means any contract awarded or executed pursuant to Section 39M of Chapter 30.
 3. "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
 4. "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of this person's residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
 5. "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified

opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

6. "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which she has made and sets forth her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefore shall be stated. An accountants report shall include as a part a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.
7. "Management", when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.
8. Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

B. Subsection A2 hereof notwithstanding, every agreement or contract awarded or executed pursuant to Section 39M of Chapter 30 shall provide that:

1. The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor, and
2. until the expiration of six years after final payment, the awarding authority, office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Contractor or of his/her subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his/her subcontractors, and
3. if the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his/her description the date of the change and reasons therefore, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes, and
4. if the agreement is a contract as defined herein, the Contractor has filed a statement of management on internal accounting controls as set forth in paragraph C. below prior to the execution of the contract, and
5. if the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph D. below.

C. Every Contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:

1. transactions are executed in accordance with management's general and specific authorization;
2. transactions are recorded as necessary
 - a. to permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - b. to maintain accountability for assets;
3. access to assets is permitted only in accordance with management's general or specific authorization; and

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

Every Contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that she has, examined the statement of management on internal accounting controls, and expressing an opinion as to

5. whether the representations of management in response to this paragraph and paragraph B. above are consistent with the result of management's evaluation of the system of internal accounting controls; and
6. whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicants financial statements.

D. Every Contractor awarded a contract by the Commonwealth or by any political subdivision thereof shall annually file with the awarding authority during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountants report.

E. The office of inspector general, the deputy commissioner for capital planning and operations and any other awarding authority shall enforce the provisions of this section. The deputy commissioner of capital planning and operations may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of Chapter 30A such rules, regulations and guidelines may be applicable to all awarding authorities. A Contractor's failure to satisfy any of the requirements of this section may be grounds for disqualification pursuant to Section 44C of Chapter 149.

1. Note: The record retention aspects of this subsection apply to all contracts awarded by the Authority regardless of value. The requirements relative to the internal auditing and management controls, including the filing of an annual statement, apply to contracts awarded with a value greater than \$100,000.

PART 6 - PROSECUTION AND PROGRESS

6.1 SUBLETTING OR ASSIGNMENT OF CONTRACT

- A.** The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the Work under control.
- B.** The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of the Contractor's right, title, or interest therein, without written consent of the Authority. If consent is given, the Contractor shall be permitted to sublet a portion thereof, but shall provide with the Contractor's own organization, Work amounting to not less than 50 percent of the original total Contract amount, except that any items designated in the Contract as "specialty items" may be provided by subcontract and the amount of any such specialty items provided by subcontracts may be deducted from the total amount in computing the amount of Work required to be provided by the Contractor's own organization. No subcontracts, or transfer of contract, shall in any case release the Contractor from liability under the Contract and bonds.
- C.** Consent to sublet any part of the Work shall not be construed to be an approval of the said subcontract or of any of its terms, but shall operate only as an approval of the making of a subcontract between the Contractor and subcontractor.

- D. A subcontractor (vendor, or supplier) will be recognized only in the capacity of an employee or agent of the Contractor, and the subcontractor's removal may be required as in the case of an employee.
- E. As soon as practicable after execution of the Contract, the Contractor shall submit to the Authority applications for approval of subcontractors for any part of the Work A is proposed to sublet. In addition to stating the name and address of the proposed subcontractor each application shall give the items, or any portions thereof, proposed to be sublet by item number and description, and the total value of the Work proposed to be sublet based on the primary contract unit prices where established or, where not established, on the approved breakdown estimate of a lump sum price required under Section 01150 - MEASUREMENT AND PAYMENT, and not on the amount of the subcontract. The application shall also show other pertinent information in order to enable the Authority to ascertain whether the proposed subcontractor is reliable and able to perform the work.
- F. The Contractor shall direct the attention of subcontractors to the requirements of:
 - 1. Article 5.4 regarding insurance, and also to the Minimum Wage Rates and Health and Welfare and Pensions Fund Contributions as determined by the Commission of Labor and Industries of the Commonwealth and also to the provisions of Article 5.25 and 5.26; and:
 - 2. Chapter 30, General Laws of the Commonwealth, Section 39L, requires under 1. above that the Commonwealth and every county, city, town, district, board, commission shall not enter into a contract for such Work with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such Work, a foreign corporation which has not filed with the Authority a certificate of the State Secretary stating that such corporation has complied with Sections 3 and 5 of Chapter 181 and the date of such compliance. Chapter 181, Section 3, requires foreign corporations to appoint the Secretary of the Commonwealth as an attorney for service of process, and Section 5, Chapter 181, requires foreign corporations to file certain documents with the Secretary of State which will permit them to do business in Massachusetts.
- G. The Contractor shall direct the attention of subcontractors and of all suppliers of material to the requirements of Article 3.9, and Section 01400 - QUALITY ASSURANCE, regarding facilities for the Engineer and his inspectors.

6.2 PROSECUTION OF WORK

- A. The Contractor shall commence Work within fifteen (15) calendar days from the date of the mailing of the executed contract to the Contractor unless otherwise ordered in writing by the Engineer; and he shall complete the specified milestones within the days specified below from the date of the mailing of the executed contract to the Contractor.

In the event the Contractor fails to complete the specified milestones within the days specified, liquidated damages will be assessed pursuant to Section 00700, Article 6.09 of the General Conditions for each calendar day of delay in the completion of the specified milestones as follows:

<u>Milestone</u>	<u>No. of Calendar Days</u>	<u>Liquidated Damages</u>
1. XXXX	XXX days after relocation of building tenants	\$XX:XXX/day
2. Completion of Entire Work	XXX	\$XXXXX/day

In no event shall the total amount of liquidated damages for failure to complete the above milestones within the days specified exceed \$XXX.00 for any one day.

- B. Should the prosecution of the Work for any reason be discontinued, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.
- C. If in the Engineer's judgment it is necessary at any time, the Contractor shall when directed, employ such forces and equipment for one or more additional shifts as will be required to insure the proper and timely completion of the Work.
- D. The Contractor shall not provide work at any time when conditions are unsuitable for its execution, safety, and permanence. This provision shall not be interpreted as constituting any waiver, release or lessening of the Contractor's obligation to bring the Work to entire completion within the Contract time stipulated therefor.
- E. The Contractor shall not receive any additional compensation for the requirements of this Article.

6.3 REMOVAL OR DEMOLITION OF BUILDINGS AND LAND TAKINGS

- A. When the removal or demolition of buildings within the Contract limits is done under other and separate contracts, the provisions of Article 3.6 shall apply. The Authority will not be held liable for any expense to the Contractor due to any delay or interference with his Work, due to removal or demolition of the buildings, or due to any failure to remove or demolish any buildings, or due to the necessary land takings.
- B. No allowance of any kind will be made except as provided in Article 6.8.

6.4 LIMITATIONS OF OPERATIONS

- A. The Contractor shall conduct the Work at all times in such a manner and in such sequence as will assure the least interference with vehicular, marine, and pedestrian traffic, operations of railroads, and existing portions of the MBTA Transit System, and occupant and consumer entrance to and exit from adjacent buildings and property. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice or detriment of work already started.

6.5 CHARACTER OF WORKMEN, METHODS, AND EQUIPMENT

- A. The Contractor shall at all times employ sufficient labor and equipment to prosecute the several classes of work to full completion in the manner and time required by the Contract Documents.
- B. The Contractor shall provide all cutting, fitting, and patching of the work that may be required to make its several parts fit together properly, and shall not endanger any work by cutting, excavating, or otherwise altering the work or any part thereof.
- C. All workmen shall have sufficient skill and experience to perform the Work assigned to them. Workmen engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.
- D. Any person employed by the Contractor or by any subcontractor who, in the Engineer's judgment, does not perform the work in a proper and skilled manner or is intemperate or disorderly or otherwise unsatisfactory or not employed in accordance with the provisions of Article 5.25, shall at the written request of the Engineer, be removed by the Contractor or subcontractor employing

such person, and shall not be employed again in any portion of the Work without the approval of the Engineer.

- E. Should the Contractor fail to take the necessary action to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with.
- F. The Contractor shall employ engineers registered in the Commonwealth of Massachusetts, qualified superintendents, foremen, and other supervisory employees to plan all construction operations and to represent the Contractor at all of the several parts of the Work and they shall be present at all times while the Work entrusted to them is in progress and shall be informed thoroughly regarding the Work.
- G. All equipment used on the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to the transit system, city streets, highways, or adjacent property will result from its use.
- H. When methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor may use any methods or equipment that demonstrate to the satisfaction of the Engineer the ability to accomplish the Work in conformity with the requirements of the Contract.
- I. When the Contract Documents specify the methods and equipment by which the construction shall be performed, such methods and equipment shall be used unless otherwise authorized in writing by the Engineer. If the Contractor desires to use a method or type of equipment other than that specified, such authority should be requested in writing from the Engineer. The request shall include a full description of the methods and equipment proposed to be used as an explanation of the reasons for desiring to make the change. If written approval is given, it will be on the condition that the Contractor shall be fully responsible for producing construction work in conformity with the Contract requirements. If after trial use of the substituted methods or equipment, the Engineer determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient Work and replace it with Work of specified quality, or take such other corrective action as the Engineer may direct. No changes will be made in basis of payment for the construction items involved nor in Contract time as a result of authorizing a change in methods or equipment under these provisions.
- J. Prior to the Contractor's selection of the job superintendent, a detailed resume must be submitted to the Authority for approval. Included in the job superintendent's requirements are:
 - 1. Commonwealth of Massachusetts Department of Public Safety License for Construction Supervisor without any restrictions.
 - 2. A minimum of 10 years of related construction experience.

The above requirements may only be waived by the Director of Construction.

6.6 **DELAY AND SUSPENSION OF WORK**

- A. The Engineer has the authority to delay the commencement of the Work and delay or suspend any portion thereof, for such period or periods as it may be deemed necessary, because of conditions beyond the control of the Authority or the Contractor, for the failure of the Contractor to correct conditions unsafe for the general public; for failure to carry out provisions of the Contract; for

failure to carry out orders; for causes and conditions considered unsuitable for the prosecution of the Work; for acts of third persons not a party to the Contract; or for any other cause, condition, or reason deemed to be in the public interest.

- B. Upon receipt of written order of the Engineer, the Contractor shall immediately delay the commencement of the Work or delay or suspend any portion thereof in accordance with said order. Work shall not be suspended or delayed without prior written approval or order of the Engineer. The work shall be resumed when conditions warrant or deficiencies have been corrected and the conditions of the Contract satisfied as ordered or approved in writing by the Engineer. The Contractor's attention is also directed to the requirements of Section 01560 - TEMPORARY CONTROLS, Part 1 "Laws to be Observed" Article, and Article 5.21 herein which shall govern during any period of temporary or partial suspension of work.

6.7 CLAIM FOR DELAY OR SUSPENSION OF WORK

- A. The Contractor shall have no claim for damages of any kind due to any delay in commencement of the Work or any delay or suspension of any portion thereof, except as hereinafter provided.
 - 1. Attention is directed to Section 39.0 of Chapter 30 which requires that every contract subject to the provisions of Section 39M of Chapter 30 contain the following provisions a. and b. in their entirety and, in the event a suspension, delay, interruption, or failure to act by the Authority increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of his performance as provisions a. and b. give the Contractor against the Authority, but nothing in provisions a. and b. shall in any way change, modify, or alter any other rights which the Contractor or the subcontractor may have against each other.
 - a. The Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Authority; provided, however, that if there is a suspension, delay, or interruption for 15 days or more or due to a failure of the Authority to act within the time specified in the Contract, the Authority will make an adjustment in the Contract price for any increase in the cost of the Contract but shall not include any profit to the Contractor on such increases; and provided further, that the Authority will not make any adjustment in the Contract price under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Contract price under any other contract provision.
 - b. The Contractor shall submit the amount of a claim under provision a. to the Authority in writing as soon as practicable after the end of the suspension, delay, interruption, or failure to act and, in any event, not later than the date of final payment under the Contract and, except for costs due to a suspension order, the Authority shall not approve any costs in the claim incurred more than 20 days before the Contractor notified the Authority in writing of the act or failure to act involved in the claim.

6.8 DETERMINATION AND EXTENSION OF CONTRACT TIME FOR COMPLETION

- A. The Contractor shall complete, entirely, and in an acceptable manner, the Work required under the Contract within the time stated in the Bid Form, except that the Contract time for completion shall be adjusted as follows:

1. If the Contract is not awarded as contemplated by Section 00100 of the Contract Specifications, then the number of days allowed for the completion of the Work will be computed from the date of receipt of the Contract by the Contractor or the date on which the Contractor was ordered to commence work whichever is later. For the purpose of this paragraph, the Contractor will be presumed to have received the Contract on the day following the mailing of the executed Contract to the Contractor by the Authority. If the Contract specifies a specific calendar date for completion and the Contract is not awarded as contemplated by Section 00100, of the Contract Specifications then the Contractor will be entitled to an extension of time equivalent to the number of days elapsed from 60 days (45 days if Federal funds are involved) after the opening of bids up to and including the day of receipt of the executed Contract by the Contractor or the date on which the Contractor was ordered to commence Work whichever is later.
 2. In case commencement of work is delayed or any part thereof is delayed or suspended by the Authority (except for unsuitable weather, winter months, or reasons caused by the fault or neglect of the Contractor), the Contractor will be granted an extension of time in which to complete the Work or any portion of the Work required under the Contract equivalent to the duration of the delay less a reasonable period of time within which the Contractor could have done necessary preliminary work.
 3. When delay occurs due to reasonable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to "Acts of God", to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, acts of the Government, acts of the state or any political subdivision thereof, acts of other contracting parties over whose acts the Contractor has no control, fires floods, epidemics, abnormal tides (not including spring tides), severe coastal storms accompanied by high winds or abnormal tides, freezing of streams and harbors, abnormal time of winter freezing or spring thawing, interference from recreational boat traffic, use of beaches and recreational facilities for recreational purposes during the summer season, abnormal ship docking and berthing, unanticipated use of wharves and storage sheds, strikes except those caused by improper acts or omissions of the Contractor, extraordinary delays in delivery of materials caused by strikes, lockouts, wrecks, freight embargoes, the time for completion of the Work shall be extended as determined by the Engineer to be equitable.
 4. An "Act of God" as used in this Article is understood to imply an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense of. A rain, windstorm or other natural phenomenon of normal intensity, based on United States Weather Bureau reports, for the particular locality and for the particular season of the year in which the Work is being prosecuted, shall not be construed as an "Act of God" and no extension of time will be granted for delays resulting therefrom. Within the scope of acts of the Government, consideration will be given to properly documented evidence that the Contractor has been delayed in obtaining any material or class of labor because of any assignment of preference ratings by the Federal Government or its agencies to other defense contracts.
 5. In case the Work is delayed by public or private utility owners or municipal agencies, see Article 3.5.
 6. Each Extra Work Order or Change Order as issued will include a statement of additional time, if any, that is agreed upon by the Contractor and the Engineer required for the completion of the Contract by reason of this Extra Work Order or Change Order, and no other time allowance due to the performance of the Work covered by such Extra Work Order or Change Order will be allowed.
- B.** An extension of time will not be granted for any delay or any suspension of the Work due to the fault of the Contractor, nor if a written request for an extension of time on account of delay due to any of the aforesaid causes is not filed within 15 days of the date of the commencement of the delay nor if the request is based on any claim that the Contract period as originally established was inadequate.

- C. Contract period has been carefully considered and has been established for reasons of importance to the Authority. This time limit will be enforced.
- D. The probable slow-down or curtailment of Work during inclement weather and winter months has been taken into consideration in determining the total time required to complete the Contract-hence no extension of time will be allowed due to this reason.

6.9 FAILURE TO COMPLETE WORK ON TIME

- A. On or before the date stated in the Contract Specification for completion, or the date to which the time of completion will have been extended under the provisions of Article 6.8, the Work shall have been performed in accordance with the terms of the Contract. The time in which the various portions and the whole of the Contract are to be Provided and the Work is to be completed is an essential part of the Contract.
- B. In case the Work has not been substantially and physically completed by the time stipulated in the Contract Specification (or by the date in which the completion time may have been extended in accordance with Article 6.8), the Contractor shall pay to the Authority a designated sum per day for the entire period of overrun in accordance with the following Schedule of deductions unless a different amount is stated in the Supplementary Conditions.

SCHEDULE OF DEDUCTIONS

VALUE OF CONTRACT		Charges per calendar day
For more than \$ 0	To and including \$ 25,000	\$ 60
\$ 25,000	\$ 50,000	\$ 150
\$ 50,000	\$ 100,000	\$ 225
\$ 100,000	\$ 500,000	\$ 300
\$ 500,000	\$1,000,000	\$ 450
\$1,000,000	\$2,000,000	\$ 600
\$2,000,000	\$3,000,000	\$ 900
\$3,000,000	\$3,500,000	\$ 1,050
\$3,500,000	\$4,000,000	\$ 1,200
\$4,000,000	\$4,500,000	\$ 1,350
\$4,500,000	\$5,000,000	\$ 1,500
\$5,000,000		\$ 2,000

- C. Whatever sum of money may become due and payable to the Authority by the Contractor under this Article may be retained out of money belonging to the Contractor in the hands and possession of the Authority. This Article shall be construed and treated by the parties to the Contract not as imposing a penalty upon the Contractor for failing fully to complete the Work as agreed on or before the time specified in the Contract Specification (as it may have been extended in accordance with Article 6.8), but as liquidated damages to compensate the Authority for all

additional costs incurred by the Authority because of the failure of the Contractor fully to complete said Work on or before the date of completion specified in the Contract Specification (as it may have been extended).

- D. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall not operate as a waiver on the part of the Authority of any of its rights under the Contract.

6.10 TERMINATION OF CONTRACT

- A. If the Contractor shall be adjudged bankrupt, or make a general assignment for the benefit of creditors, or if a receiver shall be appointed of the Contractor's property, or if the work to be done under the Contract shall be abandoned, or if the Contract or any part thereof shall be sublet without the previous written consent of the Authority, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or at any time the Engineer certifies in writing to the Authority that the Work, or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract, the Authority may, by written notice, instruct the Contractor to discontinue the Work, or any part thereof, and thereupon the Contractor shall discontinue such Work or such part thereof, as the Authority may designate, and the Authority will require the surety or sureties to complete the Contract.
- B. If the Engineer determines that the rate of progress as reflected by the Contractor's CPM submitted and approved in accordance with the requirements of Section 01300 - SUBMITTALS, is not satisfactory, the Authority, instead of notifying the Contractor to discontinue the Work or any part thereof, may notify the Contractor from time to time to increase the force, equipment, and plant, or any of them, employed on the whole or any part of the Work, stating the amount of increase required; and unless the Contractor shall, within five working days after any such notice, increase such force, equipment, and plant to the extent required therein, and maintain and employ the same from day to day until the completion of the Work or such part thereof or until the conditions as to the rate of progress shall, in the Engineer's judgment, be fulfilled; or unless the Contractor submits and receives approval of a revised CPM indicating the Work being completed on time, the Authority may employ and direct the labors of such additional force, equipment, and plant as may, in the Engineer's judgment, be necessary to insure the completion of the Work or such part thereof within the time specified, or at the earliest possible date thereafter, and charge the expense thereof to the Contractor. Neither the notice from the Authority to the Contractor, to increase the force, equipment, or plant, nor the employment of additional force, equipment, or plant by the Authority shall be held to prevent a subsequent notice from the Authority to the Contractor to discontinue Work under the provisions of the preceding portion of this Article.
- C. The Engineer may exercise the rights under this paragraph to rectify adverse conditions described in Article 3.10, Removal of Defective or Unauthorized Work, and Article 4.4, Defective Material, and notify the Contractor's bonding company to take the necessary appropriate action to remedy the situation. It shall be understood that when the Authority exercises its rights hereinbefore described, the breach of Contract by the Contractor does not itself constitute termination unless stipulated by the Authority. The Contractor shall, as directed by the Engineer, continue other works of the Contract.
- D. All expenses charged under this Article will be deducted and paid by the Authority out of any moneys then due or to become due the Contractor under the Contract, or any part thereof, and in such accounting, the Authority will not be held to obtain the lowest figures for the Work of completing the Contract or any part thereof, or for insuring its proper completion, but all sums actually paid therefor shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been payable under the Contract if the same had been completed

by the Contractor, the Contractor will be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Authority upon completion of the Work without further demand being made therefor.

6.11 TERMINATION FOR CONVENIENCE

- A. If the Engineer determines that it is in the public interest to do so, the Engineer may notify the Contractor to discontinue all work, or any part thereof, such notice shall be given to the Contractor in writing and thereupon the Contractor shall discontinue such work, or such part thereof, as the Engineer may designate.
- B. If the Engineer notifies the Contractor to discontinue all work, or any part thereof, the Engineer shall pay and the Contractor shall accept, as full payment for all work done and materials provided, the following sums:
 - 1. For all completed items of work for which there are unit prices provided in the contract.
 - a. The original contract unit prices.
 - 2. For all work on partially completed items.
 - a. A sum agreed to by the Contractor and the Engineer or:
 - 1) The actual costs for direct labor, materials (less salvage value, if any) and use of equipment, plus 10% of this total for overhead; and
 - 2) the actual cost for Workmen's Compensation and Employer's Liability, Insurance, Health, Welfare and Pension benefits, Social Security deductions, and Employment Security Benefits; and
 - 3) 6 percent of the total of (a) and (b) for profit and;
 - 4) the estimated proportionate cost of surety bonds; and
 - 5) the actual cost to the Contractor for work performed by a Subcontractor, plus 10 percent of such cost. No allowance shall be made for general superintendence and the use of small tools and manual equipment,
 - 3. For costs of settlement as:
 - a. Reasonable and necessary accounting, legal, clerical and other costs of work discontinuance; and reasonable and necessary storage, transportation and other costs incurred for the preservation, protection or disposition of the discontinued work.
 - b. When requested by the Engineer, the Contractor shall furnish itemized statements of the cost of the work performed and shall give the Engineer access to all accounts, bills and vouchers, relating there to and unless the Contractor, when requested, shall furnish such itemized statements and access to all accounts, bills and vouchers, he shall not be entitled to payment for the work for which such information is sought by the Engineer.
 - c. The Contractor shall not be paid and the Contractor shall not have any claims for loss of anticipated profits, for loss of expected reimbursement or for any increased expenses resulting directly or indirectly from the discontinuance of any or all, work or from unbalanced allocation, among the contract item, of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefor or for any other cause. The Contractor shall incorporate the provisions of this section as provisions in its contracts with each of its subcontractors.

CERTIFICATE OF COMPLIANCE
(Manufacturer of Fabricated Material)

Date _____ 20__

WE HEREBY CERTIFY THAT

_____ (Description, or Kind of Material)

Furnished to
(Name of Contractor Prime or Sub)

For Use on _____ Federal No.
(Project No.)

In the Amount of
(Quantity Represented)

Identify by
(Label, Marking, Seal No., Consignment, or Waybill No.)

Shipped on _____ 20__ Delivered on _____ 20__

Shipped via _____
(Method of Shipment, Car No., or Truck No.)

MEETS THE REQUIREMENTS OF THE PERTINENT PROJECT PLANS, SUPPLEMENTARY CONDITIONS AND SPECIFICATIONS OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, IN ALL RESPECTS, PROCESSING, PRODUCT TESTING AND INSPECTION CONTROL OF RAW MATERIALS ARE IN CONFORMANCE WITH ALL APPLICABLE SPECIFICATIONS, DRAWINGS AND/OR STANDARDS OF ALL ARTICLES FURNISHED.

All records and documents pertinent to this certificate and not submitted herewith will be maintained available by the undersigned for a period of not less than three years from date of final payment by the MBTA.

(Manufacturer of Supplier)

Signed by _____

Title _____ NOTARY STAMP
Notarized Signature of Person having Legal Authority to bind the Supplier

INSTRUCTIONS

1. The above is a suitable sample of an acceptable certificate.
2. Certificate is to be submitted in triplicate to the Engineer prior to, or on delivery of, material.
3. The following regulation is applicable to all projects involving Federal Funds.

Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) is applicable to this statement. (Section 1001 of Title 18, among other things, provides that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any Department or Agency of the United States shall be fined not more than \$10,000 or imprisoned not more than five years, or both).

END OF SECTION

CONTRACT NO.
YEAR

GENERAL CONDITIONS
00700 - 49

MBTA
REV 04/09