

ARTICLE 16 – STANDARD PROVISIONS

The following are hereby incorporated herein by reference with the same force and effect as though fully set forth herein. To the extent that the terms contained in Article 16 are inconsistent with the terms contained in other Articles within A101 and A201, the terms set forth in Article 16 herein shall apply.

16. STANDARD PROVISIONS

16.1. Employment Provisions - Based upon MOH housing policies the owner shall attach the following employment provisions to the contract as exhibits. In the case that the owner has excluded any of these provisions from the contract they are hereby attached to the contract by reference as indicated in article 16.1

16.1.1. The Boston Residency and Jobs Policy (current version), attached as Appendix A.

16.1.2. Davis Bacon Prevailing Wages, attached as Appendix B, as applicable.

16.1.3. Section 3 documents, attached as Appendix C, as applicable.

16.2. Progress Payments - The amount of each progress payment shall include:

16.2.1. That portion of the Construction Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner and the Owner's Lenders, suitably stored off the site at a location agreed upon in writing, provided that amounts payable on account of stored material not yet incorporated in the Work, but insured and stored separately, shall be limited to Contractor's actual out-of-pocket costs for such materials; and stored materials are to be incorporated in the Work within 45 days.

16.2.2. The amount of General conditions allocated with each progress payment will represent the percentage of the completed work approved by the Owner and the Owner's Lenders.

16.3. Retainage - For each progress payment made prior to Substantial Completion of the Work, the Owner will withhold 5% of the payment as retainage, from the payment.

16.3.1. For projects under 3 million dollars, the owner will withhold 10% of the payment as retainage until 50% complete at which point the retainage percentage will be reduced to 5%.

16.3.2. Upon Substantial Completion of the Work, retainage will be reduced to one hundred fifty percent (150%) of the value of the uncompleted work as

determined by the Architect and the Owner's Lenders in a monetized Punch List.

16.4. Final Payment

- 16.4.1. Owner's Lenders' approval is required for Final payment. An executed MOH Certificate of Completion is required to release retainage and final payment.

16.5. Enumeration of Contract Documents

- 16.5.1. The Contract Documents exclude contractor qualifications & assumptions, the advertisement or invitation to bid, instructions to bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.
- 16.5.2. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.
- 16.5.3. The Specifications are to be referred to in the Contract with an Exhibit to the Agreement in a list form indicating the Section number, Title and most recent date (or revision date).
- 16.5.4. The Drawings are to be referred to in the Contract with an Exhibit to the Agreement in a list form indicating the Drawing number, Title and most recent date (or revision date).
- 16.5.5. Where the reference list in the Specifications Exhibit and the Drawings Exhibit does not match the actual specification and actual drawings, the MOH approved drawings and specifications will supersede the exhibit within the contract.

16.6. Change Orders

- 16.6.1. Methods used in determining adjustments to the Contract Sum will include the following, and may not exceed the following percentages, if not enumerated in the Contract:
 - 16.6.1.1. The Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit which shall be calculated as follows: For additions to the Contract Sum, the Contractor shall add to the cost of additional Work to be performed by Contractor a percentage fee for overhead and profit of no more than [eight] percent ([8]%) (which fee shall be inclusive of any additional insurance costs) plus any additional payment,

performance and lien bond costs attributable to additional Work, charged at the same rate as the bonds attributable to the other aspects of the Work. For additional Work to be performed by Subcontractors and/or Sub-subcontractors, the Contractor shall add to the cost of the additional Work a percentage fee for overhead and profit of no more than [eighteen] percent ([18]%) in the aggregate (inclusive of all overhead and profits of the contractor and of Subcontractors or Sub-subcontractors, and of any additional insurance costs), plus any additional payment, performance, and lien bond costs attributable to additional Work, charged at the same rate as the bonds attributable to the other aspects of the Work.

- 16.6.1.2. General conditions will be excluded on change orders and change order directives without a determination by the Owner's Lenders that the additional work impacts the critical path and/or represents new programmatic scope not accounted for in the Contract Documents.

16.7. Termination of the Contract

- 16.7.1. If the contract is terminated, the Contractor may recover from the Owner payment for Work properly executed, including reasonable overhead and profit as identified in the Schedule of Values, and costs directly and reasonably incurred by reason of such termination. No payments will be made for termination fees or Work not executed.
- 16.7.2. If the unpaid balance of the Contract Sum is less than the costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such shortfall shall be paid to the Owner by the Contractor. Whether or not such costs and damages are less than the unpaid balance, the Contractor shall not be entitled to any further payment from the Owner subsequent to termination, other than with respect to Work executed and fee and overhead on the Work executed.