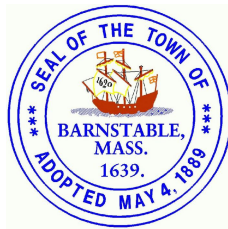


INVITATION FOR BID PROJECT MANUAL

TOWN OF BARNSTABLE DEPARTMENT OF PUBLIC WORKS

CONTRACTOR SUPPORT SERVICES BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT



**CLE ENGINEERING, INC.
15 CREEK ROAD
MARION, MA 02738**

**DATE ISSUED:
OCTOBER 20, 2015**

Bids due: November 19, 2015, No Later Than 2:00 pm

**Key Contact: Johanna Boucher, Chief Procurement Officer
Johanna.boucher@town.barnstable.ma.us, 508-862-4741**

**Pre-Bid Meeting Date: November 10, 2015 at 2:00 PM
Department of Public Works
382 Falmouth Road
Hyannis, MA 02601**

All potential bidders are required to be registered on the Town of Barnstable Bid & RFP System at www.town.barnstable.ma.us. This document and any addenda thereto are issued electronically only. It is the responsibility of every bidder who receives this bid document and all associated documents to check the Town of Barnstable Bid & RFP System for any addenda or modification to this solicitation, if they intend to respond. The Town of Barnstable accepts no liability to provide accommodation to bidders who submit a response based upon an out of date solicitation document or documents obtained from a source other than the Town. Bidders may not alter (manually or electronically) the bid language or any bid documents. Unauthorized modifications to the body of the bid, specifications, terms or conditions, or which change the intent of this bid are prohibited and may disqualify a response.

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[Project Estimate: \\$250 K](#)
[Prevailing Wages Apply dated 10/19/2015](#)

All bid documents are posted on the Town of Barnstable website, Bid & RFP System. It is the bidder's responsibility to ensure that you have downloaded all posted documents for this bid. All Addendums will also be issued in the Bid system.

Complete document set includes:

1. Invitation for Bid Project Manual dated 10/20/15

2. Special Conditions Section 17
3. FINAL CLE Supplemental Condition Technical Specifications dated 10/20/15
4. FINAL Construction plans dated 10/20/15
5. Attachments A, B and C
6. Prevailing Wages dated 10/19/15

SECTION 1

TOWN OF BARNSTABLE

INVITATION FOR BID

The Department of Public Works, is requesting bids for the following:

CONTRACTOR SUPPORT SERVICES - BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT

Sealed General Contract bids will be received at the Town of Barnstable, Chief Procurement Officer, 230 South Street, Hyannis, MA 02601 until **2:00 PM (EST), November 19, 2015.**

The work to be performed under this contract includes, but is not limited to,

Contractor support services as required for the dewatering, handling, placing, grading and/or trucking of dredge sediments hydraulically removed from the Barnstable Harbor Outer Entrance Channel by the Barnstable County Dredge.

Bids shall be in a sealed envelope bearing the words:

“TOWN OF BARNSTABLE – CONTRACTOR SUPPORT SERVICES
BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL
DREDGING & NOURISHMENT PROJECT”

To receive consideration, proposals shall be submitted no later than the above date and time for the opening.

Bid specifications may be obtained on the Town of Barnstable Website, Bid & RFP System at www.town.barnstable.ma.us immediately. All bidders must register on the Bid & RFP System to receive documents. Contact Johanna Boucher, 508-862-4741, johanna.boucher@town.barnstable.ma.us.

The successful bidder will be required to furnish a Labor and Materials Payment Bond and a Performance Bond each in the amount of one hundred percent (100%) of the contract amount.

To receive consideration, proposals shall be submitted on the appropriate forms no later than the above date and time schedule for the opening. Proposals must be accompanied by a bid security in the amount of five percent (5%) of the Bid Price in the form of a bid bond or certified, treasurer's or cashier's check issued by a responsible bank or trust company. If, upon acceptance of the bid, a Bidder fails to enter into a Contract with the Town of Barnstable, the bid security shall be forfeited to and become the property of the Town.

A non-mandatory, pre-bid meeting will take place at 2:00 PM, on November 10, 2015 at Department of Public Works 382 Falmouth Road, Hyannis, MA 02601.

Full compliance with Federal, State and Municipal Wage Laws is required of all work done for the Town of Barnstable. Minimum Wage Rates as determined by the Commissioner of Department of Labor and Industries under the provision of the Massachusetts General Laws, Chapter 149, Section 26 to 27D, as amended, apply to this project. It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Minimum

Wage Rates for those trades people who may be employed for the proposed work under this contract. Prevailing Wage Rates dated October 19, 2015 are applicable to this project. All bidders shall be required to provide Certification of Occupational Safety and Health Administration (OSHA) Training in accordance with Massachusetts General Law 30: Section 39S, as amended by Chapter 306 of the Acts of 2004, effective 7/1/06.

Bidders are not to include in their Bid Proposal sales and compensating use taxes on materials and supplies purchased for this project. All materials used are tax exempt.

Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) policies of the Town of Barnstable are applicable. The "Fair Share" construction goal for this project is a minimum of 10.4% combined MBE/WBE participation by state certified MBEs and WBEs. Within five days after the Bid Opening, the Bidder shall submit a "Schedule for Participation by Minority Business Enterprises" with accompanying Letters of Intent by each minority subcontractor proposed to be used by the Bidder. The Bidder shall submit a "Schedule for Participation by Women Business Enterprises" with accompanying Letters of Intent by each WBE subcontractor to be used by the Bidder. The Letters of Intent shall include, among other things, the contract items the M/WBE is proposing to perform and the prices that the M/WBE proposed to charge for the work. Original signed copies of the letters will be required prior to the signing of a contract. The Schedule of Participation shall list these M/WBE subcontractors with whom the Contractor intends to contract and state the total price to be paid each M/WBE contractor as taken from each Letter of Intent submitted with the bid. The Bidder shall submit a copy of current SOMWBA letter of Minority Business Enterprise or Women Business Enterprise Certification for each subcontractor. Failure to comply with the requirements of this paragraph may be deemed to render a proposal non-responsive.

Contractors shall be required to comply with all applicable Massachusetts General Laws, Chapter 30 S.39M, and other applicable Massachusetts General Laws.

A weekly certified payroll submittal shall be required of the successful bidder in accordance with MGL C149, S27B. No payments will be made by the Town until all payroll information necessary for the Town to determine compliance with prevailing wage law requirements for the time period of the payment request have been submitted.

The Contractor shall not discriminate with regard to the personnel employed on this project on the basis of race, color, creed, national origin, gender, sexual preference, handicap or age.

The Town of Barnstable reserves the right to reject any or all proposals or waive any formalities that appear to be in the best interest of the Town. A proposal which includes, for any item, a bid that is abnormally low or high may be rejected as unbalanced. The right is also reserved to accept any proposal deemed to be best for the Town of Barnstable. In any event, bids to be deemed acceptable shall comply in each and every way with all applicable Massachusetts General Laws.

All inquires with respect to this Invitation to Bid and the Contract Documents, including the Plans and Specifications, must be in writing to the Chief Procurement Officer at: johanna.boucher@town.barnstable.ma.us.

END OF SECTION

SECTION 2

INSTRUCTIONS TO BIDDERS

1. SECURING DOCUMENTS

- A. The Invitation for Bid, Instructions to Bidders, General Conditions, Special Conditions, Bid Drawings and Specifications, all Addenda issued prior to the execution of the Owner-Contractor Agreement, Performance and Labor and Materials Payment Bonds, all amendments, Change Orders and written interpretations of the Contract Documents issued by the Town, Labor Rates, completed Bid Proposal and supporting forms signed and submitted by the Contractor, Applications and Certification for Payment, Owner-Contractor Agreement and all other documents in these Project Specifications and Drawings referenced in the Agreement compose the Contract Documents.
- B. All questions regarding this invitation to bid should be addressed to Johanna Boucher, Purchasing, email address is: johanna.boucher@town.barnstable.ma.us. All bid documents are available on Town of Barnstable's website on the Bid & RFP System at www.town.barnstable.ma.us

2. BID FORMS

- A. All bids must be submitted on the forms bound herein. All blank spaces in the proposal form shall be properly completed in ink and all erasures and corrections initialed by the contractor.
- B. All bids must be submitted to the above address in a sealed envelope containing the bid, properly marked "**TOWN OF BARNSTABLE: CONTRACTOR SUPPORT SERVICES - BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT**". It is the responsibility of the bidder to ensure that bids are delivered to the specified location prior to the time and date designated.
- C. The Town may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids, except as limited under the General Laws, Chapters 30 and 149, applicable sections, as amended to date.
- D. Any bid received after the time and date designated will not be considered.

3. BID SECURITY

- A. Bid Security in the amount of **FIVE PERCENT (5%) of the bid dollars** (this includes all alternates, if any included in this bid) shall accompany each bid submittal. At the option of the Bidder, the security may be a bid bond issued by a surety authorized to do business in the Commonwealth, certified check, or treasurer's or cashier's check issued by a responsible bank or trust company, payable to the Town of Barnstable. Personal or business checks will not be accepted.

- B. The bid security shall secure the execution of the Contract.
- C. Should any bidder to whom an award is made fail to enter into a Contract therefore within ten (10) days, Saturdays, Sundays, and legal holidays excluded, after notice of award has been mailed to him or fail within such time to furnish Performance and Payment Bonds as required, the amount so received from such bidder through their bond, certified check, treasurer's or cashier's check as bid deposit shall become the property of the Town of Barnstable, as liquidated damages; provided that the amount of the bid deposit which becomes the property of the Town of Barnstable shall not, in any event, exceed the difference between their bid price and the bid price of the next lowest responsible and eligible bidder; and that provided further that in the case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other unforeseen circumstances affecting the bidder, their deposit shall be returned to them.
- D. Bid deposits of the three lowest responsible and eligible bidders will be held by the Awarding Authority during the time stipulated for the execution of the contracts and the submission of the performance bonds, and may be disposed of in such a manner as will accomplish the purpose for which they are submitted. After expiration of such period, bid guarantees not disposed, or the amounts thereof, will be returned within five (5) days, Saturdays, Sundays and legal holidays excluded.

4. DEFINITIONS

- A. All definitions set forth in the General Conditions are applicable to all bidding documents, which include the Advertisement, Instructions to Bidders, Addenda issued prior to receipt of general bids.
- B. Addenda are written or graphic instruments issued prior to the execution of the contract which modify or interpret the bidding documents, including drawings and specifications, by additions, deletions, clarifications or corrections. Addenda will become part of the Contract Documents upon execution of the Agreement.

5. BIDDER'S REPRESENTATION

- A. Each bidder, in submitting their proposal, represents that they have read and understand the bidding documents, reports, test results, drawings, or other such documents provided by the Town pursuant to this bid.
- B. Each bidder represents that they have visited the site, familiarized themselves with the local conditions under which the work is to be performed, compared the site with the drawings and specifications, satisfied themselves of the conditions of delivery, handling and storage of materials, and all other matters that may be incidental to the work that may affect: 1) the cost, progress or performance of the work; 2) the means, methods, techniques, sequences and procedures of construction; and 3) the bidder's safety precautions and programs, before submitting their proposal.
- C. Each bidder agrees at the time of submitting its bid that 1) the bidding documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the work; and 2) no further

examinations, investigations, explorations, tests, studies or data are necessary for the determination of its bid for performance of the work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the bidding documents.

- D. Each bidder is familiar with all federal, state and local laws and regulations that may affect cost, progress or performance of the work.
- E. Each bidder represents that their bid is based upon the materials and equipment described in the bidding documents, including any addenda issued thereto.
- F. The submission of a bid will constitute an incontrovertible representation by the bidder that: 1) the bidder has complied with every requirement of this Section; 2) without exception, the bid submitted is premised upon performing and furnishing the work required by the bidding documents and applying any specific means, methods, techniques, sequences and procedures of construction that may be shown or indicated or expressly required by the bidding documents; 3) the bidder has given the Town written notice of all conflicts, errors, ambiguities and discrepancies that the bidder has discovered in the bidding documents and the written resolutions thereof by the Town are acceptable to the bidder; and 4) the bidding documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work. No allowance will subsequently be made to the successful bidder by reason of any error or omission on his part, due to his neglect in complying with the requirements of this article, except with respect to conflicts with the General Laws.

6. EXAMINATION OF BIDDING DOCUMENTS

Each bidder shall examine the bidding documents carefully and, not later than seven (7) days prior to the date for receipt of bids, shall make a written request to the Chief Procurement Officer for interpretation or correction of any ambiguity, inconsistency or error therein which they may discover. Any interpretation or correction will be issued as an addendum by the Chief Procurement Officer. Only interpretations or correction by addendum shall be binding. No bidder shall rely upon any interpretation or correction given by any other method.

7. ADDENDA

- A. Prior to the receipt of the bids, addenda will be forwarded to each person or firm recorded by the Town as having received the bidding documents and will be available for inspection wherever the bidding documents are kept available for that purpose.
- B. Addenda issued during the time of bidding shall be listed on proposal forms in the space provided. Failure of a bidder to receive any addendum shall not release the bidder from any obligations under their bid, provided said addendum was sent by e-mail, by U.S. mail, or successful facsimile to the address furnished by the bidder for transmittal of mail. Bidders should always confirm final addendum(s) issued before submitting their bid.

8. REJECTION OF PROPOSALS

The bidder acknowledges the right of the Town of Barnstable to reject any or all bids and to waive any informality or irregularity in any bid received. In addition, the bidder recognizes the right of the Town of Barnstable to reject a bid if the bidder fails to furnish any required bid security, or fails to submit the data required by the bidding documents, or if the bid is in any way incomplete or irregular.

9. QUALIFICATIONS OF BIDDER

- A. Any bidder, if requested, shall submit a financial statement, experience records, and an equipment schedule, on forms to be provided by the Town of Barnstable. Financial statements shall reflect true financial conditions of bidder within three months prior to date of bid opening and shall be validated by a Certified Public Accountant.
- B. A bidder, in order to be eligible for the contract, must be able to show their financial ability to carry on the work until the project is complete and accepted by the Town of Barnstable.

10. LABOR AND MATERIALS PAYMENT & PERFORMANCE BONDS

- A. Within ten (10) days after the date of Notice of Award of Contract, Saturdays, Sundays and legal holidays excluded, the bidder to whom the award is made shall furnish a performance bond and labor and materials bond, each equal to the full amount of the contract price, including accepted alternates (if applicable) to guarantee the faithful performance of all terms, covenants and conditions of the same. The bonds are to be issued by an acceptable bonding company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Town of Barnstable.
- B. The performance bond shall guarantee the satisfactory completion of the project and that the contractor will make good any faults or defects in their work which may develop during the period of said guarantee as a result of improper or defective workmanship, material or apparatus. The full performance bond shall remain in effect until final payment is received by the Contractor.

The payment bond shall guarantee that the contractor shall pay in full all persons, firms or corporations who furnish labor or material or both labor and materials for, or on account of the work included herein. Payment bonds will be in effect until such time as the contractor furnishes proof that payment in full has been made for all materials used on the contract work. The bonds shall be paid for by the contractor. The Town of Barnstable shall have the right to demand proof that parties signing the bonds are duly authorized to do so.

- C. Every such bond shall have a power of attorney attached thereto, authorizing the Town of Barnstable to enter judgment thereon in any court in the United States of America or elsewhere against the obligors therein named for the amount therein named and shall be conditioned for the honest and faithful compliance with all provisions of the bidder or bidders.

- D. Separate Performance Bond and Labor and Materials Payment Bond forms shall be provided with Notice of Acceptance.

11. **“OR EQUAL” CLAUSE:** (Statutory reference: M.G.L. Ch.30, §39M(b)) Where products, materials or equipment are prescribed by manufacturer name, trade name, or catalog reference, the word “or approved equal” shall be understood to follow. An item shall be considered equal to the item so named or described if, in the opinion of the Consulting Engineer :

- a. it is at least equal in quality, durability, appearance, strength and design;
- b. it performs at least equally the function imposed for the public work being contracted for or the material being purchased; and
- c. it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the specifications.

Any structural or mechanical changes made necessary to accommodate substituted Equipment under this paragraph shall be at the expense of the Contractor or Subcontractor responsible for the work item. See other paragraphs of the General Conditions for any procedures that may be used in determining compliance with the standards of this paragraph.

12. SUBSTITUTIONS

- A. The Bid shall be based on using the materials or products as specified and provided. Where several materials are specified by name for one use, any of those so specified may be supplied.
- B. Whenever the specified products or class of materials is specified exclusively by trade name, by manufacturer’s name or by catalog reference, only such items shall be used, unless the Town’s written approval for substitution is secured in accordance with the Conditions of the Contract.

13. WORK TIME LIMITS

- A. Contractor shall furnish a proposed construction schedule, in writing, with their bid. A final construction schedule shall be submitted at the time of delivery of the properly executed contract, bonds and certificates of insurance to the Awarding Authority, allowing for completion of the contract work prior to the date specified below and appearing on the Contract Form. Thereupon the Town of Barnstable will review the completed documents and proposed schedule, ask for revisions or corrections, or issue a "NOTICE TO PROCEED" indicating its agreement with final contract terms.
- B. **The completion date for all of the work to be performed under this contract is March 1, 2016.**

Construction may begin immediately upon receipt of notice to proceed.

14. TAX EXEMPTION

The project is exempt from payment of Massachusetts sales tax to the extent permitted by MGL Ch. 64H, Subsection 6F. **Exemption Certificate E-046-001-079** shall be used in lieu thereof.

15. ACCEPTANCE OF PROPOSALS

Within thirty (30) days after the opening of the proposals the Town of Barnstable will act upon them. The acceptance of a proposal will be a Notice of Acceptance in writing signed by a duly authorized representative of the Town of Barnstable and accompanied by Performance and Labor and Materials Payment Bond forms. No other act of the Town of Barnstable shall constitute the acceptance of a proposal. The acceptance of the proposal shall bind the successful bidder to the contract. The rights and obligations provided for in the contract shall become effective and binding upon the parties only upon its formal execution.

16. TIME FOR EXECUTING CONTRACT AND PROVIDED CONTRACT BONDS

Any contractor whose proposal shall be accepted will be required to execute the contract and furnish contract bonds within ten (10) days, Saturdays, Sundays and legal holidays excluded after the notice that the contract has been awarded to them.

17. PAYMENT OF EMPLOYEES

- A. For work done in the Town of Barnstable, the payment for employees of the Contractor and any or all Sub-contractors and suppliers shall comply with the wage scale current at the commencement of construction, as published by the Department of Labor and Industries, under provisions of the Massachusetts General Laws. The Contractor and each of his Sub-contractors and suppliers shall pay each of their employees engaged in work on the project under the contract in full, less deductions made mandatory by law, and not less often than once a week. All forms required by local authorities, the Commonwealth of Massachusetts, and the United States Government, shall be properly submitted. No payments will be made on any application for payment until all required payroll and Affirmative Action/Equal Opportunity information for the period covered by the application has been submitted to the Town.
- B. A copy of applicable wage rate schedules is attached and forms part of the contract documents.

18. WITHDRAWAL OF PROPOSALS

- A. At any time prior to the scheduled closing time for receipt of proposals, any bidder may withdraw his proposal, either personally or by email or written request. If withdrawal is made personally, proper receipt shall be given therefore.
- B. After the scheduled time for receipt of proposals and before award of contract, no bidder will be permitted to withdraw his proposal unless said award is delayed for a period exceeding thirty (30) days. Negligence on the part of the bidder in preparing his bid confers no rights for the withdrawal of the proposal after it has been opened.

END OF SECTION

SECTION 3

GENERAL CONDITIONS

ARTICLE 1. GENERAL PROVISIONS

- 1.1 **CONTRACT DOCUMENTS:** The following Documents form the Contract and what is required by any one shall be as binding as if required by all:
- a. Invitation for Bid
 - b. Instructions to Bidders
 - c. General Conditions
 - d. Special Conditions
 - e. Bid Drawings and Technical Specifications
 - f. All Addenda issued prior to the execution of this Agreement
 - g. Performance and Labor and Materials Payment Bonds
 - h. All amendments, Change Orders, and written interpretations of the Contract Documents issued by the Town
 - i. Labor Rates
 - j. Completed Bid Proposal and supporting forms signed and submitted by Contractor
 - k. Owner-Contractor Agreement
 - l. All other documents in these Project Specifications and Drawings referenced in the Agreement compose the Contract Documents.

The intention of the Contract Documents is to include all labor, materials, equipment and other items necessary for the proper execution and completion of the Work and the terms and conditions of payment therefore, and also to include all Work which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.

- 1.1.1 Six (6) copies of the Contract Documents shall be signed by the Town of Barnstable and the Contractor. By executing the Contract, the Contractor represents that he has visited the site and familiarized himself with the local conditions under which the Work is to be performed.
- 1.1.2 The Contract Document represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship of any kind between 1) the Contractor and the Consulting Engineer or the Consulting Consulting Engineer's consultants, 2) the Owner and a Subcontractor or a Sub-subcontractor, 3) the Owner and the Consulting Engineer or the Consulting Engineer's consultants, or 4) any persons or entities other than the Owner and the Contractor. The Consulting Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Consulting Engineer's duties.
- 1.2 **WORK:** The term "Work" as used in the Contract Documents includes all labor necessary to produce the construction required by the Contract Documents, and all permits, materials and equipment incorporated or to be incorporated in such construction.

- 1.2.1 Organization of the Specifications into divisions, sections or articles of Work, and arrangement of Drawings, shall not control the Contractor in dividing the Work among Subcontractors.
- 1.3 **PROJECT:** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.
- 1.4 **DRAWINGS & SPECIFICATIONS:** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Each of these are produced for the purpose of the Contractor providing an initial bid proposal for consideration by the Owner.
- 1.5 **INSTRUMENTS OF SERVICE:** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consulting Engineer and the Consulting Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.
- 1.6 **INTERPRETATION:** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- 1.7 **USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE:** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the drawings, specifications and other Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on said documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use said documents on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Consulting Engineer and the Consulting Engineer's consultants.

ARTICLE 2. THE OWNER

- 2.1 **GENERAL:** The terms "Owner" or "awarding authority" is the Town of Barnstable and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the owner's authorized representative, the OWNER'S Project Manager or any other employee or agent of the Owner. With the exception of Article 8.2.1 or any other provision herein which grants the Consulting Engineer certain decision-making responsibilities, the OWNER's Project Manager shall exercise authority, responsibility or otherwise bind the Owner with respect to all matters requiring the Owner's approval in any portion of the Work.
- 2.2 **OWNER'S PROJECT REPRESENTATIVE:** The Town of Barnstable's Representative for this project and OWNER's Project Manager will be: John W. Juros for the Town of Barnstable. Once the project contract is signed, all project questions, shop drawings, samples and requirements for approvals shall be directed to:

Town of Barnstable
Attn: John W. Juros
DPW Structures and Grounds Division
800 Pitchers Way
Hyannis, MA 02601
Phone: (508) 790-6400

- 2.2.1 The OWNER's Project Manager shall represent the Owner throughout this Project. The OWNER's Project Manager shall be responsible for all services associated with the management of the project. The OWNER's Project Manager shall not have any responsibility for the design or the construction of the project. Such responsibilities shall remain with the Consulting Engineer and Contractor.
- 2.3 **OWNER'S RIGHT TO ACCESS WORK SITE:** The Owner shall at all times have access to the Work wherever it is in preparation and progress. The Owner will make periodic visits to the site to become thoroughly familiar with the progress and quality of the Work in accordance with the Contract Documents. On the basis of on-site observations, the Owner's Project Representative will endeavor to guard against defects and deficiencies in the Work of the Contractor. The Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and the Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with Contract Documents.
- 2.4 **INFORMATION AND SERVICES REQUIRED OF THE OWNER:** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness.
- 2.4.1 As deemed necessary by the Owner, the Owner shall furnish surveys describing physical characteristics and utility locations for the site of the Project.
- 2.4.2 The Owner will be, in the first instance, the interpreter of the requirements of the Contract Documents.
- 2.4.3 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor 10 copies of the Contract Documents for execution of the Work. Additional copies will be furnished at the cost of reproduction. AutoCad files will be released to the Contractor for use in the preparation of record drawings of the Project to be provided upon completion of the Project to the Consulting Engineer for review and submission to the Owner.
- 2.4.4 The Owner shall receive from the Contractor periodic Applications for Payment for work performed by the Contractor. Based on observations, site visits and other such information, the Owner shall determine amounts owed to the Contractor and will issue Certificates for Payment in accordance with Article 12 herein.
- 2.5 **OWNER'S RIGHT TO STOP THE WORK:** If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Article 15.2 in its entirety, or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the

part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

- 2.6 **OWNER'S RIGHT TO CARRY OUT THE WORK:** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued, deducting from payments, then or thereafter due to the Contractor, the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Consulting Engineer's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Consulting Engineer. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3. THE CONTRACTOR

- 3.1 **GENERAL:** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the Commonwealth of Massachusetts where the Project is located. The Contractor shall designate in writing a representative who shall have the express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.
- 3.1.1 The Contractor shall perform the Work in accordance with the Contract Documents.
- 3.1.2 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Consulting Engineer in the Consulting Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.
- 3.2 **REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR:** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
- 3.2.1 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Article 2.4.2, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Consulting Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a Request for Information in such form as the Consulting Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

- 3.2.2 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Consulting Engineer any nonconformity discovered by or made known to the Contractor as a Request for Information in such form as the Consulting Engineer may require.
- 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions that the Consulting Engineer issues in response to the Contractor's notices or Requests for Information pursuant to Article 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 18. If the Contractor fails to perform the obligations of Articles 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Consulting Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor recognized such error, inconsistency, omission or difference, and knowingly failed to report it to the Consulting Engineer.
- 3.2.4 The Contractor shall reimburse the Owner for costs incurred by the Consulting Engineer for design and construction administration services which are caused by the Contractor's inefficient or otherwise faulty administration or execution of its Work. These may include, but are not limited to the cost of the Consulting Engineer or OWNER's Project Manager to perform:
- a. Repeated review of the Contractor's submittals and resubmittals substantially out of sequence from the submittal schedule provided by the Contractor and agreed to by the Consulting Engineer;
 - b. An extensive number of responses to the Contractor's Requests for Information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
 - c. An extensive number of Change Orders and Change Directives requiring evaluation of proposals and the preparation or revision of Instruments of Service and not otherwise caused by the design defects of the Consulting Engineer;
 - d. Consultation regarding replacement of Work resulting from fire or other cause during construction;
 - e. Evaluation of an extensive number of claims not otherwise caused by design defects;
 - f. Evaluation of substitutions proposed by the Contractor and making subsequent revisions to Instruments of Service resulting therefrom;
 - g. Preparation of design and documentation for alternate bid or proposal requests proposed by the Contractor; or
 - h. Contract administration services provided 45 days or more after Substantial Completion.
- 3.2.5 The Contractor shall conduct a preconstruction inspection of the worksite and notify the Owner in writing of any existing damage to the property or any unsafe conditions at the site prior to commencing the Work.
- 3.3 **SUPERVISION AND CONSTRUCTION PROCEDURES:** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall

be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Consulting Engineer and shall not proceed with that portion of the Work without further written instructions from the Consulting Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of reasonable changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

- 3.3.1 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of the Contractor or any of its Subcontractors.
 - 3.3.1.1 The Contractor shall, upon written request of the Owner, remove and replace workers whom the Owner deems to be disorderly, careless, incompetent, are illegal aliens, or to be employed in violation of the terms of the Contract Documents, at no increase in the Contract Sum or the Contract Time.
- 3.3.2 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- 3.4 **LABOR AND MATERIALS:** Unless otherwise provided for in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tolls, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
 - 3.4.1 Except in the case of minor changes in the Work authorized by the Consulting Engineer in accordance with Articles 3.16.8 or 10.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Consulting Engineer and in accordance with a Change Order.
 - 3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.
- 3.5 **WARRANTY:** The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage

or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

- 3.5.1 All warranties and guarantees regarding the workmanship by the General Contractor, Subcontractors and Sub-Subcontractors shall commence on the date of Substantial Completion. Warranties and guarantees shall extend for a minimum of one (1) year. Notwithstanding the foregoing, any special warranties, as defined by the Consulting Engineer, required by the Contract Documents or manufacturer's standard warranties, extending longer than a year, shall remain in effect for the full warranty period.
- 3.6 **TAXES:** The Contractor shall not pay, and the Owner shall not reimburse or pay the Contractor for any sales taxes for building supplies or materials for which exemption is provided by law. The Owner's Tax Exemption number to be used by the Contractor in this regard will be provided by the Owner to the Contractor.
- 3.7 **PERMITS AND FEES:** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for any applicable permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.
- 3.8 **NOTICES:** The Contractor shall comply with and give notices required by the Contract Documents, applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities applicable to performance of the Work.
- 3.8.1 Notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to the last business address known to the party giving notice.
- 3.9 **COMPLIANCE WITH LAWS:** If the Contractor performs Work contrary to the Contract Documents, applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall be responsible for such Work and shall bear the costs attributable to correction of said work, along with any other damages incurred by the Owner.
- 3.10 **DEVIATIONS:** (Statutory reference: M.G.L. Ch.30, §39I): The Contractor shall perform all the work required by this contract in conformity with the plans and specifications contained herein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the Owner or by the Consulting Engineer in charge of the work who is duly authorized by the Owner to approve such deviations. In order to avoid delays in the prosecution of the work required by such contract, such deviation from the plans or specifications may be authorized by a written order of the Owner or such Consulting Engineer so authorized to approve such deviation. Within thirty (30) days thereafter, such written order shall be confirmed by a certificate of the Owner stating:
 - a. If such deviation involves any substitution or elimination of materials, fixtures, or equipment, the reasons why such materials, fixtures, or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefore;
 - b. The specified deviation does not materially injure the project as a whole;

- c. Either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the Owner and the Contractor and the amount in dollars of said adjustment; and
- d. The deviation is in the best interest of the Owner, such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the work contracted for.

3.11 **DIFFERING SITE CONDITIONS** (Statutory reference: M.G.L. Ch.30, §39N): If during the progress of the Work, the Contractor or the Owner discovers that the actual subsurface or latent physical conditions encountered at the Work site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the Owner 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.

3.11.1 (Statutory reference: M.G.L. Ch.30, §39N) Upon receipt of such a claim from a Contractor, or upon its own initiative, the Owner shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and Contract Documents and are of such a nature as to cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the Owner shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

3.12 **ALLOWANCES/UNIT PRICES:**

- a. Allowances: If applicable and requested in the bid documents, the Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.
- b. Unit Prices: If applicable and requested in the bid documents, the Contractor shall include in the bid submittal package unit pricing on provided form in accordance with provided standards as designed or with reference as defined by MADOT, Federal Highway, FAA, etc. for example as applicable. Quantities shall be controlled by change order.

3.12.1 Unless otherwise provided in the Contract Documents:

- a. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site, less any applicable trade discounts;
- b. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- c. Whenever costs are more than or less than the allowances, the Contract Sum shall be adjusted accordingly by a Change Order. The amount of the Change Order shall reflect
 - i. the difference between actual costs and the allowances under Article 3.12.2 (a), and
 - ii changes in the Contractor's costs under Article 3.12.2 (b).

- 3.12.2 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.
- 3.13 **CONTRACTOR'S AUTHORIZED SITE REPRESENTATIVE:** The Contractor shall employ a competent project manager/superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Contractor's project manager/superintendent shall represent the Contractor, and communications:
- a. Given by the Owner to the Contractor's project manager/superintendent shall be as binding as if given to the Contractor;
 - b. Given by the Contractor's project manager/superintendent to the Owner shall be as binding as if given by the Contractor; and
 - c. Given by the Contractor's project manager/superintendent to any Subcontractor, Sub-subcontractor or any other party performing work or providing supplies on behalf the Contractor shall be a binding as if given by the Contractor.
- 3.13.1 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Consulting Engineer the name and qualifications of a proposed Contractor's project manager/superintendent. The Consulting Engineer may reply within fourteen (14) days to the Contractor in writing, stating:
- a. Whether the Owner has reasonable objection to the proposed Contractor's project manager/superintendent, or
 - b. That the Owner requires additional time to review. Failure of the Consulting Engineer to reply within the 14 day period shall constitute notice of no reasonable objection, unless the Owner has deemed it necessary for additional time to review.
- 3.13.2 The Contractor shall not employ a proposed Contractor's project manager/superintendent to whom the Owner has made reasonable and timely objection. Additionally, the Contractor shall not change the Contractor's project manager/superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Any Contractor's project manager/superintendent or assistant(s) replaced by the Contractor for whatever reason shall not cause any increase or change in the Contract Sum or Contract Time.
- 3.13.3 The Contractor's representative, as well as representatives of any Subcontractor, or material or supply contractor shall attend any meetings as requested by the Owner.
- 3.14 **CONTRACTOR'S CONSTRUCTION SCHEDULES:** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Consulting Engineer's approval a Contractor's Construction Schedule for the Work. The schedule shall not exceed time limits currently under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- 3.14.1 The Contractor shall prepare a Submittal Schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current Submittal Schedule, and shall timely submit revised schedules for the Consulting Engineer's and Owner's approval. The Consulting Engineer's and OWNER's Project Manager's approval shall not unreasonably be delayed or withheld. The Submittal Schedule shall:
- a. Be coordinated with the Contractor's Construction Schedule, and
 - b. Allow the Consulting Engineer reasonable time to review submittals. If the Contractor fails to submit a Submittal Schedule, the Contractor shall not be entitled

to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

- 3.14.2 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Consulting Engineer.
- 3.15 **DOCUMENTS AND SAMPLES AT THE SITE:** The Contractor shall maintain at the site for the Owner one (1) copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order, appropriately organized and sequenced, and marked currently to indicate field changes and selections made during construction, and one (1) copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Consulting Engineer and shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed.
- 3.16 **SHOP DRAWINGS, PRODUCT DATA AND SAMPLES:** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
 - 3.16.1 Product Data are illustrations, standard schedules, performance charts, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
 - 3.16.2 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
 - 3.16.3 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Consulting Engineer is subject to the limitations of Article 8.3.4. Informational submittals upon which the Consulting Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Consulting Engineer without action.
 - 3.16.4 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Consulting Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Submittal Schedule approved by the Consulting Engineer or, in the absence of an approved Submittal Schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or separate contractors.
 - 3.16.5 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Consulting Engineer that the Contractor has 1) reviewed and approved them, 2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and 3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
 - 3.16.6 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar

submittals until the respective submittal has been approved by the Consulting Engineer as authorized by the OWNER's Project Manager.

- 3.16.7 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Consulting Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Consulting Engineer in writing of such deviation at the time of submittal and 1) the Consulting Engineer has given written approval as authorized by the OWNER's Project Manager to the specific deviation as a minor change in the Work, or 2) a Change Order has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Consulting Engineer's approval thereof.
- 3.16.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Consulting Engineer on previous submittals. In the absence of such written notice, the Consulting Engineer's approval of a resubmission shall not apply to such revisions.
- 3.16.9 The Contractor shall not be required to provide professional services that constitute the practice of architecture or Consulting Engineering unless such services are specifically required by the Contract Documents for a portion of the Work unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Consulting Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by properly licensed design professional whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Consulting Engineer. The Owner and the Consulting Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of services, certifications and approvals performed or provided by such design professionals, provided the Owner and Consulting Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this paragraph, the Consulting Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.
- 3.17 **USE OF THE SITE:** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not reasonably encumber the site with materials or equipment.
- 3.18 **CUTTING AND PATCHING:** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, and patching shall be restored to the condition existing

prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

- 3.18.1 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

- 3.19 **CLEANING UP:** The Contractor shall regularly keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project Site. Prior to removal of surplus material, the Contractor shall notify the Owner of surplus material inventory and the Owner reserves the right to retain surplus materials if deemed in our best interests.

 - 3.19.1 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.
 - 3.19.2 At the end of each work day, the Contractor will be responsible to secure the job site being worked on in a manner satisfactory to the OWNER's Project Manager.

- 3.20 **INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, and their agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (except the Work), but only to the extent caused by the negligent, accidental or intentional acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article.

 - 3.20.1 The Town agrees to and shall hold the Contractor, its officers and employees harmless from any liability for claims or damages for personal injury or property damage which is caused by, or arises from, the negligence of the Town only to the extent of the Town's liability under Massachusetts General Laws, Chapter 258 and not otherwise, and nothing herein shall operate as a waiver or modification of the Town's immunity beyond the limits established therein. In the event that both the Contractor and the Town are found by a fact finder to be negligent, and the negligence of both is a proximate cause of such claim for damage, then in such event each party shall be responsible for the portion of the liability equal to its comparative share of the total negligence, subject, however, in the case of the Town to its limited immunity.
 - 3.20.2 In claims against any person or entity under Article 3.20 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Article 3.20 shall not be limited by a limitation on amount or type of damages, compensation or benefits

payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

- 3.21 **ROYALTIES, PATENTS AND COPYRIGHTS:** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer is required by the Contract Documents, or where the copyright violation is contained in Drawings, Specifications or other documents prepared by the Owner or Consulting Engineer.

ARTICLE 4. THE SUBCONTRACTORS

- 4.1 **GENERAL:** "Subcontractor" as used in this Article for contracts awarded:
- a. As provided in Massachusetts General Laws, Chapter 30, Section 39M, shall mean a person approved by the Owner in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor, and
 - b. Shall also mean a person contracting with the Contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.
- 4.1.1 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number.
- 4.2 **AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK:** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after the award of the Contract, shall furnish in writing to the Owner through the Consulting Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the Work. The Consulting Engineer may reply within seven (7) days to the Contractor in writing stating:
- a. Whether the Owner has reasonable objection to any such proposed person or entity, or
 - b. That the Consulting Engineer requires additional time for review. Unless the Consulting Engineer fails to request additional time for review, failure of the Owner or Consulting Engineer to reply within seven (7) days shall constitute notice of no reasonable objection.
- 4.2.1 The Contractor shall not contract with a proposed person or entity to whom the Owner or Consulting Engineer has made reasonable and timely objection.
- 4.2.2 If the Owner or Consulting Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Consulting Engineer has no reasonable objection.
- 4.2.3 The Contractor shall not substitute a Subcontractor to perform any portion of the Work without the approval of the Owner, pursuant to Article 4.2.
- 4.3 **CONTRACTUAL RELATIONS:** By appropriate agreement pursuant to Massachusetts General Laws, Chapters 30 and 149, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the

Subcontractor's Work, which the Contractor, by these Contract Documents, assumes toward the Owner and Consulting Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Consulting Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner or Consulting Engineer. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective Sub-subcontractors.

- 4.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS:** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:
- a. Assignment is effective only after termination of the Contract between the Contractor and the Owner for cause pursuant to Article 17, and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
 - b. Assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.
- 4.4.1 When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.
- 4.4.2 Upon such assignment, if the Work has been suspended for more than thirty (30) days, the Subcontractor's compensation may be equitably adjusted for increases in cost resulting from the suspension.
- 4.4.3 Upon such assignment to the Owner under Article 4.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract as it had with the original contractor.

ARTICLE 5. WAGES AND EMPLOYMENT PRACTICES

- 5.1 **PREFERENCE TO VETERANS AND CITIZENS, AND RATES OF PAY** (Statutory reference: M.G.L. Ch.149, §26): In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six (6) months at the commencement of their employment, who are veterans as defined in Massachusetts General Laws, Chapter 4, Section 7, Clause 43, and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States, and every contract for such work shall contain a provision to this effect. Each county, town or district in the construction of public works, or persons contracting or subcontracting for such works,

shall give preference to veterans and citizens who are residents of such county, town or district.

- 5.1.1 The rate per hour of the wages paid to said mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works shall not be less than the rate or rates of wages to be determined by the Commissioner of Labor and Industries as hereinafter provided; provided, that the wages paid to laborers employed on said works shall not be less than those paid to laborers in the municipal service of the town or towns where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more towns, the wages paid to laborers shall not be less than those paid to laborers in the municipal service of the town paying the highest rate; provided further, that if, in any of the towns where the works are to be constructed, a wage rate or wage rates have been established in certain trades and occupations by collective agreements or understandings between organized labor and employers, the rate or rates to be paid on said works shall not be less than the rates so established; provided, further, that in towns where no such rate or rates have been so established, the wages paid to mechanics, teamsters, chauffeurs and laborers on public works, shall not be less than the wages paid to the employees in the same trades and occupations by private employers engaged in the construction industry. This Article shall also apply to regular employees of the Commonwealth or of a county, town or district, when such employees are employed in the construction, addition to or alteration of public buildings for which special appropriations of more than one thousand dollars are provided. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreement or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

- 5.2 **LIST OF JOBS, CLASSIFICATIONS, DETERMINATION OF RATES OF PAY AND SCHEDULES** (Statutory reference: M.G.L. Ch. 149, §27): The Commissioner of Labor and Industries shall prepare, for the use of such public officials or public bodies whose duty it shall be to cause public works to be constructed, a list of the several jobs usually performed on various types of public works upon which mechanics and apprentices, teamsters, chauffeurs and laborers are employed. The Commissioner shall classify said jobs, and he may revise such classifications from time to time, as he may deem advisable. Prior to awarding a contract for the construction of public works, said public official or public body shall submit to the Commissioner a list of the jobs upon which mechanics and apprentices, teamsters, chauffeurs and laborers are to be employed, and shall request the Commissioner to determine the rate of wages to be paid on each job. The Commissioner, subject to the provisions of Article 5.1, shall proceed forthwith to determine the same, and shall furnish said official or public body with a schedule of such rate or wages as soon as said determination shall have been made. In advertising or calling for bids for said works, the awarding official or public body shall incorporate said schedule in the advertisement or call for bids by an appropriate reference thereto, and shall furnish a copy of said schedule without cost, to any person requesting the same, said schedule shall be made a part of the contract for said works and shall continue to the minimum rate or rates of wages for said employees during the life of the contract. Any person engaged in the construction of said works shall cause a legible copy of said schedule to be kept posted in a conspicuous place at the site of said works during the life of the contract. The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in the previous section, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works who does not make payments to a health and welfare plan, a pension

plan and a supplementary unemployment benefit plan, where such payments are included in said rates of wages, shall pay the amount of said payments directly to each employee engaged in said construction. **Note:** The Owner does not guarantee the accuracy of any schedule of any schedule of wage rates furnished to the Contractor hereunder, and the Contractor shall be responsible for ascertaining the prevailing wages in the area where the work will be performed.

5.3 **MAINTENANCE OF EMPLOYMENT RECORDS AND STATEMENT OF COMPLIANCE BY CONTRACTOR & SUBCONTRACTOR** (Statutory reference: M.G.L. Ch.149, §27B):

Every Contractor, Subcontractor or public body engaged in said public works to which Article 5.2 applies shall keep a true and accurate record of all mechanics and apprentices, teamsters, chauffeurs and laborers employed thereon, showing the name, address and occupational classification of each such employee, and shall furnish to the Commissioner of Labor and Industries, upon his request, a copy of said record, signed by the employer or his authorized agent under the penalties of perjury, such records shall be open to inspection by any authorized representative of the Department of Labor and Industries at any reasonable time, and as often as may be necessary.

5.3.1 (Statutory reference: M.G.L. Ch.149, §27B) Each such Contractor, Subcontractor or public body shall preserve its payroll records for a period of three (3) years from the date of completion of the contract.

5.3.2 (Statutory reference: M.G.L. Ch.149, §27B) Each such Contractor, Subcontractor or public body shall furnish to the Commissioner of labor and Industries within fifteen (15) days after completion of its portion of the work a statement, executed by the Contractor, Subcontractor, or public body who supervises the payment of wages, in the following form:

STATEMENT OF COMPLIANCE

I, _____
(Name and Title of signatory party)

do hereby state:

That I pay or supervise the payment of the persons employed by

(Contractor, subcontractor or public body)

on the _____
(Name of Project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of Massachusetts General Laws, Chapter 149, Section 27.

Signature _____

Title _____

The above mentioned copies of payroll records and statements of compliance shall be available for inspection by any interested party filing a written request to the Contractor for such inspections.

- 5.4 **WAGES PAID TO OPERATORS OF TRUCKS AND OTHER EQUIPMENT** (Statutory reference: M.G.L. Ch.149, §27F): Prescribed rates of wages, as determined by the Commissioner of Labor and Industries, shall be paid to the operators of all trucks, vehicles or equipment employed on the Project. Said rates of wages shall be requested of said Commissioner by the Owner and shall be furnished by the Commissioner in a schedule containing the classification of jobs, and the rate of wage to be paid for each job. Said rates of wages shall include payments to health and welfare plans, or, if no such plan is in effect between employers and employees, the amount of such payments shall be paid directly to said operators.
- 5.5 **RESERVE POLICE OFFICERS** (Statutory reference: M.G.L. Ch.149, §34B): The Contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wages paid to regular police officers in such city or town. As identified in Article 12.3.4, the Contractor shall timely submit for payment to the Owner costs incurred in the employment of police officers necessary for the control and safety of the Project Work. Within seven (7) days of receipt of payment by the Owner, the Contractor shall make full payment to every police officer whose work was included for payment in the Contractor's original request for payment.
- 5.6 **EIGHT HOUR DAY AND WORK WEEK** (Statutory reference: M.G.L. Ch.149, §§30, 34 and 34A): No laborer, worker, mechanic, foreman or inspector working within the Commonwealth in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or part of the work contemplated by the contract, shall be required or permitted to work more than eight (8) hours in any one (1) day or more than forty-eight (48) hours in any one (1) week, or more than six (6) days in any one (1) week, except in cases of extraordinary emergency.
- 5.7 **LODGING** (Statutory reference: M.G.L. Ch.149, §25): Every employee in public work shall lodge, board and trade where and with whom he elects; and no person or his agents or employees under contract with the commonwealth, a county, city or town, or with a department, board, commission or officer acting therefore, 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.
- 5.8 **ACCESS TO CONTRACTOR'S RECORDS** (Executive Order No. 195): The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the Contractor which pertain to the performance and requirements of this contract.

ARTICLE 6. EQUAL EMPLOYMENT OPPORTUNITY & AFFIRMATIVE ACTION (Statutory reference: M.G.L. Ch.151B; Executive Orders No. 74, No. 116, and No. 143)

- 6.1 **GENERAL:** Article 6 in its entirety applies to all contractors employing six or more persons and to all state or state-assisted contracts for public buildings and public works or for goods and services exceeding the dollar amount set forth in Executive Order No. 116, as amended. The provisions of this Article 6 are intended to comply with the Commonwealth's Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program, referred to in Executive Order No. 116 and administered by the Massachusetts Commission Against Discrimination. If no specific percentage has been inserted in Article 6 herein, the applicable minimum percentage provided for in such Supplemental Program shall be deemed to have been so inserted.

- 6.2 **DEFINITIONS:** For purposes of this contract, “minority” refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. “Commission” refers to the Massachusetts Commission Against Discrimination.
- 6.3 **CONTRACTOR REQUIREMENTS AND OBLIGATIONS:** In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices law of the Commonwealth.
- 6.3.1 In connection with the performance of work under this contract, the Contractor shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate or remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age or sex.
- 6.4 **COMPLIANCE WITH EXECUTIVE ORDERS AND LAWS:** The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116, dated May 1, 1975, and of M.G.L. Ch.151B, both of which are herein incorporated by reference and made a part of this contract.
- 6.5 **NON-DISCRIMINATION:** The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age, sexual orientation or sex in employment practices, in the selection or retention of Subcontractors, or in the procurement of materials and rentals of equipment.
- 6.6 **SOLICITATIONS FOR SUB-CONTRACTS, AND PROCUREMENT OF MATERIALS AND EQUIPMENT:** In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential Subcontractor or supplier shall be notified in writing by the Contractor of the Contractor’s obligations under this contract relative to non-discrimination and affirmative action.
- 6.7 **EQUAL EMPLOYMENT OPPORTUNITY FOR THE HANDICAPPED:** The Contractor shall comply with the provisions of Executive Order No. 143, entitled “Equal Employment Opportunity for the Handicapped,” which is herein incorporated by reference and made a part of this contract. In connection with the performance or work under this contract, the Contractor, Subcontractors and suppliers of goods and services shall not discriminate against the handicapped.
- 6.8 **SUSPENSION OF PAYMENTS:** If the Owner determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of any provision of

Article 6, it may suspend any payment or portion thereof due under the contract until the Contractor demonstrates compliance with the terms of Article 6.

- 6.8.1 This temporary suspension of payments by the awarding authority is separate from the sanctions set forth in Article 17 herein.

ARTICLE 7. CONTRACTOR'S ACCOUNTING METHODS AND REQUIREMENTS (Entire provisions of Article 7 are Statutory reference: M.G.L. Ch. 30, §39R):

- 7.1 **GENERAL:** This Article applies to "Contracts" and "Contractors" as defined in Articles 7.1.2 and 7.1.3 below. The words defined herein shall have the meaning stated below whenever they appear in this Article.

7.1.1 "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to Massachusetts General Laws, Chapter 7, Sections 38A 1/2 to 38O, inclusive, and any contract awarded or executed pursuant to Chapter 25A, Section 11C, Chapter 30, Section 39M, or Chapter 149, Sections 44A to 44H, inclusive, which is for an amount or estimated amount greater than one hundred thousand dollars (\$100,000.00).

7.1.2 "Contract" means any contract awarded or executed pursuant to Massachusetts General Laws, Chapter 7, Sections 38A 1/2 to 38O, inclusive, and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, and any contract awarded or executed pursuant to Chapter 25A, Section 11C, Chapter 30, Section 39M, or Chapter 149, Sections 44A to 44H, inclusive, which is for an amount estimated amount greater than one hundred thousand dollars (\$100,000.00).

7.1.3 "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.

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

7.1.5 "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.

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

accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.

- 7.1.7 "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.
- 7.1.8 Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.
- 7.1.9 Article 7.1.4 notwithstanding, every agreement or contract awarded or executed pursuant to Massachusetts General Laws, Chapter 7, Sections 38A 1/2 to 38O, inclusive, or Chapter 25A, Section 11C, and pursuant to Chapter 30, Section 39M or to Chapter 149, Sections 44A through 44H, inclusive, shall provide that:
- a. The Contractor shall make, and keep for at least six (6) years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor;
 - b. Until the expiration of six (6) years after final payment, the Office of Inspector General, the office of Attorney General, and the Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the contractor or of his Subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his Subcontractors;
 - c. If the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his description the date of the change and reasons therefore, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes;
 - d. 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 Section 7.1.10 prior to the execution of the contract, and
 - e. 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.
- 7.1.10 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:
- a. Transactions are executed in accordance with management's general and specific authorization;
 - b. Transactions are recorded as necessary:
 - i. To permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - ii. To maintain accountability for assets;
 - c. Access to assets is permitted only in accordance with management's general or specific authorization; and
 - d. The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.
- 7.1.11 Every Contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating

that he has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- a. 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
- b. Whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.

7.1.12 Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in Massachusetts General Laws, Chapter 4, Section 7, and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of Clause (2) of Paragraph (b).

ARTICLE 8. THE CONSULTING ENGINEER

8.1 **GENERAL:** The Owner shall retain a Consulting Engineer lawfully licensed to perform and provide Consulting Engineering (civil, electrical, mechanical) services in the State of Massachusetts. That person or entity is identified as the Consulting Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

8.1.1 Duties, responsibilities and limitations of authority of the Consulting Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner.

8.1.2 If the employment of the Consulting Engineer is terminated, the Owner shall solely and promptly employ a successor Consulting Engineer, whose status shall be that of the Consulting Engineer.

8.2 **ADMINISTRATION OF THE CONTRACT:** The Consulting Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Consulting Engineer, with the Owner's consent, issues the final Certificate for Payment. The Consulting Engineer will have authority to act on behalf of the Owner only to the extent provided for in the Contract Documents.

8.2.1 The Consulting Engineer will visit the site at intervals appropriate to the stage of construction, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consulting Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Consulting Engineer will not have control over, charge of, or be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Article 3.3.

8.2.2 On the basis of the site visits, communication with the Contractor and Subcontractors, and communication with the OWNER's Project Manager, the Consulting Engineer will keep the Owner fully informed about the progress and quality of the portion of the Work completed, and report to the Owner:

- a. Known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and
- b. Defects and deficiencies observed in the Work.

8.3 **COMMUNICATIONS AND OTHER ACTIONS FACILITATING CONTRACT ADMINISTRATION:** Except as otherwise provided in the Contract Documents, or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Consulting Engineer about matters arising out of or relating to the Contract. Communications by and with the Consulting Engineer's consultants shall be through the Consulting Engineer. Communications by and with Subcontractors and material and equipment suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

8.3.1 Based on the Consulting Engineer's and OWNER's Project Manager's evaluations of the Contractor's Applications for Payment, the Consulting Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts for the Owner's approval.

8.3.2 The Consulting Engineer as authorized by the OWNER's Project Manager has authority to reject Work that does not conform to the Contract Documents. Whenever the Consulting Engineer considers it necessary or advisable, the Consulting Engineer will have authority to require inspection or testing of the Work in accordance with Article 16, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Consulting Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Consulting Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

8.3.3 The Consulting Engineer, pursuant to Section 3.16, will review and approve, or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consulting Engineer's action will be taken in accordance with the submittal schedule approved by the Consulting Engineer or, in the absence of an approved Submittal Schedule, with reasonable promptness while allowing sufficient time in the Consulting Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Consulting Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Articles 3.3, 3.5 and 3.16. The Consulting Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consulting Engineer, or any construction means, methods, techniques, sequences or procedures. The Consulting Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

8.3.4 The Consulting Engineer, in consultation with the OWNER's Project Manager, will prepare Change Orders and may authorize minor changes in the Work as provided in Article 10.4. The Consulting Engineer will investigate and make determinations and

recommendations regarding concealed and unknown conditions as provided in Article 3.11.

- 8.3.5 The Consulting Engineer and the OWNER's Project Manager will conduct inspections to:
- a. Determine the date or dates of Substantial Completion and the date of final completion;
 - b. Issue Certificates of Substantial Completion pursuant to Article 12.7;
 - c. Receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor pursuant to Article 12.9; and
 - d. Issue a final Certificate for Payment pursuant to Article 12.9.
- 8.3.6 The Consulting Engineer will interpret and decide matters concerning performance pursuant to, and requirements of, the Contract Documents on a verbal or written request of the Owner or by a written request of the Contractor. The Consulting Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 8.3.7 Interpretations and decisions of the Consulting Engineer will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in writing or in the form of drawings.
- 8.3.8 The Consulting Engineer will review and respond to Requests for Information about the Contract Documents. The Consulting Engineer's response to such requests will be made in writing with the time limit as defined in Article 8.4 or otherwise with reasonable promptness. If appropriate, the Consulting Engineer will prepare and issue supplemental Drawings and Specifications in response to the Requests for Information.
- 8.4 **TIMELY DECISIONS BY OWNER:** (Statutory reference: M.G.L. C.30, §39P): In every case in which the Contract Documents requires the Owner, any official, or its Consulting Engineer to make a decision in interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, the decision shall be made promptly and, in any event, no later than thirty days after the written submission for decision. But if such decision requires extended investigation and study, the Owner, the official, or Consulting Engineer shall, within thirty (30) days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the 30 day period and the date by which the decision will be made.

ARTICLE 9. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- 9.1 **OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS:** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Work site under conditions of the Contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation.
- 9.1.1 When separate contracts are awarded for different portions of the Project or other construction or operations on the Work site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

- 9.1.2 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their Construction Schedules. The Contractor shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The Construction Schedule shall then constitute the schedule to be used by the Contractor, separate contractors, the Owner and the Consulting Engineer until subsequently revised.
- 9.2 **MUTUAL RESPONSIBILITY:** The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.
- 9.2.1 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Consulting Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work except as to defects not then reasonably discoverable.
- 9.2.2 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.
- 9.2.3 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided by Article 13.2.5.
- 9.2.4 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as described in Article 3.18.
- 9.3 **OWNER'S RIGHT TO CLEAN UP:** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Consulting Engineer shall allocate the cost among those responsible parties.

ARTICLE 10. CHANGES IN THE WORK

- 10.1 **GENERAL:** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated throughout the entirety of this Article.
- 10.1.1 A Change Order shall be based upon agreement among the Owner, Contractor and Consulting Engineer. A Construction Change Directive requires agreement between the Owner and Consulting Engineer, but may or may not be agreed to by the Contractor.

- 10.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order.
- 10.1.3 No Change Order or Construction Change Directive affecting either Contract Sum or Contract Time shall be granted because of seasonal or abnormal variations in temperature, humidity, or precipitation, which conditions shall be wholly at the risk of the Contractor.
- 10.2 **CHANGE ORDERS:** A Change Order is a written instrument prepared by the Consulting Engineer and signed by the Owner, Contractor and Consulting Engineer stating their agreement upon all of the following:
- a. The change of Work;
 - b. The amount of the adjustment, if any, in the Contract Sum; and
 - c. The amount of the adjustment, if any, in the Contract Time.
- 10.2.1 Upon the request of the Owner or the Consulting Engineer, the Contractor shall, without cost to the Owner, submit to the Consulting Engineer in such form as the Consulting Engineer may require, a written proposal for a Change Order in the Work. The proposal shall include the quantity and the cost of each item of material, the number of hours of work and the hourly rate for each class of labor, as well as the description and amounts of all other costs sought by the Contractor to perform the proposed Change. The Contractor shall also furnish to the Consulting Engineer, bona fide proposals from Subcontractors or suppliers for all labor, materials or equipment to be included in such work. The proposal shall be furnished promptly so as not to delay the Work and shall include an estimate of any additional time required to finish the Work.
- 10.2.2 The Contractor shall also have the authority to initiate Change Order proposals for consideration by the Owner and Consulting Engineer. The submittal of such proposals shall be in accordance with the requirements and format as identified in this Article.
- 10.2.3 Change Order proposals shall be complete and definitive and the amount of the adjustment in the Contract Sum and the Contract Time, if any, shall be stated in the proposal for all Work affected by the proposed Change. Once a Change Order is executed, the Contractor shall be required to perform all of the Work required therein (including incidental work and changes to related Work which may be required to complete the Change Order) in accordance with the Contract Documents for the amounts stated in the Change Order.
- 10.2.4 In the cost or credit to the Owner resulting from a Change in the Work, the value of such cost or credit shall be determined as follows, absent the applicability of a unit price for such item(s) set forth in the Contract:
- a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits and workers' compensation insurance;
 - b. Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
 - c. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 - d. Costs of premiums for all bonds and insurance, permit fees, and taxes related to the Work that may not otherwise be exempted by state or federal law; and
 - e. Additional costs of supervision and field office personnel directly attributable to the change.

- 10.2.5 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that result in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Consulting Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 10.3 **CONSTRUCTION CHANGE DIRECTIVES:** A Construction Change Directive is a written order prepared by the Consulting Engineer and signed by the Owner and Consulting Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may issue a Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with Contract Sum and Contract Time adjustments made accordingly if necessary.
- 10.3.1 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.
- 10.3.2 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following:
- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - b. Unit prices stated in Contract Documents or subsequently agreed upon;
 - c. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed percentage fee; or
 - d. As provided for in Article 10.3.7.
- 10.3.3 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.
- 10.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Consulting Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- 10.3.5 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be recorded and formalized as a Change Order based on the final negotiated cost of the change in work and shall be duly signed by the Town Manager and thereby made part of the contract.
- 10.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Consulting Engineer as authorized by the OWNER's Project Manager shall determine the method and 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 as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, the Contractor shall keep and present, in such form as the Consulting Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the

Contract Documents, costs for the purposes of this Article shall be limited to the following:

- a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits and workers' compensation insurance;
- b. Cost of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- c. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- d. Costs of premiums for all bonds and insurance, permit fees, and taxes related to the Work that may not otherwise be exempted by state or federal law; and
- e. Additional costs of supervision and field office personnel directly attributable to the change.
- f. The appropriated level of funding for this project.

10.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Consulting Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

10.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Consulting Engineer will make an interim determination for purposes of monthly Certifications for Payment for those costs and certify for payment the amount that the Consulting Engineer determines, in the Consulting Engineer's professional judgment, to be reasonably justified, subject to the Owner's final approval.

10.4 **MINOR CHANGES IN THE WORK:** The Consulting Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or Contract Time, and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order by the Consulting Engineer and shall be binding on the Owner and Contractor.

ARTICLE 11. TIME

11.1 **DEFINITIONS:** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

11.1.1 The date of commencement of the Work is the date established in the Agreement.

11.1.2 The date of Substantial Completion is the date certified by the Consulting Engineer in accordance with Article 12.7.

11.1.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

11.2 **PROGRESS AND COMPLETION:** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

11.2.1 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the

effective date of insurance required by Article 14 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

11.2.2 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

11.2.3 If the Consulting Engineer and/or the OWNER'S Project Manager determine that the amount of Work properly completed is less than ninety percent (90%) of the Work required to be performed pursuant to the Construction Schedule, or that there have been delays to critical paths and that in the Owner's sole discretion, there is reasonable concern that the Project will not be Substantially Complete by the date described in the Agreement, the Owner may, in addition to any other remedy it may have, direct the Contractor to take some or all of the following actions at no additional cost:

- a. Increase the number or workers in such quantities and trades as the Consulting Engineer recommends;
- b. Increase the number of working hours per shift, shift per day, working days per week, amount of construction equipment, or any combination of the foregoing in accordance with the Consulting Engineer's and OWNER's Project Manager's recommendation;
- c. Re-Schedule activities at the Consulting Engineer's and OWNER's Project Manager's discretion.

11.2.4 Nothing contained herein shall limit the Owner's rights to withhold or recover damages for delays caused by the Contractor, or any other remedy to which the Owner is entitled, pursuant to the Contract Documents or by law.

11.3 **DELAYS AND EXTENSIONS OF TIME:** (Statutory reference: M.G.L. Ch.30, §39O):
Except as otherwise provided by law and by this Paragraph, the Contractor shall not be entitled to damages on account of any hindrances or delays, avoidable or unavoidable; but if such delay is caused by awarding authority, the Contractor may be entitled to an extension of time only in which to complete the work. Said decision is to be determined by the Consulting Engineer in conjunction with the Owner.

11.3.1 The awarding 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 awarding authority; provided, however, that if there is a suspension, delay or interruption for fifteen (15) days or more due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the Contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

11.3.2 The Contractor must submit the amount of a claim under this Article to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract, and except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days (20) before the Contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

- 11.3.3 In the event a suspension, delay, interruption or failure to act by the awarding 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 this Article gives the Contractor against the Owner, but nothing in this Article shall in any way change, modify or alter any other rights which the Contractor or the Subcontractor may have against each other.
- 11.3.4 Claims arising under this Article shall be made in accordance with applicable provisions of Article 18.

ARTICLE 12. PAYMENTS AND COMPLETION

- 12.1 **CONTRACT SUM:** The Contract Sum is stated in the Agreement, and including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.
- 12.2 **SCHEDULE OF VALUES:** Where the Contract is based on a stipulated sum, the Contractor shall submit to the Consulting Engineer, before the first Application for Payment, a Schedule of Values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Consulting Engineer may require. This schedule must be approved by the Consulting Engineer and Owner, and shall be used as a basis for reviewing the Contractor's Applications for Payment.
- 12.3 **APPLICATIONS FOR PAYMENT** (Statutory reference: M.G.L. Ch.30, §39K): Within fifteen (15) days after receipt from the Contractor, at the place designated by the awarding authority if such a place is so designated, of an Applications for Payment requesting payment of the amount due for the preceding month, the Owner will make a periodic payment to the Contractor for the Work performed during the preceding month and for the materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner, upon certification by the Contractor that he is the lawful owner and that the materials are free from all encumbrances, but less:
- a. A retention based on its estimate of the fair value of its claims against the Contractor;
 - b. A retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of Massachusetts General Laws, Chapter 30, Section 39F, and
 - c. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.
- 12.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Consulting Engineer an itemized Application for Payment prepared in accordance with the Schedule of Values, for completed portions of the Work. Such application shall be signed by the appropriate Contractor representative (shall be notarized, if required), and supported by such data substantiating the Contractor's right to payment as the Owner or Consulting Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

- 12.3.2 (Statutory reference: M.G.L. Ch.30, §39K) All Applications for Payment shall be submitted to the Owner, or to its designee as set forth in writing to the Contractor, and the date of receipt by the Owner or its designee shall be marked on the estimate. All Applications for Payment shall contain a separate item listing the amount paid to each Subcontractor and Sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the Owner shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.
- 12.3.3 Submitted with every Application for Payment shall be the following minimum information relative to the time period reflected in the Application and the corresponding progress of the Work:
- a. Certified payroll records in accordance with Massachusetts General Laws, Chapter 149, Section 27B, and shall include hours worked by employees of the Contractor, Subcontractors and Sub-subcontractors;
 - b. Copies of invoices of any supplies or materials used, or services performed in the completion of Work, or stored materials (see Article 12.3.8), and in particular, invoices for police officers for work performed on police details within the last thirty (30) days; and
 - c. Any other forms or information that may be required by the Owner.
- 12.3.4 As provided in Article 10.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Change Orders or Construction Change Directives.
- 12.3.5 Five percent (5%) of all payments due the Contractor for work done and materials furnished, or stored as applicable as herein defined, will be withheld until final completion of the work, as authorized by Massachusetts General Laws, Chapter 30, Section 39G.
- 12.3.6 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.
- 12.3.7 In no case shall stored materials or equipment, whether stored at the site or at some other Massachusetts location, be considered for payment unless, at the sole discretion of the Owner, the materials or equipment are ready for and actually scheduled for prompt use. Written notice required for Payment of stored material must be made thirty (30) days in advance of the due date for the Application for Payment. Payment for materials or equipment stored on site shall require submission and approval of:
- a. A valid invoice including the unit quantity, description of the material or equipment, and cost;
 - b. Bill of Sale naming the Owner a purchaser;
 - c. Certified statement identifying the exact location of materials or equipment, that the materials or equipment are properly stored and protected, and that it will not be diverted for use and installation on a different project;
 - d. Such off-site material or equipment is to be clearly identified and set apart from other material or equipment;
 - e. Photographs of said stored material or equipment; and
 - f. An All Risk Insurance Certificate for the full invoiced value of the items, with the Owner as a Certificate Holder, Insured Party and Payee in the case of loss, with no

deductible attached. Additionally, there shall be a minimum thirty (30) day notice of cancellation to the Certificate Holder.

- 12.3.8 Should the Owner need to visit the location of the stored material or equipment to further authenticate or verify the acquisition and storage of said material or equipment, the Contractor shall pay all costs associated for the OWNER's Project Manager, Consulting Engineer or other representative of the Owner to visit the storage location.
- 12.3.9 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- 12.4 **CERTIFICATES FOR PAYMENT:** (Statutory reference: M.G.L. Ch.30, §39K): The Owner may make changes in any Application for Payment submitted by the Contractor and the payment due on said Application shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected Application for Payment shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the Owner may, within seven (7) days after receipt, return to the Contractor for correction, any Application for Payment which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.
- 12.4.1 The issuance of a Certificate for Payment will constitute a representation by the Consulting Engineer to the Owner, based on the Consulting Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Consulting Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.
- 12.5 **DECISIONS TO WITHHOLD CERTIFICATION:** The Consulting Engineer may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner, if in the Consulting Engineer's opinion the representations to the Owner required by Article 12.4.2 cannot be made or complete submittal of information required by Article 12.3.4 is not submitted. If the Consulting Engineer is unable to certify payment in the amount of the Application, the Consulting Engineer will notify the Contractor and Owner as provided in Article 12.4. If the Contractor and Consulting Engineer cannot agree on a revised amount, the Consulting Engineer will promptly issue a Certificate for Payment for the amount for which the Consulting Engineer is able to make such representations to the Owner. The Consulting Engineer may also withhold a Certificate for Payment previously issued to such extent as may be necessary in the Consulting Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Article 3.3.2 because of:

- a. Defective Work not remedied;
 - b. Third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
 - c. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
 - d. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - e. Damage to the Owner or a separate contractor;
 - f. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - g. Repeated failure to carry out the Work in accordance with the Contract Documents;
 - h. Failure of the Subcontractors to comply with mandatory requirements for maintaining Record Drawings. or
 - i. Costs incurred by the Owner as described in Article 13.2.5.
- 12.5.1 When the above reasons for withholding certification are removed or addressed by the Contractor to the satisfaction of the Consulting Engineer, certification will be made for amounts previously withheld.
- 12.6 **PROGRESS PAYMENTS:** After the Consulting Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Consulting Engineer.
- 12.6.1 The Contractor shall pay each Subcontractor and material and equipment suppliers no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in an exact manner.
- 12.6.2 The Consulting Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Consulting Engineer and Owner on account of portions of the Work done by each Subcontractor. The Owner may charge a reasonable cost based on the Consulting Engineer's time and expense to prepare the information.
- 12.6.3 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Consulting Engineer shall have an obligation to pay or to see the payment of money to a Subcontractor, except as may otherwise be required by law.
- 12.6.4 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that as required in Articles 12.6.2 through 12.6.4.
- 12.6.5 A Certificate for Payment, a Progress Payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of the Work not in accordance with the Contract Documents.
- 12.7 **SUBSTANTIAL COMPLETION:** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in

accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

- 12.7.1 (Statutory reference: M.G.L. Ch.30, §39K) Notwithstanding any provisions of this section, at any time after the value of the work remaining to be done is, in the estimation of the Owner, less than 1 percent of the adjusted contract price, or the Owner has determined that the Contractor has substantially completed the Work, the Owner may send to the Contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The Contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the Contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the Owner or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the Contractor by certified mail, return receipt requested, the Owner may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the Contractor and such termination shall be without prejudice to any other rights or remedies the Owner may have under the Contract Documents
- 12.7.2 When the Work is substantially complete, the Consulting Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or designated portion thereof unless otherwise provided for in the Certificate of Substantial Completion.
- 12.7.3 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. The Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- 12.8 Reserved – not used.
- 12.9 **FINAL COMPLETION AND FINAL PAYMENT** (Statutory reference: M.G.L. Ch.30, §39K): After the receipt of a request for final payment from the Contractor, and within sixty-five (65) days after (a) the Contractor fully completes the Work or substantially completes the Work so that the value of the Work remaining to be done is, in the estimate of the awarding authority, less than one percent (1%) of the original contract price, or (b) the Contractor substantially completes the Work, the awarding authority shall pay the Contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of Work and less (2) a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of Massachusetts General Laws, Chapter 30, Section 39F, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in said Section 39F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three (3) percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing

until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate from the Contractor, at the place designated by the awarding authority if such a place is so designated. The Contractor agrees to pay to each Subcontractor a portion of any such interest paid in accordance with the amount due each Subcontractor.

- 12.9.1 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Consulting Engineer:
- a. An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, and all certified payrolls have been submitted to the Owner;
 - b. A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;
 - c. A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
 - d. If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
 - e. All warranties;
 - f. As-built drawings;
 - g. Completed Owner training sessions for safety and operations; and
 - h. All operating manuals.
- 12.9.2 If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien in full amount thereof. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- 12.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Consulting Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Consulting Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 12.9.4 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:
- a. Liens, claims, security interests or encumbrances arising out of the Contract and remain unsettled;
 - b. Failure of the Work to comply with the requirements of the Contract Documents; or
 - c. Terms of special warranties required by the Contract Documents.
- 12.9.5 The acceptance by the Contractor of the final payment, including the retainage of five percent (5%), shall operate as a release to the Town of all claims and all liabilities to the Contractor for all work done or materials furnished in connection with the Contract,

not including replacements of any defective equipment or material or defects in work that arise over the one year maintenance period. Final payment shall be as provided in Massachusetts General Laws, Chapter 30, Section 39G.

12.9.6 Notwithstanding any article within Article 12.10, the payment to the Contractor does not, however, release them or their sureties from any obligation under this Contract.

12.10 **DIRECT PAYMENT** (Entire provisions of Article 12.10 are Statutory reference: M.G.L. Ch.30, §39F): Forthwith after the Contractor receives payment on account of an Application for Payment, 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.

12.10.1 Not later than sixty-five (65) days after each Subcontractor substantially completes his work in accordance with the Contract Documents, the entire balance due under the subcontract less amounts retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the Subcontractor; and the Owner shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the Owner less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.

12.10.2 Each payment made by the Owner to the Contractor pursuant to Article 12.10 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 Owner shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the Owner 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 this Article, the Owner shall act upon the demand as provided herein.

12.10.3 If, within seventy (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 Owner as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the Owner. The demand shall be by a sworn statement delivered to or sent by certified mail to the Owner, 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 and also a statement of the status of completion of 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 ten (10) days after the Subcontractor has delivered or so mailed the demand to the Owner 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 Owner and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a 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.

- 12.10.4 Within fifteen (15) days after receipt of the demand by the Owner, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Owner shall 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:
- a. Retained by the Owner as the estimated cost of completing the incomplete or unsatisfactory items of work;
 - b. Specified in any court proceedings barring such payment, or
 - c. Disputed by the Contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided herein if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by Article 12.10.4. The Owner shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided by this Article.
- 12.10.5 The Owner shall forthwith deposit the amount deducted from a direct payment as provided in Article 12.10.5 in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the Owner 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.
- 12.10.6 All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to Article 12.10.6 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 become payable to the Contractor and in the order of receipt of such demands from Subcontractors. All direct payments shall discharge the obligation of the Owner to the Contractor to the extent of such payment.
- 12.10.7 The Owner shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant Article 12.10.6, 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 have a right in such deductions prior to any claims against such amounts by creditors of the Contractor.
- 12.10.8 If the Subcontractor does not receive payment as provided in Article 12.10, or if the Contractor does not submit an Application for Payment for the value of the labor or materials performed or furnished by the Subcontractor and the Subcontractor does not receive payment for same when due less the deductions provided for in Article 12.10, the Subcontractor may demand direct payment by following the procedure in Article 12.10.4, and the Contractor may file a sworn reply as provided in that same Article. A demand made after the first day of the month following that for which the Subcontractor performed or furnished the labor and materials for which the Subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on an Application for Payment from the Contractor. Thereafter the Owner shall proceed as provided in this section of Articles.
- 12.10.9 Any assignment by a Subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of Massachusetts General Laws, Chapter 149, Section 29 shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the

Owner or which are on deposit pursuant to Article 12.10.6 shall be subordinate to the rights of all Subcontractors who are entitled to be paid under this section and who have not been paid in full.

12.10.10 A Contractor or a Subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposited as provided in Article 12.10.6 by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A Subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in Article 12.11.6 by a petition in equity in the superior court against the Owner and the Contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. Massachusetts General Laws, Chapter 231, Sections 59 and 59B shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to Sections 59 and 59B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any Subcontractor with the petition of one or more Subcontractors or the same general contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a Subcontractor filing a demand for direct payment for which no funds due the Contractor are available for direct payment shall have a right to file a petition in court of equity against the Owner claiming a demand for direct payment is premature and such Subcontractor must file the petition before the Owner has made a direct payment to the Subcontractor and has made a deposit of the disputed portion as provided in Articles 12.10.5 and 12.10.6.

12.10.11 In any petition to collect any claim for which a Subcontractor has filed a demand for direct payment the court shall, upon motion of the Contractor, reduce by the amount of any deposit of a disputed amount by the Owner as provided in Articles 12.10.5 and 12.10.6 by any amount held under a trustee writ or pursuant to a restraining order or injunction.

ARTICLE 13. PROTECTION OF PERSONS AND PROPERTY

13.1 **SAFETY PRECAUTIONS AND PROGRAMS:** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs at the Work Site and in connection with the performance of the Contract.

13.1.1 (Statutory reference: M.G.L. Ch.149, S44F(1)) The Contractor shall install suitable weather protection in the Work area for all employees, material or equipment that may be affected thereby, and that he shall furnish adequate heat in the Work area so protected during the months of November through March.

13.1.2 (Statutory reference: M.G.L. Ch.149, §129A) Any part of the Work pursuant to this Contract Document in which a trench is to be dug to a depth of five feet or more, except a trench for laying of water pipes dug to a depth of six and one-half feet which will be open less than forty-eight hours, such trench shall be shored and braced in

conformity with the rules and regulations for the prevention of accidents in construction operations, as adopted and enforced by the attorney general.

- 13.2 **SAFETY OF PERSONS AND PROPERTY:** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- a. Employees on the Work and other persons who may be affected thereby;
 - b. The Work and materials and equipment to be incorporated therein, whether in storage on or off the Work site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - c. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 13.2.1 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 13.2.2 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- 13.2.3 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified or licensed personnel.
- 13.2.4 The Contractor shall promptly remedy damage any loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Articles 13.2.2 and 13.2.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Articles 13.2.2 and 13.2.3, except damage or loss attributable to acts or omissions of the Owner or Consulting Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Article 3.20.
- 13.2.5 The Contractor shall designate a responsible member of the Contractor's organization at the Work Site whose duty shall be the prevention of accidents. This person shall be the Contractor's Project Manager/Superintendent unless otherwise designated by the Contractor in writing to the Owner and Consulting Engineer.
- 13.2.6 The Contractor shall not permit any part of the Work or Work site to be loaded so as to cause damage or create an unsafe condition.
- 13.3 **INJURY OR DAMAGE TO PERSON OR PROPERTY:** If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

- 13.3.1 The Contractor shall be responsible for the adequate support and safety of all scaffolding, staging and hoisting equipment and for temporary shoring and bracing.
- 13.3.2 The Contractor shall furnish approved hard hats, safety colored vests, eye protection and other personal protective equipment as required, approved first aid supplies, name of first aid attendant and a posted list of emergency facilities and telephone numbers.
- 13.3.3 The Contractor shall take immediate action to correct any dangerous conditions revealed or made known to it.
- 13.3.4 No unauthorized visitors shall be allowed on the Work site without the permission from the Owner, Contractor, Consulting Engineer or OWNER's Project Manager.
- 13.3.5 On projects in which the Work is performed adjacent to a building in which any portion of said building is occupied or used by employees or the public, the Contractor shall take any and all measures to protect them from harm as they pass through or otherwise utilize approved areas of the Work site.
- 13.3.6 The Contractor shall comply with the requirements of the Occupational Safety and Health Act (OSHA), the OSHA 10 hour safety certification program for workers and the Construction Act of 1969, which are incorporated herein by reference and all standards and regulations promulgated by the governmental and regulatory bodies responsible for administration thereof. The Contractor shall be responsible for compliance with such Acts, standards and regulations by its officers, agents, employees, Subcontractors, Sub-subcontractors, and material and equipment suppliers. The Contractor shall indemnify and hold harmless the Owner and its staff, the OWNER's Project Manager and the Consulting Engineer from any and all fines, costs and expenses, including, but not limited to reasonable attorneys' fees incurred by the Owner, the OWNER's Project Manager and Consulting Engineer due to violation of such Acts, standards and regulations. OSHA certifications for all Contractor and Subcontractor employees must be held on the Work site.
- 13.4 **HAZARDOUS MATERIALS:** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable human exposure, bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered at the Work site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and immediately report the condition to the Owner and Consulting Engineer in writing.
- 13.4.1 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such hazardous material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Consulting Engineer the name and qualifications of the person or entity who shall be responsible for the removal or safe containment of such hazardous material or substance. The Contractor and Consulting Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the person or entity proposed by the Owner. If either has an objection, the Owner shall propose another to whom the Contractor and Consulting Engineer have no reasonable objection. When

the hazardous material or substance has been removed or contained, Work in the affected area shall resume upon written notice by the person or entity that the affected area is safe to resume the Work. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

- 13.4.2 The Owner shall, to the extent possible, and without any waiver of any limitations applicable to the Owner, indemnify and hold harmless the Contractor, Subcontractors, Sub-subcontractors, material and equipment suppliers, Consulting Engineer, OWNER's , and their consultants, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury, damage, loss or damage as described in Article 13.4 and has not been rendered harmless, contained or removed, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such injury damage, loss or expense is due to the fault or negligence of the party seeking indemnity.
- 13.4.3 The Owner shall not be responsible under this Article 13.4 for materials or substances the Contractor brings to the Work that is necessary to carry out the Work.
- 13.4.4 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs resulting from:
- a. Remediation of a material or substance the Contractor brings to the site and negligently handles; or
 - b. Contractor's failure to perform its obligations under Article 13.4, except to the extent that the cost and expense are due to the Owner's fault or negligence.
- 13.4.5 If, without negligence or violation of law, codes, rules or regulations on the part of the Contractor, the Contractor is held liable by a government agency or other third party having legal jurisdiction in the matter for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall, to the extend, and without any waiver of any limitations applicable to the Owner, indemnify the Contractor for all costs and expenses thereby incurred.
- 13.5 **EMERGENCIES:** In an emergency affecting safety of persons or property, the Contractor shall act at their discretion to prevent threatened bodily injury, damage or loss. The Owner shall be notified immediately of any on-site emergency. Changes to the Contract Sum or Contract Time claimed by the Contractor on account of an emergency shall be determined pursuant to Articles 10 and 18.

ARTICLE 14. INSURANCE AND BONDS

- 14.1 **CONTRACTOR'S LIABILITY INSURANCE:** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the Commonwealth of Massachusetts and or acceptable to the Town of Barnstable, such insurance as will protect the Contractor from claims set forth below, which may arise out of or result from the Contractor's operations and completed operations under the Contract, and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor, Sub-subcontractor, material or equipment supplier, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, for the following:

- a. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- b. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- d. Claims for damages insured by usual personal injury liability coverage;
- e. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- f. Claims for damages because of bodily injury, death of a person, or property damage arising out of ownership, maintenance or use of a motor vehicle;
- g. Claims for bodily injury or property damage arising out of completed operations; and
- h. Claims involving contractual liability insurance applicable to the Contractor's obligations under Article 3.20.

14.1.1 The Contractor shall specifically purchase and maintain insurance in the type and amount shown below. The insurance required by Article 14 shall include all major divisions of coverage, and shall be on a comprehensive general basis, including Premises and Operations (including X-C-U), Owner's and Contractor's Protective, Products and Completed Operations and Owned and Non-Owned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or the following limits, whichever is greater:

- a. Commercial General Liability, including Products/Completed Operations, with no exclusions for explosions, collapse, and underground damage (XCU) for Bodily Injury and Property Damage in the following limits:
 - 1. \$1,000,000 Each Occurrence;
 - 2. \$2,000,000 General Aggregate;
 - 3. \$100,000 Fire Damage;
 - 4. \$5,000 Medical Expense;
 - 5. \$1,000,000 Personal and Adv. Injury;
 - 6. \$2,000,000 Products Comp./Op. Agg.
- b. Automobile Liability (Owned, Non-Owned, Hired and Scheduled):
 - 1. \$1,000,000 Each Occurrence;
- c. Umbrella Liability:
 - 1. \$1,000,000 Each Occurrence;
 - 2. \$2,000,000 Annual Aggregate;
- d. Workers' Compensation Insurance (statutory)
- e. Protection and Indemnity (P+I) with a liability limit equal to or greater than \$1,000,000.

14.1.2 Insurance coverage must be written with carriers rated as "A" or better by Best's Service or equivalent. As an alternate, but with the Town's prior approval, the Contractor may purchase an Owner's & Contractors Liability Policy naming the Town of Barnstable as an insured with limits of \$5,000,000 per occurrence and \$5,000,000 aggregate. All insurance shall be written on an occurrence basis and not on a claims-made basis. Coverages shall be maintained without interruption from date of commencement of the Work until date of Final Payment, and termination of any coverage required to be maintained after Final Payment. **The Owner, Consulting Engineer and OWNER's Project Manager shall be added as "Additional Insureds" and as loss payees on all policies.** The Contractor's insurance in all applicable instances shall be primary insurance to all insurance carried by the Owner.

14.1.3 Under all insurance coverage, required or not required by the Town, the Contractor shall indemnify, and hold harmless the Town of Barnstable, its elected or duly appointed offices, directors and employees against any claim based upon negligent,

accidental or intentional acts or omissions of the contractor, its employees or its agents in providing its services to employees of the municipality or their dependants pursuant to the agreement and as stated in Article 3.20.

- 14.1.4 Each Subcontractor and Sub-subcontractor shall purchase and maintain insurance in the amount and type at least equal to the limits stated in these documents, and provisions of Articles 14.1 and 14.1.2 shall be equally applicable to them. Each Subcontractor and Sub-contractor shall provide certificates of such insurance to the Owner, unless such shall be included in the certifications submitted by the Contractor.
- 14.1.5 Certificates of Insurance acceptable to the Owner and confirming the insurance coverages required in Articles 14.1 and 14.1.2 shall be provided to the Owner in accordance with Article 14.4.7. The Owner shall have no obligation to execute the Contract, and may award the Contract to the next lowest responsible and eligible bidder, if such insurance certificates have not been provided to the Owner within ten (10) days after the presentation of the Contract to the Contractor for execution. These certificates and the insurance policies required herein shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. These certificates shall set for evidence of all coverages required herein. The form of certificate shall be the ACCORD Form, supplemented as necessary as may be required by the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage. If any of the insurance coverages are required to remain in force after final payment and are reasonably available. An additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment as required by Article 12.9 Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.
- 14.1.6 Failure of the Contractor to provide and continue in force any insurance policy required herein may be deemed by the Owner as a material breach of this Contract, and may constitute sufficient grounds for immediate termination of the Contract.
- 14.1.7 The Owner's authority to review certificates and policies of insurance, and its decision to raise or not to raise any objections about those certificates and policies shall not in any way give rise to any duty or responsibility on the part of the Owner to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor, material or equipment supplier, or any other party.
- 14.1.8 The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in Article 15, and at all times after that when the Contractor may be correcting, removing or replacing defective Work. The Completed Operations insurance shall be maintained for two (2) years after the Contractor's receipt of Final Payment.
- 14.2 **WORKERS' COMPENSATION INSURANCE** (Statutory reference: M.G.L. Ch.149, §34A):
The Contractor shall, before commencing performance of the contract, provide by insurance for the payment of compensation and the furnishing of other benefits under Massachusetts General Laws, Chapter 152 to all persons to be employed under the contract, and the Contractor shall continue such insurance in full force and effect during the term of the contract. Sufficient proof of compliance with this Article must be furnished at the time of execution of this contract. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the contract and shall operate as an immediate termination thereof. No cancellation of such

insurance, whether by the insurer or by the insured shall be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the awarding authority at least fifteen (15) days prior to the intended effective date thereof, which date shall be expressed in said notice.

- 14.2.1 Due to the nature of the work on water, in the bid submission documents, the Contractor must also demonstrate compliance and coverage under its regular workers compensation program with the United States Longshoreman and Harbor-workers Act (LHWCA)(Title 33 USC, Chapter 18, Section 901 et seq.). This is commonly referred to as USL&H coverage.
- 14.3 **OWNER'S LIABILITY INSURANCE:** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability and property insurance during the term of the Work, or at such times as the Owner has made a determination of Substantial Completion in a portion of or the total Work as identified in Article 12.7.4,
 - 14.3.1 The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents, or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, Contractor, Subcontractor and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.
- 14.4 **PROPERTY INSURANCE:** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and start-up, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Consulting Engineer's and Contractor's services and expenses required as a result of such insured loss.
 - 14.4.1 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
 - 14.4.2 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by an appropriate Change Order.
 - 14.4.3 If, during the Work construction period, the Owner insures properties, real or personal, or both, at or adjacent to the Work site by property insurance under policies separate from those insuring the Project, or if after Final Payment, property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Article 14.4.6 for damages caused by fire or other causes of loss covered by this separate property insurance.
 - 14.4.4 Before an exposure to loss may occur, upon request by the Contractor, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by Article 14.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced until at least thirty (30) days prior written notice has been given to the Contractor.

- 14.4.5 The Owner shall have the power to adjust and settle with its insurer any loss for which it has obtained insurance pursuant to Article 14.3.
- 14.4.6 Upon the occurrence of an insured loss, the Owner and the Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information, and the distribution of any insurance proceeds. If, after such a loss, no special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order or Change Directive.

ARTICLE 15. UNCOVERING AND CORRECTION OF WORK

- 15.1 **UNCOVERING WORK:** If a portion of the Work is covered contrary to the Consulting Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Engineer Consulting Engineer, be uncovered for the Consulting Engineer's examination and be replaced at the Contractor's time and expense without change to either the Contract Sum or Contract Time.
 - 15.1.1 If a portion of the Work has been covered that the Consulting Engineer has not specifically requested to examine prior to its being covered, the Consulting Engineer, with the Owner's agreement, may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs. Depending on the cause of the faulty Work, change to either the Contract Sum or Contract Time may be considered.
- 15.2 **CORRECTION OF WORK:** The Contractor shall promptly correct Work rejected by the Consulting Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the costs of uncovering and replacement, and compensation for the Consulting Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense without change to either the Contract Sum or Contract Time.
 - 15.2.1 In addition to the Contractor's obligations under Article 3.5, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Article 12.9, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one (1) year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable

time during that period after receipt of notice from the Owner or Consulting Engineer, the Owner may correct it in accordance with Article 2.6.

- 15.2.2 The one (1) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.
- 15.2.3 The one (1) year period for correction of Work shall not be extended by corrective Work performed by the Contractor after Substantial Completion for correction work necessary as a result of damage caused by the Owner or a separate contractor.
- 15.2.4 The Contractor shall remove from the Work site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor or accepted by the Owner.
- 15.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
- 15.2.6 Nothing contained in the entirety of Article 2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in this Article relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- 15.3 **ACCEPTANCE OF NON-CONFORMING WORK:** If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment has been made. Owner's acceptance of Work under this provision must be in writing, signed by the OWNER's Project Manager.

ARTICLE 16. TESTS, INSPECTIONS AND APPROVALS

- 16.1 **TESTS, INSPECTIONS AND APPROVALS:** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Consulting Engineer timely notice of when and where tests and inspections are to be made so that the Consulting Engineer may be present for such procedures. The Owner shall bear costs of:
 - a. Tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded; and
 - b. Tests, inspections or approvals where applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

- 16.1.1 If the Consulting Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Article 16, the Consulting Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an individual or entity acceptable to the Owner, and the Contractor shall give timely notice to the Consulting Engineer of when and where tests and inspections are to be made so that the Consulting Engineer may be present for such procedures. Such costs, except as provided in Article 16.1.3, shall be at the Owner's expense.
- 16.1.2 If such procedures for testing, inspection or approval under Articles 16.1 and 16.1.2 reveal failure of the portions of Work to comply with requirements established by the Contract Documents, all costs, including the cost of re-testing made necessary by such failure, including those of repeated procedures and compensation for the Consulting Engineer's services and expenses, shall be at the Contractor's expense.
- 16.1.3 The Contractor shall obtain and deliver promptly to the Consulting Engineer any permits, certificates of final inspection of any part of the Contractor's Work, and operating permits for any mechanical apparatus (if applicable). Receipt of such permits or certificates by the Consulting Engineer shall be a condition precedent to determining that the Work is Substantially Complete.
- 16.1.4 If the Consulting Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Consulting Engineer will do so promptly, and where practicable, at the normal place of testing.
- 16.1.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

ARTICLE 17. TERMINATION OR SUSPENSION OF THE CONTRACT

- 17.1 **TERMINATION BY THE OWNER FOR CAUSE:** The Owner may terminate the Contract if the Contractor:
- a. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - b. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and Subcontractors;
 - c. Repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
 - d. Otherwise is guilty of substantial breach of a provision of the Contract Documents;
 - e. Assigns any portion of the Contract between the Contractor and the Owner, or otherwise assigns any portion of the Contractor's responsibilities to a third party without the express approval of the Owner; or
 - f. The Contractor files for bankruptcy.
- 17.1.1 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's Surety, if any, seven (7) days written notice, terminate employment of the Contractor and may, subject to any prior rights of the Surety:
- a. Exclude the Contractor from the site and take possession of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor;
 - b. Accept assignment of subcontract pursuant to Article 4.4; and

- c. Finish the Work by whatever reasonable method the owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- 17.1.2 When the Owner terminates the Contract for one of the reasons stated in Article 17, the Contractor shall not be entitled to receive further payment until the Work is finished.
 - 17.1.3 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Consulting Engineer and OWNER's Project Manager services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, application, and this obligation for payment shall survive termination of the Contract.
 - 17.2 **TERMINATION BY OWNER FOR EXTRAORDINARY DELAY:** Should the Contractor's performance of the Work be delayed for ninety (90) or more days pursuant to any provision in Article 11.3, the Owner shall have the authority to terminate the Contract.
 - 17.2.1 In the case of such termination due to delay, the Contractor shall only be entitled to receive payment for Work executed to the date of such termination.
 - 17.3 **TERMINATION BY THE OWNER FOR CONVENIENCE:** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.
 - 17.3.1 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
 - a. Cease operations as directed by the Owner in the notice;
 - b. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
 - c. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
 - 17.3.2 In the case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.
 - 17.4 **SUSPENSION BY THE OWNER FOR CONVENIENCE:** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period as the Owner may determine.
 - 17.4.1 The Contract Sum and Contract Time shall be adjusted for increases thereto caused by suspension, delay or interruption as described in Article 17.2. Adjustment of the Contract Sum shall include reasonable overhead and profit as may be defined in the Contract Documents. No adjustment shall be made to the extent that:
 - a. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
 - b. An equitable adjustment is made or denied under another provision of the Contract.

ARTICLE 18. CLAIMS AND DISPUTES

- 18.1 **DEFINITION OF CLAIM:** A claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question

between the Owner and the Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

- 18.2 **NOTICE OF CLAIMS:** Claims by either the Owner or Contractor must be initiated by written notice, as provided herein, to the other party. Claims by either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.
- 18.2.1 The failure of either party to provide written notice in strict accordance with this Article shall result in either party having waived its claim. Written notice submitted by the Contractor must include pricing of the Claim in accordance with Article 10.
- 18.3 **CONTINUING CONTRACT PERFORMANCE:** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 12.7 and Article 17 in its entirety, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.
- 18.4 **CLAIMS FOR ADDITIONAL COST:** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Article 13.4 or 13.5.
- 18.4.1 The Contractor hereby acknowledges that the Owner has the contractual right to delay the Work. Such right may not be exercised unreasonably. In addition, the Contractor shall not be entitled to additional compensation as a result of delay, even if caused by the Owner or those for whom the Owner is responsible. The Contractor's sole remedy for any delay is an extension of time, notwithstanding the above.
- 18.5 **CLAIMS FOR ADDITIONAL TIME:** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- 18.5.1 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled Work.
- 18.5.2 No increase in Contract Time will be allowed for Work which is delayed as a result of the Contractor's failure to timely submit, revise or re-submit shop drawings, product data and/or samples.
- 18.5.3 Any claim or dispute outstanding, or otherwise not settled between the Owner and Contractor may be brought by either party to the appropriate State of Massachusetts court having jurisdiction in the matter. The Appellant shall notify the other party promptly at the time of the filing of the matter in court.
- 18.6 **NOTIFICATION OF SURETY:** In the event of a Claim against the Contractor, the Owner may, but is not obligated to notify the Surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the Claim.

18.7 **MECHANIC'S LIEN:** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

ARTICLE 19. MISCELLANEOUS PROVISIONS

19.1 **FOREIGN CORPORATIONS:** Each and every contractor awarded a contract pursuant to this bid shall comply with the provisions of Massachusetts General Laws, Chapter 30, Section 39L and Chapter 156D as they relate to Foreign Corporations.

ARTICLE 20. TRAFFIC CONTROL AND BARRICADES

Contractor shall coordinate with the police and fire departments and shall initiate all measures to include erection of barricades, to insure the safety of vehicular and pedestrian traffic in the area adjacent to construction, if required for the project.

- 20.1 No excavation shall be left open overnight.
- 20.2 Contractor shall notify the Town 24 hours in advance of any pavement cut and shall at that time supply any estimate of the duration of work involving disruption of traffic.
- 20.3 Any paving cuts left overnight shall be marked with an approved illuminated warning device.
- 20.4 Refer to Standard Specification Section 850 for general policy and description of warning devices.

ARTICLE 21. PARTIAL AWARD

- 21.1 The Owner reserves the right to award all or part of the Contract item stated in the specification or to reduce the amount of work under any item by agreement with the lowest eligible bidder.
- 21.2 A number of alternate prices may be requested in the proposal and the Town reserves the right to award the Contract on the basis of any one of the proposed alternatives.

ARTICLE 22. PRE-BID CONFERENCE

22.1 A non-mandatory pre-bid conference will be held at **2:00 pm on Tuesday, November 10, 2015** at the Department of Public Works 382 Falmouth Road, Hyannis, MA 02601. An on-site visit will follow the pre-bid conference meeting.

ARTICLE 23. ROAD OPENING/TRENCH PERMIT

23.1 The Contractor, if required, shall apply to the Town for a Road Opening/Trenching Permit at least 24 hours in advance of commencement of work in the Town right-of-way or on Town property. A form for this purpose can be obtained from the Department of Public Works Administration and Technical Support Division. The cost of the Permit is \$160.00.

ARTICLE 24. NOTIFICATION OF UTILITIES

- 24.1 In accordance with Chapter 502 of the Acts of 1980, the Contractor shall notify the applicable Water District, Nstar Electric, Comcast, Verizon Telephone Company and National Grid, 72 hours, Saturdays, Sundays and holidays excluded prior to commencing work on the site. Evidence of this notification must be furnished to the Town in order to obtain the road opening permit of Section 3.21 of these Contract General Conditions.

NOTIFICATION OF UTILITIES

The following utility companies which may maintain underground lines or equipment in the project area may be contacted for the required notification of excavation by a single call to DIG-SAFE CENTER 1-888-344-7233.

NSTAR (electric) 1-800-642-7070
P.O. Box 70
Hyannis, MA 02601

VERIZON (telephone) 508-394-0973
44 Old Town House Road
South Yarmouth, MA 02664

NATIONAL GRID (gas) 508-760-7500
127 White's Path
South Yarmouth, MA 02664

COMCAST (cable) 508-543-9022 x 7801
Michael Ahearn, Construction Manager Mike_Ahearn@cable.comcast.net
85 East Belcher Road
Foxboro, MA 02035

In addition, direct contact must be made with the applicable Water District Office.

HYANNIS

Water Supply Division
47 Old Yarmouth Road
Hyannis, MA 02601
508-775-0063

CENTERVILLE, MARSTONS MILLS AND OSTERVILLE

Centerville-Osterville Water District
1138 Main Street
Osterville, MA 02655
508-428-6691

COTUIT

Cotuit Water District
4300 Falmouth Road
Cotuit, MA 02635
508-428-2687

BARNSTABLE VILLAGE

Barnstable Fire District Water Depart.
1841 Phinney's Lane
Barnstable, MA 02630
508-362-6498

Dig-Safe cannot be relied upon to locate electric utilities that are "privately" owned. This can include electric cables located in public ways that run from utility poles to buildings.

It is therefore incumbent upon all Contractors to ascertain if any electric cables are located in any area prior to excavation. This will be done at the Contractor's expense.

Farrell Electric, Inc.
Holmes Road
North Eastham, MA 02651
508-255-1697

All Cape Locating
Don Costa
1-800-760-3785

Willman Electric, Inc.
1199 Pitchers Way
Hyannis, MA 02601
508-775-2568

END OF SECTION

SECTION 4
SPECIAL CONDITIONS

See Section 16, Supplemental General and Special Conditions

SECTION 5

PROPOSAL SUBMITTAL REQUIREMENTS

The following pages in Section 5 must be filled out in their entirety by the Bidder and submitted with the bid. Additionally, a 5% bid deposit in the form of a bid bond, bank or certified check is required with your bid submittal.

Form of General Bid	Pages 67-68
Schedule of Prices	Pages 69
Certificate of Non-Collusion 70	Page
State Tax Certification Clause	Page 70
OSHA Requirements and Certification	Pages 71-72
Reference Sheet	Page 73-74
List of Sub-Contractors	Page 75
List of All Equipment to be Used	Page 76

**Include the following information with Bid Submission:

1. Proposed Construction Schedule.
2. Contractor experience within the last five (5) years with similar projects that have been successfully completed along with applicable project references.

Note: 100% Payment and Performance Bonds and Certificate of Insurance are required with submission of the signed contract.

MBE/WBE Participation documentation may be submitted with bid but shall be submitted no later than five (5) working days after bid opening.

REQUIRED BID SUBMITTAL FORM

**CONTACTOR SUPPORT SERVICES
BARNSTABLE HARBOR OUTER ENTRANCE
CHANNEL DREDGING & NOURISHMENT PROJECT
Town of Barnstable**

FORM FOR GENERAL BID

To: Town of Barnstable, Awarding Authority

From:

Name of Contractor

- A. **Bid:** The undersigned proposes to furnish all labor and materials required for, **CONTRACTOR SUPPORT SERVICES - BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT**, Town of Barnstable, Massachusetts, in accordance with the accompanying plans and specifications prepared by CLE Engineering, Inc. as specified subject to the additions and deductions according to the terms of the specifications, for the lump sum price of:

_____ T
Total Contract Price in Words (which governs)

Dollars (\$ _____) (in numbers)

- B. **Alternate Prices:** There are no alternates associated with this bid.

- C. **Addendum:** This bid includes addenda numbered _____.

- D. The undersigned, as bidder, declares under penalties of perjury that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made and submitted in good faith and without collusion or fraud with any other person, firm or corporation; that he has filed all state tax returns and paid all state taxes under law; that he has carefully examined the locations of the proposed work, the proposed form of contract, the standard specifications and plans therein referred to and the Special Conditions herein annexed; and he proposes and agrees, if this proposal is accepted, that he will contract with the Awarding Authority, in the form of the contract referred to herein and to be annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work and furnish all the materials specified in the contract, in the manner and time herein prescribed, and according to the requirements of the Engineer as therein set forth.

- E. The undersigned agrees that if presented with the Notice of Acceptance for this contract, he will within ten (10) days, Saturdays, Sundays and legal holidays excluded, execute a contract in accordance with the terms of this bid and furnish a performance bond and a payment bond, each of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the awarding authority and each in the sum of one hundred (100%) percent of the contract price, the premiums for which are to be paid by the Contractor and are included in the contract price; and within five (5) days of the bid opening, the bidder will submit all M/WBE required documentation, per Section 6.

Date: _____

Name of Bidding Concern: _____

By: _____

(Signature)

(Name & Title of Person Signing Bid)

(Business Address)

(City, State, Zip Code)

Telephone: _____

Fax: _____

E-mail address: _____

REQUIRED BID SUBMITTAL FORM

SCHEDULE OF PRICES

CONTRACTOR SUPPORT SERVICES

**BARNSTABLE HARBOR OUTER ENTRANCE
CHANNEL DREDGING & NOURISHMENT PROJECT
BARNSTABLE, MA**

ITEM NUMBER	QUANTITY	ITEM WITH UNIT BID PRICE WRITTEN IN WORDS	UNIT PRICE		AMOUNT	
			DOLLARS	CENTS	DOLLARS	CENTS
1	1 LS	DREDGE SEDIMENT DEWATERING/HANDLING AREA Dollars () per LUMP SUM				
2	1 LS	REMOVE & RESTORE DREDGE SEDIMENT CONTAINMENT BASIN Dollars () per LUMP SUM				
3	1 LS	REMOVE/REINSTALL GUARD RAIL Dollars () per LUMP SUM				
4	5,700 CY	LOAD/HAUL/PLACE DREDGE SEDIMENTS - SANDY NECK PUBLIC BEACH FACILITY (NOURISHMENT SITE #1) Dollars () per CUBIC YARD				
5	1 LS	FINAL GRADING DREDGE SEDIMENTS - SANDY NECK COTTAGE AREA (NOURISHMENT SITE #2) Dollars () per LUMP SUM				
TOTAL BID AMOUNT						

REQUIRED BID SUBMITTAL FORM

TOWN OF BARNSTABLE

CERTIFICATE OF NON-COLLUSION

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

FIRM _____ SIGNATURE _____

ADDRESS _____ NAME (print) _____

_____ TITLE _____

TELEPHONE _____ DATE _____

STATE TAX CERTIFICATION CLAUSE

REQUIRED BID SUBMITTAL FORM

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all State Tax returns and paid all State Taxes under law.

* Signature of Individual or
Corporate Name (Mandatory)

By: _____
Corporate Officer
(Mandatory, if applicable)

**Social Security No. (Voluntary)
or Federal Identification No.

* Approval of a contract or other agreement will not be granted unless this certification clause, is signed,

Your Social Security Number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency **will not have a contract or agreement issued, reviewed, or extended. This request is made under the authority of Mass. G.L. 62C, S.49A.

Town of Barnstable Procedures
OSHA Training Certification of Contractors

As of July 1, 2006, the Town of Barnstable will comply with the amended M.G.L. C. 30 section 39S **"Contracts for Construction: Requirements"** as follows.

The Town of Barnstable in all bids and contracts that fall under the application of this law, as amended, will require bidders and/or contractors to comply with the requirements of certifying that they and their employees have complied with M.G.L. C.30 section 39S. This law requires successful completion of a 10 hour OSHA safety training course prior to working on the Town's worksite or in the work subject to the bid or contract.

The Town will reject any bids that do not include proper certification submitted with the bids at the posted time for bid opening, however, the town may, at its sole discretion, allow up to two (2) working days for the contractor to submit the required certification. In those cases where contracts are offered without using the sealed bid process, the same certification will be due upon contract signing.

It is expected that the contractor, by signing the certification form provided with the bid is fully meeting the language of the law, as amended, and that they are accepting the responsibilities to comply with the law for the full term of the work.

The Town of Barnstable will pay certified payrolls that are deemed complete. The statute indicates that with the first certified payroll submitted to the Town, documentation must be provided that each employee on the payroll documents submitted to the Town has successfully completed the OSHA training.

Any employee whose name does not appear on the first certified payroll must submit certification with the first payroll they do appear on. Failure to provide full documentation may result in a delay in payment to the vendor as the packet submitted for payment would be determined to be incomplete.

Any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.

This certification requirement will go into effect for any bids received or contracts awarded after July 1, 2006 in accordance with M.G.L. C30 39s as amended by Chapter 306 of the Acts of 2004.

REQUIRED BID SUBMITTAL FORM

**CERTIFICATION
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) TRAINING**

In accordance with Massachusetts General Law Chapter 30, Section 39S, as amended by Chapter 306 of the Acts of 2004, effective 7/1/06, for all contracts for the construction, reconstruction, alteration, remodeling or repair of any public work or the construction, reconstruction, installation, demolition, maintenance or repair of any public building estimated to cost more than \$10,000. the Contractor hereby certifies to the following:

(a) (1) that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

(b) Any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.

(c) The attorney general, or his designee, shall have the power to enforce this section including the power to institute and prosecute proceedings in the superior court to restrain the award of contracts and the performance of contracts in all cases where, after investigation of the facts, he has made a finding that the award or performance has resulted in violation, directly or indirectly, of subsection (b), and he shall not be required to pay to the clerk of the court an entry fee in connection with the institution of the proceeding.

The undersigned hereby certifies under the penalties of perjury to the above:

Company: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Telephone: _____

Fax: _____

CONTRACTOR REFERENCES

**CONTACTOR SUPPORT SERVICES
BARNSTABLE HARBOR OUTER ENTRANCE
CHANNEL DREDGING & NOURISHMENT PROJECT
BARNSTABLE, MA**

BIDDER NAME: _____

Bidders must provide a list of at least 5 references to which similar size and scope projects have been completed within the past five (5) years, along with a name of a contact person and phone numbers. (Municipalities desired, if applicable). Additionally, please attach to this form, a complete list of ongoing projects, projects completed within the past two years including project contact names, values and contact names and numbers. Town reserves the right to obtain additional references at their option. The Town shall interpret whether project references are similar in scope and size.

1. Owner: _____ Project Date: _____

Contact: _____ Phone: _____

Project Value and Description: _____

2. Owner: _____ Project Date: _____

Contact: _____ Phone: _____

Project Value and Description: _____

3. Owner: _____ Project Date: _____

Contact: _____ Phone: _____

Project Value and Description: _____

4. Owner: _____ Project Date: _____
Contact: _____ Phone: _____
Project Value and Description: _____

5. Owner: _____ Project Date: _____
Contact: _____ Phone: _____
Project Value and Description: _____

REQUIRED BID SUBMITTAL FORM

LIST OF SUB-CONTRACTORS

**CONTACTOR SUPPORT SERVICES
BARNSTABLE HARBOR OUTER ENTRANCE
CHANNEL DREDGING & NOURISHMENT PROJECT
BARNSTABLE, MA**

Any person making a bid or offer to perform the work, shall in his or her bid or offer, set forth:
(a) The name and location of the place of business of each subcontractor who will perform work or labor or render service to the prime Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the Commonwealth of Massachusetts who, under subcontract to the primary Contractor specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime Contractor's total bid; (b) The portion of the work which will be done by each such subcontractor under this act. The prime Contractor shall list only one subcontractor for each such portion as defined by the prime Contractor in his or her bid.

Any item of work, which does not set forth a designated Subcontractor will be done by the Prime Contractor.

Name & Address

Portion of Work

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(Prime Contractor)

Signed by: _____
Title: _____

REQUIRED BID SUBMITTAL FORM

LIST OF ALL EQUIPMENT TO BE USED

**CONTACTOR SUPPORT SERVICES
BARNSTABLE HARBOR OUTER ENTRANCE
CHANNEL DREDGING & NOURISHMENT PROJECT
BARNSTABLE, MA**

Contractor is required to submit for review copies of all applicable current inspections and certificates, as applicable. Use additional sheets as necessary.

Proposed Equipment:

Type/Name	Manufacturer	Age & Condition

Signed by: _____
Title: _____

SECTION 6

TOWN OF BARNSTABLE

Minority and Woman Owned Business Participation Requirements

10.4% combined MBE/WBE participation requirements apply to this bid. See attached Town of Barnstable MBE/WBE Policy for forms to be submitted within five (5) days after receipt of bid. (separate pdf)

REQUESTS FOR WAIVER OR REDUCTION MUST BE RECEIVED BY THE COMPLIANCE OFFICER NO LATER THAN 11/10/15 WITH EVIDENCE OF DUE DILIGENCE TO SUPPORT REQUEST. IF WAIVER OR REDUCTION GRANTED, THE CHANGE WILL BE REFLECTED IN AN ADDENDUM TO THIS BID.

SECTION 7

PREVAILING WAGE RATES

Prevailing wages, attached hereinafter, apply to this project and are a part of this Contract.

SECTION 8

OWNER-CONTRACTOR AGREEMENT FORM

TOWN OF BARNSTABLE, MASSACHUSETTS

AGREEMENT BETWEEN CONTRACTOR AND TOWN OF BARNSTABLE

THIS AGREEMENT, made this _____ day of _____ 2015 by and between the TOWN OF BARNSTABLE, Massachusetts, hereinafter called Town of Barnstable, and CONTRACTOR NAME with legal address and principal place of business at

_____ hereinafter called Contractor:

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the TOWN OF BARNSTABLE, the CONTRACTOR hereby agrees with the TOWN OF BARNSTABLE to commence and complete the **CONTRACTOR SUPPORT SERVICES BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT**, hereinafter called the Project, for the consideration set forth in the Proposal and all extra work in connection therewith, under the terms as stated in the General and Supplemental General Conditions of the Contract; and at their own proper cost and expense to furnish all the materials supplies, machinery, equipment, tools, superintending, labor, insurance, and other accessories and services necessary to complete said Project in accordance with the conditions and prices stated in the bid submittal dated _____ and the Construction Specifications/**Invitation for bid dated _____, 2015** including Addendums _____ thereto, all of which are made a part hereof and collectively evidence and constitute the Contract.

Work Schedule – Construction is anticipated to commence on/about December 1, 2015. All work to performed under this Contract shall be completed by **March 1, 2016**. Construction may begin upon Notice to Proceed.

Contract Value - \$ _____

Force Majeure - The Lease shall be subject to Force Majeure considerations. Either party hereto shall be excused from performance of any act under the Lease if prevented from the performance of any act required by reasons of strikes, lockouts, labor trouble, inability to procure materials, failure of power, fire, winds, Acts of God, riots, insurrections, war or other reason of a like nature not reasonably within the control of the party. The period for the performance of such obligation shall be extended for an equivalent period for no additional cost. Continued prevention from performance by such causes for periods aggregating sixty (60) or more days shall be deemed to render performance impossible, and either party shall thereafter have the right to terminate this Lease.

Termination of Contract - Subject to the provisions of the section explaining Force Majeure, if the Contractor shall fail to fulfill in a timely and satisfactory manner its obligations under this agreement, or if the Contractor shall violate any of the covenants, conditions, or stipulations of this agreement, which failure or violation shall continue for seven (7) business days after written notice of such failure or violation is received by the contractor, then the municipality shall thereupon have the right to terminate this agreement by giving written notice to the contractor of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination.

Insurance - The Contractor shall maintain insurance with minimum limits as defined in the Invitation for

Bid, Special Conditions for the entire duration of the project work to be performed, and provide a certificate of insurance with the Town of Barnstable named as an additional insured. Renewal certificates of insurance must be submitted to the Town of Barnstable, Risk Management, 230 South St., Hyannis, MA 02601 on a yearly basis.

Governing Law – This contract is governed by the laws of the Commonwealth of Massachusetts.

Massachusetts General Law Chapter 3039M hereby applies to this contract. **Prevailing Wage Rates dated** apply to this contract. The contractor shall submit weekly certified payrolls with invoices to Town of Barnstable, Attn: John Juros, Town of Barnstable, Structures & Grounds, 800 Pitchers Way, Hyannis, MA 02601. OSHA 10 certification required for all employees and subcontractors performing work on the job site. A one hundred (100%) payment and performance bond is required with the signed contract.

Contractor will defend, indemnify and hold harmless the Town of Barnstable and its employees against any and all claims for damages on account of bodily injury, including death, property damage, personal injury, and advertising injury by any act or omission due to negligence of the Contractor, subcontracts, its agents, or employees to any property of or under the control of the Town of Barnstable during the term or any extension of the resultant agreement, and in case of any action or actions or other legal proceedings shall be brought or instituted against the Town of Barnstable on account of any such claims, Contractor shall indemnify and hold harmless the Town of Barnstable. However, should the claim be due to the negligence of the Town of Barnstable and/or its employees, Contractor shall be held harmless, provided that nothing contained herein or elsewhere in this agreement constitutes an express or implied waiver of the Town of Barnstable's limited liability.

THE TOWN OF BARNSTABLE agrees to pay the Contractor for the performance of the Contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Article 1 MEASUREMENT AND PAYMENT of the Special Conditions.

The total payment shall not exceed this contract amount of \$ _____, without the written authorization of the Town of Barnstable.

IN WITNESS WHEREOF, the parties to these present have executed this Contract in the year and day first above mentioned.

Approved as to form:

By:

Ruth J. Weil, Town Attorney

CONTRACTOR

By:

TOWN MANAGER

I hereby certify that the Town of Barnstable has an appropriation to cover the cost of this contract in accordance with Ch 44 §31C of the Massachusetts General Laws.

By: _____

Mark Milne, Finance Director

SIGNATORY AUTHORITY

Project Name: **CONTACTOR SUPPORT SERVICES - BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT**

At a duly constituted meeting of _____ held on _____
Name of (Corporation) (Date)
at which all Directors were present or waived notice, it was voted that:

(Name) (Officer)

of this company, be and he/she is hereby authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or obligation in this company's name on its behalf of such

_____ under seal of the company, shall
(Officer)

be valid and binding upon this company.

A TRUE COPY,
ATTEST: _____
(Clerk)

Place of Business: _____

Date of this Contract: _____

I hereby certify that I am the clerk of the
_____ that
_____ is duly elected _____ of said
company, and the above vote has not been amended or rescinded and remains in full force and effect as
of the date of this contract

(Clerk)

(CORPORATE SEAL)

On this _____ day of _____, 2015, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document in my presence.

Notary Public
My commission expires: _____

IF A CORPORATION, COMPLETE ABOVE OR ATTACH TO EACH SIGNED COPY OF THE CONTRACT A NOTARIZED COPY OF VOTE OF CORPORATION AUTHORIZING THE SIGNATORY TO SIGN THIS CONTRACT. IF ATTESTING CLERK IS THE SAME PERSON AS THE INDIVIDUAL EXECUTING THIS CONTRACT, HAVE SIGNATURE NOTARIZED ABOVE.

SECTION 9

LABOR AND MATERIALS PAYMENT BOND

KNOWN ALL MEN AND WOMEN BY THESE PRESENT, THAT:

_____ as principal, and

_____ as surety, are held and firmly bound unto the Town of Barnstable, Hyannis, Massachusetts in the sum of:

_____ lawful money of the United State of America, to be paid to the Town of Barnstable, Hyannis, Massachusetts, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principal has made a contract with the Town of Barnstable, Hyannis, Massachusetts, bearing the date of _____ of _____, 2015, for the construction project:

**CONTACTOR SUPPORT SERVICES
BARNSTABLE HARBOR OUTER ENTRANCE
CHANNEL DREDGING & NOURISHMENT PROJECT**

Now the condition of this obligation is such that if the principal shall pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the surety of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purpose or items set out in, and subject to, the provisions of Massachusetts General Laws, Chapter 30, Section 39A, and Chapter 149, Section 29, as amended, then this obligation shall become null and void; otherwise it shall remain in full force and virtue.

IN WITNESS THEREOF, we hereunto set our hands and seals this

_____ day of _____, 2015.

(Seal)

By: _____

By: _____

SECTION 10

PERFORMANCE BOND

KNOW ALL MEN AND WOMEN BY THESE PRESENT, THAT:

as principal,

and

as surety,

are held and firmly bound unto the Town of Barnstable, Hyannis, Massachusetts, in the sum of \$_____ lawful money of the United States of America, to be paid to the Town of Barnstable, Hyannis, Massachusetts, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principal has made a contract with the Town of Barnstable, Hyannis, Massachusetts, bearing the date of _____, 2015, for the construction of Project:

**CONTACTOR SUPPORT SERVICES
BARNSTABLE HARBOR OUTER ENTRANCE
CHANNEL DREDGING & NOURISHMENT PROJECT**

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

IN WITNESS WHEREOF we hereunto set our hands and seal this _____ day of _____, 2015.

Seal

By: _____

By: _____

SECTION 11
TOWN OF BARNSTABLE
ACCEPTANCE OF BID NOTICE

DATE: _____

(Contractor Name/Address)

is hereby notified that their bid for the **CONTACTOR SUPPORT SERVICES - BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT** in accordance with Invitation for Bid dated _____ and Addendum ____ thereto, in the amount of \$ _____, dated _____ has been accepted.

It is requested that acknowledgement of this ACCEPTANCE be indicated by endorsement below by an authorized representative of the contractor, return by fax or email to 508-862-4741 or johanna.boucher@town.barnstable.ma.us and the original be returned to the Procurement Office, 230 South Street, 3rd Floor, Hyannis, MA 02601.

A formal Contract will be drawn up based on the terms of the Bid offered through the Town of Barnstable, subject to final approval by the Town Manager of the Town of Barnstable. Contractor shall provide a 100% payment and performance bond per the Invitation for Bid and supply a certificate of insurance naming the Town of Barnstable as an additional insured with the contract document.

Thomas K. Lynch, Town Manager

TO:

NAME: _____

ADDRESS: _____,

EMAIL: _____

Receipt is hereby acknowledged for the above **ACCEPTANCE OF BID**

BY: _____

Signature

DATE: _____

PRINT NAME: _____

TITLE: _____

SECTION 12

APPLICATION & CERTIFICATION FOR PAYMENT

CONTRACT # _____
TITLE: _____

CONTRACTOR:

TO: Town of Barnstable, Department of Public Works
OWNER's Project Manager

Application Date: _____

Period: From _____ to _____

NOTE: In order to receive payment for the monthly period covered by this application, this form shall be delivered to the Town of Barnstable on the third Monday of each month or the working day immediately preceding. Amounts not so applied for shall carry over to the next scheduled billing period.

CHANGE ORDER SUMMARY

Number	Date		
TOTALS			

ORIGINAL CONTRACT SUM	\$ _____
Net Change by Change Order	\$ _____
Contract Sum to Date	\$ _____
TOTAL COMPLETED TO DATE	\$ _____
Retainage	\$ _____
Total Earned Less Retainage	\$ _____
Less, Previous Certificates for Payment	\$ _____
Current Payment Due	\$ _____

The undersigned certifies that the work covered by this application has been completed in accordance with the Contract Documents, that all amounts have been paid by them for Work and Materials for which previous Certificates for Payments have been issued and payments received from the Town of Barnstable, that all Contractor and Sub-contractor payroll data for the time period covered by this application has been submitted to the Town and that the current payment shown herein is now due

CONTRACTOR:

BY: _____ DATE: _____

**SECTION 13
TOWN OF BARNSTABLE
HYANNIS, MA 02601
(508) 862-4090**

TAX EXEMPTION NUMBER

Date: _____

TO WHOM IT MAY CONCERN:

This is to certify that whenever

purchases material and supplies for projects awarded by bid for the Town of Barnstable, all materials used on these projects are tax exempt.

Our Tax Exempt number is E-046-001-079.

OWNER's Project Manager

SECTION 14

TOWN OF BARNSTABLE CHANGE ORDER

CHANGE ORDER NO. _____ DATE: _____

CONTRACT NO. _____ PROJECT NO. _____

CONTRACT TITLE: _____

CONTRACTOR'S NAME: _____

CONTRACTOR'S ADDRESS: _____

PREVIOUS CONTRACT AMOUNT \$ _____

AMOUNT OF THIS ORDER \$ _____
(decrease) (increase)

REVISED CONTRACT AMOUNT \$ _____

An (increase) (decrease) (no change) of _____ days in the contract is hereby authorized.

This order covers the contract modification hereunder described:

The work covered by this order shall be performed under the same terms and conditions as included on the original construction contract.

Change Approved:

By: _____

Contractor

Title: _____

Date: _____

TOWN OF BARNSTABLE

By: _____

Thomas K. Lynch Town Manager

Date: _____

By: _____

Mark Milne, Town Accountant
Verify funds are available for this Change Order

Date: _____

SECTION 15
TOWN OF BARNSTABLE
NOTICE TO PROCEED

DATE: _____,2015

SUBJECT CONTRACT: CONTRACTOR SUPPORT SERVICES - BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING & NOURISHMENT PROJECT.

To:

1. You are hereby given formal NOTICE TO PROCEED in accordance with the provisions of the subject contract.
2. **It is requested that acknowledgment of this NOTICE be indicated by endorsement hereon, and that the original be returned to this office.** The duplicate should be retained in your office files.

John W. Juros, OWNER's Project Manager

FIRST ENDORSEMENT

TO: Town of Barnstable
OWNER's Project Manager

Receipt is hereby acknowledged of the above **NOTICE TO PROCEED** under this contract.

PROJECT NAME: CONTRACTOR SUPPORT SERVICES - BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGONG & NOURISHMENT

By: _____

Title: _____

Date: _____