

ROWLEY MUNICIPAL LIGHTING PLANT

INVITATION FOR BID AND
CONTRACT DOCUMENTS
FOR

Tree Trimming
IFB #2024-001

Released: November 2024

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SECTION A

ROWLEY MUNICIPAL LIGHTING PLANT
INVITATION FOR BIDS- (IFB) – IFB #2024-01

The Rowley Municipal Lighting Plant invites bids for tree trimming on RMLP’s Electrical Infrastructure as set forth on the specifications and on an as-needed basis. The successful bidder will be awarded a two (2) year contract. RMLP, at its discretion shall have the option to grant the successful bidder an extension for one (1) year. Prices shall remain firm during the contract term and for any extension and the conditions of the contract shall remain the same.

Specifications may be obtained at the office of the Rowley Municipal Lighting Plant, 47 Summer Street, Rowley, Massachusetts 01969 beginning on November 4, 2024 or by contacting mbrown@rowleylight.com. They can also be found posted along with the remainder of the IFB documents on www.rmlp.org.

A mandatory pre-bid conference will be held on November 12, 2024, at RMLP’s office, 47 Summer Street, Rowley, Massachusetts 01969 starting at 10 a.m.

All questions or requests for clarification regarding this IFB should be made in writing to the attention of: mbrown@rowleylight.com

Selection of the contractor will be based upon bidder qualifications, including evidence of past performance in similar projects, and bid price. The contract will be awarded to the bidder deemed by the awarding authority to be the lowest responsible and eligible bidder.

All bids for this project are subject to applicable bidding laws of Massachusetts, including M.G.L. c. 30, § 39M as amended.

Attention is directed to the minimum wage rates to be paid as determined by the Department of Labor Standards under the provisions of M.G.L. c. 149, §§ 26-27D.

All proposals must be sealed and marked on the outside “RMLP Tree Trimming, IFB #2024-01” and be received at the office of Matt Brown, General Manager, Rowley Municipal Lighting Plant, 47 Summer Street, Rowley, Massachusetts 01969, no later than 11:00 a.m. on November 25, 2024, at which time and place they will be publicly opened and read.

The Rowley Municipal Lighting Plant reserves the right to reject any and all bids, to waive informalities and minor irregularities in bids received, if it is deemed to be in the best interest of the Rowley Municipal Lighting Plant to do so.

Rowley Municipal Lighting Plant

Matt Brown, General Manager

SECTION B

INSTRUCTIONS TO BIDDERS

1. Receipt and Opening of Bids

RMLP herein, called the Owner, acting by and through its General Manager, will receive sealed Bids for tree trimming on RMLP’s Electrical Infrastructure on an as-needed basis. Such bids shall be sealed in an envelope and marked “Tree Trimming IFB” and shall be addressed to Matt Brown, General Manager, Rowley Municipal Lighting Plant, 47 Summer Street, Rowley, MA 01969. Such bids will be received at the RMLP until 11:00 a.m., on November 25, 2024 at which time and place said bids will be publicly opened and read aloud.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. The bidder agrees that this bid shall be good and may not be withdrawn for a period of 90 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

2. Location and Work to be Done

The “Work” consists of:

Tree Trimming on RMLP’s Electrical Infrastructure per the specifications and also on an as-needed basis.

A mandatory pre-bid conference will be held at 10 a.m. on November 12, 2024, at RMLP’s office at 47 Summer Street, Rowley, MA 01969.

The successful bidder will be awarded a two (2) year contract. RMLP, at its discretion shall have the option to grant the successful bidder an extension for one (1) year. Prices shall remain firm during the contract term and for any extension and the conditions of the contract shall remain the same.

The successful bidder must be able to begin work on RMLP’s system January 7, 2025.

The location, general characteristics, schedule and principal details of the Work are indicated on plans entitled: RMLP Tree Trimming, as set forth in **Section D, SPECIFICATIONS**, along with drawings contained therein.

The Contractor shall furnish all labor, services, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of each item of the Work and as herein specified.

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

3. Preparation of Bid

Each bid must be submitted on the prescribed form, **Section C, BID FORM**. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above.

If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

The following must be included with the bid:

- Bid Form
- Bid Security/Bid Bond
- Bidder Qualifications (see Article 5)
- Corporate Resolution
- Certificate of Tax Compliance
- Foreign Corporations Certificate

Bidders, upon signed written request, may be given permission to withdraw their bids not later than one-half hour prior to the time set for the opening thereof.

4. Bid Opening Procedure

The following list of requirements shall apply to each filed bid. Bids not meeting all the requirements for timeliness and security will be rejected without opening; bids not meeting signature and addenda requirements will be rejected prior to checking of bid amounts.

Bids shall be filed at the place and before the time specified in Receipt and Opening of Bids, above.

Properly executed bid security shall be placed in a sealed envelope and shall be attached to the outside of the envelope containing the bid.

Bid signatures will be checked.

All addenda will be sent by certified mail, with return receipt requested, to all prospective bidders and the last of which will be mailed not later than five days prior to the date established for submission of bids. All bidders shall include with their bids the written acknowledgement form provided in **Section C, BID FORM**.

The total dollar amount of each bid will be read, and the three apparent lowest bids will be selected for further consideration. These three apparent low bids will be read aloud for the benefit of the other bidders and the bid opening procedure will be closed. All those present at the bid opening may examine all bids after the bid opening and after the reading of the three apparent low bids.

5. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the Owner that he has sufficient ability and experience in this class of work and sufficient capital and plant to enable him to prosecute and complete the work successfully within the time named. The Owner's decision or judgment on these matters will be final, conclusive, and binding.

The Owner may make such investigations as he deems necessary, and the bidder shall furnish to the Owner, all such information and data for this purpose as the Owner may request. In addition to the information requested in **Section C, BID FORM**, the following information must be submitted for inclusion in the bid evaluation process and the Contractor must possess the following qualifications and equipment:

- A. The Contractor must provide a description of, and references from projects of a similar size and nature for an electric utility (including utility's name, contact person, project location and dates of performance) performed in the past two (2) years.
- B. The Contractor must have at least ten (10) years experience performing work of a similar nature for an electric utility.
- C. The Foreman and Bucket Truck Operator must possess knowledge and expertise in all phases of tree trimming of overhead electrical infrastructure. The Foreman and Bucket Truck Operator must have experience working near energized 13,800 Volt electric installations.
- D. The Contractor shall submit a brief resume of the qualifications of all foremen and supervisors. A copy of the proposed Foreman's and Bucket Truck Operators resume, detailing experience working around 13,800 Volt electric installations must be attached to the bid package submitted to RMLP. The Foreman must have at least two (2) years of experience directing the type of work involved. In addition, the Foreman is required to have a minimum of five (5) years of experience as a laborer performing the type of work involved.
- E. The Contractor must have been regularly and actively engaged in the utility line clearance, tree trimming business, operating under the same business name and business organization structure for 10 years.
- F. The Contractor must also have a fully staffed location within a 25-mile radius of RMLP's service territory.
- G. The Contractor must have in place a formal documented safety program, which includes weekly tailgate safety meetings, daily written pre job briefing, and quarterly safety reviews

with a Certified Tree Care Safety Professional who is presently on staff. The Contractor shall provide RMLP with a copy of this document as part of its bid submission.

- H. The Contractor must have on staff a minimum of (3) crew foremen engaged daily in actual electrical utility line clearance and tree trimming operations who are certified Arborists and hold valid certification with the Massachusetts Arborist Association (MAA) or the ISA.
- I. The Contractor must have a minimum of three (3) full-time line clearance tree trimming work crews consisting of two (2) persons per crew.
- J. The Contractor must have the following equipment, either owned or currently leased by Contractor and available for use by Contractor's tree trimming workforce on a full-time basis, **at a minimum**:
 - Three (3) aerial lifts available that have a 70' or greater working height with dumping chip box.
 - One (1) crane, 50 ton minimum, with a main boom tip height of 150' or greater.
 - One (1) chip truck, which has a 30 yd capacity or greater.
 - One (1) whole tree chipper with grapple. 21" minimum.
 - Two (2) storm body log trucks, 50 yd capacity or greater, with a lifting capacity of four (4) tons or greater.
 - One (1) tractor w/forestry mower head, 100 hp or greater.
 - One (1) stump grinder with 100 horsepower or greater.
- K. The Contractor to show proof of compliance with Drug and Alcohol Test Procedure (D.O.T.) for CDL drivers.
- L. The Contractor shall submit proof of necessary trade licenses as required by Massachusetts law.
- M. The Contractor shall not be debarred from bidding on public projects.
- N. The Contractor should be able to respond to emergency work at all times within 2 hours of notice.

6. Conditions of Work

Each bidder must familiarize himself fully with the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all equipment and labor necessary to carry out the provisions of his contract. Insofar as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

7. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other documents will be made to any bidder orally. All information given to bidders other than by means of the plans, specifications, or by addenda, as described below, is given informally and shall not be used as the basis of a claim against the Owner.

Every request for such interpretation should be in writing addressed to:

Matt Brown, mbrown@rowleylight.com. In order to receive consideration, such request must be received at least seven days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, when issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective address furnished by them for such purposes), not later than five days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

8. Security for Payment

Simultaneously with delivery of the executed Contract, the Contractor shall furnish a surety bond for the payment of all persons performing labor and supplying equipment under this contract as specified in **Section G, PAYMENT BOND**, included herein, in the amount of fifty percent (50%) of the bid price. The surety on such bond shall be a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Owner. The bond shall remain in force for one year after final acceptance of the work by the Owner, unless the Owner, in writing, releases the Contractor from the obligation sooner.

9. Power of Attorney

Attorneys-in-fact who sign Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

10. Laws and Regulations

The bidder's attention is directed to the fact that all applicable State and Federal laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the Work ("Laws") shall apply to the contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

11. Obligation of Bidder

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his bid.

12. Information Not Guaranteed

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes and other structures is from the best sources presently available to the Owner. All such information is furnished only for the information and convenience of bidders and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface and other conditions, natural phenomena, existing pipes and other structures encountered during construction will be the same as those indicated in the Contract Documents.

It is further agreed and understood that no bidder or Contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

13. Bid Security

Each bid must be accompanied by a certified check, a bid bond, or cashier's check, payable to the Owner, in the amount of 5% of the bid price. Such checks will be returned to all except the three lowest responsible and eligible bidders within five days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids, and the remaining checks will be returned promptly after the Owner and the accepted bidder have executed the Contract, or if no notice of intent to award has been presented to the selected contractor within 30 days, Saturdays, Sundays and holidays excluded, after the date of the opening of bids, upon demand of the bidder at any time thereafter.

14. Rejection/Disqualification

The Owner reserves the right to waive any informalities or reject any and all bids, should the Owner deem it to be in the public interest to do so.

The Owner may also reject bids which in its sole judgment are incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities.

The Owner also reserves the right to reject the bid of any bidder that the Owner considers to be unqualified based on the criteria set forth in Article 5 herein.

The following, without limitation, are some of the causes, which may be considered as sufficient for the disqualification of a bidder and the rejection of his bid:

- A. More than one bid for the same work from an individual, firm, partnership or corporation.
- B. Evidence of collusion among Bidders.
- C. Poor performance in the execution of work under previous contract.
- D. Failure to achieve reasonable progress on existing contract.
- E. Default on previous contracts or failure to execute Contract Documents after award.
- F. Failure to supply Bid Bond, Certified Check or Cashier's Check.

- G. Failure to fully complete Bid Form.
- H. Failure to include information and forms required by this IFB.

15. Comparison of Bids

Bids will be compared on the basis of the total of unit prices set forth in the bid form.

16. Award of Contract

The Contract will be awarded to "the lowest responsible and eligible bidder" pursuant to M.G.L. c. 30, § 39M. Such a bidder shall possess the skill, ability and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law.

17. Statutes Regulating Competitive Bidding

Any bid which does not comply with the provisions of M.G.L. c. 30, § 39M, need not be accepted and the Owner may reject every such bid.

18. Wage Rates

Prevailing Wage Rates as determined by the Division of Occupational Safety, Department of Labor and Workforce Development under the provisions of M.G.L. c. 149, §§ 26 – 27G, apply to this project. It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Prevailing Wage Rates for those trade people who may be employed for the proposed work under this contract.

Prevailing wage rates for this project are included in **Section J, PREVAILING WAGE SCHEDULE.**

19. Contractor Records

The Contractor shall comply with the provisions of M.G.L. c. 30, § 39R, concerning Contractor records.

20. Insurance

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified in **Section H, CERTIFICATE OF INSURANCE** and in such form as shall protect him performing work covered by this Contract, or the Owner and its employees, agents and officials, from all claims and liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The Contractor covenants and agrees to hold Owner and its employees, agents and officials harmless from loss or damage due to claims for personal injury and/or property damage arising from, or in connection with operations under this Contract.

21. Terms and Conditions

The successful bidder will be expected to sign the **AGREEMENT** in **Section E**, attached to which will be Terms and Conditions to the Agreement, appearing in substantially similar form as set forth in **Section I, TERMS AND CONDITIONS**.

22. OSHA Certification

Pursuant to the provisions of M.G.L. c. 30, § 39S, the Contractor must be able to certify 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 must furnish documentation of successful completion of said course with the first certified payroll report for each employee.

SECTION C

BID FORM

Bid of _____(hereinafter called "Bidder")*

(____) a corporation, organized and existing under the laws of the state of _____

(____) a partnership

(____) a joint venture

(____) an individual
doing business as _____

To the Rowley Municipal Lighting Plant (hereinafter called "Owner").

Sir:

The Bidder, in compliance with your invitation for bids for “Tree Trimming”, having examined the specifications with related documents and being familiar with all of the conditions surrounding the construction of the proposed projects hereby proposes to furnish all labor, equipment and supplies, and to construct the projects in accordance with the contract documents at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

The Bidder hereby agrees to commence work under this contract on or before a date to be specified in writing by the Owner.

*Insert corporation, partnership or individual as applicable.

Bidder acknowledges receipt of the following addenda:

No. _____ Dated: _____

No. _____ Dated: _____

The Bidder agrees to perform the bid work described in the specifications for the following amount. Labor rates shall not include travel. Pricing shall be firm for duration of 2-year Contract and any extension thereof:

Lump sum price (This total amount will be used to determine low bidder) =

\$ _____

LABOR	Straight Time (Per Hour)	Overtime (Per Hour)	Emergency Rate (Per Hour)
Foreman			
Climber			
Groundman/Laborer			
Crane Operator			
Bucket Truck Operator			
Supervisor			
Administration/Secretary			

Equipment	Hourly Rate
Bucket Truck	
Pick-Up Truck	
Crane	
Small Dump Truck	
Log Truck	
Stump Grinder	
Small Wood Chipper	
Large Wood Chipper	

*Note: Hourly Rates are requested but selection of bidder will not be made on the basis of those rates. Rates stated herein shall be binding on the Bidder however for the duration of the 2-year Contract and any extension thereof.

The above price(s) shall remain firm for the duration of the contract and include all labor, equipment, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that all bids for this project are subject to the applicable bidding laws of the Commonwealth of Massachusetts, including M.G.L. c. 30, § 39M.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 90 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal Agreement attached in Section E, AGREEMENT.

Bid security is attached in the sum of five percent (5%) of the total bid price in accordance with the conditions of Section B, INSTRUCTIONS TO BIDDERS. The bid security may become the property of the Owner in the event the contract and bond are not executed within the time set forth above.

The selected Contractor shall furnish a payment bond in the amount of at least equal to fifty (50%) of the contract prices in accordance with Section G, PAYMENT BOND, and as stipulated in Section I, TERMS AND CONDITIONS of these specifications.

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

1. Have been in business under present name for _____ years.
2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as General Partners or Principals, are as follows:

(attach supplementary list if necessary)

3. The bidder is requested to state below what work of a similar character to that included in the proposed contract he has done, and give references (including names of contacts and telephone numbers) that will enable the Owner to judge his experience, skill and business standing (add supplementary page if necessary). Specifically, bidder is requested to provide here, attached to this page, the information requested in **Section B, INSTRUCTIONS TO BIDDERS, Article 5.**

4. Bank reference _____
(Name)

(Bank)

(Address)

(Telephone No.)

Pursuant to M.G.L. c. 62C, § 49A, 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 Required under law.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work.

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

Respectfully submitted:

Date: _____

By: _____
(Signature)

(Name of Bidder)

(SEAL - if bid is by
a corporation)

(Title)

(Business Address)

(City and State)

(Telephone Number)

SECTION D

ROWLEY MUNICIPAL LIGHTING PLANT

TREE TRIMMING SPECIFICATIONS

Section 1 - SCOPE

This Request for Proposal is for the tree trimming services, on an as-needed basis for the Rowley Municipal Lighting Plant (RMLP).

The scope of work may include but is not limited to the following as part of RMLP's overall tree trimming program:

Standard Trimming

- Maintain right of way clearance, tree trimming for high voltage power lines up to 13,800 volts.
- Daily support of one standard crew which must include at a minimum:
 - (1) Insulated bucket truck
 - (1) small wood chipper
 - (1) Groundman
 - (1) Bucket Truck Operator/Trimmer
- On days that are determined by RMLP to be "Rain Days", RMLP must have the option to keep the crew or to determine, without cost or penalty, that their services are not required.
- Contractor responsible for disposal of wood chips.

RMLP Schedule/Routes

- Feeder 3 and 4 – Jan/Feb/March 2025 (Weather permitting)
- Feeder 1 and 2 – Jan/Feb/March 2026 (Weather permitting)
- Other trimming on as-needed basis– Jan/Feb/March 2027 (*if contract extended after 2 year term/Weather permitting)

See attached Electrical System Map and Trimming Clearance Diagrams attached to this Section D.

RMLP Storm Support Requirements

- RMLP will require first right of refusal for the availability of (2) "Standard Crews" as mentioned in the "Standard Trimming" section above.
- RMLP must have the option to keep one (1) or both crews to determine in a reasonable time frame and without cost or penalty that their services are not required.

Section 2 - GENERAL TERMS

The successful bidder will be awarded a two (2) year contract as RMLP is requesting that the work be performed in segments in 2025 and 2026. RMLP, at

its discretion shall have the option to grant the successful bidder an extension for one (1) year. Prices shall remain firm during the contract term and any extension. There will be no change in contract conditions during the term or any extension thereof.

The overall performance of the successful contractor will be evaluated on an on-going basis, for performance and productivity. It is the intent of this evaluation to ensure that established performance and productivity standards are maintained or surpassed.

All work performed shall be under the general supervision and direction of RMLP or a designated representative and must meet with that person's complete satisfaction.

In addition to trimming specified for the routes set forth in the scope, other work performed may be requested on an as needed basis, including but not limited to emergency and storm situations. In the event of a storm or emergency situation, RMLP management will coordinate with the tree crew to discuss proper coverage.

All work included in this Contract shall be done in accordance with RMLP standards and specifications, unless otherwise directed. The work shall also be performed following RMLP Safety Procedures. Copies of Safety Procedures and Construction Standards are available upon request.

Response time for emergency work shall be within two (2) hours.

All overtime and emergency work shall be planned and approved with RMLP

The Contractor(s) shall provide and include in the labor base costs, all tools and incidental materials. Payment will be on a per hour basis starting at the time of arrival on the worksite.

The Contractor will arrange for Police Details when field conditions warrant. RMLP is responsible for Police Detail payments. However, Contractor will be held responsible for Police Detail payments when such payments are a result of Contractor's scheduling conflicts, cancellations or other delays/issues that the Contractor has caused.

Section 3 - CONTACT WITH RMLP

Matt Brown, General Manager
47 Summer Street
Rowley, MA 01969
Phone: 978-948-3992
Email: mbrown@rowleylight.com

Section 4 - SAFETY

Contractor will insure that all work, either by its forces or its subcontractor's forces, is performed following RMLP Safety Procedures, including the use of personal protective equipment such as (but not limited to) eye, ear and foot protection. In addition, the successful bidder must adhere to OSHA regulations

for Tree Trimming.

The Contractor shall provide and enforce the necessary safety precautions to prevent personal injuries to anyone or damage to any property and shall conduct his operations with a minimum of interference to traffic or inconvenience to the public. All work zones shall be MUTCD compliant.

The Contractor shall properly secure or protect all work that could, under conditions of a storm or darkness, be the cause of accidents, service interruptions, conflicts with the operation of existing utilities or endanger persons or property.

When night work is required, the Contractor shall provide lighting, so that the work may progress efficiently and safely.

All tools and devices, that require electric power, shall be properly grounded in accordance with state requirements.

The Contractor shall at all times keep his operation as neat and clean as possible, free from hazards that may cause accidents and annoyances that will cause complaints from or result in irritations to, the public or adjacent property owners.

The Contractor shall comply with all applicable safety laws, codes and regulations of Federal, State, Local or other public authorities having jurisdiction and in addition must comply with all applicable RMLP Safety Procedures.

The Contractor must meet current ICC and D.O.T. regulations and be able to demonstrate proof of satisfying Drug and Alcohol Testing requirements.

All accidents and property damage involving the Contractor(s) shall be reported promptly in written form to RMLP's Electrical Operations Supervisor or his designated representative.

The Contractor must be EHAP certified. All employees must be trained and knowledgeable working around energized power lines of 13,800 volts.

Section 5 - LABOR & SUPERVISION REQUIREMENTS

The Contractor shall provide and maintain competent supervision on an as needed basis, throughout the duration of the Contract.

Any employee of the Contractor that is not satisfactory to RMLP shall be immediately removed from the work.

Contractor's employees must meet the qualifications set forth in **Section B, INSTRUCTIONS TO BIDDERS** and **Section C, BID FORM** in order to perform work for RMLP:

Section 6 - WORK HOURS

Normal working hours are defined as Monday through Friday, 7:00 AM to 3:00 PM, with one-half hour for lunch.

Section 7 - MATERIAL CONDITION

RMLP has a reasonable expectation that all equipment used in conjunction with this Agreement, whether leased or owned by the Contractor, will be in good working order. Any delays caused by faulty equipment obtained through the Contractor, and all financial ramifications of those delays are solely the responsibility of the Contractor.

SECTION E

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between the party of the first part, the Rowley Municipal Lighting Plant, hereinafter called "OWNER," acting herein through its General Manager, and the party of the second part, _____ doing business as *(an individual) (a partnership) (a joint venture) (a corporation) located in the *(City) (Town) of _____, County of _____, and State of _____, hereinafter called "CONTRACTOR."

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

The Work generally consists of: Tree trimming services in accordance with the specifications and on an as-needed basis for the Rowley Municipal Lighting Plant (RMLP)

hereinafter called the Project, on the basis of the prices submitted in Section C, FORM OF BID, which are hereby incorporated by reference into this Agreement and all extra work in connection therewith, under the terms as stated in the Contract Documents; and at his (its or their) own proper cost and expense to furnish all the supplies, machinery equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the Project in accordance with the conditions and prices stated in Section C, FORM OF BID, Section I, TERMS AND CONDITIONS, and the specifications and Contract Documents as prepared by the Owner.

The CONTRACTOR hereby agrees to commence work under this Contract on or before a date to be specified in writing by the OWNER.

*Strike out inapplicable term.

The CONTRACTOR agrees not to discriminate against or exclude any person from participation herein on grounds of race, religion, color, sex, age or national origin; and that it shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, sex, age, handicapped status, or national origin.

The CONTRACTOR agrees not to participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in Section I, GENERAL CONDITIONS.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in four (4) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

AGREED:

Rowley Municipal Lighting Plant (Owner)

By _____

(Name)

(Title)

(Contractor)

By _____

(Name)

(Title)

(Address)

CERTIFICATE OF VOTE
(to be filed if Contractor is a Corporation)

I, _____, hereby certify that I am (Secretary of the Corporation)
the duly qualified and acting Secretary of _____
(Name of Corporation)

and I further certify that a meeting of the Directors of said Company, duly called and held on
_____, at which
(Date of Meeting)

all Directors were present and voting, the following vote was unanimously passed:
VOTED: To authorize and empower

Anyone acting singly, to execute Forms of Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: _____
(Secretary of Corporation)

A True Copy:

Attest: _____
(Notary Public)

My Commission Expires: _____
(Date)

SECTION F

[RESERVED]

SECTION G

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____

_____ a _____
(Name of Contractor) (Corporation, Partnership, Joint Venture or Individual)

hereinafter called "Principal" and _____
(Surety)

of _____, State of _____ hereinafter
(City and State)

called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Rowley Municipal Lighting Plant, hereinafter called "Owner", in the penal sum of _____

_____ Dollars

(\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the _____ day of _____, 20____, a copy of which is hereto attached and made a part hereof for the construction described as follows:

Tree trimming services in accordance with the specifications and on an as-needed basis for the Rowley Municipal Lighting Plant (RMLP)

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation

on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the work or to the specifications.

PROVIDED FURTHER, that Owner is the beneficiary of this bond and entitled to claims against Surety under this bond.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six (6) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20__.

ATTEST:

Principal

(Principal Secretary) By _____

(Address-Zip Code)

Witness as to Principal (SEAL)

(Address-Zip Code)

ATTEST:

Surety

(Attorney-in-Fact)

By _____

(Address-Zip Code)

Witness as to Surety (SEAL)

(Address-Zip Code)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute Bond.

SECTION H

CERTIFICATE OF INSURANCE
[ACORD FORM ATTACHED]

SECTION I

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, these General Conditions, the Supplemental Terms and Conditions, the Bid Form and Bidding Documents, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all applicable laws, ordinances and regulations. A Modification is (1) a written amendment to the contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Owner or (4) a written order for a minor change in the Work issued by the Owner pursuant to Paragraph 12.3. The Contract Documents include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1.

1.1.3 THE WORK

The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction, as applicable.

1.1.4 THE PROJECT

The project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.5 "OR EQUAL"

The use of the words "Or Equal" following the name of any manufacturer, vendor or proprietary product shall be understood to mean that articles or materials may be substituted which, in the opinion of the Owner, are equal in quality, durability, appearance, strength, design and performance to the articles or materials named or described and will perform adequately in providing a first-class facility.

When submitting shop drawing information on articles or materials which are being proposed as substitutes for specified items, the Contractor shall clearly identify them as such. If the articles or materials are accepted as equal to those on which dimensions on the drawings are based, any dimensional variance from those shown and/or specified shall be shown on the shop drawings prepared

by the Contractor, illustrating the manner in which conformity to dimensions and design is to be obtained. All such drawings shall be subject to the approval of the Owner and the installation of the article shall not proceed without first obtaining said approval.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than quadruplicate by the Owner and Contractor.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Owner are and shall remain the Owner's property. They are to be used only with respect to this Project and are not to be used on any other project without the prior written consent of the Owner. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Owner at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

ARTICLE 2

2.1 ADMINISTRATION OF THE CONTRACT

2.1.1 The designated representative of the Owner or its Engineer will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Owner's Representative or Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

2.1.2 The Owner shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Owner may perform its functions under the Contract Documents.

2.1.3 Based on the Owner's observations and an evaluation of the Contractor's Applications for Payment, the Owner will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.1.4 The Owner will render information necessary for the proper execution or progress of the Work within twenty (20) days of any request by the contractor or in accordance with any time limit agreed upon.

2.1.5 The Owner will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. Any such rejection of work shall not relieve the Contractor of the responsibility for maintaining protection of the Work and the Owner's property.

2.1.8 The Owner will conduct inspections to determine the date of Substantial Completion and Final Completion, will review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

ARTICLE 3 OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall, at the time of execution of the Agreement and any subsequent Change Orders, certify for the Contractor that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

3.2.2 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.3 The Owner will furnish the Contractor with (____) copies of all Drawings and Specifications and revisions issued during the progress of the Work; all additional copies will be furnished upon request at the cost of reproduction.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or fails to carry out the Work in accordance with the Contract Documents or if the Owner shall for any other reason so require, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated or until further written notice from the Owner; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the

Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3. The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the Owner. If such stoppage is required through no fault of the Contractor, the Contract Time (and the dates for achieving Substantial Completion and Final Completion) shall be extended by a period equal to the period of the stoppage, and the Contractor shall be compensated for its reasonable and justifiable costs incurred as a result of such stoppage.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days 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 any other remedy he may have, perform such work or cause such work to be performed and/or make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover the amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4 CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner for any damage resulting from errors, inconsistencies or omissions in the Contract Documents which he discovers but shall be liable for damage to the extent he reasonably should have but failed to discover such errors, inconsistencies or omissions. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the Premises during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Contract, or by inspection, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and service necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him including all persons on the Site controlled directly or indirectly by the Contractor.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new and of recent manufacture unless otherwise permitted in writing by the Owner and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and, promptly after written notification of non-conformance, shall be repaired or replaced by the Contractor with Work conforming to such requirements. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

4.6 TAXES

4.6.1 The Contractor shall pay all applicable sales, consumer, use and other similar taxes for the Work or portion thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise expressly provided in the Contract Documents, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.

4.7.2 The Contractor shall give all notices and comply with all Laws bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid.

4.7.3 If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any Work which he knows or should know is contrary to such Laws, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 SUPERINTENDENT

4.8.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.9 PROGRESS SCHEDULE

4.9.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule 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.

4.10 DOCUMENTS AND SAMPLES AT THE SITE

4.10.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Owner upon completion of the Work.

4.11 [Intentionally Left Blank]

4.12 USE OF SITE

4.12.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.13 CUTTING AND PATCHING OF WORK

4.13.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.13.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

4.14 CLEANING UP

4.14.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project in full compliance with all applicable laws and

regulations as well as all his tools, construction equipment, machinery and surplus materials and the Project shall be thoroughly cleaned and ready for immediate occupancy by the Owner.

4.14.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

4.15 COMMUNICATIONS

4.15.1 The Contractor shall forward all communications to the Owner as set forth in **Section D, SPECIFICATIONS..**

4.16 ROYALTIES AND PATENTS

4.16.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.

4.17 INDEMNIFICATION

4.17.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.17.

4.17.2 In any and all claims against the Owner and any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.17 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his

authorized representatives. The term Subcontractor does not include any separate contractor or his subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise required by the Contract Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner will reply to the Contractor as soon as practicable stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection.

5.2.3 If the Owner has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner has no reasonable objection.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate agreement, written where legally required for validity, 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 the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make availability to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors. The Contractor shall be fully responsible to the Owner for the acts and omissions of all Subcontractors and other entities or persons directly or indirectly employed by him to perform the Work. If requested by the Owner, the form and substance of any Subcontract with the Contractor shall be subject to the prior written consent of the Owner, which consent shall not be unreasonably withheld or delayed.

ARTICLE 6
WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD
SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor cause damage to the work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it

and shall reimburse the Owner for all attorneys' fees and court or arbitrations costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof to the contractors responsible therefor.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the Commonwealth of Massachusetts. All applicable provisions of Federal, state, or local laws, by-laws, rules, or regulations are incorporated into the Contract as if fully set forth herein, and shall prevail over any conflicting provisions of the General Conditions.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor each bind himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice. Written Notice to the Owner shall be delivered to the General Manager, RMLP.

7.4 CLAIMS FOR DAMAGES

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. The reasonable time shall not exceed fourteen days.

7.5 PAYMENT
BOND

7.5.1 The Contractor shall furnish a Payment Bond in an amount not less than fifty percent (50%) of the Contract price as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, calculated in accordance with **Section B, INSTRUCTIONS TO BIDDERS**. The Payment will be in a form acceptable to the Owner, and shall remain in effect through the one-year warranty period.

7.6 RIGHTS AND REMEDIES

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, except as otherwise set forth therein.

7.6.2 No action or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

ARTICLE 8
TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial and Final Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto. Time is of the essence with regard to completion of the Work required by the Contract.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Owner when construction is substantially complete, in accordance with the Contract Documents, other than only custom punch list items, the lack of or completion of which will not interfere with the Owner's use, so the Owner can lawfully occupy and utilize the Work or designated portion thereof for the use for which it is intended. The Date of Final Completion of the Work is the date on which the Owner issues its final Certificate for Payment in accordance with Paragraph 9.9.1 hereof.

8.1.4 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, and Final Completion thereafter in accordance with the provisions of the Contract Documents.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or by any employee of the Owner, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any causes beyond the Contractor's or its Subcontractor's control, or by delay authorized by the Owner, then, provided such

delay in no way results from the act or neglect of the Contractor or any of its Subcontractors, the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Owner not more than seven (7) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretation until fifteen (15) days after written request is made for them, and not then unless such claim is reasonable.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 If applicable to the Project, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used only as a basis for the Contractor's Application for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 The Contractor shall submit to the Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as provided elsewhere in the Contract Documents for the period ending the 25th day of each month within the Contract period.

9.3.2 [Reserved]

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing supplies and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES OF PAYMENT

9.4.1 The Owner will, within ten (10) days after the receipt of the Contractor's Application for Payment, issue a Certificate for Payment to the Contractor for such amount as the Owner determines is

properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner, based on its observations at the site as provided in Subparagraph 3.2.7 and the data comprising the application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Document upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Owner shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS (If Applicable to Project)

9.5.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents. The Owner reserves the right to a 5% general retainage from each progress payment, which retainage shall be released to the Contractor upon substantial completion.

9.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.5.3 The Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

9.5.4 The Owner shall not have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The Owner shall decline to certify payment and withhold its Certificate in whole or in part, to the extent necessary reasonably to protect itself. If the Owner is unable to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which it determines is properly due. The Owner may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in its opinion to protect itself from loss because of:

- .1 defective work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims,
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the Owner or another Contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or
- .7 material failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 SUBSTANTIAL COMPLETION

9.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Owner a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare for a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibility assigned to them in such Certificate.

9.7.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and Certification by the Owner, the Owner shall make payment, reflecting

adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract fully performed, it will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Owner's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.8.2 have been fulfilled.

9.8.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been fully paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3), if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as the written document described in Paragraph 13.2.2, receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.8.3 If, after Substantial Completion of the Work, final completion thereof is delayed for more than ninety (90) days through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted, provided that the remaining balance for Work not fully completed or corrected shall not be less than the retainage stipulated in the Contract Documents, and as bonds will have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.8.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents,
or
- .4 terms of any special warranties required by the Contract Documents.
- .5 obligations under the Performance and Payment Bonds.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled prior to the time of the final Application for Payment.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- .1 all employees on the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all 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 utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3., except damage or loss solely attributable to the acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the acts or omissions of the Owner, or anyone directly or indirectly employed by Owner, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligation under Paragraph 4.17.

10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11 INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor will furnish and maintain insurance with the coverages and limits set forth below at its own expense, without limiting its indemnity under this Agreement and provide evidence of the coverage on certificates issued by Contractor's insurance broker as required herein, on behalf of the carriers qualified to do business in the Commonwealth of Massachusetts having a Best rating of A- and a financial classification of IX or better. The insurance shall be effective as of the date of the Notice to Proceed. Deductible amounts shall be the responsibility of the Contractor. Such coverage shall include the following:

1. Include Owner and its commissioners, agents, and employees as additional insureds for the activities and operations under this Contract;
2. Severability-of-Interest or Cross-Liability Paragraph;
3. A copy of the additional insured endorsement listing Owner as an additional insured under the insurance policy.

11.2 The insurance required by Subparagraph 11.1. shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

11.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. See **Section H, INSURANCE**. These Certificates shall contain a provision that coverages afforded under the policies will not be cancelled until at least thirty days prior written notice has been given to the Owner. Certificates of renewal shall be delivered to the Owner at least fifteen (15) days prior to the expiration date of any insurance policy. The Contractor shall not commence the Work until all insurance required hereunder shall have been obtained and approved by the Owner, and the Contractor shall not permit any Subcontractor or Sub-subcontractor to commence work until all insurance required of them shall have been similarly obtained and approved. Coverage shall remain effective for a period of two (2) years after termination of the Owner-Contractor Agreement for any reason.

THE FOLLOWING ARE MINIMUM INSURANCE REQUIREMENTS

Worker's Compensation/Employer's Liability - \$1,000,000.00

Commercial General Liability: With the Rowely Municipal
Lighting Plant named as additional insured.

\$5,000,000.00 Each Occurrence ; \$5,000,000 General Aggregate_

Commerical Automobile Liability

Combined Single Limit \$5,000,000.00 Each Occurrence

All Risk Property - Repair/Replacement Cost

Example Coverage:

Commercial General Liability + Umbrella/Excess Liability
= \$5,000,000.00

Commerical Automobile Liability + Umbrella/Excess Liability
= \$5,000,000.00

ARTICLE 12
CHANGES IN THE WORK

12.1 CHANGE ORDER

12.1.1 A Change Order is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Owner resulting from a change in the Work shall be determined by unit prices stated in the Contract Documents.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in his Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation by the Owner or Engineer, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claim as provided in Subparagraph 12.3.1.

12.4 MINOR CHANGES IN THE WORK

12.4.1 The Owner and Engineer will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order, and shall be binding on the Owner, Engineer and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13
UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the work should be covered contrary to the request of the Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Owner or Engineer as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Owner's additional services made necessary thereby.

13.2.2 The Contractor shall provide a document to the Owner certifying that if within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or requiring excessive service or maintenance or not in accordance with the Contract Documents, the Contractor shall correct it within seven (7) days after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such approval, which written acceptance shall specifically refer to such defect. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. The provisions of this paragraph are in addition to, and not in limitation of, the Owner's other rights and remedies hereunder and in law and equity.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraph 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the Owner in writing.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 4.3.1, 12.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Owner's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his 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 his obligation other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Owner unjustifiably has not made payment upon an approved Invoice as provided in Paragraph 9.6, then the Contractor may, upon fifteen (15) additional days written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, and construction equipment and machinery.

14.2 TERMINATION BY THE OWNER

14.2.1 To the extent permitted by law, if the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, repeatedly except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt proper payment to Subcontractors for materials or labor, or disregards laws, or order of any public authority having jurisdiction, or otherwise fails to comply with any provision of the Contract Documents including these Terms and Conditions, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Owner's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligation to pay said amount to the Contractor or to the Owner, as the case may be, shall survive the termination of the Contract.

14.3 ORDER OF PRECEDENCE

14.3.1 In the event of a conflict between these Terms and Conditions and **Section D, SPECIFICATIONS**, the Terms and Conditions shall govern. In the event of a conflict between these Terms and Conditions and Section K, **SUPPLEMENTAL TERMS AND CONDITIONS**, the Supplemental Terms and Conditions shall govern.

SECTION J

PREVAILING WAGE SCHEDULE

[attached]

SECTION K

SUPPLEMENTARY TERMS AND CONDITIONS

STATUTORY PROVISIONS FOR MASSACHUSETTS PUBLIC CONSTRUCTION CONTRACTS

The following provisions are required by or are intended to be consistent with requirements of Massachusetts statutes governing public construction contracts in the Commonwealth of Massachusetts (hereinafter referred to as the "Commonwealth"). Any other provisions required by statute to be included herein shall be deemed to be so included. In addition, the parties recognize that other rights, duties, and obligations with respect to public construction contracts are provided for by statute, notwithstanding the fact that they are not provided for in the Contract Documents. In case of conflict between the provisions of these Supplementary General Conditions and other provisions in the Contract Documents, including the Terms and Conditions, the provisions of these Supplementary General Conditions shall govern. In case of conflict between the provisions of these Supplementary General Conditions and the provisions of any applicable statute, the statutory provisions shall govern. Where the term "awarding authority" appears in the following paragraphs, it shall be taken as meaning the Owner.

ARTICLE 1- PAYMENT, CONTRACT ADMINISTRATION, ETC.

1.1 "Or Equal" Paragraph - (Statutory reference: M.G.L. c. 30, §39M(b)). This Paragraph 1.1 applies to every contract for the construction, reconstruction or repair of any public work or for the purchase of any material by the Commonwealth, any political subdivision thereof, or any county, city, City, district or housing authority (above certain dollar limits, as stated in the statute), and to contracts awarded pursuant to M.G.L. c. 149, §§44A through 44I-I. The said §§44A through 44I-I apply to every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a department, agency, board, commission, authority, or other instrumentality of the Commonwealth or political subdivision thereof or two or more subdivisions thereof, but not including the Massachusetts Bay Transportation Authority, estimated to cost more than a dollar amount set forth in M.G.L. c. 149, §44A.

Where products or materials 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 Architect:

- a. it is at least equal in quality, durability, appearance, strength and design;
- b. it performs at least equally the function imposed in the general design for the work;
- 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 Terms and Conditions and Supplementary Conditions for procedures to be used in determining compliance with the standards of this paragraph.

- 1.2 Delay– (Statutory reference- M.G.L. c. 30, §39O). This Paragraph 1.3 applies to every contract subject to M.G.L. c. 30, §39M and to every contract subject to M.G.L. c. 149, §§44A through 44H.

Except as otherwise provided by law and by this Paragraph 1.2, the Contractor shall not be entitled to damages on account of any hindrances or delays, avoidable or unavoidable; but if such delay be occasioned by the awarding authority, the Contractor may be entitled to an extension of time only, in which to complete the work, to be determined by the Architect.

- (a) 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 days or more or 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 adjustments 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.
- (b) The Contractor must submit the amount of a claim under provision (a) 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 before the Contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

In the event a suspension, delay, interruption or failure to act of 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 provisions (a) and (b) give the Contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the Contractor or the Subcontractor may have against each other.

- 1.3 Deviations. (Statutory reference: M.G.L. c. 30, §39I) This Paragraph 1.3 applies to every contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public building or public works for the Commonwealth or any political

subdivision thereof.

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 awarding authority or by the Engineer or Architect in charge of the work who is duly authorized by the awarding authority 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 awarding authority or such Engineer or Architect so authorized to approve such deviation. Within thirty days thereafter, such written order shall be confirmed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the awarding authority and the Contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the awarding authority.

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.

- 1.4 *Finality of Decisions by Awarding Authority or Architect.* (Statutory reference: M.G.L. c. 30, §39J). This Paragraph 1.4 applies to every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public works by the Commonwealth or by any county, city, district, board, commission, or other public body, when the amount of the contract exceeds the amount stated in M.G.L. c. 30, §39J.

Notwithstanding any contrary provision of this contract, no decision by the awarding authority or by the Architect on a dispute, whether of fact or of law, arising under said contract shall be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

- 1.5 *Differing Site Conditions.* (Statutory reference: M.G.L. c. 30, §30N). This Paragraph 1.5 applies to every contract subject to M.G.L. c. 30, §39M and to every contract subject to M.G.L. c. 149, §§44A through 44H.

If, during the progress of the work, the Contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the Contract Documents, either the Contractor or the awarding authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the awarding authority 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 awarding authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly,

- 1.6 Timely Decision by Awarding Authority (Statutory reference: M.G.L. c. 30, §39P). This Paragraph 1.6 applies to every contract subject to M.G.L. c. 30, §39M, and to every contract subject to M.G.L. c. 149, §§44A through 44H.

In every case in which this contract requires the awarding authority, any official, its Architect or Engineer to make a decision or 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 awarding authority, the official, Architect or Engineer shall, within thirty days after receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made.

- 1.7 Direct Payment. (Statutory reference: M.G.L. c. 30, §39F) This Paragraph 1.7 applies to every contract awarded pursuant to M.G.L. c. 149, §§44A through 44H, and (with the exception of Subparagraph 1.7.9) to every contract awarded pursuant to M.G.L. c. 30, §39M.

- 1.7.1 Forthwith after the Contractor receives payment on account of a periodic estimate, the Contractor shall pay to each Subcontractor the amount paid for the labor performed and the materials furnished by that Subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.
- 1.7.2 Not later than the sixty-fifth day after each Subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract, less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the Subcontractor; and the awarding authority shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.
- 1.7.3 Each payment made by the awarding authority to the Contractor pursuant to Subparagraphs 1.7.1 and 1.7.2 of this Paragraph 1.7 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 awarding authority shall take reasonable steps to compel the Contractor to make each such

payment to each such Subcontractor. If the awarding authority has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in Subparagraphs 1.7.1 and 1.7.2, the awarding authority shall act upon the demand as provided in this Paragraph 1.7.

- 1.7.4 If, within seventy 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 awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract 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 days after the Subcontractor has delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be a sworn statement delivered to or sent by certified mail to the awarding authority, 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.
- 1.7.5 Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority 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 (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by Subparagraph 1.7.4. The awarding authority shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this Subparagraph.
- 1.7.6 The awarding authority shall forthwith deposit the amounts deducted from a direct payment as provided in part (iii) of Subparagraph 1.7.5 in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the Contractor and the Subcontractor and shall notify the Contractor and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the Subcontractor or as determined by decree of a court of competent jurisdiction.

- 1.7.7 All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to Subparagraph 1.7.6 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 awarding authority to the Contractor to the extent of such payment.
- 1.7.8 The awarding authority shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to Subparagraph 1.7.6, 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.
- 1.7.9 If the Subcontractor does not receive payment as provided in Subparagraph 1.7.1 or if the Contractor does not submit a periodic estimate 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 Subparagraph 1.7.1, the Subcontractor may demand direct payment by following the procedure in Subparagraph 1.7.4 and the Contractor may file a sworn reply as provided in that same Subparagraph. 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 a periodic estimate from the Contractor. Thereafter the awarding authority shall proceed as provided in Subparagraphs 1.7.5, 1.7.6 and 1.7.8.
- 1.7.10 Any assignment by a Subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of M.G.L. c. 149, §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 awarding authority or which are on deposit pursuant to Subparagraph 1.7.6 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.
- 1.7.11 "Subcontractor" as used in this Paragraph 1.7 for contracts awarded as provided in M.G.L. c. 149, §§44A through 44H, inclusive, shall mean a person who files a sub-bid and receives a subcontract as a result of that filed sub-bid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor, (ii) for contracts awarded as provided in M.G.L. c. 30, §39M, paragraph (a) shall mean a person approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the Commonwealth not awarded as provided in M.G.L. c. 149, §§44A through 44H, inclusive, 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 the amount stated in M.G.L. c. 30, §39F.

- 1.7.12 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 Subparagraph 1.7.6 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 Subparagraph 1.7.6 by a petition in equity in the superior court against the awarding authority 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. 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 a court of equity against the awarding authority claiming a demand for direct payment is premature, and such Subcontractor must file the petition before the awarding authority has made a direct payment to the Subcontractor and has made a deposit of the disputed portion as provided in part (iii) of Subparagraph 1.7.5 and in Subparagraph 1.7.6.
- 1.7.13 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 awarding authority as provided in part (iii) of Subparagraph 1.7.5 and in subparagraph 1.7.6 any amount held under a trustee writ or pursuant to a restraining order.

ARTICLE 2 - WAGES AND EMPLOYMENT PRACTICES

- 2.1 *Preference To Veterans and Citizens In Public Work: Rate of Wages.* (Statutory reference: M.G.L. c. 149, §26) This Paragraph applies to every contract or subcontract for the construction of public works by the Commonwealth or by a county, City or district.
- 2.1.1 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 months at the commencement of their employment, who are veterans as defined in M.G.L. c. 4, §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, City 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, City or district.

2.1.2 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 City where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more Cities, the wages paid to laborers shall not be less than those paid to laborers in the municipal service of the City paying the highest rate; provided further, that if, in any of the Cities 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 Cities 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 section shall also apply to regular employees of the Commonwealth or a county, City 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 agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

2.2 List of Jobs; Classification; Determination of Rate of Wages; Schedule. (Statutory reference: M.G.L. c. 149, §27) This Paragraph applies to every contract or subcontract for the construction of public works by the Commonwealth, or by a county, City or district.

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 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 Paragraph 2.1 of these Supplementary General Conditions, shall proceed forthwith to determine the same, and shall furnish said official or public body with a schedule of such rate or rates of 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 awarding authority does not guarantee the accuracy 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.

2.3 Employment Records To Be Kept By Contractor, Subcontractors; Statement of Compliance. (Statutory reference: M.G.L. c. 149, §27B) This Paragraph applies to every contract or subcontract for the construction of public works by the Commonwealth, or by a country, City or district.

Every Contractor, Subcontractor or public body engaged in said public works to which paragraph 2.2 of these Supplementary General Conditions 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.

Each such Contractor, Subcontractor or public body shall preserve its payroll records for a period of three years from the date of completion of the contract.

Each such Contractor, Subcontractor or public body shall furnish to the Commissioner of Labor and Industries within fifteen days after completion of its portion of the work a statement, executed by the Contractor, Subcontractor, or a public body who supervises the payment of wages, in the following form:

STATEMENT OF COMPLIANCE

I, _____, do hereby state:
(Name of Signatory Party) (Title)

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

(Contractor, Subcontractor or Public Body)

on the _____ and that all mechanics and apprentices, teamsters,
(building or project)

chauffeurs and laborers employed on said projects have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty-nine of the General Laws.

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.

2.4 Wages Paid to Operators of Trucks and Other Equipment. (Statutory reference: M.G.L, c. 149, §27F) This Paragraph applies to every contract for the construction of public works by the Commonwealth, or by a county, city, town or district. 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 awarding authority 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.

2.5 Reserve Police Officers. (Statutory reference: M.G.L. c. 149, §34B) This Paragraph 2.5 applies to every contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public works for the Commonwealth or any political subdivision thereof.

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.

2.6 Lodging, etc. (Statutory reference: M.G.L. c. 149, §25) This paragraph applies to every contract for the doing of public work with the Commonwealth, a county, city, or town, or with a department, board, commission, or officer acting therefor.

Every employee under this Contract shall lodge, board and trade where and with whom he elects, and neither the Contractor nor his agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.

2.7 Access To Contractor's Records (Executive Order No. 195) This Paragraph applies to every contract for the purchase of services or materials by any agency, bureau, board, commission, institution, or department of the Commonwealth.

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.

- 2.8 Worker's Compensation Insurance (Statutory reference; M.G.L. c. 149, §34A) This Paragraph 2.8 applies to every contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public building or other public works for the Commonwealth or any political subdivision thereof.

The Contractor shall, before commencing performance of the contract, provide by insurance for the payment of compensation and the furnishing of other benefits under M.G.L. c. 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 Paragraph 2.8 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 days prior to the intended effective date thereof, which date shall be expressed in said notice.

ARTICLE 3 - EQUAL EMPLOYMENT OPPORTUNITY

(Statutory reference: M.G.L. c. 151B) Subparagraph 3.2 applies to all contractors employing six or more persons.

- 3.1 Definitions. For purposes of this contract, "Commission" refers to the Massachusetts Commission Against Discrimination.
- 3.2 Non-Discrimination. During the performance of this contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:

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, sexual orientation, which shall not include persons whose orientation involves minor children as the sex object, genetic information, or ancestry of any individual. 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.

ARTICLE 4 - CONTRACTOR'S ACCOUNTING METHOD REQUIREMENTS (Statutory reference: M.G.L. c. 30, §39R)

This Article 4 applies to "Contracts" and "Contractors" as defined in Subparagraphs 4.1.1 and 4.1.2 below.

- 4.1 The words defined herein shall have the meaning stated below whenever they appear in this Article 4:
 - 4.1.1 "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to §39M of c. 30, §§ 44A-44H inclusive, of c. 149, and §§38A1/2 – 38O, inclusive, of c.7.
 - 4.1.2 "Contract" means any contract awarded or executed pursuant to §§38A1/2 – 30O, inclusive, of c. 7, and any contract awarded or executed pursuant to §39M of c. 30, or §§44A-44H, inclusive, of c. 149, which is for an amount or estimated amount that exceeds the dollar amount set forth in M.G.L. c. 30, §39R.
 - 4.1.3 "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.
 - 4.1.4 "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/her 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.
 - 4.1.5 "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 expressed a CERTIFIED opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.
 - 4.1.6 "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/she has made and sets forth his/her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor 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.

- 4.1.7 "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.
- 4.1.8 Account terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principals and auditing standards.
- 4.2 Subparagraph 4.1.2 hereof notwithstanding, every agreement or contract awarded or executed pursuant to §§38A1/2 – 30O, inclusive, of c.7, and pursuant to §39M of c. 30 or to §§44A-44H, inclusive of c. 149, shall provide that:
 - 4.2.1 The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the . transactions and dispositions of the Contractor.
 - 4.2.2 Until the expiration of six years after final payment, the awarding authority, office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Contractor or his/her Subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his/her Subcontractors.
 - 4.2.3 If the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his/her description the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor's independent certified public accountant approving or otherwise commenting on the changes.
 - 4.2.4 If the agreement is a contract as defined herein, the Contractor has filed a statement of . management on internal accounting controls as set forth in Paragraph 4.3 below prior to the execution of the contract.
 - 4.2.5 If the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Paragraph 4.5 below.
- 4.3. 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:
 - 4.3.1 Transactions are executed in accordance with management's general and specific authorization;
 - 4.3.2 Transactions are recorded as necessary:

(i) to permit preparation of financial statements in conformity with generally accepted accounting principals, and

(ii) to maintain accountability for assets;

4.3.3 access to assets is permitted only in accordance with management's general or specific authorization; and

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

4.4 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/she has examined the statement of management or internal accounting controls, and expressing an opinion as to

4.4.1 whether the representations of management in response to this paragraph and Paragraph 4.2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and

4.4.2 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.

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

ARTICLE 5 - MISCELLANEOUS

5.1 Foreign Corporations. This Paragraph applies to every contract with the Commonwealth, a county, city, City, district, board, commission, or other public body for the construction, reconstruction, alteration, remodeling, repair, or demolition of any public building or other public works.

The Contractor, if a foreign corporation, shall comply with M.G.L. c. 181, §§3 and 5, and c. 30, §39L.

5.2 Certification of Compliance with Tax Laws. (Statutory reference: M.G.L. c. 62C §49A) This Paragraph 5.5 applies to contracts for goods or services furnished to any department, board, commission, division, authority, district or other agency of the Commonwealth or any subdivision of the Commonwealth, including a city, City or district.

By executing this contract, the Contractor certifies, under penalties of perjury, that to the best of his information, knowledge, and belief, he has complied with all laws of the Commonwealth relating to taxes.