CITY OF
LOWELL, MASSACHUSETTS

INFORMATION FOR BIDDERS

BID PROPOSAL, CONTRACT

GENERAL CONDITIONS, SPECIAL CONDITIONS

AND TECHNICAL SPECIFICATIONS

FOR

CURED-IN-PLACE LINING
(CONTRACT # IFB 16-36)

CITY MANAGER – KEVIN J. MURPHY

EXECUTIVE DIRECTOR – MARK YOUNG

City of Lowell
Purchasing Department
Lowell, Massachusetts

September 16, 2015

CURED-IN-PLACE LINING
(CONTRACT IFB 16-36)

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CITY OF LOWELL
CURED-IN-PLACE LINING
(CONTRACT IFB 16-36)

The City of Lowell is seeking bids to furnish all labor, materials, equipment, and incidentals required and install and test cured-in-place pipe (CIPP) lining and appurtenances complete as specified.

DUE DATE

Sealed bids will be publicly opened on: **September 30, 2015** at City Hall in the Purchasing Department, 3rd Floor, 375 Merrimack Street, Lowell, MA 01852, at 11:00AM, EST/EDST, for the work described herein. BIDDERS ARE REQUIRED TO SUBMIT A BID INCLUDING ALL BID FORMS CONTAINED IN THIS PACKAGE. DO NOT REMOVE PAGES.

BID AND PAYMENT BONDS

A certified check made payable to the "City of Lowell" in the amount of 5% must accompany this bid. Bid bonds are acceptable.

A payment bond in the amount of 50% of the total dollar award is required prior to contract execution.

A performance bond in the amount of 100% of the total dollar award is required prior to contract execution.

Attention of the Bidders is particularly called to the requirements of the conditions of employment to be observed and the prevailing wage rates to be paid on this project, as determined by the State Department of Labor Division of Occupational Safety. The Contractor must use the higher of the two rates for each trade to be used on the project.

Note: Bidders must also comply with Certification of Compliance G.L.C. 30 & 39M Public Construction More Than $10,000.00. See page BP-6.

The City of Lowell, acting through its Chief Procurement Officer, reserves the right to waive any informality in, to reject any or all bids or to accept the one which appears in the best interest of the City of Lowell.

P. M. Vaughn – Chief Procurement Officer

ADVERTISED:	Wednesday Lowell Sun,	September 16, 2015
	Central Register	September 16, 2015
	City of Lowell website	September 16, 2015

INFORMATION FOR BIDDERS

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INFORMATION FOR BIDDERS

1. RECEIPT AND OPENING OF BIDS

The City of Lowell herein called the "Owner" invites sealed bids on the separate copies of Bid Forms furnished for that purpose, all blanks of which must be appropriately filled in. The bound-in Bid Forms in the Contract Documents are for continuity and the convenience of Bidders and are not to be detached from the Contract Documents, filled out or executed.

Bids will be received by the OWNER at the Office of the Chief Procurement Officer, P. Michael Vaughn, City Hall, Purchasing Department, 375 Merrimack Street, 3rd floor, Lowell, MA 01852 until 11:00 A.M. local time, **September 30, 2015** and then at said Office publicly opened and read aloud. The envelope containing the bids for the **CURED-IN-PLACE LINING: CONTRACT #IFB 16-36** shall be sealed, addressed to the City of Lowell, Purchasing Department and designated as "Bid for the **CURED-IN-PLACE LINING: CONTRACT #IFB 16-36"**

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. 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 shall not be considered. No bidder may withdraw a bid within 60 days after the actual date of the opening thereof.

2. PREPARATION OF BID

Each bid for the **CURED-IN-PLACE LINING: CONTRACT #IFB 16-36** shall be submitted on the prescribed bid forms.

All blank spaces for bid prices must be filled in, with ink or typewriter, in both words and figures, and both of the foregoing Certifications must be fully completed and executed when submitted.

Each bid for the **CURED-IN-PLACE LINING: CONTRACT #IFB 16-36** must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified above.

3. BLANK

4. BLANK

5. QUALIFICATIONS OF BIDDER

The OWNER may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the OWNER that such bidder is properly qualified to carry out the obligations of the Contract and to complete the work contemplated therein. Conditional bids will not be accepted.

Each bid **must include** evidence of the Bidder's ability to complete the Work in accordance with the Contract Documents. Each bid **must include** the name of the Superintendent who is to be used on this project, and his/her experience.

Each bid must include:

1. A comprehensive list of any and all citations and /or violations issued by regulatory agencies and/or judgments against bidder from a court of law.

2. All assessed penalties or liquidated damages, and the project in which they occurred.

3. Any and all contract terminations.

4. A list of at least five references.

6. BID SECURITY

Each bid shall be accompanied by cash, a certified check, treasurer's check, or cashier's check issued by a responsible bank or trust company, made payable to the City of Lowell in the amount of 5% of the bid or a bid bond prepared in the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company, licensed to do business in the Commonwealth of Massachusetts, approved by the OWNER, in the amount of 5% of the bid, but in no event less than one hundred dollars not more than fifty thousand dollars.

Subbids shall be submitted for the following items for work: NONE

All bid deposits of general bidders, except those of the three lowest responsible and eligible bidders, will be returned within five (5) days, Saturdays, Sundays and legal holidays excluded, after the opening of the general bids.

The bid deposits of the three lowest responsible and eligible bidders shall be returned upon the execution and delivery of the Contract, or if no award is made, upon the expiration of 60 days, Saturdays, Sundays, and legal holidays excluded, except that, if any bidder fails to perform his agreement to execute a Contract and furnish a Performance Bond and also a Labor and Materials Payment Bond as stated in his bid, his bid deposit shall become and be the property of the City of Lowell as liquidated damages; provided that the amount of the bid deposit which becomes the property of the City of Lowell shall not, in any event, exceed the difference between his bid price and the bid price of the next lowest responsible and eligible bidder; and provided further that, in case of death, disability or other unforeseen circumstances affecting the bidder, his bid deposit may be returned. The sixty day time limit shall not be applicable to the next lowest eligible bidder, with his and his subbidder's consent, if the original award made within the time limit is invalidated.

All bid deposits of subbidders, except (a) of the subbidders named in the general bids of the three lowest responsible and eligible general bidders, and (b) those of the three lowest responsible and eligible subbidders for each subtrade, will be returned within five days (Saturdays, Sundays, and legal holidays excluded), after the execution of the general contract; except that, if a selected subbidder fails to perform his agreement to execute a subcontract with the general bidder selected as the general contractor

contingent upon the execution of the general contract and if requested to do so in the general bid by such a general bidder, to furnish a Performance and Payment Bond as stated in his subbid, the bid deposit which becomes the property of the City of Lowell shall not, in any event, exceed the difference between his subbid price and the subbid price of the next lowest responsible and eligible subbidder; and provided further that, in case of death, disability or other unforeseen circumstances affection any such subbidder, his bid deposit may be returned to him.

7. DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within 10 days after he has received notice of the acceptance of his bid, shall forfeit to the OWNER, as liquidated damages for such failure or refusal, the security deposited with his bid.

8. DURATION OF CONTRACT

The contract shall be for the period beginning on or about **October 1, 2015** or as stated in the **NOTICE TO PROCEED, WHICHEVER IS LATER** and ending, on or before **June 30, 2018**. Funding for this project requires that all work be completed no later than **June 30, 2018** regardless of the date of the notice to proceed.

The CONTRACTOR shall note that issuance of the Notice to Proceed is contingent on the City of Lowell securing all rights-of-way required for the project and the necessary easement required to perform the work.

9. CONDITIONS OF WORK

Each bidder must inform himself fully of 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 material 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.

10. ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally.

Every request for such interpretation should be in writing addressed to **Chief Procurement Officer, City Hall, Purchasing Department, 375 Merrimack Street, 3rd floor, Lowell, Massachusetts 01852 phone (978) 970-4110, email pmvaughn@lowellma.gov** and to be given consideration must be received at least five 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, if issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective addresses furnished for such purposes), not later than three 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 obligations under his bid as submitted. All addenda so issued shall become part of the contract documents.

11. SECURITY FOR FAITHFUL PERFORMANCE

Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this Contract and for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract, as specified in the General Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company, licensed to do business in the Commonwealth of Massachusetts, and satisfactory to the OWNER.

12. POWER OF ATTORNEY

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

13. NOTICE OF SPECIAL CONDITIONS

Attention is particularly called to those parts of the contract documents and specifications which deal with the following:

(a) Inspection and testing of materials
(b) Insurance requirements
(c) Wage rates
(d) Non-discrimination in employment

14. LAWS AND REGULATIONS

The bidder's attention is directed to the fact that all applicable State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as through herein written out in full.

15. METHOD OF AWARD - LOWEST QUALIFIED BIDDER

If at the time this contract is to be awarded, the lowest base bid submitted by a responsible bidder does not exceed the amount of funds then estimated by the OWNER as available to finance the Project, the Contract will be awarded on the base bid. If such bid exceeds such amount, the OWNER may reject all bids.

16. OBLIGATION OF BIDDER

At the time of the opening of bids it is presumed that each bidder has inspected the site and has read and is thoroughly familiar with the plans and 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 to his bid.

17. LIST OF UTILITIES IN THE AREA:

The following are the names of owners and representatives of the principal utilities affected, but completeness of this list is not guaranteed by the City:

CITY OF LOWELL

Lowell Engineering Department City Hall - Room 61 375 Merrimack Street Lowell MA 01852	Lisa DeMeo, P.E. City Engineer Phone:(978) 970-3331
Lowell Fire Department 99 Moody Street Lowell, MA 01852	Chief Jeffery Winward Phone:(978) 459-5553
Lowell Police Department 50 Arcand Drive Lowell, MA 01852	Supt. William Taylor Phone:(978) 937-3225
Lowell Building Department City Electrician 1365 Middlesex Street Lowell, MA 01852	Steve Coutu Phone:(978) 970-3333

WATER

Lowell Regional Water Utility 815 Pawtucket Blvd. Lowell, MA 01854	Eric Gitschier Phone:(978) 970-4242

SEWER

Lowell Regional Wastewater Utility 451 First Street Lowell, MA 01850	Michael Stuer Phone:(978) 970-4248

FIRE ALARM
Lowell City Electrician
1365 Middlesex Street
Lowell, MA 01851

Steve Coutu
Phone:(978) 970-3333

ELECTRIC
National Grid
25 Research Drive
Westborough, MA 01582

Ayodele Osimboni
Phone:(508) 389-3657
Fax: (315) 477-7161

TELEPHONE
Verizon
1166 Shawmut Avenue
New Bedford, MA 02746

Karen Nunes
Phone: (508) 991-3522

GAS
National Grid Gas
52 Second Avenue
Waltham, MA 02451

Dennis Peri
Phone: (781) 466-5241

CABLE
AT&T
157 Green Street, Suite 2
Foxborough, MA 02035

Scott Ferreira
Phone: (508) 216-0059

COMCAST
676 Island Pond Road
Manchester, NH 03109

Stacey Charest
Phone: (603) 628-3732

The Contractor shall notify the controlling utility agency at least 72 hours in advance of its intent to excavate in any way or manner, within six feet of any existing utility agency owned pole, anchor guy, underground duct, conduit, pipe, valve or manhole. No excavation shall take place within six feet of any existing utility agency owned pole, anchor guy, underground duct, conduit, pipe, valve or manhole owned by a utility agency without this notification.
The Contractor shall make his own investigation to assure that no damage to existing structures, drainage lines, traffic signal conduits, and other utilities will occur as a result of construction operations.

The Contractor shall notify "Mass. DIG SAFE" and procure a DIG SAFE number of each location prior to disturbing ground in any way.

"DIG-SAFE" Call Center: Telephone 1-888-344-7233

18. BLANK

19. NONDISCRIMINATION IN EMPLOYMENT

Contracts for work under this proposal will obligate the Contractors and subcontractors not to discriminate in employment practices.

Bidders must, if requested, submit a compliance report concerning their employment practices and policies in order to maintain their eligibility to receive the award of the Contract.

The successful bidder must be prepared to comply in all respects with the Contract Provisions regarding Equal Employment Opportunity which are located in the Special Conditions Section of these Specifications.

20. BLANK

21. SALES TAX

Materials and equipment purchased for permanent installation in this project will be exempt from the Massachusetts Sales and Use Tax. The exemption certificate number will be furnished to the Contractor. Each bidder shall take this exemption into account in calculating his bid for the work.

22. BLANK

23. COMPLIANCE WITH AIR AND WATER ACTS

This contract is subject to the requirements of the Clean Air Act, as amended, 42 U.S.C. 1857 et. seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et. seq. and the regulations of the Environmental Protection Agency with respect thereto, 40 CFR Part 15, as amended from time to time, the major provisions of same being located in the special conditions of these specifications.

24. INTEREST OF MEMBERS, OFFICERS, or EMPLOYEES of the OWNER, MEMBERS of LOCAL GOVERNING BODY, or OTHER PUBLIC OFFICIALS

No member, officer, or employee of the OWNER, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure of for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Contract.

BID PROPOSAL

GENERAL BID

CITY OF LOWELL, MASSACHUSETTS

Project: **CURED-IN-PLACE LINING: CONTRACT #IFB 16-36**

Lowell, Massachusetts

To the City of Lowell, Massachusetts (hereinafter called OWNER)

Gentlemen:

The Bidder, in compliance with your invitation for bids for the construction of the proposed project having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the project in accordance with the contract documents, within the time set forth therein, and at the prices stated below. This price is to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this Contract on or before a date to be specified in a written "notice to proceed" of the OWNER and to fully complete the Contract on **June 30, 2018** consecutive calendar days thereafter as stipulated in the specifications.

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 **60 calendar days** after the scheduled closing time for receiving bids.

Upon receipt of written notice of the acceptance of this bid, bidder will execute the formal contract within 10 days and deliver a Surety Bond or Bonds as required.

The Bid Security attached in the sum of _____

($_____

is to become the property of the OWNER in the event the contract and bonds are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the OWNER caused thereby.

Bidder acknowledges receipt of the following addendum(s):

_____

The CONTRACTOR agrees that its attention has been called to the provisions of the "Reserve System" Ordinance of the City of Lowell, which is now incorporated in "The Code of the City of Lowell, Massachusetts", passed by the City Council on April 26, 1988 and amendments thereto and that each purchase order, so-called, issued in accordance with Section 7 - 76 of Said Code to cover the services to be rendered under this contract shall be made a part hereof by reference. It is further agreed that no obligation shall be considered to have been incurred under this Contract unless and until a purchase order shall have been issued and approved. And further, that the obligation incurred shall be limited to the amount set forth in each purchase order, or purchase orders, duly issued and approved.

The CONTRACTOR further agrees that his attention has been called to the duration of contract on Pages I-4 and SC-2 of this Contract.

BASIS OF AWARD

CURED-IN-PLACE LINING:
(CONTRACT # IFB 16-36)

In accordance with the Specifications, and under the terms and conditions mentioned above, I (We) hereby offer to furnish and deliver to departments described above the following services which shall in all respects meet the attached specifications, as required during the terms mentioned above for the following prices:

BIDDERS MUST COMPLETE ATTACHED SPREADSHEET REQUIRING UNIT PRICES

TOTAL COST _____

IN WORDS: _____
Total cost must be same as total bid price on spreadsheet

The BASIS OF AWARD is the lowest responsive and responsible bidder offering the lowest TOTAL COST.

Signature of Bidder: _____

Print Name and Title: _____

Company Name and Address:

_____

_____

_____

Telephone Number: _____

CERTIFICATION OF COMPLIANCE
G.L.c.30, §39S
PUBLIC CONSTRUCTION MORE THAN $10,000.00

I certify under the pains and penalties of perjury that:

1. the Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;

2. all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration ("OSHA") that is at least 10 hours in duration and the time the employee begins works and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and

3. that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by OSHA that is at least 10 hours in duration.

_____	_____
Signature of Individual or Corporate Name (Mandatory)	By: Corporate Officer (Mandatory, if applicable)

Approval of a contact or other agreement will not be granted unless this certification clause is signed by the applicant.

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

1. Have been in business under present business name of _____
_____

for _____years.

2. Ever failed to complete any work?_____

3. List one or more recent projects with names of Community and Engineer on which you served as general contractor similar to work required for this project.

Project and Engineer	Community	Date	Amount
a)			
b)			
c)			

4. Bank Reference_____

The undersigned agrees that, if he is selected as general contractor, he will within ten (10) days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of the general bid and furnish a performance bond and also a labor and materials or payment bond, each of a Surety company qualified to do business under the laws of the Commonwealth and satisfactory to the awarding authority and each in the sum of one hundred percent (100%) of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

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

Date:_____ _____
(Name of General Bidder)

BY _____
(Signature)

_____
(Title of Signer)

_____
(Business Address)

_____
(City and State)

_____
(Phone Number)

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____)

County of _____)

_____being duly sworn, deposes and says that:

(1) He is (owner, partner, office representative or agent) of _____

_____the Bidder that has submitted the attached bid;

(2) He is fully informed respecting the preparation and contents of the attached bid and of all pertinent circumstances respecting such bid;

(3) Such bid is genuine and is not a collusive or sham bid;

(4) Neither the said bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham bid in connection with the Contract for which the attached bid has been submitted, or to refrain from bidding in connection with such contract, or has in any manner directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached bid, or of any other Bidder; or to fix any overhead, profit or cost element of the bid price, or the bid price of any other Bidder; or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the **CITY OF LOWELL** or any person interested in the proposed Contract; **CURED-IN-PLACE LINING: CONTRACT #IFB 16-36**

(5) The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents representatives, owners, employees, or parties in interest, including this affiant.

_____
(Signed)

_____
(Title)

Subscribed and sworn to before me on
this _____day of _____, 20___

_____

_____
Title
My commission expires _____

A. Contractors' Certification

A contractor will not be eligible for award of a contract unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

_____ certifies that:
Contractor

1. It intends to use the following listed construction trades in the work under the contract

_____

_____; and

2. Will comply with the minority manpower ratio and specific affirmative action steps contained herein; and

3. Will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions.

_____
(Signature of authorized representative of contractor)

B. <u>Subcontractors' Certification</u>

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTORS' CERTIFICATION

_____ certifies that:
Subcontractor

1. It tends to use the following listed construction trades in the work under the subcontract

_____

_____; and

2. Will comply with the minority manpower ratio and specific affirmative action steps contained herein; and

3. Will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

_____
(Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractors' certification becomes a part of all subcontractors under the prime contract, no subcontract shall be executed until an authorized representative of the state agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

MINIMUM MINORITY PERCENTAGES TO BE APPLIED TO STATE AND STATE ASSISTED CONTRACTS WITHIN THE COMMONWEALTH OF MASSACHUSETTS

The Construction Reform Law, Chapter 193 of the Acts of 2004, and the revisions it made to M.G.L. c. 23A, §44 and M.G.L. c. 7, §40N, include a new municipal affirmative marketing program. Municipalities (hereinafter Awarding Authorities) must now incorporate Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) goals into both their design and construction procurement for municipal contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public work by any city or town that includes funding provided by the Commonwealth, in whole or in part (such as funding under the School Building Assistance Program, funding in any legislative appropriation, grant awards, reimbursements, municipal commitments to use state funds and the like). To count towards participation the business must be a State Office of Minority and Women Business Assistance (SOMWBA) certified WBE or MBE. Certification as a disadvantaged business enterprise (DBE), certification as an MBE/WBE by any agency other than SOMWBA, or submission of an application to SOMWBA for certification as an MBE/WBE shall not confer MBE or WBE status on a firm for purposes of participation credit. You can access the new law on The General Court of Massachusetts website:

http://www.mass.gov/legis/laws/mgl/7-40n.htm and

http://www.mass.gov/legis/laws/mgl/23a-44.htm

Affirmative Marketing Participation Goals Each Municipality must enforce the Affirmative Marketing Goals developed by the Division of Capital Asset Management (DCAM) in consultation with SOMWBA as follows:

Design Participation: MBEs (8%) and WBEs (4%)

Construction Participation: MBEs (7.4%) and WBEs (4%)

A list of currently certified MBEs and WBEs in the design and construction fields is available on SOMWBA's website at:

http://www.somwba.state.ma.us.

EXHIBIT A

SCHEDULE FOR PARTICIPATION
BY MINORITY/WOMEN BUSINESS ENTERPRISES

Project Number_____
Project Location_____
Project Name _____

A. Filed Sub-bidders utilizing MBE/WBE firms, and MBE/WBE Sub-bidders - attach to Filed Sub-bid.

B. General Contractor must submit to the Awarding Authority within five (5) working days of the opening of General Bids.

BIDDER CERTIFICATION:

The Bidder agrees that if awarded the contract it will expend at least the amount of the contract set forth below for MBE/WBE participation. For purposes of this commitment, the MBE and WBE designation means that a business has been certified by SOMWBA as either a MBE, WBE or MBE/WBE. The Bidder must indicate the MBE/WBE firms it intends to utilize on the project as follows (attach additional sheets if necessary):

Company Name & Address	MBE or WBE	Describe MBE/WBE Scopes of Work (clarify "Labor Only", "Material Only" or "Labor and Material")	If Supplier, Indicate Total Value of Supplies (60% of Total Counts toward Participation)	Total Dollar Value of Participation
1.				
2.				
3.				
4.				
5.				

MBE Goal: $_____ **Total Dollar Value of MBE Commitment: $** _____

WBE Goal: $_____ **Total Dollar Value of WBE Commitment: $** _____

The undersigned hereby certifies that he/she has read the terms and conditions of the contract with regard to MBE/WBE participation and is authorized to bind the Bidder to the commitment set forth above.

Name of Firm_____

Business Address_____

Print Name_____

Authorized Signature_____

Title_____

Telephone No._____ **Fax No.**_____

Date _____

EXHIBIT B **LETTER OF INTENT**

MINORITY/WOMEN BUSINESS ENTERPRISES PARTICIPATION

(To be completed by MBE/WBE, and submitted by the General Bidder to the Municipal Affirmative Marketing Construction Officer (AMCO) within five (5) working days of the opening of General Bids or by Filed Sub-bidder with its bid.)

Project Number_____
Project Name _____
Project Location _____
To _____
Name of General Bidder/Sub-bidder

Indicate SOMWBA Certification: _____ MBE _____ WBE _____ M/WBE
This firm intends to perform work in connection with the above project.
This firm is currently certified by SOMWBA to perform the work identified below, and has not changed its minority/women ownership, control, or management without notifying SOMWBA within thirty (30) days of such a change.
This firm understands that if the General Bidder/Sub-bidder referenced above is awarded the contract, the Bidder intends to enter into an agreement with this firm to perform the activity described below for the prices indicated. This firm also understands that the above-referenced firm, as General Bidder/Sub-Bidder, will make substitutions only as allowed by the terms of the Contract.
This firm understands that under the terms of the contract, only work actually performed by an MBE/WBE will be credited toward MBE/WBE participation goals, and this firm cannot assign or subcontract out any of its work without prior written approval of the Awarding Authority, and that any such assignment or subcontracting will not be credited toward MBE/WBE participation goals.

MBE/WBE PARTICIPATION

Section/Item Number (If Applicable)	**Describe MBE/WBE Scopes of Work (Clarify "Labor Only", "Material Only" or "Labor and Material")**	**If Supplier, Indicate Total Value of Supplies (60% of Total Counts Toward Participation)**	**Dollar Value of Participation**

Total Dollar Value: $_____

Name of MBE/WBE Firm_____

Business Address_____

Print Name_____

Authorized Signature _____

Title_____

Telephone No._____ **Fax No.**_____

Date _____

EXHIBIT C

CONTRACTOR PROGRESS PAYMENT REPORT
MINORITY/WOMEN BUSINESS ENTERPRISES PARTICIPATION

Project Number: _____

Project Name: _____

Project Location: _____

Date: _____

Periodical Payment No.: _____

General Contractor: _____

MBE and/or WBE: _____

One copy of this report is to be submitted for each Minority Business Enterprise (MBE) and/or Women Business Enterprise (WBE) at the time of submitting a request for payment. Copies of the report must be sent to the Minority Business Enterprise (MBE) and/or Women Business Enterprise (WBE) named above and to the municipalities Affirmative Marketing Construction Officer (AMCO). The AMCO will forward a copy of each Contractor Progress Payment Report to SOMWBA on a quarterly basis.

1. The total price to be paid to the above-named Minority Business Enterprise _____ and/or Women Business Enterprise _____: $_____

2. The amount remitted to the Minority Business Enterprise and/or Women Business Enterprise as of the above date for work performed under this project: $_____

3. Balance due the Minority Business Enterprise and/or Women Business Enterprise as of the above date for work performed under the above-named project: $_____

4. Comments or explanation of amounts indicated under items 1 and 2 above: _____

_____

_____

_____

_____

5. We hereby certify that the information supplied herein (including pages attached) is correct and complete.

General Contractor:	**Minority and/or Women Business Enterprise**
_____	_____
(Signed)	**(Signed)**
_____	_____
(Title)	**(Title)**
_____	_____
(Date)	**(Date)**

CITY OF LOWELL
AFFIRMATIVE ACTION CONTRACT REQUIREMENTS
CONTRACTORS' CERTIFICATION

NAME OF PROJECT: CURED-IN-PLACE LINING: CONTRACT #IFB 16-36

A contractor will not be eligible for award of a contract unless such contractor has submitted the following certification, which is deemed a part of the resulting contract:

CONTRACTOR'S CERTIFICATION

_____certifies that

1. It intends to use the following listed construction trades in the work under the contract_____

_____

_____; and,

2. Will comply with the minority manpower ratio and specific affirmative action steps contained herein; and

3. Will obtain from each of its subcontractors and submit the contracting or administering agency prior to the award of any subcontract under this contract the subcontractor certification required by these bid conditions.

_____
(Signature of Authorized Representative of Contractor)

CITY OF LOWELL
AFFIRMATIVE ACTION CONTRACT REQUIREMENTS
SUBCONTRACTORS' CERTIFICATION

NAME OF PROJECT: CURED-IN-PLACE LINING: CONTRACT #IFB 16-36

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTOR'S CERTIFICATION

_____certifies that

1. It intends to use the following listed construction trades in the work under the subcontract_____

_____

_____; and,

2. Will comply with the minority manpower ratio and specific affirmative action steps contained herein; and

3. Will obtain from each of the subcontractors prior to the award subcontract under this subcontract, the subcontractor certification required by these bid conditions.

_____
(Signature of Authorized Representative of Contractor)

In order to ensure that the said subcontractor's certification becomes a part of all subcontracts under the Prime Contract, no subcontract shall be executed until an authorized representative of the City administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

CITY OF LOWELL
AFFIRMATIVE ACTION CONTRACT REQUIREMENTS
BIDDERS' CERTIFICATION

The bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in the Appendix EEO attached hereto, including compliance with the minority contractor compliance specified in Section V of said Appendix. The contractor receiving the award of the contract shall be required to obtain from each of its subcontractors and submit to the contracting or administering agency prior to the performance of any work under said contract a certification by said subcontractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in the Appendix EEO.

_____
Signature of Bidder

_____
Name of Firm

_____
Title

_____
Date

CONTRACT

THIS AGREEMENT, made this the _____day of _____,

20___, by and between the City of Lowell, Massachusetts acting herein through its

Commissioner of the Public Works Department, hereinafter called "OWNER" and

(1)_____

an individual doing business as, a partnership, a corporation of the _____

_____

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 construction of Contract described as follows: **CURED-IN-PLACE LINING: CONTRACT #IFB 16-36** hereinafter called the Project for the sum of

_____

_____Dollars ($)_____

and all extra work in connection therewith, under the terms as stated in the General and Special Conditions of the Contract; and at his/her (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said Project in accordance with the conditions and prices stated in the Proposal, the General and Special Conditions of the Contract, the Plans, which include all maps, plates, blue prints, and other drawings and printed or written explanatory matter thereof, the Specifications and contract documents therefore as prepared on behalf of the City of Lowell, City Engineer herein entitled "Engineer", and as herein enumerated all of which are made a part hereof and collectively evidence and constitute the contract.

The Contractor hereby agrees to commence work under this Contract on or before a date to be specified in a written "Notice to Proceed" of the OWNER and to fully complete the project by **June 30, 2015**.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account thereof as provided in Paragraph 25, "Progress Payments", of the General Conditions.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in five (5) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

ATTEST:

_____ CITY OF LOWELL, MASSACHUSETTS
Secretary

_____ BY_____
Witness City Manager, Kevin J. Murphy

_____ _____
Secretary Contractor

_____ BY_____
Witness

_____
Address

_____

_____

APPROVED AS TO FORM

_____ BY_____
City Solicitor, Christine P. O'Connor Chief Procurement Officer, P.M. Vaughn

APPROVED AS TO AVAILABILITY OF FUNDS

_____
Acting City Auditor, Robert Healy

X (1) Strike out inapplicable terms. Secretary of the OWNER should attest. If Contractor is corporation, Secretary should attest. Give proper title of each person executing Contract.

DUAL OBLIGEE RIDER

TO BE ATTACHED TO AND MADE A PART OF PERFORMANCE AND PAYMENT BONDS NO._____
ISSUED BY _____ (SURETY) ON BEHALF OF_____ (PRINCIPAL) IN THE AMOUNT OF _____
_____ ($_____) AND DATED _____
IN FAVOR OF _____ (OBLIGEE).

In consideration of $1.00 and other valuable consideration the receipt whereof is acknowledged, the name (s) of _____ shall be added to said Bonds as a named Dual Obligee.

The Dual Obligee shall have the same rights and be subject to the same conditions and obligations as the original Obligee under the Bonds. Nothing in this Dual Obligee Rider shall be interpreted to extend or increase the liability of the Surety beyond that provided by the Bonds. At Surety's election, any payment due either Obligee may be made by its check issued jointly to both.

_____	_____
(Principal)	(Obligee)
By: _____	By: _____
_____	_____
(Surety)	(Dual Obligee)
By:_____	By:_____

PERFORMANCE BOND

Bond Number: _____

Contract Number: _____

CONTRACTOR PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That We, _____ ("Principal"), and _____, a _____ corporation, as Surety ("Surety"), are held firmly bound unto _____ ("Owner") and such other obligees as listed in the attached Obligee Rider (Owner and such other obligees are together referred to as the "Obligees"), in the sum of _____ Dollars ($_____) for payment of which well and truly to be made we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has entered into a contract with Owner dated _____ ("Contract"), requiring Principal to furnish, install and perform the work on the _____ ("Project"), all as more fully described and detailed in the Contract; the provisions, terms and conditions of the Contract, being fully incorporated herein and made part of this Bond with the same force and effect as if fully set forth herein;

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall faithfully perform and fulfill the Contract in the manner and at the times required by the Contract, and shall fully indemnify and save the Obligees harmless from all liability, cost, damage, expense, delay and/or schedule related damages, liquidated damages, and attorneys' fees and expenses related to the Principal's default (such attorneys' fees and expenses include, without limitation, the costs and fees associated with any mediation, arbitration, and litigation proceeding, and any effort to realize or execute on any award), which the Obligees may suffer by reason of Principal's default under the Contract, and if the Principal shall fully reimburse and repay the Obligees for making good any such default, including but not limited to guaranty and warranty obligations and claims, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety, for value received, agrees that no change, extension of time, alteration, addition, omission and/or any other modification to the Contract, to the Plans or Specifications referenced therein, or to any of the work to be performed thereunder, nor any forbearance on the part of either the Principal or the Obligees shall in any way impair or affect its obligations under this Bond and hereby waives notice of any and all such changes, extensions of time, alterations, additions, omissions and/or any other modifications or any forbearance on the part of either the Principal or Obligees.

In addition, the Surety, for value received, agrees that in the event that the Principal is declared by Owner to be in default of the Contract, the Surety shall, within twenty calendar days of written notice of Owner's election:
commence and then continue to promptly complete the Contract in accordance with its terms and conditions; or

obtain a bid or bids for submission to Owner for completion of the Contract in accordance with its terms and conditions, and upon determination by Owner of the lowest responsible and acceptable bidder for such work, arrange for a contract between such bidder and Owner in a form and under terms and conditions which are acceptable to Owner, and make available as the work progresses (even should there be a default or a succession of defaults under the contract or contracts of completion arranged under this subparagraph) sufficient funds to pay for the costs of completion of the Contract work and the other costs and damages for which the Surety may be liable hereunder, less the Balance of the Contract Price. As used in this Subparagraph "Balance of the Contract Price" shall mean the total amount payable by Owner to the Principal under the Contract and any amendments thereto as shown on the most recent application for payment or requisition submitted by Principal and approved by Owner in the immediate month preceding the default declared by Owner, less the amount previously paid by Owner and less other offsets or credits due Owner from the Principal under the Contract or otherwise.

Should the Surety fail to so promptly perform Owner's election, Owner shall have the right, in its sole discretion and without further notice to the Surety, to arrange for full completion of the Contract Work and the Surety shall, in addition to its other obligations and liabilities, be liable for all costs and expenses related to such completion of the Contract Work.

The Surety's obligations under this Bond shall not be satisfied by, and the amount of this Bond shall not be reduced or limited by, any payments made by Surety to or on behalf of subcontractors, suppliers, claimants or other creditors of Principal or to any claimant under any payment or lien bond issued for or on behalf of Principal related to the Project.

No right of action shall accrue under this Bond to or for the use of any person or corporation other than the Obligees or their successors or assigns.

Surety shall be liable to the Obligees for all liabilities, costs, damages, expenses, delay and/or schedule related damages, liquidated damages, and attorneys' fees and expenses related to the Principal's default. Such attorneys' fees and expenses include, without limitation, the costs and fees associated with any mediation, arbitration, and litigation proceeding (and any effort to realize or execute on any award), which the Obligees may suffer by reason of Principal's default under the Subcontract and/or in the Obligee's enforcement of their rights under this Performance Bond.

Judgment and/or arbitration award in favor of any Obligee against the Principal shall be fully binding on the Surety, including, without limitation, an assessment of punitive or statutory damages of any kind arising from the actions of the Principal.

IN WITNESS WHEREOF, the Principal and Surety have hereunto executed this Bond as an instrument under Seal executed by a duly authorized representative below as of the _____ day of _____, 2015.

PRINCIPAL	SURETY
By: _____	By: _____
Printed Name:	Printed Name:
Its Duly Authorized:	Its Duly Authorized Attorney In Fact
ATTEST: _____	ATTEST: _____

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

PAYMENT BOND

Bond Number: _____
Contract Number: _____

CONTRACTOR PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, That We, _____ ("Principal"), and _____ _____, a _____ corporation, as Surety ("Surety"), are held firmly bound unto _____ ("Owner") and such other Obligees as listed in the attached Dual Obligee Rider (Owner and such Obligees are together referred to as the "Obligees), in the sum of _____ _____ Dollars ($_____) for payment of which well and truly to be made we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Owner and Principal have entered into a Contract dated _____, 201__, requiring Principal to furnish, install and perform the work on the Project ("Contract"), all as more fully described and detailed in the Contract; the provisions, terms and conditions of the Contract being fully incorporated herein and made part of this Bond with the same force and effect as if fully set forth herein;

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly pay persons having just claims for (a) labor, materials, services, insurance, supplies, machinery, equipment, rentals, fuel, oils, implements, tools, and/or appliances and any other items of whatever nature, furnished for, used or consumed in prosecution of the Subcontract work and all any all modifications thereto, whether lienable, non-lienable and whether or not permanently incorporated in said work; (b) pensions, welfare, vacation and/or any supplemental employee benefit contributions payable under collective bargaining agreements with respect to persons employed upon said work; (c) federal, state, and local taxes and contributions required by law to be withheld and or paid with respect to the employment of persons upon said work; and (d) otherwise fully indemnify and save the Obligees harmless from and against any claims or liens asserted by any party as a result of payment claimed due or concerning the Contract, including attorneys' fees and expenses; then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety, for value received, agrees that no change, extension of time, alteration, addition, omission and/or any other modification to the Contract or to any of the work to be performed thereunder or any forbearance on the part of either the Principal or the Obligees shall in any way impair or affect its obligations under this Bond and hereby waives notice of any and all such changes, extensions of time, alternations, additions, omissions and/or any other modifications or any forbearance on the part of either the Principal or the Obligees.

The Principal and the Surety, for value received, agree that this Bond shall inure to the benefit of all persons with just claims as aforesaid whether or not they have any direct contractual relationship with the Principal, as well as to the benefit of the Obligees, and that such persons may maintain independent actions based upon this Bond in their names.

IN WITNESS WHEREOF, the Principal and Surety have hereunto executed this Bond as an instrument under Seal executed by a duly authorized representative below as of the _____ day of _____, 2015.

PRINCIPAL	SURETY
By: _____	By: _____
Printed Name:	Printed Name:
Its Duly Authorized:	Its Duly Authorized Attorney In Fact
ATTEST:	ATTEST:
_____	_____

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

CONTRACT

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned

the duly authorized and acting legal representative, of the City of Lowell, Massachusetts, do hereby certify as follows:

I have examined the foregoing Contract and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations and provisions thereof.

_____

Date:_____

GENERAL CONDITIONS

SUBSECTION

1. Definitions
2. Notice
3. Intent
4. Codes, Regulations and Issue Date of Standard Specifications
5. Drawings and Specifications
6. Conflicting Conditions
7. Samples
8. Quality of Equipment and Materials
9. Shop Drawings
10. Equipment and Material Approval
11. Rejected Work and Materials
12. Separate Contracts
13. Rights of Various Interests
14. Notice to Proceed
15. Time for Completion and Liquidated Damages and Incentives
16. The Contractor's Duties and Rights
17. The Engineer's Authority
18. The Owner's Duties and Rights
19. Assignment
20. Oral Agreements
21. Insurance
22. Contract Security
23. Extra Work
24. Extension of Contract Time
25. Progress Payments
26. Acceptance and Final Payment
27. Correction of Faulty Work after Final Payment
28. Substitutions and Deletions
29. Provisions Required by Law Deemed Inserted
30. Protection of Lives and Health
31. Obstructions Encountered
32. Standard Specifications

GENERAL CONDITIONS

1. DEFINITIONS

1. CONTRACT AND CONTRACT DOCUMENTS

The Contract comprises the following documents, including all additions, deletions and modifications incorporated therein before the execution of the Contract:

a. Legal and Procedural Documents

1) Invitation to Bid
2) Information for Bidders
3) Bid Proposal
4) Certifications of Bidders
5) Contract Agreement
6) Performance Bond
7) Payment Bond
8) Certificate of OWNER'S Attorney
9) Form for Sub-bid (when required)

b. General Conditions
c. Special Conditions
d. Technical Specifications, Drawings, and Addenda as enumerated in the Special Conditions

2. ENGINEER: City of Lowell, City Engineer or
Carol R. Johnson Associates, Inc.

3. STATE: The Commonwealth of Massachusetts

4. OWNER, AWARDING AUTHORITY OR MUNICIPALITY: The party of the first part designated in the Contract or any board, officer or agent duly authorized to act for the said party of the first part in the matter covered by the Contract. The OWNER is the City of Lowell, acting through its Commissioner of the Department of Public Works.

5. CONTRACTOR: The General Contractor, and is the CONTRACTOR, and is the CONTRACTOR named in the Contract Documents.

6. SUBCONTRACTOR: Any person, firm or corporation with a direct contract with the CONTRACTOR who acts for or in behalf of the CONTRACTOR in executing any part of the Contract, but does not include one who merely furnishes material.

7. WORK ON (AT) THE PROJECT: Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the CONTRACTOR and any Subcontractor.

8. DIRECTED, REQUIRED APPROVED, ACCEPTABLE: Whenever they refer to the work or its performance, “Directed”, “Required”, “Permitted”, “Ordered”, “Designated”, “Prescribed” and words of like import shall imply the direction, requirement, permission, order, designation or prescription of the ENGINEER, and “Approved”, “Acceptable”, “Satisfactory”, “In the Judgement of” and words of like import shall mean approval by, or acceptable to, or satisfactory to or in the judgement of the ENGINEER.

9. PROPOSAL: The offer of a bidder to perform the work described by the Contract Documents when made out and submitted on the prescribed form properly signed and guaranteed.

10. PROPOSAL GUARANTEE: The bid deposit accompanying the proposal submitted by the bidder, as a guaranty that the bidder will enter into a Contract with the OWNER for the construction of the work if the Contract is awarded to him.

11. CONTRACT: The agreement covering the performance of the work described in the Contract Documents and Plans including all supplemental agreements thereto and all general and special provisions pertaining to the work or materials therefor.

12. PERFORMANCE AND PAYMENT BONDS: the approved forms of security furnished by the CONTRACTOR and his Surety as a guaranty of good faith on the part of the CONTRACTOR to execute the work in accordance with the terms of the Contract.

13. SURETY: The person, firm or corporation who executes the CONTRACTOR’S Performance and Payment Bonds.

14. SPECIFICATIONS: The Legal and Procedural Documents, General Conditions, Special Conditions and Technical Specifications with all addenda thereto.

15. DRAWINGS: Those listed herein in the Special Conditions.

16. PROVIDE: Furnish and install.

17. SHOP DRAWINGS: Fabrication and erection drawings and instructions.

18. ACT OF GOD: An earthquake, flood, cyclone, or other cataclysmic phenomenon of nature. Rain, wind, flood, or other natural phenomenon of normal intensity for the locality shall not be construed as and Act of God and no reparation shall be made to the CONTRACTOR for damages to the work resulting therefrom.

19. EXTRA WORK: Work other than that required either expressed or implied by the Contract in its present form.

20. SITE: The area upon or in which the CONTRACTOR'S operations are carried on and such other areas adjacent thereto as may be designated as such by the ENGINEER.

21. CHANGE ORDER: A written order issued by the ENGINEER to the CONTRACTOR directing certain changes, additions, or reductions in the work or in the materials or methods to be used.

2. NOTICE

Written notice shall be considered as served when delivered in person or sent by certified mail to the individual, firm or corporation or to the last business address known to him who serves the Notice. It shall be the duty of each party to advise the other parties to the Contract as to any change in his business address until completion of the Contract.

3. INTENT

1. The intent of the Contract Documents is that the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

2. Any work performed after regular working hours, on Sundays or Legal Holidays, shall be performed without additional expense to the OWNER.

4. CODES, REGULATIONS AND ISSUE DATE OF STANDARD SPECIFICATIONS.

1. Where standard specifications, codes, regulations and similar publications of governmental agencies, technical societies, manufacturer's associations and regulatory groups or bureaus are referred to in these specifications, the applicable portion thereof shall be of the same effect as if fully printed herein, and the work done in full accordance therewith. The edition current as of the date of issue of this specification shall be used except where publication date is specifically stated.

5. DRAWINGS AND SPECIFICATIONS

1. Except as provided for otherwise, all required copies of Drawings and Specifications necessary for the execution of the work shall be furnished to the CONTRACTOR without charge. One complete set of all Drawings and Specifications shall be maintained at the job site and shall be available to the ENGINEER at all times.

2. All Drawings and Specifications and other data prepared by the ENGINEER shall remain the property of the ENGINEER, and they shall not be re-used on other work.

3. Figured dimensions on the Plans will be used in preference to scaling the Drawings. Where the work of the CONTRACTOR is affected by finish dimensions, these shall be determined by the CONTRACTOR at the site, and he shall assume the responsibility therefor.

4. Any discrepancies found between the Drawings and Specifications and site conditions of any errors or omissions in the Drawings and Specifications shall be immediately reported to the ENGINEER, who shall promptly correct such error or omission in writing. Any work done by the CONTRACTOR after his discovery of such discrepancies, errors or omissions without notifying the ENGINEER shall be done at the CONTRACTOR'S risk.

6. CONFLICTING CONDITIONS

1. Anything shown on any plans and not mentioned in the Specifications, or mentioned in the Specifications and not shown on the Plans, shall have the same effect as if shown or mentioned respectively on both. On the Plans, the dimensions shown shall govern in case of any discrepancy between a scaled distance and the figures shown. Either party shall take advantage of any obvious error or omission in the contract documents. Any apparent discrepancies shall be submitted to the ENGINEER for determination. The decision of the ENGINEER thereupon shall be conclusive.

2. The fact that specific mention of a fixture, or any part of the work is omitted in the Specifications, whether intentionally or otherwise, when the same is clearly shown or indicated on the Plans, or is usually and customarily required to complete fully such work as is specified herein, will not entitle the CONTRACTOR to consider action in the manner of any claim for extra compensation, but the same fixtures or work, or both, must be installed or done the same as if called for by both the Plans and Specifications.

7. SAMPLES

All samples called for in the Specifications or required by the ENGINEER shall be furnished by the CONTRACTOR at his expense and shall be submitted to the ENGINEER for his approval. Samples shall be furnished so as not to delay fabrication, allowing the ENGINEER reasonable time for the consideration of the samples submitted. CONTRACTOR shall furnish such samples of materials, and workmanship shall be in accordance with approved samples.

8. QUALITY OF EQUIPMENT AND MATERIALS

1. Everything furnished and provided shall be new and all materials and equipment shall be of the quality specified. All unspecified materials and equipment shall be equal in grade and quality to specified materials.

2. In order to establish standards of quality, ENGINEER has, in the detailed Specifications, referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers where fully suitable in design.

3. The CONTRACTOR shall furnish one complete list of proposed desired substitutions prior to signing of the Contract, together with such engineering catalog data and sketches the ENGINEER may require.

4. The CONTRACTOR shall abide by the ENGINEER'S judgment when proposed substitute materials or items or equipment are judged to be unacceptable and shall furnish the specified materials or item of equipment in such cases. All proposals for substitutions shall be submitted in writing by the General CONTRACTOR and not by individual trades or material suppliers. The ENGINEER will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute materials shall be used unless approved in writing.

9. SHOP DRAWINGS

1. The Contractor shall submit shop drawings and working drawings for all items fabricated or manufactured to be incorporated into the work, including but not limited to concrete reinforcement, structural details, piping layouts (including hangers and supports), manholes and appurtenances, wiring, materials fabricated especially for the Contract, all mechanical equipment without exception, and materials and equipment for which such drawings are specifically requested. Submittals of working drawings, shop drawings, manufacturer's specifications, catalog data, descriptive matter, illustrations, etc. as required by the Technical Specifications shall be made electronically in Portable Document Format (PDF), a file format created by Adobe Systems for document exchange. Provide PDF documents in most current version available.

2. Such Drawings shall show the principal dimensions, weight structural and operating features, space required, clearances, type and/or brand of finish or shop coat, grease fittings, etc., depending on the subject of the Drawings. When it is customary to do so, when the dimensions are of particular importance, or when so specified, the Drawings shall be certified by the manufacturer or fabricator as correct for the Contract.

3. When so specified or if considered by the ENGINEER to be acceptable, manufacturer's specifications, catalog data, descriptive matter, illustrations, etc., may be submitted for approval in place of shop and working drawings. In such case the requirements shall be as specified for shop and working drawings, insofar as applicable.

4. The CONTRACTOR shall be responsible for the prompt and timely submittal of all shop and working drawings so that there shall be no delay to the work due to the absence of such drawings.

5. No material or equipment shall be purchased or fabricated especially for the Contract until the required shop and working drawings have been submitted as hereinabove provided and approved as conforming to the Contract requirements. All such materials and equipment and the work involved in their installation or incorporation into the work shall then be as shown on and represented by said drawings.

6. Until the necessary approval has been given, the CONTRACTOR shall not proceed with any portion of the work (such as the construction of foundations), the design or details of which are dependent upon the design or details of work, materials, equipment or other features for which approval is required.

7. All shop and working drawings shall be submitted to the ENGINEER by and /or through the CONTRACTOR, who shall be responsible for obtaining shop and working drawings from drawings from his subcontractors and returning approved drawings to them. All drawings shall be clearly marked with the names of the OWNER, CONTRACTOR, and building, equipment, or structure to which the drawing applies, and shall be suitably numbered. Each shipment of drawings shall be accompanied by a letter of transmittal giving a list of the drawing numbers and the names mentioned above.

8. Only drawings which have been checked and corrected by the fabricator should be submitted to the CONTRACTOR by his subcontractors and vendors. Prior to submitting drawings to the ENGINEER, the CONTRACTOR shall check thoroughly all such drawings to satisfy himself that the subject matter thereof conforms to the Drawings and Specifications in all respects. ALL DRAWINGS WHICH ARE CORRECT SHALL BE MARKED WITH THE DATE, CHECKER'S NAME AND SUBMITTED TO THE ENGINEER: OTHER DRAWINGS SHALL BE RETURNED FOR CORRECTION.

9. The approval of shop and working drawings, etc., will be general only and shall not relieve or in any respect diminish the responsibility of the CONTRACTOR for details of design, dimensions etc., necessary for proper fitting and construction of the work as required by the Contract and for achieving the result and performance specified thereunder.

10. Should the CONTRACTOR submit for approval equipment that requires modifications to the structures, piping, layout, etc., detailed on the Drawings, he shall also submit for approval details of the proposed modifications. Any modifications to structures or substitute designs submitted for approval must carry the stamp of a Registered Professional ENGINEER with the State. If such equipment and modifications are approved, the CONTRACTOR, at no additional cost to the OWNER, shall do all work necessary to make such modifications.

11. One marked-up transparent ozalid copy of the shop and working drawings or two marked-up copies of catalog cuts will be returned to the CONTRACTOR. The CONTRACTOR shall furnish additional copies of such drawings or catalog cuts when so requested.

10. EQUIPMENT AND MATERIAL APPROVAL

1. As soon as practical and within fifteen (15) days after date of award of Contract and before any materials, fixtures or equipment are purchased, the CONTRACTOR shall furnish three copies of complete catalog data for every manufactured item of equipment and all components to be used in the work, including specific performance data, material description, rating, capacity, working pressure and general type. This submittal shall be compiled by the CONTRACTOR and approved by the ENGINEER before any of the equipment is ordered. Each data sheet or catalog in the submittal shall be indexed according to specifications section and paragraph for easy reference.

2. If prior to the expiration of the above specified period or of any authorized extension thereof, the CONTRACTOR fails to submit a list of materials, fixtures and equipment as specified above, the selection made by the ENGINEER shall be final and binding and all items shall be furnished and installed by the CONTRACTOR without change in contract price or time of completion.

3. Where conformance to any standard is specified, the catalog data for that item shall state that the item conforms to that standard; or after the ENGINEER'S approval of the item subject to conformance to the standard, the CONTRACTOR shall furnish a notarized affidavit on the manufacturer's letterhead signed by an officer certifying compliance to the standard. The CONTRACTOR shall stamp all such affidavits by which it is understood that the item certified is the item provided.

4. The name and address of and organization authorized by the manufacturer to service each item of equipment shall be included with the submittal. Proof of authorization shall be furnished on request. If the ENGINEER decides that the service organization is too far distant for practical servicing, such equipment shall be rejected.

5. After written approval, this submission shall become a part of the Contract, and may not be deviated from except upon written approval of the ENGINEER.

6. Catalog data for equipment approved by the ENGINEER does not in any case supersede the ENGINEER'S Contract Documents. The approval of the ENGINEER shall not relieve the CONTRACTOR from responsibility for deviations from Drawings or Specifications unless he has in writing called to the ENGINEER'S attention such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any in the items submitted. The CONTRACTOR shall check the work described by the catalog data with the ENGINEER'S Contract Documents for deviations and errors.

7. It shall be the responsibility of the Contractor to ensure that items to be furnished fit the space available. He shall make necessary field measurements to ascertain space requirements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the Drawings and Specifications.

8. Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the CONTRACTOR to install the equipment to operate properly and in harmony with the intent of the Drawings and Specifications, and to make all changes in the work required by the different arrangement of connections.

9. Manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer unless herein specified to the contrary.

10. After the execution of the Contract, substitution of equipment of makes other than those named in the Contract will be considered only if the equipment proposed for substitution is equal in construction and/or efficiency to that named in the Contract. It will be assumed that the cost to the CONTRACTOR of the equipment proposed to be substituted is less than the equipment named in the Contract and if the substitution is approved, the Contract Price shall be reduced a corresponding amount.

To receive consideration, requests for substitution must be accompanied by documentary proof of the actual difference in cost to the CONTRACTOR in the form of certified copies of Equipment Company's quotation to the CONTRACTOR covering the original equipment and also equipment proposed for substitution or other proof satisfactory to the OWNER. It is the intention that the OWNER shall receive the full benefit of the savings in cost involved in any substitution. In all cases the burden of proof that the equipment offered for substitution is equal or superior in construction and/or efficiency to that named in the Contract shall rest on the CONTRACTOR, and unless the proof is satisfactory to the OWNER, the substitution will not be approved. Requests for substitution on the grounds that better delivery can be obtained on the equipment proposed for substitution will not be approved for it will be assured that the CONTRACTOR in his proposal has named equipment on which he has received proposals from equipment manufacturers giving a delivery time which will permit completion of the project within the contract time. Requests for substitution of equipment which the CONTRACTOR can not prove to the satisfaction of the OWNER to be equal or superior in construction and/or efficiency to that so named in the Contract will not be approved.

In the event that the CONTRACTOR obtains the ENGINEER'S approval on equipment other than that which is shown on the Plans and specified herein, the CONTRACTOR shall, at his own expense, make any changes in the structures, buildings or piping necessary to accommodate the equipment.

11. REJECTED WORK AND MATERIALS

1. All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the ENGINEER, or are in any way unsatisfactory or unsuitable for the purpose for which they are intended, shall be rejected. Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, shall be removed within ten (10) days after written notice is given by the ENGINEER, and the work shall be re-executed by the CONTRACTOR. The fact that such defective work

may not have been reported on previous inspections shall not constitute an acceptance of any part of it.

2. Should the CONTRACTOR fail to remove rejected work or materials within ten (10) days after written notice to do so, the OWNER may remove the rejected work and then may store the materials.

3. The removal of rejected work or materials and storage of materials by the OWNER shall be paid for by the CONTRACTOR within thirty (30) days after the written notice to pay is given by the OWNER. If the CONTRACTOR does not pay the expense of such removal and after ten (10) days written notice being given by the OWNER of his intent to sell the materials, the OWNER may sell the materials at auction or at a private sale and shall pay to the CONTRACTOR the net proceeds therefrom after deducting all the costs and expenses that should have been borne by the CONTRACTOR.

12. SEPARATE CONTRACTS

The OWNER may let other contracts in connection with the work of the CONTRACTOR. The Contractor shall cooperate with other CONTRACTORS with regard to storage of materials and execution of their work. It shall be the CONTRACTOR'S responsibility to inspect all work by other CONTRACTORS affecting his work and to report to the ENGINEER any irregularities which will not permit him to complete his work in a satisfactory manner. His failure to notify the ENGINEER of such irregularities shall indicate the work of other CONTRACTORS has been satisfactorily completed to receive his work. The CONTRACTOR shall not be responsible for defects of which he could not have known which develop in the work of others after the work is completed. It shall be the responsibility of the CONTRACTOR to measure the completed work in place and report to the ENGINEER immediately any difference between completed work by others and the Drawings.

13. RIGHTS OF VARIOUS INTERESTS

Whenever work being done by the OWNER'S forces or by other contractors is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the ENGINEER, to secure the completion of the various portions of the work in general harmony.

14. NOTICE TO PROCEED

Following the execution of the Contract by the OWNER, Written Notice to Proceed with the work shall be given to the CONTRACTOR. Computation of Contract Time shall commence on a date to be specified in the Notice to Proceed and every calendar day following, except as herein provided, shall be counted in the time for completion.

The CONTRACTOR shall note that issuance of the Notice to Proceed is contingent on the City of Lowell securing all rights-of-way required for the project.

15. TIME FOR COMPLETION, LIQUIDATED DAMAGES AND INCENTIVES

1. It is hereby understood and mutually agreed by and between the CONTRACTOR and the OWNER, that the date of beginning and the time for completion as specified in the Information to Bidders of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the work embraced in this Contract shall commence on a date to be specified in the "NOTICE TO PROCEED".

2. The CONTRACTOR agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

3. If the said CONTRACTOR shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extensions thereof granted by the OWNER, then the CONTRACTOR does hereby agree, as a part consideration for the awarding of this Contract, to pay to the OWNER the **$500 per day**, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work.

4. The said amount ($500 per day) is fixed and agreed upon by and between the CONTRACTOR and the OWNER because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER would in such event sustain, and said amount is agreed to be the amount of damages which the OWNER would sustain and said amount shall be retained from time to time by the OWNER from current periodic estimates.

5. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract and additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract. Provided, that the CONTRACTOR shall not be charged with liquidated damages or any excess cost when the OWNER determines that the CONTRACTOR is without fault and the CONTRACTOR'S reasons for the time extension are acceptable to the OWNER: provided, further, that the CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due;

(a) To any preference, priority or allocation order duly issued by the Government;

(b) To unforeseeable cause beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to Acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and severe weather.

6. The CONTRACTOR shall begin within ten (10) days from the beginning of any such delay, unless the OWNER shall grant a further period of time prior to the date of final settlement of the Contract, notify the OWNER, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the CONTRACTOR within a reasonable time of its decision in the matter.

16. THE CONTRACTOR'S DUTIES AND RIGHTS

1. The CONTRACTOR shall begin and shall prosecute the work regularly and uninterruptedly after Notice to Proceed has been given (unless otherwise directed in writing by the OWNER) with such force as to secure the completion of the work, in and acceptable manner, within the time stated in the Proposal.

2. The CONTRACTOR shall submit at such times as may reasonably be requested by the ENGINEER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

3. For this Unit Price Contract, the CONTRACTOR shall within ten (10) days of receipt of Notice to Proceed, submit a complete breakdown of the Contract Amount showing a schedule of work tied to payment for specific Payment Items. Upon approval of the breakdown of the Contract Amount by the Engineer, it shall be used as the basis for all Requests for Payment.

4. The CONTRACTOR shall utilize the services of specialty subcontractors on those parts of the work which under normal contracting practices are performed by specialty subcontractors; provided that if the ENGINEER shall determine that the specialty work in question has been customarily performed by the CONTRACTOR'S own organization and that such organization is presently competent to perform such work, the CONTRACTOR shall be permitted to do so; provided further that, if the ENGINEER shall determine that the performance of any specialty work by specialty subcontractors will result in materially increased costs or inordinate delays, the requirements of this paragraph shall not apply. At the time specified by the Contract Documents or when requested by the ENGINEER, the CONTRACTOR shall submit in writing to the OWNER for the ENGINEER, the names of the subcontractors proposed for the work. Subcontractors may not be changed except at the request of the CONTRACTOR with the approval of the ENGINEER. The CONTRACTOR is responsible to the OWNER for the acts and omissions of his subcontractors, and of

their direct and indirect employees to the same extent as he is responsible for the acts and omissions of his employees. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the OWNER. The CONTRACTOR shall bind every subcontractor by the terms of the Contract Documents. For convenience of reference the Specifications are separated into titled sections. Such separations shall not, however, operate to make the ENGINEER an arbiter to establish limits to the contracts between CONTRACTOR and Subcontractors.

The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the CONTRACTOR by the terms of the Contract Documents insofar as applicable to the work of subcontractors and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the Contract Documents.

5. The CONTRACTOR shall develop and make all detail surveys necessary for construction, including setting the construction baselines, slope stakes, batter boards, stakes for pile locations and other working points, lines and elevations. The ENGINEER will provide base lines ties and bench marks for the use of the CONTRACTOR in laying out the work. The CONTRACTOR shall be responsible for the accuracy of all lines and levels and of the work as built in accordance therewith. The CONTRACTOR shall have the responsibility to carefully preserve bench marks, reference points and stakes established by the ENGINEER and in the case of destruction thereof by the CONTRACTOR or resulting from his negligence, resulting therefrom and shall be responsible for any mistakes that may be caused by the unnecessary loss or disturbance of such bench marks, reference points and stakes.

6. The CONTRACTOR, if required, shall employ at his own expense a competent surveyor or engineer registered in the STATE as a Professional Engineer or Land Surveyor, and necessary assistants who shall stake out all structures and other parts of the work, using as reference the base lines and bench marks established by the ENGINEER. The CONTRACTOR shall be responsible for the accuracy of all levels of the work as built in accordance therewith.

7. The CONTRACTOR shall secure and pay for all permits and licenses necessary for the prosecution of the work.

8. The CONTRACTOR shall give all notices and comply with all Federal, State and Local laws, or ordinances and regulations in any manner affecting the conduct of the work, and all such orders and decrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the OWNER against any claim or liability arising from or based on, the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employee.

9. The CONTRACTOR shall pay all royalties and license fees for any design, device, material or process covered by letters, patent or copyright by legal agreement with the owner of the patent or a duly authorized licensee of such owner, and shall

save harmless the OWNER from any and all loss or expense on account thereof, including its use by the OWNER.

10. The CONTRACTOR shall confine his apparatus and storage of materials and operation of his workmen to those areas described in the Drawings and Specifications and such additional areas which he may provide as approved by the ENGINEER.

11. The CONTRACTOR shall not enter upon private property for any purpose without obtaining permission, and he shall be responsible for the preservation of all public property, trees, monuments, etc., along and adjacent to the street and/or right - of-way, and shall use every precaution necessary to prevent damage or injury thereto. He shall use suitable precautions to prevent damage to pipes, conduits, and other underground structures, and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.

12. The CONTRACTOR shall provide adequate signs, barricades, red lights and watchman and take all necessary precautions for the protection of the work and the safety of the public. All barricades and obstructions shall be protected at night by red signal lights which shall be of substantial construction and shall be painted white or whitewashed to increase their visibility at night. Suitable warning signs shall be so placed and illuminated at night as to show in advance where construction, barricades, or detours exist.

13. The CONTRACTOR shall conduct his work at all times to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work, and to ensure the protection of persons and property in a manner satisfactory to the ENGINEER. No road or street shall be closed to the public except with the permission of the ENGINEER and proper governmental authority. Fire hydrants on or adjacent to the work shall be kept accessible to fire fighting equipment at all times. Temporary provisions shall be made by the CONTRACTOR to ensure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches, which shall not be obstructed except as approved by the ENGINEER.

14. The CONTRACTOR shall secure written permission from the proper authority before executing new construction when such new construction crosses highways, railroad, streets or utilities under jurisdiction of State, County, or other public agency, public utility or private entity. A copy of this written permission must be filed with the ENGINEER or OWNER before any work is done.

The CONTRACTOR will be required to furnish a release from the proper authority before final acceptance of the work.

15. The CONTRACTOR shall provide and maintain such sanitary accommodations for the use of his employees and those of his subcontractors as may be necessary to comply with the requirements and regulations of the Local and State Departments of Health and as directed by the ENGINEER.

16. The CONTRACTOR shall maintain on the work a qualified superintendent who is acceptable to the ENGINEER, and who shall give efficient supervision to the work until its completion. The Superintendent shall have full authority to act in behalf of the CONTRACTOR, and all directions given to the Superintendent shall be considered given to the CONTRACTOR. In general, the ENGINEER'S instructions shall be confirmed in writing and always upon written request from the CONTRACTOR.

17. The CONTRACTOR shall be responsible for the conduct and discipline of his employees and/or any subcontractor or persons employed by subcontractors. All workmen must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any foreman or workman employed by the CONTRACTOR or subcontractor who, in the opinion of the ENGINEER, does not perform his work, in a skillful manner or appears to be incompetent or to act in a disorderly or intemperate manner shall, at the written request of the ENGINEER, be discharged immediately and shall not be employed again in any portion of the work without approval of the ENGINEER.

18. The CONTRACTOR shall provide suitable on-site storage for all equipment and materials necessary for use in construction of the project. All materials improperly stored shall be subject to rejection by the ENGINEER. Private property shall not be used for storage purposes without the written permission of the owner or lessee.

19. The CONTRACTOR shall perform any work and shall furnish and install any materials and equipment necessary during an emergency endangering life or property. In all cases he shall notify the ENGINEER of the emergency as soon as practical but he shall not wait for instructions before proceeding to properly protect both life and property.

20. The CONTRACTOR shall do all necessary cutting and patching of the work that may be required to properly receive the work of the various trades or as required by the Drawings and Specifications to complete the structure. He shall restore all such cuts or patch work as directed by the ENGINEER. Cutting of existing structures that shall endanger the work, adjacent property, workmen or the public shall not be done unless approved by the ENGINEER and under his direction.

21. The CONTRACTOR shall keep the OWNER'S property free at all times from accumulations of waste materials or rubbish and shall remove from the OWNER'S property, and from all public and private property, all temporary structures, rubbish, and waste materials resulting from his operation or caused by his employees, and remove all surplus materials resulting from his operation or caused by his employees, leaving the site smooth, clean and true to line and grade.

22. The CONTRACTOR shall pay for all transportation and utility services not later than the twentieth day of the calendar month following that in which such services are rendered; pay for all materials, tools and other expendable equipment to the extent of 90 percent of the cost thereof, not later than the twentieth day of the calendar month following that in which such materials, tools and equipment are

delivered at the site of the project, and the balance of the cost thereof not later than the thirtieth day following the completion of that part of the work in or on which such materials, tools and equipment are incorporated or used; and pay to each of his subcontractors not later than the fifth day following each payment to the CONTRACTOR, the respective amounts allowed to CONTRACTOR on account of the work performed by his subcontractors, to the extent of each subcontractor's interest therein.

23. The CONTRACTOR shall at the termination of this Contract before acceptance of the work by the ENGINEER, remove all his equipment, tools and supplies from the property of the OWNER. Should the CONTRACTOR fail to remove such equipment, tools and supplies, the OWNER shall have the right to remove them, and the CONTRACTOR shall pay all costs incurred by the OWNER in removing them.

24. The CONTRACTOR shall deliver to the OWNER a complete release of all liens arising out of this Contract before the retained percentage or before the final Request for Payment is paid. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to the OWNER such amounts as the OWNER may have been compelled to pay in discharging such liens including all costs and a reasonable attorney's fee.

25. The CONTRACTOR shall warrant all material and equipment furnished and work performed by him for a period of one year from the date of written acceptance of the work, and furnish all guarantees applicable to definite parts of the work as stipulated in the sections of the Technical Provisions.

26. The CONTRACTOR shall have the right to suspend work or terminate the Contract upon ten (10) days written notice to the OWNER and the ENGINEER, for any of the following reasons:

a. If an order of any court, or other public authority caused the work to be stopped or suspended for a period of ninety (90) days through no act of the CONTRACTOR or his employees.

b. If the ENGINEER should fail to act upon any Request for Payment within fifteen (15) days after it is presented in accordance with the General Conditions of the Contract.

c. If the OWNER should fail to act upon any Request for Payment within thirty (30) days after its approval by the ENGINEER.

27. Blank

28. When a set of drawings has been produced for a job the CONTRACTOR shall maintain at the site a set of the drawings. On this set shall be accurately shown the actual installation of all work under each section, indicating thereon any variations from the Contract Drawings, including changes in sites, locations and dimensions. For this purpose the ENGINEER will furnish two sets of black or blue line on white

drawings. At the conclusion of the work, both sets of prints showing the entire work as actually installed shall be delivered to the ENGINEER for approval and shall become property of the OWNER.

17. THE ENGINEER'S AUTHORITY

1. The ENGINEER shall have general supervision and direction of the work. The ENGINEER shall decide any and all questions which may arise as to the quality and acceptability of materials furnished, work performed, rate of progress of work, interpretation of Drawings and Specifications and all questions as to the acceptable fulfillment of the Contract on the part of CONTRACTOR. All claims of the OWNER or the CONTRACTOR shall be presented to the ENGINEER for decision which shall be made in writing within a reasonable time. All decisions of the ENGINEER shall be final.

2. The ENGINEER shall have the authority to suspend the work, wholly or in part, for such period or periods, as he may deem necessary, due to unsuitable weather, or such other conditions as are considered unfavorable for prosecution of the work, or failure on the part of the CONTRACTOR to carry out the provisions of the Contract or to supply materials meeting the requirements of the Specifications. The CONTRACTOR shall not suspend operations due to unsuitable weather without the ENGINEER'S permission.

3. In the event of temporary suspension of work or during inclement weather or whenever the ENGINEER shall direct, the CONTRACTOR will and will cause his subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the ENGINEER, any work or materials shall have been damaged or injured from the weather, by reason of failure on the part of the CONTRACTOR or any of his subcontractors so to protect his work, such materials shall be removed and replaced at the expense of the CONTRACTOR.

4. The ENGINEER shall have the authority at all times to inspect all materials and each part or detail of the work and the CONTRACTOR will be held strictly to the true intent of the Specifications in regard to quality of materials, workmanship and the diligent execution of the Contract. Such inspection may include mill, plant or shop inspection, and any material furnished under these Specifications is subject to such inspections. The ENGINEER shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the CONTRACTOR as is required to make a complete detailed inspection.

5. The ENGINEER shall have the authority at any time before acceptance of the work to direct the CONTRACTOR to remove or uncover any portions of the finished work. After examination, the CONTRACTOR shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as Extra Work, but should the work so exposed or examined prove unacceptable, the uncovering, removing and replacing shall be at the CONTRACTOR'S expense.

6. The ENGINEER shall have the authority to direct the CONTRACTOR to correct work that has been damaged or that was not performed in accordance with the Contract Documents. An equitable deduction from the Contract Amount shall be made to compensate the OWNER from the uncorrected work.

18. THE OWNER'S DUTIES AND RIGHTS

1. The OWNER will provide the land shown on the Drawings upon which the work under the Contract is to be performed and to be used for rights-of-way for access. Any delay in furnishing these lands by the OWNER shall be deemed proper cause for adjustment in the Contract Amount and in time of completion.

2. The OWNER shall have the right to suspend the work or any portion thereof at any time provided that he gives the CONTRACTOR five (5) days written notice of suspension which shall set forth the date on which work is to be resumed. The CONTRACTOR shall resume the work upon written notice from the OWNER and within ten (10) days after the date set forth in the notice of suspension, the CONTRACTOR may abandon that portion of the work so suspended and shall be entitled to payment for all work done on the portions so abandoned, plus 15 percent of the value of the abandoned work to compensate for overhead, plant expense, and anticipated profit.

3. The OWNER, acting upon the recommendation of its ENGINEER, shall have the authority to suspend the work wholly or in part, for such period or periods, as may be deemed necessary, due to unsuitable weather, or such other conditions as are considered unfavorably for prosecution of the work, or failure on the part of the CONTRACTOR to carry out the provisions of the Contract or to supply materials meeting the requirements of the Specifications. The CONTRACTOR shall not suspend operations due to unsuitable weather without the OWNER'S permission.

4. In the event of temporary suspension of work or during inclement weather or whenever the OWNER, acting upon the recommendation of the ENGINEER, shall direct, the CONTRACTOR and his subcontractors will protect carefully his and their work and materials against damage or injury from the weather. If, in the opinion of the OWNER, acting upon the recommendation of the ENGINEER, any work or materials shall have been damaged or injured from the weather, by reason of failure on the part of the CONTRACTOR or any of his subcontractors to protect his work, such materials shall be removed and replaced at the expense of the CONTRACTOR.

5. The OWNER shall have the right to correct any deficiencies, without prejudice to any other remedy he may have, upon failure of the CONTRACTOR to perform the work in accordance with the CONTRACT documents, including any requirements with respect to the Schedule of Completion, after five (5) days written notice to the CONTRACTOR and receipt of written approval from the ENGINEER. The cost of the work so performed by the owner shall be paid for by the CONTRACTOR.

6. The OWNER, acting upon the recommendation of the ENGINEER, shall have the authority to direct the CONTRACTOR not to correct work that has been

damaged, or that was not performed in accordance with the Contract Documents. An equitable deduction from the Contract Amount shall be made to compensate the OWNER for the uncorrected work.

7. The OWNER shall have the right to terminate the employment of the CONTRACTOR giving ten (10) days written notice of termination to the CONTRACTOR in the event of any default by the CONTRACTOR and upon receiving written notice from the ENGINEER certifying cause for such action in the event of such termination, the OWNER may take possession of the work and of all materials, tools and equipment thereon and may finish the work by whatever method and means he may select. It shall be considered a default by the CONTRACTOR whenever he shall:

a.) Declare bankruptcy, become insolvent, or assign his assets for the benefit of his creditors.

b.) Disregard or violate important provisions of the Contract Documents of the ENGINEER'S instructions, or fail to prosecute the work according to the agreed Schedule of Completion including extensions thereof.

c.) Fail to provide a qualified superintendent, competent workmen or subcontractors, or proper materials, or fail to make prompt payment therefor.

If the right of the CONTRACTOR to proceed is so terminated, the OWNER may take possession of and utilize in completing the work such materials, appliances, supplies, plant and equipment as may be on the site of the work, and necessary therefor. Upon termination of the Contract by the OWNER, no further payments shall be due the CONTRACTOR until the work is completed. If the unpaid balance of the Contract Amount shall exceed the cost of completing the work including all overhead costs, the excess shall be paid to the CONTRACTOR.

If the cost of completing the work shall exceed the unpaid balance, the Contractor and his sureties shall pay the difference to the OWNER. The cost incurred by the OWNER, as herein provided, and the damage incurred through the CONTRACTOR'S default, shall be certified by the OWNER, and approved by the ENGINEER.

8. The OWNER shall have the right to order changes in the work through additions, deletions or modifications without invalidating the Contract. Compensation and time completion affected by the change shall be adjusted at the time of ordering such change.

9. The OWNER shall have the right to take possession of and use any completed or partially completed portions of the work, not withstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted work or causes refinishing of completed work,

the CONTRACTOR shall be to such extra compensation, or extension of time or both, as the ENGINEER may determine.

19. ASSIGNMENT

Neither the CONTRACTOR nor the OWNER shall sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof, or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

20. ORAL AGREEMENTS

No oral order, objection, claim or notice by any party to the others shall affect or held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing, and no evidence shall be introduced in any proceeding of any other waiver or modification.

21. INSURANCE

The CONTRACTOR shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been approved by the OWNER, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Approval of the insurance by the OWNER shall not relieve or decrease the liability of the CONTRACTOR hereunder. The amounts of such Insurance shall not be less than those enumerated in the Limits of Insurance Section of the Special Conditions. Certificates from the CONTRACTOR'S insurance, carriers stating the coverage provided, the limits of liability, and expiration dates shall be filed in triplicate with the ENGINEER before operations are begun.

21.1 The CONTRACTOR shall carry public liability insurance with an insurance company satisfactory to the City so as to save the City harmless from any and all claims for damages arising out of bodily injury to, or death of, any person or persons and for all claims for damages arising out of injury to, or destruction of, property caused by accidents resulting from the use of implements, equipment or labor used in the performance of the Contract or from any neglect, default omission or want of proper care or misconduct on the part of the CONTRACTOR or of any one in his employ during the execution of the work. Such insurance shall include coverage for blasting and explosion, if explosives are to be used.

21.2 The CONTRACTOR shall carry any other types of insurance as may be required elsewhere in the Contract Documents. Including but not limited to the requirements specified by BOOTT HYDO Company (see Appendix).

21.3 General Requirements

21.3.1 All insurance policies required in the Contract Documents shall be provided by companies satisfactory to the City. Any insurance carrier utilized to fulfill the insurance requirements of this Contract shall be licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts shall have a minimum A.M. rating. The CONTRACTOR must provide the required insurance at its own expense.

21.3.2 CONTRACTOR shall either (1) require each subcontractor to procure and to maintain during the life of its subcontract, Subcontractor's General Liability and Property Damage Insurance of the same type and in the same manner as specified herein, or (2) insure activities of his subcontractors in his own policy.

21.3.3 Each policy must list the City as an additional insured and shall be primary to and non-contributory to any coverage maintained by the City**.**

21.3.4 All insurance shall be written on an occurrence basis, unless the City approves in writing coverage on a claims-made basis. Insurance coverage whether written on an occurrence or a claims-made basis shall be maintained without interruption from the date of commencement of the work until the date of final payment and termination of any coverage required to be maintained after final payment.

21.3.5 Certificates of Insurance acceptable to the City and confirming the insurance coverage required herein are attached to the Contract. Certificates of Insurance evidencing (1) either the claims-made or occurrence form coverage, (2) work description/location, (3) CONTRACTOR's corporate name, and (4) naming the City as an additional insured must be furnished to the City within five (5) business days after presentation of the Contract to the CONTRACTOR for execution. The City shall have no obligation to execute the Contract and may award the Contract to the next lowest responsible and responsive bidder, if such insurance certificates have not been provided to the City**.** The Certificate must provide that the insured will give Notice of Accident and Notice of Claim to the insurance company as soon as practicable after receiving such notice. The CONTRACTOR shall promptly provide the City with Certificates of Insurance evidencing policies' annual renewal.

21.3.6 In the event of paid claims, the CONTRACTOR shall bear costs of any amount deductible.

21.3.7 All insurance policies must contain a minimum thirty (30) day written notice of cancellation clause, and provide that the insurance company will notify the City via registered mail, of any cancellation, change or expiration of the policy. The CONTRACTOR shall furnish to the City copies of any said cancellation, change or expiration. Prior to the effective date of any such cancellation the CONTRACTOR shall take out new insurance to cover the policies so cancelled. The Insurance Companies shall remain liable, however, until new and satisfactory insurance policies have been delivered to, and accepted by, the City.

21.3.8 In the event of the cancellation of any policy during the term of this Contract, or the failure to keep in effect the insurance required by this section, the City may, on twenty-four (24) hours notice and at its option, procure or renew such insurance on the account of the CONTRACTOR. The CONTRACTOR agrees to repay the City's expense with interest thereon at the rate of eighteen percent (18%) annually from the date of the expenditure by the City.

21.3.9 The insurance required under 21.4 through shall include all major divisions of coverage and shall be on a comprehensive general basis including Premise and Operations (including X-C-U), Owner's Protective (as a separate policy), Products and Completed Operations, and Owned, Non-owned, Leased, and Hired Vehicles. Such insurance shall be written for not less than any limits of liability required by law or the limits set forth in said insurance amounts under 21.4 through, whichever are greater.

21.3.10 The City reserves the right, at its sole discretion, to amend the insurance requirements contained herein.

21.3.11 The CONTRACTOR and all Subcontractors waive subrogation rights against the City for all losses.

21.3.12 Unless greater amounts of insurance coverage are required elsewhere in the Contract Documents, the amounts of insurance shall not be less than the minimum amounts set forth below.

21.4 **Commercial General Liability Insurance** – for personal injury, bodily injury and property damage in an amount not less than $1,000,000 for any one person, $2,000,000 per occurrence and $3,000,000 in the aggregate covering all work performed on or adjacent to City property including:
All premises and operations;
Contractual liability;
Products and Completed Operations (for a period of at least two (2) years following acceptance by the City or the completed Contract);

21.4.1 This policy(ies) shall include coverage relating to explosion, collapse, and underground property damage and contractual liability coverage.

21.4.2 Additionally, CONTRACTOR shall provide the following coverage against loss or damage by fire and against loss or damage covered by the special perils insurance endorsement on all Work: Special Perils 80% of Contract Price minimum. Upon completion of Work at City buildings, CONTRACTOR shall provide an installation floater, in the full amount of the Contract Price, for the requirements set forth above. The policy or policies shall specifically state that they are for the benefit and payable to the City, the CONTRACTOR, and all persons furnishing labor or labor and materials for the Work, as their interests may appear.

21.4.3 Personal & Advertising Injury, on an occurrence basis, $1,000,000 each occurrence.

21.5 <u>Automobile Liability Insurance</u> – including the use of all vehicles owned, non-owned, leased and/or hired in an amount not less than $2,000,000 combined single limit or Bodily Injury, each person in an amount no less than $ 500,000 and each accident in amount no less than $ 2,000,000 and Property Damage, each occurrence $2,000,000.

21.6 <u>Worker's Compensation Insurance</u> – CONTRACTOR shall provide during the life of this Contract Worker's Compensation Insurance in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts (G.L. c. 149 § 34A and G.L. c. 152) including Employees Liability Insurance, covering all work as follows:

21.6.1 Coverage A is statutory;

21.6.2 Coverage B in amounts no less than the following: each accident - $500,000; Disease Policy limit - $500,000; and Disease- each employee - $500,000.

Further, in addition to the General Requirements, CONTRACTOR shall 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. 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 City at least fifteen (15) days prior to the intended effective date thereof, which date shall be expressed in said notice. Contractor Worker's Compensation overage

21.7 Umbrella <u>Liability Coverage</u> – in an amount not less than $5,000,000 combined single limit and $5,000,000 in the aggregate.

21.8 Hazardous <u>Materials Insurance</u> – if work involves hazardous materials, the following coverage is required:

21.8.1 <u>Pollution Liability Insurance</u> – for sudden and/or gradual occurrences in an amount not less than $1,000,000 per occurrence and $5,000,000 in the aggregate arising out of the work, including but not limited to all hazardous materials identified in the contract;

21.8.2 When applicable, CONTRACTOR will designate the disposal site and furnish a Certificate of Insurance from the Disposal Facility for Environmental Impairment Liability Insurance for (a) sudden and accidental occurrences in an amount no less than $3,000,000 per occurrence and $6,000,000 in the aggregate and (b) non-sudden occurrences in the amount no less than $5,000,000 per occurrence and $10,000,000 in the aggregate.

21.8.3 Certificates of Insurance will clearly state the hazardous materials exposure work being performed.

21.8.4 Further, the CONTRACTOR shall be responsible for the confirmation, verification, remediation, and disposal of all environmental impact and hazardous materials consistent with accomplishing the work of the contract documents. The CONTRACTOR shall adhere to the Massachusetts Contingency Plan, U.S. Environmental Projection Agency, Massachusetts Department of Environmental Protection, regulatory groups and bureaus, as well as all state, federal, local, health, and environmental codes, rules, publications, ordinances, regulations, recommendations, and laws consistent with the removal and disposal of Environmental Impact and Hazardous Materials, to include, but not limited to: lead paint, asbestos, presumed asbestos, oils, refrigerants, fluids, chemical waste, general waste, tanks, polychlorinated biphenyls, Mercury, antifreeze, fluorescent light ballasts, capacitors, drums and containers, pigeon guano, dead animals, unknown or unidentified materials, contaminated soils, etc. The edition of the publication and/or governing agency current as of the date of the identification of the environmental impact and hazardous material item shall be used for accomplishing the work of the contract documents.

21.9 Builder's Risk Insurance - covering loss by fire and extended coverage in the amount of the total insurable value of all structures, materials, and equipment to be built and installed. The policy shall indicate the City, the CONTRACTOR, and all subcontractors as the named insured with loss payable to the City as Trustee. The policy shall provide for a thirty (30) day notice to the City of cancellation or restrictive amendment.

21.9.1 A copy of this insurance policy shall be furnished to the City.

21.9.2 The Builder's Risk Insurance shall be obtained before the work is started and shall be maintained until the date of completion of the work, or until the City occupies or otherwise takes possession of the project, whichever occurs first.

21.10 Owner's Protective Liability (requires a separate policy) - in an amount not less than $2,000,000 per occurrence and $5,000,000 in the aggregate.

21.11 Optional Insurance

21.11.1 Excess Liability Insurance - The CONTRACTOR may purchase and maintain excess liability insurance in the umbrella form in order to satisfy the limits of liability required for the insurance to be purchased and maintained in accordance with the requirements set forth above. Any such amounts must be in addition to the umbrella limits required, must list all underlying policies, and must list the City as an additional insured. Evidence of such excess liability shall be delivered to the City in the same form and manner as the required insurance policies.

21.11.2 Property Insurance - The City does not intend to purchase property Insurance covering the Project or the Work. The City shall not be required to provide such insurance, but the CONTRACTOR may, if it so desires, procure property insurance which will protect the interests of the CONTRACTOR, Subcontractor and Sub-subcontractors in the Work. The CONTRACTOR understands that such property insurance is solely the CONTRACTOR's responsibility, and the

CONTRACTOR, its Subcontractors and Sub-subcontractors shall have no claim against the City on account of the City's failure to provide such property insurance

21.12 <u>Limitation Of Liability</u> - Notwithstanding anything herein to the contrary, the Contractor's maximum aggregate liability for any loss or damages (other than death or personal injury) incurred by the City as a result of or in consequence of the acts or omissions of the Contractor, its employees, subcontractors or agents in the performance of services covered by this Agreement shall not exceed one hundred percent (100%) of the Contract value plus any adjusted value per executed change order; provided, however, that if the Contractor's applicable insurance coverage is greater than this amount, the limit of liability for the Contract shall be the total insurance coverage.

IT IS AGREED AND UNDERSTOOD THAT THE CITY SHALL BE ENTITLED TO RECOVER DIRECT DAMAGES INCLUDING "BENEFIT-OF-THE-BARGAIN" EXPECTATION DAMAGES AND DAMAGES FOR BREACH OF WARRANTY SUBJECT TO THE LIMITATION OF LIABILITY, AND THAT IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OR FAILURE TO REALIZE ANTICIPATED SAVINGS OR EFFICIENCIES ARISING IN CONNECTION WITH THIS AGREEMENT.

21.13 <u>Indemnification of the City</u> - The Contractor agrees to indemnify, save harmless, and defend the City and all of its officers, agents, and employees from and against any and all third party suits, claims, or proceedings ("Claims"), and any losses, damages, charges or expenses, whether direct or indirect, and liability of every name and nature related to such Claims ("Liabilities") for or due to any loss or injury to persons or damages to real or tangible property to the extent caused by the Contractor or its employees, subcontractors or agents.

22. CONTRACT SECURITY

1. The CONTRACTOR shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a labor and materials payment bond in an amount not less than One Hundred Percent (100%) 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; each such bonds naming the OWNER as obliges under an oblige rider (attached in appendix)

2. The Sureties of all bonds shall be such surety company or companies as are approved by the OWNER, and are authorized to transact business in the State.

3. If at any time the OWNER, for justifiable cause, shall be or become dissatisfied with any surety or sureties then upon the Performance or Payment Bonds, the CONTRACTOR shall within five (5) days after notice from the OWNER to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such bond shall be paid

by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished such and acceptable bond to the OWNER.

23. EXTRA WORK

Payment for extra work shall be governed by Sec. 9.03 of the "Standard Specifications for Highways and Bridges", published by the Commonwealth of Massachusetts, Massachusetts Highway Department, dated 1988 including the Supplemental Specifications dated June 6, 2006.

24. EXTENSION OF CONTRACT TIME

When extra work is ordered at any time during the progress of the work which, in the sole judgement of the ENGINEER, unavoidably increases the time for the completion of the work, an extension of time shall be granted.

A delay beyond the CONTRACTOR'S control occasioned by an Act of God, an act of omission on the part of the OWNER or by strikes, lockouts, fires, etc., may entitle the CONTRACTOR to an extension of time in which to complete the work as determined by the ENGINEER, provided however, that the CONTRACTOR shall immediately give written notice to the ENGINEER of the cause of such delay, together with a statement of the portions of work so delayed. Delays in work for which necessary material has not been received by the CONTRACTOR will not be recognized or allowed until after receipt of such necessary material.

25. PROGRESS PAYMENTS

1. The CONTRACTOR may submit once each month, a Request for Payment for work done. The CONTRACTOR shall furnish the ENGINEER all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the work. Each Request for Payment shall be computed from the work completed on all items listed in the detailed breakdown of Contract Amount, less Five percent (5%) to be retained until final completion and acceptance of the work, and less previous payments.

If the ENGINEER determines that the progress of the Work will be benefitted by the delivery to the site of certain materials and equipment, when available, in advance of actual requirement therefore and if such materials and equipment are delivered and properly stored and protected, the cost to the CONTRACTOR or subcontractor as established, by invoices or other suitable vouchers satisfactory to the ENGINEER, less the retained percentages as above provided, may be included in the progress estimates; provided always that there be duly executed and delivered by the CONTRACTOR to the ENGINEER at the same time a Bill of Sale in form satisfactory to the OWNER, transferring and assigning to the OWNER, full ownership and title to such materials or equipment.

2. Within fifteen (15) days of submission of any Request for Payment by the CONTRACTOR, the ENGINEER shall:

a.) Approve the Request for Payment as submitted, or

b.) Approve such other amount as he shall decide is due to the CONTRACTOR, informing the CONTRACTOR in writing of his reasons for approving the amended amount, or

c.) Withhold the Request for Payment, informing the CONTRACTOR in writing of his reasons for withholding it.

3. Within thirty (30) days from the date of approval of a Request for Payment by the ENGINEER, the OWNER shall:

a.) Pay the Request for Payment as approved, or

b.) Withhold payment in whole or in part on an approved Request for Payment to the extent necessary to protect itself from loss on account of any of the following causes discovered subsequent to approval of Request for Payment by the ENGINEER provided he informs the CONTRACTOR and the ENGINEER in writing of his reasons for withholding payment in whole or in part:

1. Defective Work

2. Evidence indicating the probable filing of claims by other parties against the CONTRACTOR.

3. Failure of the CONTRACTOR to make payments to Subcontractors, material suppliers or labor.

4. Damage to another CONTRACTOR.

26. ACCEPTANCE AND FINAL PAYMENT

When the CONTRACTOR shall have completed the work in accordance with the terms of the Contract Documents, the ENGINEER shall certify his acceptance to the OWNER and his approval of the CONTRACTOR'S final Request for Payment, less any money to be retained for repairs if so specified in the Special Conditions Section of these Specifications, which shall be the Contract Amount plus all approved additions less all approved deductions and less previous payments made. The CONTRACTOR shall furnish evidence that he has fully paid all debts for labor, materials and equipment incurred in connection with the work, following which the OWNER shall accept the work and release the CONTRACTOR except as to the conditions of the Performance Bond, any legal rights of the OWNER, required guarantees, and Corrections of Faulty Work after final payment and shall pay the CONTRACTOR'S final Request for Payment. The CONTRACTOR must

allow sufficient time between the time of completion of the work and approval of the final Request for Payment for the ENGINEER to assemble and check the necessary data.

27. CORRECTION OF FAULTY WORK AFTER FINAL PAYMENT

The approval of the Final Request for Payment by the ENGINEER and the making of the final payment by the OWNER to the CONTRACTOR shall not relieve the CONTRACTOR of the responsibility for faulty materials or workmanship. The OWNER shall promptly give notice of faulty materials or workmanship and the CONTRACTOR shall promptly replace any such defects discovered within one year from the date of written acceptance of the work. The ENGINEER shall decide all questions arising under this paragraph.

28. SUBSTITUTIONS AND DELETIONS

Substitutions and deletions in the work shall be accomplished by the CONTRACTOR upon written order from the OWNER as approved by the ENGINEER or upon written order from the ENGINEER: which order shall state the reasons for original inclusion and subsequent elimination or substitution for materials, fixtures or equipment; and that the deviation does not materially injure the project as a whole, is in the best interest of the OWNER and is of the same cost and quality as originally specified or giving the amount in dollars of any equitable adjustment to which the parties have agreed.

29. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forth will be physically amended to make such insertion or correction.

30. PROTECTION OF LIVES AND HEALTH

In order to protect the lives and health of his employees under this Contract, the CONTRACTOR and his Subcontractors shall comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in course of employment on work under the Contract. He alone shall be responsible for the safety, efficiency, ad adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance or operation.

31. OBSTRUCTIONS ENCOUNTERED

The Drawings may show certain information which has been obtained by the OWNER regarding the existing structure and various pipe lines and other utilities which exist at the location of the project.

The OWNER expressly disclaims any responsibility for the accuracy or completeness of the information given on the Drawings with regard to existing structures and utilities, and the CONTRACTOR will not be entitled to any extra compensation on account of inaccuracy or incompleteness of such information, said structures and utilities being shown only for the convenience of the CONTRACTOR, who must verify the information to his own satisfaction. The giving of this information upon the Contract Drawings will not relieve the CONTRACTOR of his obligations to support and protect all utilities and other structures which may be encountered during the construction of the work, and to make good all damages done to such utilities and structures, as provided in these Specifications.

32. STANDARD SPECIFICATIONS

For the purpose of governing the work to be done under this contract, the OWNER has adopted as its Standard Specifications format the "**1988 Massachusetts Highway Department Standard Specifications for Highways and Bridges; the English Supplemental Specifications, dated June 6, 2006; the Standard Special Provisions contained in this book; the 1977 Construction Standards and the Supplemental Drawings dated April 2003; the latest edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways(MUTCD)" with revisions; the 1990 Standard Drawings for Signs and Supports; the 1968 Standard Drawings for Traffic Signals and Highway Lighting; the latest edition of American Standards for Nursery Stock, City of Lowell Standards, the Plans, and these Special Provisions.**

These Standard Specifications shall apply as if reprinted herein except as modified by the General Conditions, Special Conditions and Technical Specifications.

In case of conflict between these documents, the Supplement to Standards and the Special Provisions of these Specifications shall govern