CITY OF
LOWELL, MASSACHUSETTS

INFORMATION TO BIDDERS

BID PROPOSAL, CONTRACT

GENERAL CONDITIONS, SPECIAL CONDITIONS

AND TECHNICAL SPECIFICATIONS

FOR

Cawley Stadium
Track
Renovations

CITY MANAGER – Kevin J. Murphy

SCHOOL DEPARTMENT

MAY 14, 2014

Track Renovations at Cawley Stadium

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APPENDIX

INVITATION FOR BID #14-68

CITY OF LOWELL
Track Renovations at Cawley Stadium

DUE DATE – General Bids
Sealed bids will be publicly opened on: **May 29, 2014** at City Hall in the Purchasing Department, Room 60, 375 Merrimack Street, Lowell, MA 01852, at 11:00 AM, 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.

PREBID/SITE INSPECTION
A prebid/site inspection is scheduled for: **May 21, 2014** at 10:00 AM, EST/EDST, for the work described herein, at City Hall in the Purchasing Department, Room 60, 375 Merrimack Street, Lowell, MA 01852.

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 100% 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.

PREVAILING WAGE
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 and Industries.

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.

MBE's and WBE's are encouraged to submit proposals. EOE/AA.

Project Value $ 575,000.00
TO BE ADVERTISED: WEDNESDAY, May 14, 2014

INFORMATION FOR BIDDERS

SUBSECTION

1. Receipt and Opening of Bids
2. Preparation of Bid
3. Pre-Bid Conference
4. Surveys
5. Qualifications of Bidder
6. Bid Security
7. Damages for Failure to Enter into Contract
8. Time of Completion and Liquidated Damages
9. Conditions of Work
10. Addenda and Interpretations
11. Security for Faithful Performance
12. Power of Attorney
13. Notice of Special Conditions
14. Laws and Regulations
15. Method of Award - Lowest Qualified Bidder
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19. Nondiscrimination in Employment
20. Blank
21. Sales Tax
22. Borings
23. Compliance with Air and Water Acts
24. Interest of Members, Officers, as Employees of the Owner, Members of Local Governing Body, or other Public Officials

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.

DUE DATE – General Bids

Sealed bids will be publicly opened on: **May 29, 2014** at City Hall in the Purchasing Department, Room 60, 375 Merrimack Street, Lowell, MA 01852, at 11:00 AM, 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.

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 Track Renovations at Cawley Stadium 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 Track Renovations at Cawley Stadium 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. 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.

A. No - DCAM CERTIFICATION REQUIRED

B. Each bid **must include** evidence of the Bidder's ability to complete the Work in accordance with the Contract Documents. **Bidder must submit the Company's balance sheet for the latest fiscal year and other sufficient financial data in order to demonstrate to the OWNER the company's financial capability. Each bid must include the name of the Superintendent who is to be used on this project, and his/her experience.**

C. 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.

4. 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.

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 sub-bidder's consent, if the original award made within the time limit is invalidated.

All bid deposits of sub-bidders, except (a) of the sub-bidders named in the general bids of the three lowest responsible and eligible general bidders, and (b) those of the three lowest responsible and eligible sub-bidders for each sub-trade, will be returned within five days (Saturdays, Sundays, and legal holidays excluded), after the execution of the general contract; except that, if a selected sub-bidder 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 sub-bid, the bid deposit which becomes the property of the City of Lowell shall not, in any event, exceed the difference between his sub-bid price and the sub-bid price of the next lowest responsible and eligible sub-bidder; and provided further that, in case of death, disability or other unforeseen circumstances affection any such sub-bidder, his bid deposit may be returned to him.

5. 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.

6. DURATION, TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall commence work within five (5) days of the date specified in a written Notice to Proceed of the OWNER and to fully complete the Contract within **time period** stipulated in the specifications. Bidder must agree also to **pay as liquidated damages, the sum of $500.00 for each consecutive calendar day** thereafter as hereinafter provided in the Special Conditions.

The anticipated start date is <u>June 1, 2014 and completion date is August 15, 2014</u>, the City reserves the sole right to delay the start date.

7. 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.

8. 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, 375 Merrimack Street, Room 60, Lowell, MA 01852 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.

9. 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.

10. 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.

11. 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) Stated Allowances
(e) Non-discrimination in employment

12. 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.

13. 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 and any or all accepted alternatives. If such bid exceeds such amount, the OWNER may reject all bids.

14. 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.

15. LIST OF UTILITIES IN THE AREA:

Attention is called to the fact that the following Utility Companies have facilities in the area:

Lowell Water Utility	978-674-4242
Lowell Regional Wastewater Utility	978-674-4248
Lowell Engineering Department	978-674-4070
National Grid - Gas	800-548-8000
National Grid - Electric	978-459-2600
Verizon Telephone Company	978-275-1292
Comcast Communications	978-685-0258
Lowell Fire Alarm	978-674-1813

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. In addition, Dig Safe must be notified 72 hours prior to commencing excavation.

16. 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.

17. 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.

18. BORINGS

No soil borings have been performed in conjunction with this project.

19. 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.

20. 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 FORM

Project: **Track Renovations at Cawley Stadium**

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

Gentlemen:

The Bidder, in compliance with your invitation for bids for the demolition of the proposed project having examined the plans and specifications with related documents as prepared, 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. These prices are 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 as stipulated in the specifications. Bidder further agrees to pay as liquidated damages, the sum of **$ 500.00** for each consecutive calendar day thereafter as hereinafter provided.

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 agrees to perform all the work described in the specifications and shown on the plans for the following unit prices:

NOTE: All prices should be written in ink, in words as well as figures, for the entire proposal. In case of discrepancy the amount shown in words will govern.

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 time for completion and liquidated damages on Pages 16 of this Contract.

BASIS OF AWARD

IFB 14-68

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 materials which shall in all respects meet the attached specifications, as required during the terms mentioned above for the following prices:

Bidder must provide on separate spreadsheet containing a detailed breakdown of their total costs and must identify any sub-bidders. Do not include alternates in Total Cost

TOTAL COST: _____

IN WORDS: _____

ALTERNATE # 1**: _____**
D ZONE 1 SURFACING AND DRAINAGE.

ALTERNATE #2**: _____**
D ZONE 2 SURFACING AND DRAINAGE.

ALTERNATE #3**: _____**
ADDITION OF LANES 7 AND 8.

Signature of Bidder _____

Print Name and Title _____

Company Name and Address _____

_____

Telephone Number _____

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 _____)
ss
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; Track Renovations at Cawley Stadium.

(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. Subcontractors' Certification

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 following percentages shall apply:		No less than
Boston:	Impact Area (Jamaica Plain (part), Mattapan, South Cove, Chinatown, Bay Village, Roxbury, Dorchester, South End)	30%
	Others	10%
Cambridge		12%
New Bedford		18%
Springfield		10%
All other cities and towns		5%

CITY OF LOWELL
AFFIRMATIVE ACTION CONTRACT REQUIREMENTS
CONTRACTORS' CERTIFICATION

NAME OF PROJECT: **Track Renovations at Cawley Stadium**

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: Track Renovations at Cawley Stadium

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

School Departmnet, 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: Track Renovations at Cawley Stadium 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 by 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 within 60 consecutive calendar days thereafter.

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	Chief Procurement Officer

APPROVED AS TO AVAILABILITY OF FUNDS

_____
City Auditor

(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.

PERFORMANCE BOND

Track Renovations at Cawley Stadium

KNOW ALL MEN BY THESE PRESENTS: That we _____
Name of Contractor

_____a_____
(Corporation, Partnership or Individual)

hereinafter called "Principal" and _____
(Surety)

of _____, State of _____

hereinafter called the "Surety", are held and firmly bound unto the School Department of the City of Lowell, Massachusetts, hereinafter called "Owner", in the penal sum
(City) (State)
of _____
Dollars ($_____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the _____day of _____, 200__, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default, and make at its own cost and expense any and all defects and deficiencies in materials or workmanship which may appear in the work provided for in said contract within the period of one year from the date of approval and acceptance of all work under said contract, then this obligation shall be void; otherwise to remain in full force and effect.

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

AND PROVIDED, however, that the Surety and Sureties, for value received, hereby stipulate and agree to fully perform and complete the work mentioned and described in said contract and specifications, or cause said work to be performed and completed pursuant to the terms, conditions, and covenants thereof, it for any cause, said Principal fails or neglects to fully perform and complete said work; and the Surety or Sureties further agree to commence said work of completion or cause said work of completion to commence within twenty (20) days of notice thereof from the Owner and to complete same or cause same to be completed within (20) days of the time allowed, said Principal, in said contract and specifications for the completion of said work.

AND PROVIDED, THAT THE SAID Surety and Sureties, for value received hereby further stipulate that should the Principal for any reason terminate the Contract and have the Contract terminated, the Owner shall have the right to complete the Contract under the direction of its own Engineer with all rules, regulations, clauses, etc., of the original Contract and specification in full effect.

AND FURTHER PROVIDED, that no suit, action or proceeding by reason of any default whatever shall be brought on this bond after twenty-four (24) months from the date on which the final payment under the contract falls due.

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

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

ATTEST:

_____ (Principal Secretary)

_____ (Principal)

(SEAL)

By_____(S)

_____ (Witness as to Principal)

_____ (Address-zip Code)

_____ (Address-zip Code)

ATTEST:

_____ (Surety) Secretary

(SEAL)

_____ (Surety)

By_____ (Attorney-in-Fact)

_____ (Witness as to Surety)

_____ (Address-zip Code)

_____ (Address-zip Code)

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

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we_____
(Name of Contractor)

_____ a _____
(Corporation, Partnership or Individual)

hereinafter called "Principal" and _____
(Surety)

of _____, State of _____

hereinafter called the "Surety", are held and firmly bound unto the School Department of the City of Lowell, Massachusetts, hereinafter called "Owner", in the penal
(City) (State)
sum of _____

_____Dollars ($_____)

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

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

Track Renovations at Cawley Stadium

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

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

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

PROVIDED, FURTHER, that the above name Principal, and Surety hereby jointly and severally agree with the Owner that every claimant who has not been paid in full may sue in this bond for the use of such claimant in the name of the Owner, prosecute the suit to final judgement for such sum or sums as may be justly due claimant, and have execution thereon, provided, however, that the Owner shall not be liable for payment of any costs or expenses of any such suit.

PROVIDED, FURTHER, that no suit, action shall be commenced hereunder by any claimant as follows:

A. After the expiration of two (2) years following the date on which Principal ceased work on said CONTRACT.

B. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated and not elsewhere.

PROVIDED, FURTHER, that the amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed or recorded against such improvement, whether or not claim for the amount of such lien be presented under and against this bond.

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

ATTEST:

_____ (Principal Secretary)

_____ (Principal)

(SEAL)

By_____(S)

_____ (Witness as to Principal)

_____ (Address-zip Code)

_____ (Address-zip Code)

ATTEST:

_____ (Surety) Secretary

(SEAL)

_____ (Surety)

By_____ (Attorney-in-Fact)

_____ (Witness as to Surety)

_____ (Address-zip Code)

_____ (Address-zip Code)

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
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) Advertisement for Bids
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 his designated representative.

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 Division of Planning & Development.

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 police details, 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 the 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 judgement 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. DRAWINGS - attached

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.

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

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 amount specified in the information for Bidders, 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 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. On Lump Sum Contracts the CONTRACTOR shall within ten (10) days of receipt of Notice to Proceed, submit a complete breakdown of the Contract Amount showing the value assigned to each part of the work, including an allowance for profit and overhead. Upon approval of the breakdown of the Contract Amount by the Engineer, it shall be used as the basis for all Requests for Payments.

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 slope stakes, batter boards, stakes for pile locations and other working points, lines and elevations. The ENGINEER will establish reference base lines 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. The CONTRACTOR shall maintain at the site a set of drawings on which 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 modify any of the terms or obligations contained in any of the Contract Documents shall be 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

1. 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.

a. Workmen's Compensation and Employer's Liability Insurance:

The CONTRACTOR shall take out and maintain during the life of this Contract, the statutory Workmen's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this Contract and in case any such work is sublet the CONTRACTOR shall require the subcontractor similarly to provide Workman's Compensation and Employer's Liability Insurance for all the latter's employees engaged in such work.

b. Bodily Injury Liability and Property Damage Liability Insurance

The CONTRACT shall take out and maintain during the life of this Contract such Bodily Injury Liability and Property Damage Liability Insurance and Automobile Bodily Injury Liability Insurance and Automobile Property Damage Liability Insurance as shall protect him and any subcontractor performing work covered by this Contract for claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any subcontractor or by anyone directly or indirectly employed by either of them.

c. Builder's Risk Insurance:

The CONTRACTOR shall procure and maintain during the life of this Contract, fire and extended coverage insurance in an amount equal to the insurable value of the Contract.

d. Contractual Liability Insurance:

The CONTRACTOR shall indemnify and save harmless the OWNER and the ENGINEER and their officers, agents, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgements, awards, losses, damages, costs

and expenses, including attorney's fees, on account of bodily injury, sickness, disease or death sustained by any person or persons or injury or damage to or destruction of any property, directly or indirectly arising out of, relating to or in connection with the Work, whether or not due or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of the CONTRACTOR, his officers, agents, servants or employees and/or any other person or persons, and whether or not such claims demands, suits or proceedings are just, unjust, groundless, false or fraudulent; and the CONTRACTOR shall and does hereby assume and agrees to pay for the defense of all such claims, demands, suits and proceedings, provided, however, that the CONTRACTOR shall not be required to indemnify the ENGINEER, his officers, agents, servants or employees, against any such damages, occasioned solely by defects in maps, plans, drawings, designs or specifications prepared, acquired or used by the ENGINEER and/or solely by the negligence or fault of the ENGINEER; and provided further, that the CONTRACTOR shall not be required to indemnify the OWNER, his officers, agents, servants or employees, against any such damages occasioned solely by acts or omissions of the OWNER other than supervisory acts or omissions of the OWNER in connection with the work.

e. Special Coverage Insurance:

1. Hazards resulting from storage and use of explosives and storage of highly flammable liquids shall be covered by riders to the insurance policies or by separate policies.

2. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the Contract and shall operate as and immediate termination thereof.

3. All policies shall be so written that the OWNER will be notified in writing of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment.

Renewal certificates must be furnished by the CONTRACTOR prior to the expiration date of any of the initial insurance.

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.

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.

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 therefor 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 "Standard Specifications for Highways, Bridges and Waterways" published by the Commonwealth of Massachusetts, Department of Public Works, dated 1988 including the Supplemental Specifications dated December 11, 2002.

This 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.

SPECIAL CONDITIONS

SUBSECTION

1. Enumeration of Plans, Specifications and Addenda
2. Time for Completion and Liquidated Damages
3. Inspection
4. Photographs of Project
5. Limits for Insurance
6. Blank
7. Money to be Retained for Repairs
8. Blank
9. Blank
10. Blank
11. Traffic Control
12. Communication
13. Owner's Rights
14. Daily Cleanup
15. Prevailing Wage Rates
16. Contractor Evaluation

SPECIAL CONDITIONS

1. ENUMERATION OF PLANS AND SPECIFICATIONS

Following are the Plans and Specifications which form a part of this Contract, as set forth in paragraph 1 of the General Conditions.

Project: **Track Renovations at Cawley Stadium**

2. TIME FOR COMPLETION AND LIQUIDATED DAMAGES:

The Contractor shall commence work within five (5) days of the date specified in a written Notice to Proceed of the OWNER and to fully complete the Contract as stipulated in the specifications. Bidder must agree also to pay as liquidated damages, the sum of $500.00 for each consecutive calendar day thereafter.

3. INSPECTION

The OWNER shall have access and be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records whenever these are in progress of preparation. The Contractor shall provide proper and necessary facilities for such access and inspection.

3. PHOTOGRAPHS OF PROJECT - na

5. LIMITS FOR INSURANCE

The limits for the various types of insurance required under the Insurance Subsection of the General Conditions shall be as follows:

a. For Workman's Compensation, as required by State Statute;

b. Minimum amounts of Public Liability, Bodily Injury Liability and Property damage Liability Insurance is as follows:

Injury or death of one person:	$500,000.00
Injury to more than one person In a single accident:	$1,000,000.00
Property damage in one accident:	$250,000.00
Property damage in all accidents:	$500,000.00

c. Minimum amounts of Automobile and Truck (Vehicular) Public Liability, Bodily Injury Liability, and Property Damage Liability are as follows:

Injury or death of one person;	$500,000.00

Injury to more than one person in a single accident;	$500,000.00
Property damage in one accident;	$250,000.00
Property damage in all accidents;	$500,000.00

d. Builder's Risk Insurance shall be procured and maintained by the Contractor covering loss by fire and extended coverage in the completed value form in the amount of the total insurance value of all structures, materials, and equipment to be built and installed. The policy shall indicate the Owner, the Contractor, and all subcontractors as the named insured with loss payable to the Owner as Trustee, the policy shall provide for a thirty (30) day notice to the Owner of cancellation or restrictive amendment. A copy of the policy shall be furnished to the Owner and a Certificate of Insurance shall be furnished to the Engineer.

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 as stated in the final estimate, or until the Owner occupies or otherwise takes possession of the project, whichever occurs first.

e. Contractual Liability Insurance covering the liability assumed by the Contractor as outlined under section (d) of the Insurance Section of the General Conditions to the amounts required under Section (b) above.

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7. MONEY TO BE RETAINED FOR REPAIRS

1. The CONTRACTOR agrees that the OWNER may retain out of the final payment due to the CONTRACTOR under this Contract, five percent (5%) of the amount thereof, and may expend the same in the manner hereinafter provided, in making such repairs or replacements of said work as the OWNER may deem expedient.

2. If at any time within one-year period of guarantee any part of the work constructed under the terms of this Contract requires repairing or replacement, the OWNER may notify the CONTRACTOR in writing to make the required repairs or replacements. If the CONTRACTOR neglects to begin making such repairs or replacements within ten (10) days from the date of receipt of such notice, the OWNER may employ other persons to make the same. The OWNER shall pay the expense of the repairs out of the sum retained for that purpose. Upon the expiration of the one year period of guarantee, provided that the work at the time is in good order, the CONTRACTOR will be entitled to receive the whole or such part of the sum retained as may remain after the expense of making repairs or replacements has been paid.

3. For settlement of all claims arising out of this Contract against the OWNER, its officers, or agents and for all expenses, losses, or damages incurred by the OWNER by reason

of said claims, it is agreed that the OWNER may keep the whole or any portion of the sum retained.

8. BLANK

9. BLANK

10. BLANK

11. TRAFFIC CONTROL

The intent of this project is to maintain access to all homes and businesses at all times during construction. The CONTRACTOR must furnish all required traffic control, including detour signs and drums. The CONTRACTOR may not close traffic lanes, roadways, driveways or sidewalks without prior written approval from the OWNER. The CONTRACTOR shall submit a Traffic Control Plan for each street indicating proposed staging of traffic to complete the required work. No work shall begin on a street until the Traffic Control Plan has been reviewed and approved by the OWNER. The Traffic Control Plan shall show proposed signage and placement of drums. **When directed by the ENGINEER, the CONTRACTOR shall call for police details, which will be paid for by the CONTRACTOR.**

During the progress of the work, the CONTRACTOR shall make every effort to maintain access to abutting properties. When it becomes necessary to temporarily block access to a property, the CONTRACTOR shall notify the owner of the property in writing at least 72 hours in advance of blocking access so that the property owner can move vehicles and make alternate arrangements.

Cost for preparation of the Traffic Control Plan shall be considered as incidental to the work. No separate payment will be made for preparation of the Traffic Control Plan.

12. COMMUNICATION

The Contractor must furnish a portable phone (Nextel) to communicate with the Engineer's field engineer. The Contractors foreman/supervisor must have radio/phone to the engineer before start of work. The Contractor shall pay all phone charges reasonable within contract scope of work. The Contractor shall receive no additional compensation for communications.

13. OWNER'S RIGHTS

OWNER'S Rights to be exercised by the Department of Public Works wherever in this Contract the OWNER is to give or receive a notice or provisions are included for the exercise of rights and privileges and without limiting the generality thereof, the acts dealing with the OWNER'S prerogatives in the Contract shall be exercised by the Commissioner of Public Works or his authorized representative for and in behalf of the OWNER.

14. DAILY CLEAN UP

Before completion of each day's work, the CONTRACTOR shall be responsible for cleaning up and removing and relocating all removed material, debris, equipment and the like to ensure the continuous flow of traffic in roadways where work is progressing including access to private property during non-working hours.

15. PREVAILING WAGE RATES

16. CONTRACTOREVALUATION

CITY OF LOWELL
CONTRACTOR'S AND SUBCONTRACTOR'S RECORD OF PERFORMANCE

Contractors and Subcontractors performing construction work or providing supplies or services are required by law to be responsible and responsive.

In order to document contractors' performance for final payment and for future contract evaluation, the City must have a documented record of contract performance.

Before the release of any final payments on contracts with the City of Lowell, the following report questionnaire must be completed and copies sent to the City Manager, City Auditor and Purchasing Agent.

Contract No. _____

Name of Contractor:_____Date of Contract:_____

Address:_____

Type of Work Performed:_____Contract Completion Date:_____

PLEASE FILL OUT EACH OF THE FOLLOWING AND PROVIDE DETAILS UNDER "COMMENTS" BELOW:

Did the quality of the work/product meet specification?_____

Was work performed in a timely manner?_____ If not, why?_____

Did contractor meet minority hiring goals, local employment ordinance, and prevailing wage, and wage reporting requirements?_____

Did you note any deficiencies in the work?_____

If any deficiencies were noted, was contractor notified in writing?_____

Were deficiencies corrected without cost to City?_____

How many change orders were required?_____ Any fault associated?_____

Was their bond called in?_____If so, why?_____

Was someone else brought in to correct or finish job?_____

Do you recommend we use them again (If no, must state reasons below)?_____

Comments:_____

_____

_____

Department_____Completed by _____

Date_____

TECHNICAL SPECIFICATIONS

APPENDIX

1. THE COMMONWEALTH OF MASSACHUSETTS CITY OF LOWELL SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

2. CITY OF LOWELL MINORITY BUSINESS ENTERPRISE PROGRAM

3. FORMS

THE COMMONWEALTH OF MASSACHUSETTS
CITY OF LOWELL
SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

I. For purposes of this contract, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.

II. During the performances of this contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:

1. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex.

The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer: recruitment advertising; recruitment layoff; termination; rates of pay or other forms compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).

2. In connection with the performance of work under this contract, the Contractor, shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age or sex.

A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.

III. 1. As part of his obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a (not less than) 5% percent ratio of minority employee man hours to total man hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws.

2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or the Commission.

IV. 1. At the discretion of the Commission there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering this project, hereinafter called the Administering Agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administering agency.

2. The Contractor (or his agent, if any, designated by him as the on-site equal, employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

3. The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, or workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Commission and Liaison Committee.

4. Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.

5. The Contractor shall prepare weekly reports in a form approved by the Commission of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Commission and to the Liaison Committee.

V. If the Contractor shall use any subcontractor on any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods. It shall include notification to the Office of Minority Business Assistance (within the Executive Office of Communities and Development) or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.

VI. 1. In the employment of journeymen, apprentices, trainees and advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and, secondly, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States.

VII. A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

VIII. Compliance with Requirements

The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116 dated May 1, 1975, and of Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this contract.

IX. Non-Discrimination

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

X. Solicitations for Sub-Contracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action.

XI. Bidders Certification Requirement

1. The bidders certification form currently in use will be deleted from all future bid documents.

2. The following certification statement will be inserted in the bid document just above the bidder's signature, as a substitute for the present bidder certification form: "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."

XII. Contractor's Certification

The Contractor's certification form must be signed by all successful low bidder(s) prior to award by the contracting agency. (See attachment.)

XIII. Compliance-Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering agency or the Commission on instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information, which may be determined by the Commission to affect the employment of

personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary affirmative action contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.

2. Whenever the administering agency, the Commission, or the Liaison Committee believes the General Contractor or any Subcontractor may not be operating in compliance with the terms of this Section, the Commission directly, or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Section. If the Commission or its agents finds the General Contractor or any subcontractor not in compliance, it shall make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission shall make a final report of non-compliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the General Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

a) The recovery by the administering agency from the General Contractor of 1/100 of 1% of the contract award price or $1000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the administering agency from the General Contractor to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the subcontract price, or $400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply.

b) The suspension of any payment or part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate his compliance with the terms of the contract;

c) The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;

d) The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.

3. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Section, he may request the administering agency, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency,

based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

4. Sanctions enumerated under Sections XII-2 shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

Severability

The provisions of this section are severable, and if any court of competent jurisdiction shall hold any of these provisions unconstitutional, the decision of such court shall not affect or impair any of the remaining provisions.

CITY OF LOWELL

MINORITY BUSINESS ENTERPRISE

PROGRAM

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CITY OF LOWELL

MINORITY BUSINESS ENTERPRISE PROGRAM

I. Statement of Equal Opportunity Policy

WHEREAS: it is the policy of the government of the United States of America, the Commonwealth of Massachusetts and the City of Lowell that no person shall be discriminated against in any manner whatsoever on the grounds of race, religion, color, sex or national origin; and

WHEREAS: it is the policy of the government of the United States of America, the Commonwealth of Massachusetts and the City of Lowell that no person because of race, color, national origin, sex or religion be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded entirely or in part by the City, State or Federal government; and

WHEREAS: the City of Lowell unequivocally ascribes to the policies of the State and Federal governments with respect to non-discrimination and equal opportunity and is the recipient of Federal and State financial assistance; and

WHEREAS: to clearly enunciate the equal opportunity/affirmative action policy of the City of Lowell's Minority Business Enterprise Program, the following responsibilities are specified:

(1) The City of Lowell strongly affirms that it will not discriminate in any contractual procedures including, but not limited to, contracts for construction, services, and supplies.

(2) This policy shall be administered at all levels of City government with a positive, aggressive and supportive attitude on the part of all Department Heads. All City Department Heads will be furnished with a copy of the Minority Business Enterprise Program.

(3) It is the responsibility of all Department Heads and employees to take affirmative steps to implement this policy to insure equality of opportunity in conducting the affairs of the City of Lowell, including notifying those persons and businesses doing business with the City of Lowell that contracts for goods and services, and construction shall be made without reference or regard to race, color, sex, age, disability, religion or national origin.

(4) The Contract Compliance/Affirmative Action Officer shall be responsible for insuring that all aspects of the MBE Program are implemented and monitored. This will include active recruitment of MBE's. The Contract Compliance/Affirmative Action Officer will report directly to the City Manager on all MBE matters.

(5) The Contract Compliance/Affirmative Action Officer will conduct pre-bid conferences to inform all potential bidders of the goals of the City's MBE Program.

(6) A copy of the MBE Program will be available for public inspection in the office of the Contract Compliance/Affirmative Action Officer.

NOW, THEREFORE, IT IS HEREBY RESOLVED: that the following Minority Business Enterprise Program be and hereby is adopted for and in behalf of the City of Lowell.

I. Objectives and Goals

(1) For purposes of this MBE Program "minority" refers to a person with permanent residence in the United States and who is Black, Hispanic, American Indian, Eskimo, Aleut, Asian or Cape Verdean.

(2) For purposes of this MBE Program "Minority Business Enterprise" or "MBE" means any business certified by the State Office of Minority Women Business Assistance (SOMWBA) as a bonafide minority business enterprise. To be certified as an MBE, a business must demonstrate:

a. That minority-persons beneficially own and control at least 51% of the business;

b. That minority persons have dominant control in the management and operation of the business;

c. That minority persons have made a substantial investment in the business; and

d. That the business is an ongoing concern and that it was not created solely for the purpose of taking advantage of set-aside programs.

In the case of a joint venture between a SOMWBA certified MBE and a non-minority controlled enterprise, the joint venture shall be considered to be an MBE if the SOMWBA certified MBE which is part of the joint venture has more than 51% control over management of the project bid upon by the joint venture, and has the right to receive more than 51% of the profits that are derived from that project.

(3) The objective of the City of Lowell's MBE Program is to ensure participation by MBE's in City contracts for goods, services and supplies. This objective is based in part on the availability of MBE's with expertise in these areas. The Contract Compliance/Affirmative Action Officer will work to identify the needs of the various City Departments for supplies, goods, and services and to match them with available MBE's.

(4) The goal of the City of Lowell's MBE Program shall be the awarding of not less than five percent (5%) of the total dollar value of all contracts for goods, services and supplies to available qualified MBE's.

(5) The City of Lowell will seek to use MBE's certified by the State Office of Minority Women Business Assistance (SOMWBA). The Contract Compliance/Affirmative Action Officer will contact SOMWBA for confirmation of the certification status of MBE's. Uncertified MBE's will be referred to SOMWBA for certification.

III. Responsibility For Implementation

The City's Contract Compliance/Affirmative Action Officer is responsible for the development, implementation and managerial functions of the MBE Program. That person is directly responsible to the City Manager who has overall responsibility for the Program. All City personnel involved in the MBE Program are expected to cooperate fully with the Contract Compliance/Affirmative Action Officer to ensure the success of the Program.

Specific responsibilities of the Contract Compliance/Affirmative Action Officer include:

(1) Development of monitoring and revising the MBE Program.

(2) Identifying the supplies, goods and services required by the City through notifications sent to him/her by the various departments responsible for procuring them.

(3) Maintaining a directory of MBE's with information to include the type of business and area of specialty of each MBE.

(4) Publicizing business opportunities to MBE's and assisting such business to obtain contracts and subcontracts by providing them with information in sufficient time to prepare bids and quotations.

(5) Advising MBE's of training opportunities and available technical assistance.

(6) Conducting pre-bid and pre-construction conferences to explain MBE requirements and to respond to questions.

(7) Participating on bid and proposal review panels.

(8) Maintaining accurate and up-to-date records of MBE efforts.

(9) Monitoring contractors' and subcontractors' compliance with MBE requirements.

(10) Attending conferences, workshops and training seminars concerning MBE Programs.

(11) Serving as liaison with economic development organizations working in support of economic development in the minority community.

(12) Assisting in the arrangement of joint ventures between minority and non-minority firms and two or more minority firms.

(13) Providing technical assistance to interested MBE's in the area of bidding and bonding, and if necessary, making referrals to other agencies for such assistance.

IV. Implementation of Program

(A) Internal Mechanisms

The procedures that will be utilized by the City of Lowell that will help to ensure that Minority Business Enterprises will have an equitable opportunity to compete for contracts and subcontracts include the following:

(1) The City will develop bid packages and requests for proposals in such a way as to increase MBE Participation whenever possible. (e.g. breaking large contracts into smaller contracts to enable MBE's to bid).

(2) The City will encourage the formation of joint ventures among MBE's and also between Minority and Non-Minority firms by having the Contract Compliance Officer serve as the liaison between firms.

(3) The City will provide specifications and requests for proposals to the Minority entrepreneurial Community in such a timely fashion as to insure that minority bidders will have ample time to formulate a proposal.

(4) The City will provide notice of bid specifications and requests for proposals to the State Office of Minority Women Business Assistance not less than fifteen (15) days in advance of the bid or proposal advertisement.

(5) The City will utilize bid forms that will be as simplified as possible.

(6) The Contract Compliance Officer will hold pre-bid conferences to emphasize the City's commitment to the MBE program and to explain the goals and objectives of the City's MBE program and also to explain the forms that must be submitted with the bid regarding the MBE participation.

(7) The City will make available to and assist bidders in the use of the MBE directory.

(8) The Department of Public Works will request that all contractors submit monthly reports regarding their use of minority services.

(9) The City of Lowell will seek to make MBE's aware of future projects to be undertaken through its outreach program.

(10) The Contract Compliance Officer, with the assistance of the State Office of Minority Women Business Assistance, will regularly update the MBE Directory.

(B) External Mechanisms

In order for MBE's to be aware of the City of Lowell's procurement and construction activities, the Contract Compliance Officer will:

(1) Forward copies of all bid notices, including date contract was advertised, to the State Office of Minority Women Business Assistance, and other Minority Business Associations.

(2) Place bid notices in all local newspapers, the Dodge Bulletin, MBE trade association newsletters and minority newspapers.

(3) Include Minority Business Enterprise clause in all advertisement for bids.

(4) Hold pre-bid conferences for potential bidders to provide an opportunity to explain MBE requirements.

(5) Seek to obtain the maximum utilization of SOMWBA Certified Contractors, vendors and services.

(6) Conduct a seminar with all City of Lowell Department Heads for the purpose of identifying their respective duties and responsibilities to accomplish the affirmative action goals of the City.

(7) Outreach minorities who provide professional services such as architects, engineers, consultants, accountants, attorneys, etc. through notices to professional organizations and utilization of listing provided by SOMWBA.

V. Bidding Procedures

COMPETITIVE BIDDING

The City of Lowell, in awarding contracts, uses the procedure set out in Chapter 43, Section 18 of the Massachusetts General Laws. All contracts for construction or for the purchase of equipment, supplies or materials, which amount to two thousand dollars or more are awarded after proposals are solicited through advertisements in the central register published by the state secretary and in at least one newspaper published in the City of Lowell once a week for at least two consecutive weeks. All proposals are opened in public. Contracts are awarded to the lowest responsible bidder meeting the plans and specifications of proposed work or supplies.

PURCHASES OF LESS THAN $2,000.00

When purchasing supplies totaling less than $2,000.00 the Purchasing Department of the City of Lowell contracts at least three firms to obtain prices for the required goods. The firm quoting the lowest price is then generally used, based on its past performance and ability to provide quality supplies.

REQUESTS FOR PROPOSALS

The City of Lowell utilizes RFP's for consultant, engineering, design, etc. services. The procedure that has been used is that the Office of the City Manager, Division of Planning and Development, distributes copies of an RFP to firms who have completed similar projects (whether or not for the City of Lowell), those listed in trade/professional journals, and those

who have expressed an interest in receiving particular RFP's. The selection of a firm for a project is based on its past performance on similar projects, the content of its proposal and consideration of the City's overall needs and project justification. Project cost is only one factor taken into consideration in the awarding of such projects.

The City of Lowell will make every effort to outreach to MBE's to ensure them an opportunity to participate in each of the above procedures, as outlined in Section IV above.

VI. Monitoring and Reporting Procedure

In addition to the established reporting requirements for Affirmative Action, quarterly reports will be developed and documented by the Contract Compliance Officer, and will include the following information for each project:

(1) Name of General/Prime Contractor and Subcontractor awarded City funded contracts.

(2) Description, dollar value, and percentage of dollar value of contracts awarded to MBE's by the City.

(3) Description, dollar value, and percentage of dollar value of subcontracts, regardless of tier, awarded to MBE's by the City.

(4) Total percentage at dollar value of all contracts and subcontracts, regardless of tier, awarded to MBE's and an indication as to whether the percentage met or exceeded the goal specified in the project application.

The Contract Compliance Officer will also require that each Contractor employed by the City of Lowell, submit to her/him monthly reports consisting of a complete breakdown of all minority services employed during each week of construction.

The monthly and quarterly reports will be kept on file with the Contract Compliance Officer and will be forwarded to the Massachusetts Commission Against Discrimination and the State Office of Minority Women Business Assistance and HUD.

The Contract Compliance Officer shall be responsible for insuring that all aspects of the City of Lowell's Minority Business Enterprise Program are initiated and undertaken. By virtue of the delegation of this responsibility and authority to direct the program, the Contract Compliance Officer will report directly to the Office of the City Manager on equal opportunity matters. The Contract Compliance Officer shall be responsible for the development, administration and monitoring of all activities necessary to insure the accomplishment and success of this Minority Business Enterprise Program. This includes a close working relationship with the Department of Public Works and the Engineering Office for the City of Lowell.

The Contract Compliance Officer will forward all monthly monitoring reports from the Contractor to the State Office of Minority Women Business Assistance on a quarterly basis.