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**Project Manual  
for  
Water Pollution Control Facility  
Improvements – Phase 1**

**Wareham, Massachusetts**

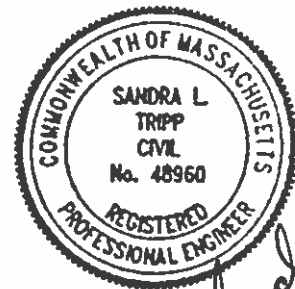
**Contract No. 2021-WW-01  
CWSRF No. 6642  
Volume I of II**

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1545 Iyannough Road - Route 132  
Hyannis, Massachusetts

2021



*Sandra L. Tripp*  
4/16/21

**PROJECT MANUAL  
FOR  
WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1**

**CWSRF NO. 6642  
CONTRACT NO. 2020-WW-01**

**TOWN OF WAREHAM, MASSACHUSETTS**

**VOLUME I OF II**

**GHD Inc.  
1545 Iyannough Road  
Hyannis, Massachusetts 02601**

**2021**

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INVITATION TO BID  
WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1  
TOWN OF WAREHAM, MASSACHUSETTS  
CONTRACT NO. 2021-WW-01  
CWSRF NO. 6642

Sealed bids for General Contractors for the construction of the Water Pollution Control Facility Improvements – Phase 1 for the Town of Wareham MA will be received at the Water Pollution Control Facility (WPCF), 6 Tony's Lane, Wareham, Massachusetts, Attn: Guy Campinha, Director of Water Pollution Control until 2:00 p.m. local time on May 11, 2021 and at that place and time will be publicly opened and read aloud. All bids will be valid only when accompanied by a current certificate of eligibility and updated statement (Form CQ3) issued by the Division of Capital Asset Management (DCAM), showing that the General Bidder has the classification of Sewage and Water Treatment Plants and that the Filed Sub Bidders have the classification matching the Filed Sub-Bid being submitted.

Filed subcontractor sealed bids designated herein for construction of the above referenced project will be received at the Water Pollution Control Facility (WPCF), 6 Tony's Lane, Wareham, Massachusetts, Attn: Guy Campinha, Director of Water Pollution Control until 2:00 p.m. local time on April 29, 2021 and at that place and time will be publicly opened and read aloud. All bids will be valid only when accompanied by a current certificate of eligibility and updated statement issued by the Division of Capital Asset Management (DCAM), showing that the Filed Sub Bidders have the classification matching the Filed Sub-Bid being submitted.

The Project is being bid under the provisions of M.G.L. c.149, s44D. Bidding and award of this Contract shall be required to comply with Massachusetts General Law Chapter 149, Section 44A-44J, and all other applicable Massachusetts General Laws.

Separate sealed Bids will be received for the following:

General Construction – Sewage and Water Treatment Plants

Masonry

Miscellaneous and Ornamental Iron

Heating, Ventilating, and Air Conditioning

Electrical and Instrumentation

The Work consists of construction of a concrete equalization basin, odor control facility, denitrification filters, and development of a groundwater well in accordance with the Bidding Documents heretofore prepared by GHD Inc. 340 calendar days will be allowed for contractor to achieve substantial completion and 400 calendar days to achieve final completion.

The Town of Wareham is the Issuing Office for this Project. The electronic documents may be obtained in person at the following location after 2:00 p.m. on April 8, 2021. The Contract Documents may also be examined (by appointment only) at the following location after 2:00 p.m. on April 8, 2021. It is recommended bidders call the facility before picking up electronic documents.

Wareham Water Pollution Control Facility  
6 Tony's Lane  
Wareham, MA 02571  
508-295-6144

Electronic documents can also be mailed to bidders upon request. Please contact the facility to make arrangements for mailing of the electronic documents.



All questions shall be submitted in writing to Guy Campinha, Director of Water Pollution Control at [gcampinha@wareham.ma.us](mailto:gcampinha@wareham.ma.us). The subject heading for all e-mails and faxes shall be:

WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1

No response will be given to questions received less than seven (7) days before the Bid opening date.

Bidders shall review and acknowledge all Addenda on the Bid Form.

Each General and Filed Sub-bidder's Bid must be accompanied by a Bid security made payable to Owner in an amount of 5-percent of Bidder's maximum Bid price and in the form of a check, bank money order, or a Bid Bond issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General and Supplementary Conditions.

Disadvantaged Business Enterprise (DBE) goals are applicable to the total dollars paid to the construction contract. The goals for this project are a minimum of **4.20 percent D/MBE participation and 4.50 percent D/WBE participation** by certified DBEs. The two low bidders shall submit completed DBE forms (EEO-DEP-190C & EEO-DEP-191C and the DBE Certification of United States Citizenship form) by the close of business on the third business day after Bid opening. Failure to comply with the requirements of this paragraph may be deemed to render a proposal non-responsive. No waiver of any provision of this section will be granted unless approved by the Department of Environmental Protection (MassDEP).

Minimum Wage Rates as determined by the Executive Office of Labor and Workforce Development under the provision of the Massachusetts General Laws, Chapter 149, Sections 26 to 27D, as amended, apply to this project.

It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Minimum Wage Rates for those trades people who may be employed for the proposed work under this contract. Federal Minimum Wage Rates as determined by the United States Department of Labor under the Davis-Bacon Act also apply to this project.

If, upon acceptance of a Bid, a Bidder fails to enter into a Contract with the Town of Wareham, the Bid security shall be forfeited to and become the property of the Town.

No Bidder may withdraw its Bid within 60 days after the date of the Bid opening. The successful Bidder must furnish a 100% Performance Bond and a 100% Payment Bond with a surety company satisfactory to the Town of Wareham and conforming to the prerequisite requirements of Article 5 of the General Conditions.

The Town of Wareham reserves the right to waive any informalities or to reject any or all Bids.

Bidders are required to certify, under penalty of perjury, that Bids have been prepared without collusion with other Bidders, subcontractors, suppliers, etc. This certification is included with the Bid Form and each Bidder must sign in the space provided.

The Project is to be funded in part by the Massachusetts Water Pollution Abatement Trust (the "Trust").

The Project requires compliance with the Department of Environmental Protection's Diesel Retrofit Program.

The Project is subject to the American Iron and Steel requirements of P.L. 113-76, the Consolidated Appropriations Act of 2014.

A Pre-Bid Conference will be held at 10:00 a.m. on April 20, 2021 at the Wareham Wastewater Treatment Facility on Tony's Lane in Wareham, MA. The Pre-Bid Conference is mandatory for General Contractors,

and optional for Filed-Subbid subcontractors. Representatives of Owner and Engineer will be present to discuss the Project. Bidders are encouraged to attend and participate in the conference.

Dated: April 7, 2021

SECTION 00100

INSTRUCTIONS TO BIDDERS

**ARTICLE 1 - DEFINED TERMS**

- 1.01. Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. Issuing Office - The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered. The Issuing Office for this project is the Town of Wareham, Massachusetts, Wareham Water Pollution Control Facility, 6 Tony's Lane, Wareham, MA 02571.
  - B. Prefixes to Referenced Paragraph Numbers are as follows:  
  
General Conditions; "GC-\_\_\_\_."   
Supplementary Conditions; "SC-\_\_\_\_."
  - C. Bidder – The individual or entity who submits a Bid directly to the Owner.
  - D. Successful Bidder – The lowest responsible and eligible Bidder submitting a responsive Bid to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

**ARTICLE 2 - COPIES OF BIDDING DOCUMENTS**

- 2.01. Complete sets of the Bidding Documents in the number and for the deposit sum, if any, stated in the advertisement or invitation to bid may be obtained from the Issuing Office.
- 2.02. Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03. Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

**ARTICLE 3 - QUALIFICATIONS OF BIDDERS**

- 3.01. To demonstrate Bidder's qualifications to perform the Work, Bidder shall submit written evidence that he has been certified by the Commonwealth of Massachusetts Division of Capital Asset Management and Maintenance and is listed on the most current list for the relevant category.
- 3.02. Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

**ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE**

- 4.01. Subsurface and Physical Conditions
  - A. The Supplementary Conditions identify:

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1. Those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site that the Engineer has used in preparing the Bidding Documents.
  2. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except underground facilities) that the Engineer has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in Article 4 of the General and Supplementary Conditions are either appended in these Contract Documents as called out in specific specification sections or will be made available for viewing by the Issuing Office to any Bidder on request. Those reports and drawings not appended in the Contract Documents are not part of the Contract Documents. Bidder is responsible for any interpretation or conclusion Bidder draws from any data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings. No claim can be made as to the accuracy of the documents.
- C. A complete set of referenced drawings is available for review at the issuing office, during normal business hours. No claim can be made as to the accuracy of the drawings.

#### 4.02. Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner or others.

#### 4.03. Hazardous Environmental Condition

- A. The Supplementary Conditions identify any reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site.
- B. Copies of such reports and drawings referenced in Article 4 of the General and Supplementary Conditions are appended to these Contract Documents. Those reports and drawings are not part of the Contract Documents. Bidder is responsible for any interpretation or conclusion Bidder draws from any data, interpretations, opinions, or information contained in such reports, or shown or indicated in such drawings.

4.04. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Article 4 of the General and Supplementary Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Article 4 of the General and Supplementary Conditions.

4.05. On written request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

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- 4.06. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is planned to be performed at the Site by others (such as utilities, other prime contractors, and Owner) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work if they exist.
- A. Any construction personnel on this construction site for this project shall have certifications per Paragraph 6.13.C of the Supplementary Conditions.
- 4.07. It is the responsibility of each Bidder before submitting a Bid to:
- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
- D. carefully study all Contract Documents including: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in Article 4 of the General and Supplementary Conditions, and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Article 4 of the General and Supplementary Conditions;
- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
- I. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and

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- J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

#### **ARTICLE 5 - PRE-BID CONFERENCE**

- 5.01. A pre-Bid conference will be held as indicated in the Invitation to Bid. Any oral statements made during this pre-bid meeting will not be binding or legally effective.

#### **ARTICLE 6 - SITE AND OTHER AREAS**

- 6.01. The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

#### **ARTICLE 7 - INTERPRETATIONS AND ADDENDA**

- 7.01. All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Questions received less than seven calendar days prior to the date for the applicable opening of Bids may not be answered (questions due by close of business – 5:00 p.m., local time).
- 7.02. Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.
- 7.03. Failure of a bidder to receive any addendum, or to acknowledge receipt thereof, will not relieve such bidder from conforming with the requirements which such addendum impose on his Bid or the Contract Documents, and may subject his Bid to disqualification by Owner.

#### **ARTICLE 8 - BID SECURITY**

- 8.01. A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price and in the form of a certified check, bank money order or a Bid Bond (on the form attached) issued by a surety meeting the requirements of Article 5 of the General and Supplementary Conditions.
- 8.02. The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of

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Award and the Bid Security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 46 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

- 8.03. Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

#### **ARTICLE 9 - CONTRACT TIMES**

- 9.01. The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

#### **ARTICLE 10 - LIQUIDATED DAMAGES**

- 10.01. Provisions for liquidated damages, if any, are set forth in the Agreement.

#### **ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS**

- 11.01. The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or "or-equal" items. Whenever it is specified or described in the Bidding Documents that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The materials and equipment described in the Bidding Documents establish a standard of required type, function, and quality to be met by any proposed substitute or "or-equal" item. The burden of proof of the merit of the proposed item is upon Contractor. Engineer's decision of approval or disapproval of a proposed item will be final and binding on the Contractor. Refer to General Conditions and Supplementary Conditions.

#### **ARTICLE 12 - PREPARATION OF BID**

- 12.01. The Bid Form is included with the Bidding Documents. Additional copies may be obtained from Engineer. **An unbound copy of the Bid Forms and attachments shall be printed and used to prepare the Bid.**
- 12.02. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid Item and alternate listed therein. In the case of optional alternatives, the words "No Bid," "No Change," or "Not Applicable" may be entered.
- 12.03. A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 12.04. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 12.05. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown.
- 12.06. A Bid by an individual shall show the Bidder's name and official address.

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- 12.07. Not used.
- 12.08. All names shall be printed in ink above the signatures.
- 12.09. The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 12.10. The Bid shall contain the current Prime/General Contractor or Sub-Bidder Update Statement (depending on which is being bid). Copies of these forms may be obtained from the Asset Management Web Site: [www.mass.gov/dcam](http://www.mass.gov/dcam).
- 12.11. Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 12.12. The products furnished are to meet or exceed all specified requirements of the Bidding Documents. No evaluation of submittals will be made prior to the Bid opening.
- 12.13. This project is funded by appropriations that contain "Buy American" requirements. Refer to H.R. 3547, 'Consolidated Appropriations Act, 2014.' (Appropriations Act) for more information.
- 12.14. The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state Contractor license number, if any, shall also be shown on the Bid Form.

#### **ARTICLE 13 - BASIS OF BID; COMPARISON OF BIDS**

##### 13.01. Lump Sum

- A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form for each lump sum Bid Item.
- B. Bidders shall submit a Bid on a lump sum basis for the Base Bid and include a separate price for each Alternate described in the Bidding Documents as provided for in the Bid Form. The price for each Alternate will be the amount added to or deleted from the Base Bid if Owner selects the Alternate. In the comparison of Bids, Alternates will be applied in the same order as listed in the Bid Form.

##### 13.02. Unit Price

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Unit Price Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. Bidders shall submit a Bid on a unit price basis for the Base Bid and include the same unit price for each Alternate incorporating a Unit Price Bid Item, as described in the Bidding Documents and as provided for in the Bid Form. The price for each Alternate will be the amount added to or deleted from the Base Bid if Owner selects the Alternate. In the comparison of Bids, Alternates will be applied in the same order as listed in the Bid Form.

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- D. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.
- E. Should the Bidder provide a different unit price for a Unit Price Bid Item included in an Alternative from the unit price for that same Unit Price Bid Item provided in the Base Bid, the unit price provided in the Base Bid will be applied to the alternate and a corrected sum will be applied to the Bid.

13.03. Resolution of Discrepancies

- A. Where there are discrepancies between numbers and words, words shall prevail.

**ARTICLE 14 - SUBMITTAL OF BID**

14.01. Applicable provisions of Massachusetts General Laws and Regulations and/or the United States Code and Code of Federal Regulations govern this Contract and any provision in violation of the foregoing shall be deemed null, void and of no effect. Where conflict between Code of Federal Regulations and State Laws and Regulations exist, the more stringent applicable requirement shall apply.

14.02. The contractor guarantees that the Work and Services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of the same shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Drawings, Specifications, and other contract documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the Contract shall be fulfilled. This guarantee shall be for a period of one year from and after the date of completion and acceptance of the Work as stated in the final estimate. If part of the Work is accepted in accordance with that subsection of this AGREEMENT titled "Partial Acceptance", the guarantee for that part of the Work shall be for a period of one year from the date fixed for such acceptance.

If at any time within the said period of guarantee any part of the Work requires repairing, correction or replacement, the Owner may notify the contractor in writing to make the required repairs, correction, or replacements. If the Contractor neglects to commence making such repairs, corrections or replacements to the satisfaction of the Owner within seven (7) days from the date of receipt of such notice, or having commenced fails to prosecute such Work with diligence, the Owner may employ other persons to make said repairs, correction or replacements, and charge the costs, including compensation for additional professional services, to the Contractor.

14.03. With each copy of the Bidding Documents, a Bidder is furnished one copy of the Bid Form, and, if required, the Bid Bond Form. The copy of the Bid Form is to be completed and submitted with the Bid security and all required attachments to the Bid stated in the Bid Form.

14.04. A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "**BID ENCLOSED – WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1.**" When using the mail or other delivery system, the Bidder is totally responsible for the mail or other delivery system delivering the Bid at the place and prior to the time indicated in the Advertisement for Bid.

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## ARTICLE 15 - MODIFICATION AND WITHDRAWAL OF BID

- 15.01. A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 15.02. If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

## ARTICLE 16 - OPENING OF BIDS

- 16.01. Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.
- 16.02. As a minimum, bid documents shall be reviewed/inspected for conformance with the following requirements in the order presented below. Failure to comply with any of these requirements may render the bid non-responsive and upon determination of such non-responsiveness, such bid shall be rejected immediately, set aside, and shall receive no further consideration at the sole discretion of the Owner.
- 16.03. Timeliness – The bid must be filed at the place and within the time specified therefore in the invitation to bid, and no bid shall be accepted after such time. The time at which a bid is filed should be time/date stamped or otherwise prominently noted on the bid.
- 16.04. Bid Security – Properly executed bid security, in the amount and terms specified in the invitation to bid (equal to 5% of Highest Possible Amount considering all alternatives) shall be placed in a sealed envelope and attached to the outside of the envelope containing the bid at the time of its submission.
  - A. Bid Bond: The Bid bond must be dated On or Before the Bid Date; Issued by a Bonding Company Licensed in Massachusetts; Accompanied by a Current Power of Attorney; Signed by Surety.
  - B. Check: The Check must be a Certified, Cashiers or Bank Treasurer's; Dated On or Before the Bid Date.
- 16.05. Bid Signature – The bid and all accompanying documents so required shall be signed by the bidder or its authorized representative before submission;
- 16.06. Addenda – All addenda shall be sent by email to all individuals and organizations which have received plans and specifications and shall be emailed not later than five days prior to the date established for submission of bids. All bidders shall include with their bids written acknowledgement of receipt of all addenda, which acknowledgement may be on a form provided therefore by the Owner.
- 16.07. Alternates – Alternatives, if any, shall be acknowledged.
- 16.08. DCAM Prime/General Contractor or Sub-Bidder Update Statement.
- 16.09. The Bid Opening Procedures, Contractor Checklist also attached hereto, will be used during the bid opening. This is not an all-inclusive list of items that need to be included in the bid proposal.

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Refer to Section 00400 (for General Bidder) or Section 00410 (for Filed Sub Bidder) for a full listing of documents to be provided.

#### **ARTICLE 17 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

- 17.01. All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to the end of this period.

#### **ARTICLE 18 - EVALUATION OF BIDS AND AWARD OF CONTRACT**

- 18.01. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming bids, nonresponsive bids, or bids which contain abnormally high or abnormally low prices for any item of work, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities in its sole discretion and to reject any and all Bids to the maximum extent permitted by law.
- 18.02. More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 18.03. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 18.04. Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of the General Contractor and filed sub-bidders in accordance with the Contract Documents.

#### **ARTICLE 19 - CONTRACT SECURITY AND INSURANCE**

- 19.01. Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

#### **ARTICLE 20 - SIGNING OF AGREEMENT**

- 20.01. When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement as attached thereto. Within 5 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

#### **ARTICLE 21 - COPIES OF CONTRACT DOCUMENTS**

- 21.01. Owner will furnish copies of the Contract Documents as defined in 00520 to Contractor as indicated in the General Conditions Paragraph 2.02.

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## ARTICLE 22 - SALES AND USE TAXES

- 22.01. Owner is exempt from Massachusetts state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Bid. Refer to Paragraph 6.10 of the Supplementary Conditions for additional information.

## ARTICLE 23 - FUNDING REQUIREMENTS

- 23.01. Minimum Wage Rates as determined by the Executive Office of Labor and Workforce Development under the provision of the Massachusetts General Laws, Chapter 149, Sections 26 to 27D, as amended, apply to this project. It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Minimum Wage Rates for those trades people who may be employed for the proposed work under this contract. Federal Minimum Wage Rates as determined by the United States Department of Labor under the Davis-Bacon Act also apply to this project.
- 23.02. This project is subject to the Safety and Health Regulations of the U.S. Department of Labor set forth in Title 29 CFR, Part 1926 and to all subsequent amendments, and to the Massachusetts Department of Labor and Industries, Division of Industrial Safety 'Rules and Regulations for the Prevention of Accidents in Construction Operations' (Chapter 454 CMR 10.00 et seq.). Contractors shall be familiar with the requirements of these regulations.
- 23.03. This project is subject to the requirements of the Department of Environmental Protection's Diesel Retrofit Program. Bidders must submit a signed and dated Statement of Intent to Comply form as part of their bid proposal documents.
- 23.04. This project is subject to the American Iron and Steel (AIS) requirements of P.L. 113-76, the Consolidated Appropriations Act of 2014. All iron and steel products, whether an SRF eligible item or not, are subject to the AIS requirements.
- 23.05. Whenever it is written that an equipment manufacturer must have a specified period of experience with his product, equipment which does not meet the specified experience period can be considered if the equipment supplier or manufacturer is willing to provide an "Efficiency Guarantee Bond" or cash deposit for the duration of the specified time period which will guarantee replacement of that equipment in the event of failure."
- 23.06. Disadvantaged Business Enterprise (DBE) goals are applicable to the total dollars paid to the construction contract. The goals for this project are a minimum of 4.20 percent D/MBE participation and 4.50 percent D/WBE participation by certified DBEs. The two low bidders shall submit completed DBE forms (EEO-DEP-190C & EEO-DEP-191C and the DBE Certification of United States Citizenship form) by the close of business on the third business day after Bid opening. Failure to comply with the requirements of this paragraph may be deemed to render a proposal non-responsive. No waiver of any provision of this section will be granted unless approved by the Department of Environmental Protection (MassDEP).

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**BID OPENING PROCEDURES CONTRACTORS CHECKLIST**

**CONTRACT NO.:** 2021-WW-01 Wareham WCPF Improvements - Phase 1 **BIDDER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

All non-responsive bids shall be rejected forthwith by the awarding authority upon determination of such bids' non-responsiveness at the time bids are opened and read. Failure to comply with one or more of the following requirements shall render the bid non-responsive, and upon determination of such non-responsiveness such bid shall be rejected and receive no further consideration.

ITEMS	REQUIREMENTS	COMPLIANCE (CIRCLE 1)		REASONS FOR REJECTION
		Yes	No; Rejected	
1. Timeliness	Bids filed within time specified	Yes	No; Rejected	
2. Bid Security	Appropriate and properly Executed security with bid.	Yes	No; Rejected	
3. Signature	Bid signed by authorized representative	Yes	No; Rejected	
4. Addenda	Any Addenda acknowledged	Yes	No; Rejected	
5. DCAMM Update	DCAMM Prime/General Contractor or Sub-Bidder Update Statement – <b>NOT OPEN TO PUBLIC INSPECTION (M.G.L c 149,s44D)</b>	Yes	No, Rejected	
6. Dollar Amount	Dollar amount in words specified for each line item in bid	Yes	No; Rejected	
7. Alternates	Bid provided for each Alternate	Yes	No; Rejected	

END OF SECTION

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**FORM FOR GENERAL BID  
FOR  
CONSTRUCTION OF CONTRACT NO. 2021-WW-01  
WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1  
CWSRF NO. 6642  
WAREHAM, MA**

THIS BID IS SUBMITTED TO:

Water Pollution Control Facility  
6 Tony's Lane  
Wareham, MA 02571

- A. The Undersigned proposes to furnish all labor and materials required for Water Pollution Control Facility Improvements – Phase 1 (project) in Wareham, Massachusetts, in accordance with the accompanying plans and specifications prepared by GHD Inc. for the contract price specified below, subject to additions and deductions according to the terms of the specifications.
- B. This bid includes addenda numbered \_\_\_\_\_ to \_\_\_\_\_
- C. The proposed contract price is \_\_\_\_\_ dollars  
( \$ \_\_\_\_\_ ). Total of Items A and B.
- D. Subdivision of Proposed Contract Price and Alternates Price
1. The subdivision of the proposed contract price is as follows:

**ITEM A.** The work of the General Contractor, being all work other than that covered by Item 2.  
\$ \_\_\_\_\_ and consisting of the following:

Bid Item No. 1 Mobilization (max 5% of Bid Items 2 and 3):

\$ \_\_\_\_\_

Bid Item No. 2 Modification to the Wareham WPCF:

\$ \_\_\_\_\_

Bid Item No. 3 Stipulated Procurement Price for Denitrification Filters:

\$ 780,385.00 \_\_\_\_\_

Total Item A: (Sum of Bid Item No. 1 through Bid Item No. 3):

\$ \_\_\_\_\_

**ITEM B.** Sub-bids as follows:

Sub-trade	Name of Sub-bidder	Amount	Bonds required, (indicate by "Yes" or "No")
<u>F-1: Masonry</u>	_____	\$ _____	_____
<u>F-2: Misc. and Ornamental Iron</u>	_____	\$ _____	_____
<u>F-3: HVAC</u>	_____	\$ _____	_____
<u>F-4: Electrical and Instrumentation</u>	_____	\$ _____	_____
Total of Items A and B: \$ _____			

In words: \_\_\_\_\_

The undersigned agrees that each of the above named sub-bidders will be used for the work indicated at the amount stated, unless a substitution is made. The undersigned further agrees to pay the premiums for the performance and payment bonds furnished by sub-bidders as requested herein and that all of the cost of all such premiums is included in the amount set forth in Item 1 of this bid.

The undersigned agrees that if he is selected as general contractor, he will promptly confer with the awarding authority on the question of sub-bidders; and that the awarding authority may substitute for any sub-bid listed above a sub-bid filed with the awarding authority by another sub-bidder for the sub-trade against whose standing and ability the undersigned makes no objection; and that the undersigned will use all such finally selected sub-bidders at the amounts named in their respective sub-bids and be in every way as responsible for them and their work as if they had been originally named in this general bid, the total contract price being adjusted to conform thereto.

- E. The undersigned agrees that, if he is selected as general contractor, he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this 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 the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price; provided, however, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards made subject to section 44A.

## BID FORM

The undersigned hereby certifies that the proposed Project Manager and proposed Superintendent whose resumes are attached to this bid will be assigned to this project in their respective roles and be committed full-time to this project. Should either the Project Manager or Superintendent be unavailable at the start of or at any time during the Contract, the qualifications of the replacement Project Manager or Superintendent will be presented to the Owner for acceptance, and that the Owner reserves the right to reject the replacement.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

### F. Bidder Acknowledgements (SRF Requirements)

1. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The time period for holding bids, where Federal approval is not required is 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids and where Federal approval is required, the time period for holding bids is 30 days, Saturdays, Sundays and holidays excluded after Federal approval.
2. Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the Massachusetts State Revolving Fund.
3. If Contract is awarded, successful Bidder will submit a Payment Bond in the amount of 100% of the total contract price.
4. If Contract is awarded, successful Bidder will submit a Performance Bond in the amount of 100% of the total contract price.
5. Bidder agrees that the Work will be substantially completed and ready for final payment in accordance with paragraphs 14.04 and 14.07 of the General Conditions and Supplementary Conditions within the number of calendar days indicated in the Agreement. The time of completion of this contract is 340 calendar days for Substantial Completion after the date contained in the Notice to Proceed, and 400 calendar days for completion and final payment.
6. Bidder accepts the provisions of the Agreement as to liquidated damages. Liquidated damages specified in this contract are \$1,900.00 per day for each calendar day beyond the Substantial Completion date that Work remains uncompleted plus any costs incurred by the Owner as result of penalties assessed or costs incurred to defend or renegotiate the consent order contained in Appendix G of the Supplementary Conditions and \$850.00 per day for each calendar day beyond the date for completion and final payment plus any costs incurred by the Owner as result of penalties assessed or costs incurred to defend or renegotiate the consent order contained in Appendix G.
7. Contract award shall be based upon lowest bid for base work if no alternate work will be performed. If alternate work will be performed, the Contract award shall be based upon the lowest bid for the sum of base work and one or more alternates with the Town considering alternates in ascending numerical sequence, such that no single alternate shall be considered unless every alternate preceding it on the list has been added to the base bid (per Chapter 149 44G (B)).
8. All aspects of this project are SRF eligible.



BID FORM

G. Attachments to this Bid

The following documents are submitted with and made a condition of this Bid:

1. Bid Form
2. Required Bid Security in the form of a Bid Bond or certified check, or money order
3. Massachusetts DEP Certification Statement Regarding State Taxes, Equal Employment Opportunity, Non-Debarment, and Non-Collusion
4. Certification: American Iron and Steel Compliance
5. Statement of Intent to Comply (MassDEP Diesel Retrofit Program)
6. Massachusetts DEP Certification OSHA Training
7. Proposal Form Affidavit
8. Certification: Division of Capital Asset Management
9. MBE/WBE/DBE SRF Forms

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of General Bidder)

By \_\_\_\_\_  
(Printed Name of Person Signing Bid and Title)

By \_\_\_\_\_  
(Signature of Person Signing Bid and Title)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City and State)

**ATTACHMENTS**

(as listed in Article G of the General Bid)

**BID BOND**

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address)*:

SURETY *(Name and Address of Principal Place of Business)*:

OWNER *(Name and Address)*:

**BID**

Bid Due Date:

Description *(Project Name and Include Location)*:

**BOND**

Bond Number:

Date *(Not earlier than Bid due date)*:

Penal sum \_\_\_\_\_ \$ \_\_\_\_\_  
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**

**SURETY**

\_\_\_\_\_  
Bidder's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**CERTIFICATION STATEMENTS  
STATE TAXES, EEO/AA, NON-DEBARMENT, AND NON-COLLUSION**

Pursuant to M.G.L. Ch. 62C, s 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all State Taxes Required under law.

The undersigned bidder hereby certifies he/she will comply with the specific affirmative action steps contained in the Equal Employment Opportunity/Affirmative Action (EEO/AA) provisions of this Contract, including compliance with the Disadvantaged Business Enterprise provisions as required under these contract provisions. The contractor receiving the award of the contract shall incorporate the EEO/ AA provisions of this contract into all subcontracts and purchase orders so that such provisions will be binding upon each subcontractor or vendor.

The undersigned certifies under penalties of perjury that there have been no substantial changes in his financial position or business organization other than those changes noted within the application since the applicant's most recent pre-qualification statement and that the bid is in all respects bonafide, fair and made without collusion or fraud with any other person.

"Person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity which sells materials, equipment or supplies used in or for, or engages in the performance of, the same or similar construction, reconstruction, installation, demolition, maintenance or repair work or any part thereof.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to section forty-four A.

The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth of Massachusetts under the provision of Section Twenty-Nine F of Chapter Twenty-Nine, or any other applicable debarment provisions of any other Chapter of the General Laws or any rule or regulation promulgated thereunder; and is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

\_\_\_\_\_ (Date)                                  \_\_\_\_\_ (Name of General Bidder)                                  \_\_\_\_\_ (Federal Employer Identification No.)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title & Name of person signing bid)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, Zip)

**CERTIFICATION  
AMERICAN IRON AND STEEL COMPLIANCE**

In accordance with the requirements of P.L. 113-76, the Contractor hereby certifies to the following:

- Bidder has reviewed and understands the American Iron and Steel (AIS) Requirement.
- All of the iron and steel products used in the project will comply with the AIS as outlined in P.L. 113-76 Consolidated Appropriations Act, 2014 and United States Environmental Protection Agency (US EPA) memo dated March 20, 2014. Iron and steel products include the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- Successful Bidder will provide further verified information, certification or assurance of compliance necessary per the Contract Documents.
- Waivers will only be recognized if they have been issued from the US EPA.

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**STATEMENT OF INTENT TO COMPLY**

***This form must be signed and submitted by the bidder as part of the bid.***

Local Governmental Unit \_\_\_\_\_ SRF Project No. 6642 \_\_\_\_\_

Contract No. 2021-WW-01 Contract Title Wareham WPCF Improvements – Phase 1 \_\_\_\_\_

Bidder \_\_\_\_\_

The undersigned, on behalf of the above-named Bidder, agrees that, if awarded the Contract:

1. the Bidder shall comply with the Department of Environmental Protection's ("DEP") Diesel Retrofit Program by ensuring that all diesel powered non-road construction equipment and vehicles greater than 50 brake horsepower which will be used in the performance of the work under the Contract are equipped or retrofitted with a pollution control device in accordance with the Diesel Retrofit Program Standard;
2. the Bidder shall require all Subcontractors to comply with DEP's Diesel Retrofit Program by ensuring all diesel powered non-road construction equipment and vehicles greater than 50 brake horsepower which will be used in the performance of the work under the Contract are equipped or retrofitted with a pollution control device in accordance with the Diesel Retrofit Program Standard; and
3. The Bidder shall submit and shall require each Subcontractor to submit a Diesel Retrofit Program Contractor Certification (form attached) with a Diesel Retrofit List to DEP (Patricia Arp, MassDEP, 8 New Bond Street, Worcester, MA 01606) and the Bidder within 10 days of the bidder being notified that it has been awarded the Contract. The Bidder shall require each Subcontractor to update such Certification and List within 2 days of using additional Diesel Construction Equipment on the project under the Contract.

\_\_\_\_\_  
(Signature of Bidder's Authorized Representative)

\_\_\_\_\_  
(Date)

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

In accordance with Massachusetts General Law 30: Section 39S, for all contracts for the construction, reconstruction, installation, demolition, maintenance or repair of any public work estimated to cost more than \$10,000, the Contractor hereby certifies to the following:

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

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

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

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

Company: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_



**PROPOSAL FORM**

**AFFIDAVIT**

State of \_\_\_\_\_ ss: \_\_\_\_\_, 20\_\_\_\_  
(Bid Opening Date)

County of \_\_\_\_\_

The undersigned being duly sworn, deposes and says that he or she is the sole owner, partner, president, treasurer, or other duly authorized agent or office of:

\_\_\_\_\_  
(Name of bidder as appearing in submitted proposal)

for work in \_\_\_\_\_ at 6 Tony's Lane  
(City/Town)

and certifies that to his or her own knowledge, said bidder has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken into any action in restraint of free competitive bidding in connection with this contract.

\_\_\_\_\_  
Signature and Title of Person Making Affidavit

Then personally appeared the above-named \_\_\_\_\_  
And acknowledged the foregoing instrument to be \_\_\_\_\_  
Free act and deed, before me.

\_\_\_\_\_  
Notary Public

My commission expires:

**Division of Capital Management**

In accordance with M.G.L. Chapter 149, Section 44D, ALL bids will be valid only when accompanied by a current certificate of eligibility and update statement issued by the Division of Capital Asset Management, copies of which are attached to this bid.

### **MBE/WBE/DBE SRF Forms**

The following MBE/WBE/DBE forms are to be submitted by the two (2) lowest bidders within three (3) business days of the Bid Opening:

- Schedule of Participation for SRF Construction
- Letter of Intent for SRF Construction
- DBE Certification of United States Citizenship
- DBE Subcontractor Participation Form
- and Request for Waiver for SRF Construction

Bidders **MAY** submit these forms with their bids.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
 MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 DIVISION OF MUNICIPAL SERVICES

**SCHEDULE OF PARTICIPATION FOR SRF CONSTRUCTION**

**Project Title:** \_\_\_\_\_ **Project Location:** \_\_\_\_\_

**Disadvantaged Minority Business Enterprise Participation in the SRF Loan Work**

Name & Address of D/MBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		
<b>Total D/MBE Commitment:</b>		<b>\$</b> _____
<b>Percentage D/MBE Participation = (Total D/MBE Commitment) / (Bid Price) =</b>		<b>%</b> _____

**Disadvantaged Women Business Enterprise Participation in the SRF Loan Work**

Name & Address of D/WBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		
<b>Total D/WBE Commitment:</b>		<b>\$</b> _____
<b>Percentage D/WBE Participation = (Total D/WBE Commitment) / ( Bid Price) =</b>		<b>%</b> _____

The Bidder agrees to furnish implementation reports as required by MassDEP to indicate the D/MBEs and D/WBE(s) which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

**Name of Bidder:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **By:** \_\_\_\_\_  
Signature

NOTE: Participation of a DBE may be counted in only their certified category; the same dollar participation cannot be used in computing the percentage of D/MBE participation and again of D/WBE participation.

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**LETTER OF INTENT FOR SRF CONSTRUCTION**

This form is to be completed by the D/MBE and D/WBE and must be submitted by the Bidder no later than close of business on the third business day after notification by the LGU. A separate form must be completed for each D/MBE and D/WBE involved in the project.

Project Title: \_\_\_\_\_ Project Location: \_\_\_\_\_

**TO:** \_\_\_\_\_  
(Name of Bidder)

**FROM:** \_\_\_\_\_  
(Please Indicate Status [ ] D/MBE or [ ] D/WBE)

° I/we intend to perform work in connection with the above project as (check one):

- An individual
- A partnership
- A corporation
- A joint venture with: \_\_\_\_\_
- Other (explain): \_\_\_\_\_

° It is understood that if you are awarded the contract, you intend to enter into an agreement to perform the activity described below for the prices indicated.

**DBE PARTICIPATION**

Description of Activity	Date of Project Commencement	\$ Amount	% Bid Price
		\$	%

° The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above referenced project.

<b>BIDDER</b>		<b>DBE</b>	
(Authorized Original Signature)	Date	(Authorized Original Signature)	Date
ADDRESS:		ADDRESS:	
TELEPHONE #:		TELEPHONE #:	
FEIN:		FEIN:	
EMAIL ADDRESS:		EMAIL ADDRESS:	

**ORIGINALS:**

- ° Compliance Mgr. City/Town Project Location
- ° DEP Program Manager for DEP's AAO Director

\* **Attach a copy of current (within 2 years) DBE Certification**

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**DBE CERTIFICATION OF UNITED STATES CITIZENSHIP**

For the SRF program, under the EPA Disadvantage Business Enterprise (DBE) Rule, a DBE must be owned or controlled by a socially and economically disadvantaged person that is also a **citizen of the United States** (See 40 CFR 33.202). "Ownership" is defined at 13 CFR 124.105 and "control" is defined at 13 CFR 124.106.

DBEs are certified for the SRF program through the Supplier Diversity Office using the federal Department of Transportation (DOT) DBE rules. EPA allows the use of DBEs certified under the DOT rules as long as they are also United States citizens. To ensure compliance with the EPA rule, MassDEP must verify United States citizenship through the completion of the following form for each DBE used on the project.

SRF Project Number \_\_\_\_\_

Contract Number \_\_\_\_\_

Contract Title \_\_\_\_\_

DBE Subcontractor \_\_\_\_\_

The undersigned, on behalf of the above named DBE subcontractor, hereby certifies that the DBE firm is either owned or controlled by a person or persons that are citizens of the United States.

\_\_\_\_\_  
Printed Name and Title of DBE Signatory

\_\_\_\_\_  
DBE Signature

\_\_\_\_\_  
Date

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**DBE SUBCONTRACTOR PARTICIPATION FORM**

The United States Environmental Protection Agency (EPA) requires that this form be provided to all subcontractors on the project. At the option of the subcontractor, this form may be filled out and submitted directly to the EPA DBE Coordinator.

NAME OF SUBCONTRACTOR	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	E-MAIL ADDRESS
PRIME CONTRACTOR NAME:	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

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CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR
Subcontractor Signature _____		Title/Date _____

Equivalent to EPA form 6100-2

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REQUEST FOR WAIVER FOR SRF CONSTRUCTION

Upon exhausting all known sources and making every possible effort to meet the minimum requirements for DBE participation, the Bidder may seek relief either partially or entirely from these requirements by submitting a completed waiver package by the close of business on the third business day after notification by the LGU. Failure to comply with this process shall be cause to reject the bid thereby rendering the Bidder not eligible for award of the contract.

General Information

Project Title: \_\_\_\_\_ Project Location: \_\_\_\_\_  
Bid Opening (time/date) \_\_\_\_\_  
Bidder: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_ Ext. \_\_\_\_\_

Minimum Requirements

The bidder must demonstrate that good faith efforts were undertaken to comply with the percentage goals as specified. The firm seeking relief must show that such efforts were taken appropriately in advance of the time set for opening bid proposals to allow adequate time for response(s) by submitting the following:

- A. A detailed record of the effort made to contact and negotiate with disadvantaged minority and/or woman owned businesses, including:
  - 1. names, addresses, telephone numbers and contact dates of all such companies contacted;
  - 2. copies of written notice(s) which were sent to DBE potential subcontractors prior to bid opening;
  - 3. a detailed statement as to why each subcontractor contacted (i) was not willing to do the job or (ii) was not qualified to perform the work as solicited; and
  - 4. in the case(s) where a negotiated price could not be reached the bidder should detail what efforts were made to reach an agreement on a competitive price.
  - 5. copies of advertisements, dated not less than ten (10) days prior to bid opening, as appearing in general publications, trade-oriented publications, and applicable minority/women-focused media detailing the opportunities for participation;

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- B. MassDEP may require the bidder to produce such additional information as it deems appropriate.
- C. No later than fifteen (15) days after submission of all required information and documentation, MassDEP shall make a determination, in writing, whether the waiver request is granted and shall provide that determination to the bidder and Awarding Authority. If the waiver request is denied, the facts upon which a denial is based will be set forth in writing.

CERTIFICATION

The undersigned herewith certifies that the above information and appropriate attachments are true and accurate to the best of my knowledge and that I have been authorized to act on behalf of the bidder in this matter.

\_\_\_\_\_  
(authorized original signature)

\_\_\_\_\_  
DATE



SUB-BID PROPOSAL

**NOTICE TO SUB-BIDDERS**

Sub-Bidders are advised not to list names or classes of work in paragraph E of the Form of Sub-Bid unless such listing is specifically required in this Section of the Specification for the Sub-Contract.

Listing names and/or classes of work when not so specified, or providing any other addition to the Form for Sub-Bid not called for is cause for rejection (M.G.L. Chapter 149, Section 44F).

SUB-BID PROPOSAL

**FORM FOR SUB-BID**  
**as required by Chapter 149 Section 44F**  
**FOR**  
**CONSTRUCTION OF CONTRACT NO. 2021-WW-01**  
**WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1**  
**CWSRF NO. 6642**  
**WAREHAM, MA**

THIS BID IS SUBMITTED TO:

Water Pollution Control Facility  
6 Tony's Lane  
Wareham, MA 02571

To all General Bidders Except those Excluded:

A. The undersigned proposes to furnish all labor and materials required for completing, in accordance with the hereinafter described plans, specifications and addenda, all the work specified in Section No. 04001 Masonry Work – General of the specifications and in any plans specified in such section, prepared by GHD Inc. for Water Pollution Control Facility Improvements – Phase 1, Contract No. 2021-WW-01 (project) in the Town of Wareham, Massachusetts:

1. For Modifications to the Wareham WPCF:

\_\_\_\_\_ dollars (\$\_\_\_\_\_).

B. This sub-bid includes addenda numbered \_\_\_\_\_ to \_\_\_\_\_

C. This sub-bid

may be used by any general bidder except:

\_\_\_\_\_  
\_\_\_\_\_

may only be used by the following general bidders:

\_\_\_\_\_  
\_\_\_\_\_

[To exclude general bidders, insert "X" in one box only and fill in blank following that box. Do not answer C if no general bidders are excluded.]

D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, execute with such general bidder a subcontract in accordance with the terms of this sub-bid, and contingent upon the execution of the general contract, and, if requested so to do in the general bid by the general bidder, who shall pay the premiums therefor, or if prequalification is required pursuant to section 44D 3/4, furnish a performance and payment bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority, in the full sum of the subcontract price.

SUB-BID PROPOSAL

- E. The names of all persons, firms and corporations furnishing to the undersigned labor or labor and materials for the class or classes or part thereof of work for which the provisions of the section of the specifications for this sub-trade require a listing in this paragraph, including the undersigned if customarily furnished by persons on his own payroll and in the absence of a contrary provision in the specifications, the name of each such class of work or part thereto and the bid price for such class of work or part thereof are:

Name	Class of Work	Bid price

Do not give bid price for any class or part thereof furnished by undersigned.

- F. The undersigned agrees that the above list of bids to the undersigned represents bona fide bids based on the hereinbefore described plans, specifications and addenda and that, if the undersigned is awarded the contract, they will be used for the work indicated at the amounts stated, if satisfactory to the awarding authority.
- G. The undersigned further agrees to be bound to the general contractor by the terms of the hereinbefore described plans, specifications, including all general conditions stated therein, and addenda, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the owner.
- H. Not Used.
- I. The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section forty-four F.

The undersigned hereby certifies that the proposed Project Manager and proposed Superintendent whose resumes are attached to this bid will be assigned to this project in their respective roles and be committed full-time to this project. Should either the Project Manager or Superintendent be unavailable at the start of or at any time during the Contract, the qualifications of the replacement Project Manager or Superintendent will be presented to the Owner for acceptance, and that the Owner reserves the right to reject the replacement.

The undersigned further certifies under penalties of perjury that this sub-bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

- J. Bidder Certification (SRF Requirements)
1. Bidder acknowledges the bid hold period for the General Contractor in Item F.1 of the Form for General Bid (Section 00400).
  2. Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).

SUB-BID PROPOSAL

Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the Massachusetts State Revolving Fund.

K. Attachments to this Bid

The following documents are submitted with and made a condition of this Bid:

1. Bid Form
2. Required Bid Security in the form of a Bid Bond or certified check, or money order
3. Statement of Surety's Intent (if Bid Security is to be Certified or Bank Cashier's Check)
4. Massachusetts DEP Certification Statement Regarding State Taxes, Equal Employment Opportunity, Non-Debarment, and Non-Collusion
5. Certification: American Iron and Steel Compliance
6. Statement of Intent to Comply (MassDEP Diesel Retrofit Program)
7. Massachusetts DEP Certification OSHA Training
8. Proposal Form Affidavit
9. Certification: Division of Capital Asset Management

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Sub-bidder)

By \_\_\_\_\_  
(Printed Name and Title of Person Signing Bid)

\_\_\_\_\_  
(Signature of Person Signing Bid)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, and Zip Code)

SUB-BID PROPOSAL

**NOTICE TO SUB-BIDDERS**

Sub-Bidders are advised not to list names or classes of work in paragraph E of the Form of Sub-Bid unless such listing is specifically required in this Section of the Specification for the Sub-Contract.

Listing names and/or classes of work when not so specified, or providing any other addition to the Form for Sub-Bid not called for is cause for rejection (M.G.L. Chapter 149, Section 44F).

SUB-BID PROPOSAL

**FORM FOR SUB-BID**  
**as required by Chapter 149 Section 44F**  
**FOR**  
**CONSTRUCTION OF CONTRACT NO. 2021-WW-01**  
**WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1**  
**CWSRF NO. 6642**  
**WAREHAM, MA**

THIS BID IS SUBMITTED TO:

Water Pollution Control Facility  
6 Tony's Lane  
Wareham, MA 02571

To all General Bidders Except those Excluded:

A. The undersigned proposes to furnish all labor and materials required for completing, in accordance with the hereinafter described plans, specifications and addenda, all the work specified in Section No. 05001 Miscellaneous Metal and Ornamental Iron – General of the specifications and in any plans specified in such section, prepared by GHD Inc. for Water Pollution Control Facility Improvements – Phase 1, Contract No. 2021-WW-01 (project) in the Town of Wareham, Massachusetts:

1. For Modifications to the Wareham WPCF:

\_\_\_\_\_ dollars (\$\_\_\_\_\_).

B. This sub-bid includes addenda numbered \_\_\_\_\_ to \_\_\_\_\_

C. This sub-bid

may be used by any general bidder except:

\_\_\_\_\_  
\_\_\_\_\_

may only be used by the following general bidders:

\_\_\_\_\_  
\_\_\_\_\_

[To exclude general bidders, insert "X" in one box only and fill in blank following that box. Do not answer C if no general bidders are excluded.]

D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, execute with such general bidder a subcontract in accordance with the terms of this sub-bid, and contingent upon the execution of the general contract, and, if requested so to do in the general bid by the general bidder, who shall pay the premiums therefor, or if prequalification is required pursuant to section 44D 3/4, furnish a performance and payment bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority, in the full sum of the subcontract price.



SUB-BID PROPOSAL

E. The names of all persons, firms and corporations furnishing to the undersigned labor or labor and materials for the class or classes or part thereof of work for which the provisions of the section of the specifications for this sub-trade require a listing in this paragraph, including the undersigned if customarily furnished by persons on his own payroll and in the absence of a contrary provision in the specifications, the name of each such class of work or part thereto and the bid price for such class of work or part thereof are:

Name	Class of Work	Bid price
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do not give bid price for any class or part thereof furnished by undersigned.

F. The undersigned agrees that the above list of bids to the undersigned represents bona fide bids based on the hereinbefore described plans, specifications and addenda and that, if the undersigned is awarded the contract, they will be used for the work indicated at the amounts stated, if satisfactory to the awarding authority.

G. The undersigned further agrees to be bound to the general contractor by the terms of the hereinbefore described plans, specifications, including all general conditions stated therein, and addenda, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the owner.

H. Not Used.

I. The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section forty-four F.

The undersigned hereby certifies that the proposed Project Manager and proposed Superintendent whose resumes are attached to this bid will be assigned to this project in their respective roles and be committed full-time to this project. Should either the Project Manager or Superintendent be unavailable at the start of or at any time during the Contract, the qualifications of the replacement Project Manager or Superintendent will be presented to the Owner for acceptance, and that the Owner reserves the right to reject the replacement.

The undersigned further certifies under penalties of perjury that this sub-bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

J. Bidder Certification (SRF Requirements)

1. Bidder acknowledges the bid hold period for the General Contractor in Item F.1 of the Form for General Bid (Section 00400).
2. Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).

SUB-BID PROPOSAL

Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the Massachusetts State Revolving Fund.

K. Attachments to this Bid

The following documents are submitted with and made a condition of this Bid:

1. Bid Form
2. Required Bid Security in the form of a Bid Bond or certified check, or money order
3. Statement of Surety's Intent (if Bid Security is to be Certified or Bank Cashier's Check)
4. Massachusetts DEP Certification Statement Regarding State Taxes, Equal Employment Opportunity, Non-Debarment, and Non-Collusion
5. Certification: American Iron and Steel Compliance
6. Statement of Intent to Comply (MassDEP Diesel Retrofit Program)
7. Massachusetts DEP Certification OSHA Training
8. Proposal Form Affidavit
9. Certification: Division of Capital Asset Management

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Sub-bidder)

By \_\_\_\_\_  
(Printed Name and Title of Person Signing Bid)

\_\_\_\_\_  
(Signature of Person Signing Bid)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, and Zip Code)

SUB-BID PROPOSAL

**NOTICE TO SUB-BIDDERS**

Sub-Bidders are advised not to list names or classes of work in paragraph E of the Form of Sub-Bid unless such listing is specifically required in this Section of the Specification for the Sub-Contract.

Listing names and/or classes of work when not so specified, or providing any other addition to the Form for Sub-Bid not called for is cause for rejection (M.G.L. Chapter 149, Section 44F).

SUB-BID PROPOSAL

**FORM FOR SUB-BID**  
**as required by Chapter 149 Section 44F**  
**FOR**  
**CONSTRUCTION OF CONTRACT NO. 2021-WW-01**  
**WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1**  
**CWSRF NO. 6642**  
**WAREHAM, MA**

THIS BID IS SUBMITTED TO:

Water Pollution Control Facility  
6 Tony's Lane  
Wareham, MA 02571

To all General Bidders Except those Excluded:

A. The undersigned proposes to furnish all labor and materials required for completing, in accordance with the hereinafter described plans, specifications and addenda, all the work specified in Section No. 15001 HVAC – General of the specifications and in any plans specified in such section, prepared by GHD Inc. for Water Pollution Control Facility Improvements – Phase 1, Contract No. 2021-WW-01 (project) in the Town of Wareham, Massachusetts:

1. For Modifications to the Wareham WPCF:

\_\_\_\_\_ dollars (\$\_\_\_\_\_).

B. This sub-bid includes addenda numbered \_\_\_\_\_ to \_\_\_\_\_

C. This sub-bid

may be used by any general bidder except:

\_\_\_\_\_  
\_\_\_\_\_

may only be used by the following general bidders:

\_\_\_\_\_  
\_\_\_\_\_

[To exclude general bidders, insert "X" in one box only and fill in blank following that box. Do not answer C if no general bidders are excluded.]

D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, execute with such general bidder a subcontract in accordance with the terms of this sub-bid, and contingent upon the execution of the general contract, and, if requested so to do in the general bid by the general bidder, who shall pay the premiums therefor, or if prequalification is required pursuant to section 44D 3/4, furnish a performance and payment bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority, in the full sum of the subcontract price.

SUB-BID PROPOSAL

- E. The names of all persons, firms and corporations furnishing to the undersigned labor or labor and materials for the class or classes or part thereof of work for which the provisions of the section of the specifications for this sub-trade require a listing in this paragraph, including the undersigned if customarily furnished by persons on his own payroll and in the absence of a contrary provision in the specifications, the name of each such class of work or part thereto and the bid price for such class of work or part thereof are:

Name	Class of Work	Bid price
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do not give bid price for any class or part thereof furnished by undersigned.

- F. The undersigned agrees that the above list of bids to the undersigned represents bona fide bids based on the hereinbefore described plans, specifications and addenda and that, if the undersigned is awarded the contract, they will be used for the work indicated at the amounts stated, if satisfactory to the awarding authority.
- G. The undersigned further agrees to be bound to the general contractor by the terms of the hereinbefore described plans, specifications, including all general conditions stated therein, and addenda, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the owner.
- H. Not Used.
- I. The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section forty-four F.

The undersigned hereby certifies that the proposed Project Manager and proposed Superintendent whose resumes are attached to this bid will be assigned to this project in their respective roles and be committed full-time to this project. Should either the Project Manager or Superintendent be unavailable at the start of or at any time during the Contract, the qualifications of the replacement Project Manager or Superintendent will be presented to the Owner for acceptance, and that the Owner reserves the right to reject the replacement.

The undersigned further certifies under penalties of perjury that this sub-bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

- J. Bidder Certification (SRF Requirements)
1. Bidder acknowledges the bid hold period for the General Contractor in Item F.1 of the Form for General Bid (Section 00400).
  2. Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).

SUB-BID PROPOSAL

Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the Massachusetts State Revolving Fund.

K. Attachments to this Bid

The following documents are submitted with and made a condition of this Bid:

1. Bid Form
2. Required Bid Security in the form of a Bid Bond or certified check, or money order
3. Statement of Surety's Intent (if Bid Security is to be Certified or Bank Cashier's Check)
4. Massachusetts DEP Certification Statement Regarding State Taxes, Equal Employment Opportunity, Non-Debarment, and Non-Collusion
5. Certification: American Iron and Steel Compliance
6. Statement of Intent to Comply (MassDEP Diesel Retrofit Program)
7. Massachusetts DEP Certification OSHA Training
8. Proposal Form Affidavit
9. Certification: Division of Capital Asset Management

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Sub-bidder)

By \_\_\_\_\_  
(Printed Name and Title of Person Signing Bid)

\_\_\_\_\_  
(Signature of Person Signing Bid)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, and Zip Code)

SUB-BID PROPOSAL

**NOTICE TO SUB-BIDDERS**

Sub-Bidders are advised not to list names or classes of work in paragraph E of the Form of Sub-Bid unless such listing is specifically required in this Section of the Specification for the Sub-Contract.

Listing names and/or classes of work when not so specified, or providing any other addition to the Form for Sub-Bid not called for is cause for rejection (M.G.L. Chapter 149, Section 44F).

SUB-BID PROPOSAL

**FORM FOR SUB-BID**  
**as required by Chapter 149 Section 44F**  
**FOR**  
**CONSTRUCTION OF CONTRACT NO. 2021-WW-01**  
**WATER POLLUTION CONTROL FACILITY IMPROVEMENTS – PHASE 1**  
**CWSRF NO. 6642**  
**WAREHAM, MA**

THIS BID IS SUBMITTED TO:

Water Pollution Control Facility  
6 Tony's Lane  
Wareham, MA 02571

To all General Bidders Except those Excluded:

A. The undersigned proposes to furnish all labor and materials required for completing, in accordance with the hereinafter described plans, specifications and addenda, all the work specified in Section No. 16001 Electrical Work – General of the specifications and in any plans specified in such section, prepared by GHD Inc. for Water Pollution Control Facility Improvements – Phase 1, Contract No. 2021-WW-01 (project) in the Town of Wareham, Massachusetts:

1. For Modifications to the Wareham WPCF:

\_\_\_\_\_ dollars (\$\_\_\_\_\_).

B. This sub-bid includes addenda numbered \_\_\_\_\_ to \_\_\_\_\_

C. This sub-bid

may be used by any general bidder except:

\_\_\_\_\_  
\_\_\_\_\_

may only be used by the following general bidders:

\_\_\_\_\_  
\_\_\_\_\_

[To exclude general bidders, insert "X" in one box only and fill in blank following that box. Do not answer C if no general bidders are excluded.]

D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, execute with such general bidder a subcontract in accordance with the terms of this sub-bid, and contingent upon the execution of the general contract, and, if requested so to do in the general bid by the general bidder, who shall pay the premiums therefor, or if prequalification is required pursuant to section 44D 3/4, furnish a performance and payment bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority, in the full sum of the subcontract price.



SUB-BID PROPOSAL

- E. The names of all persons, firms and corporations furnishing to the undersigned labor or labor and materials for the class or classes or part thereof of work for which the provisions of the section of the specifications for this sub-trade require a listing in this paragraph, including the undersigned if customarily furnished by persons on his own payroll and in the absence of a contrary provision in the specifications, the name of each such class of work or part thereto and the bid price for such class of work or part thereof are:

Name	Class of Work	Bid price
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do not give bid price for any class or part thereof furnished by undersigned.

- F. The undersigned agrees that the above list of bids to the undersigned represents bona fide bids based on the hereinbefore described plans, specifications and addenda and that, if the undersigned is awarded the contract, they will be used for the work indicated at the amounts stated, if satisfactory to the awarding authority.
- G. The undersigned further agrees to be bound to the general contractor by the terms of the hereinbefore described plans, specifications, including all general conditions stated therein, and addenda, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the owner.
- H. Not Used.
- I. The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section forty-four F.

The undersigned hereby certifies that the proposed Project Manager and proposed Superintendent whose resumes are attached to this bid will be assigned to this project in their respective roles and be committed full-time to this project. Should either the Project Manager or Superintendent be unavailable at the start of or at any time during the Contract, the qualifications of the replacement Project Manager or Superintendent will be presented to the Owner for acceptance, and that the Owner reserves the right to reject the replacement.

The undersigned further certifies under penalties of perjury that this sub-bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

- J. Bidder Certification (SRF Requirements)
1. Bidder acknowledges the bid hold period for the General Contractor in Item F.1 of the Form for General Bid (Section 00400).
  2. Bidders must fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons).

SUB-BID PROPOSAL

Contractors, subcontractors, or suppliers that appear on the Excluded Parties List System at [www.epls.gov](http://www.epls.gov) are not eligible for award of any contracts funded by the Massachusetts State Revolving Fund.

K. Attachments to this Bid

The following documents are submitted with and made a condition of this Bid:

1. Bid Form
2. Required Bid Security in the form of a Bid Bond or certified check, or money order
3. Statement of Surety's Intent (if Bid Security is to be Certified or Bank Cashier's Check)
4. Massachusetts DEP Certification Statement Regarding State Taxes, Equal Employment Opportunity, Non-Debarment, and Non-Collusion
5. Certification: American Iron and Steel Compliance
6. Statement of Intent to Comply (MassDEP Diesel Retrofit Program)
7. Massachusetts DEP Certification OSHA Training
8. Proposal Form Affidavit
9. Certification: Division of Capital Asset Management

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Sub-bidder)

By \_\_\_\_\_  
(Printed Name and Title of Person Signing Bid)

\_\_\_\_\_  
(Signature of Person Signing Bid)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, and Zip Code)

SUB-BID PROPOSAL

ATTACHMENTS  
(as listed in Paragraph K of the Sub-Bid Proposal)

**BID BOND**

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address):*

SURETY *(Name and Address of Principal Place of Business):*

OWNER *(Name and Address):*

BID

Bid Due Date:  
Description *(Project Name and Include Location):*

BOND

Bond Number:  
Date *(Not earlier than Bid due date):*  
Penal sum \_\_\_\_\_

(Words)

\$

\_\_\_\_\_ (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**

**SURETY**

\_\_\_\_\_  
Bidder's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

## SUB-BID PROPOSAL

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

SUB-BID PROPOSAL

**STATEMENT OF SURETY'S INTENT**

(To be completed if Bid Security is to be  
Certified or Bank Cashier's Check)

To: Town of Wareham, MA  
\_\_\_\_\_  
(Owner)

We have reviewed the Bid of \_\_\_\_\_  
\_\_\_\_\_  
(Contractor)

of \_\_\_\_\_  
\_\_\_\_\_  
(Address)

for Wareham Contract No. 2021-WW-01 WPCF Improvements – Phase 1  
\_\_\_\_\_  
(Project)

Bids for which will be received on \_\_\_\_\_  
\_\_\_\_\_  
(Bid Opening Date)

and wish to advise that should this Bid of the Contractor be accepted and the Contract awarded to him, it is our intention to become surety on the performance bond and labor and material bond required by the Contract.

We are duly authorized to do business in the Commonwealth of Massachusetts.

Attest:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Surety's Authorized Signature(s)

Attach Power of Attorney

(Corporate seal if any. If no seal, write "No Seal" across this place and sign.)

(This form must be completed prior to the submission of the bid.)

SUB-BID PROPOSAL

**CERTIFICATION STATEMENTS**  
**STATE TAXES, EEO/AA, NON-DEBARMENT, AND NON-COLLUSION**

Pursuant to M.G.L. Ch. 62C, s 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all State Taxes Required under law.

The undersigned bidder hereby certifies he/she will comply with the specific affirmative action steps contained in the Equal Employment Opportunity/Affirmative Action (EEO/AA) provisions of this Contract, including compliance with the Disadvantaged Business Enterprise provisions as required under these contract provisions. The contractor receiving the award of the contract shall incorporate the EEO/ AA provisions of this contract into all subcontracts and purchase orders so that such provisions will be binding upon each subcontractor or vendor.

The undersigned certifies under penalties of perjury that there have been no substantial changes in his financial position or business organization other than those changes noted within the application since the applicant's most recent pre-qualification statement and that the bid is in all respects bonafide, fair and made without collusion or fraud with any other person.

"Person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity which sells materials, equipment or supplies used in or for, or engages in the performance of, the same or similar construction, reconstruction, installation, demolition, maintenance or repair work or any part thereof.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to section forty-four A.

The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth of Massachusetts under the provision of Section Twenty-Nine F of Chapter Twenty-Nine, or any other applicable debarment provisions of any other Chapter of the General Laws or any rule or regulation promulgated thereunder; and is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

\_\_\_\_\_  
(Date)                      (Name of Bidder)                      \_\_\_\_\_  
(Federal Employer Identification No.)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title & Name of person signing bid)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, Zip)

SUB-BID PROPOSAL

**CERTIFICATION  
AMERICAN IRON AND STEEL COMPLIANCE**

In accordance with the requirements of P.L. 113-76, the Contractor hereby certifies to the following:

- Bidder has reviewed and understands the American Iron and Steel (AIS) Requirement.
- All of the iron and steel products used in the project will comply with the AIS as outlined in P.L. 113-76 Consolidated Appropriations Act, 2014 and United States Environmental Protection Agency (US EPA) memo dated March 20, 2014. Iron and steel products include the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
- Successful Bidder will provide further verified information, certification, or assurance of compliance necessary per the Contract Documents.
- Waivers will only be recognized if they have been issued from the US EPA.

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SUB-BID PROPOSAL

**STATEMENT OF INTENT TO COMPLY**

***This form must be signed and submitted by the bidder as part of the bid.***

Local Governmental Unit \_\_\_\_\_ SRF Project No. 6642 \_\_\_\_\_

Contract No. 2021-WW-01 Contact Title Wareham WPCF Improvements – Phase 1 \_\_\_\_\_

Bidder \_\_\_\_\_

The undersigned, on behalf of the above-named Bidder, agrees that, if awarded the Contract:

1. the Bidder shall comply with the Department of Environmental Protection's ("DEP") Diesel Retrofit Program by ensuring that all diesel powered non-road construction equipment and vehicles greater than 50 brake horsepower which will be used in the performance of the work under the Contract are equipped or retrofitted with a pollution control device in accordance with the Diesel Retrofit Program Standard;
2. the Bidder shall require all Subcontractors to comply with DEP's Diesel Retrofit Program by ensuring all diesel powered non-road construction equipment and vehicles greater than 50 brake horsepower which will be used in the performance of the work under the Contract are equipped or retrofitted with a pollution control device in accordance with the Diesel Retrofit Program Standard; and
3. The Bidder shall submit and shall require each Subcontractor to submit a Diesel Retrofit Program Contractor Certification (form attached) with a Diesel Retrofit List to DEP (Patricia Arp, MassDEP, 8 New Bond Street, Worcester, MA 01606) and the Bidder within 10 days of the bidder being notified that it has been awarded the Contract. The Bidder shall require each Subcontractor to update such Certification and List within 2 days of using additional Diesel Construction Equipment on the project under the Contract.

\_\_\_\_\_  
(Signature of Bidder's Authorized Representative)

\_\_\_\_\_  
(Date)



SUB-BID PROPOSAL

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

In accordance with Massachusetts General Law 30: Section 39S, as amended by Chapter 193 of the Acts of 2004, effective 7/1/06, for all contracts for the construction, reconstruction, installation, demolition, maintenance or repair of any public building estimated to cost more than \$10,000, the Contractor hereby certifies to the following:

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

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

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

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

Company: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SUB-BID PROPOSAL

PROPOSAL FORM

AFFIDAVIT

State of \_\_\_\_\_ ss: \_\_\_\_\_, 20\_\_\_\_  
(Bid Opening Date)

County of \_\_\_\_\_

The undersigned being duly sworn, deposes and says that he or she is the sole owner, partner, president, treasurer, or other duly authorized agent or office of:

\_\_\_\_\_  
(Name of bidder as appearing in submitted proposal)

for work in \_\_\_\_\_ at 6 Tony's Lane.  
(City/Town)

and certifies that to his or her own knowledge, said bidder has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken into any action in restraint of free competitive bidding in connection with this contract.

\_\_\_\_\_  
Signature and Title of Person Making Affidavit

Then personally appeared the above-named \_\_\_\_\_  
and acknowledged the foregoing instrument to be \_\_\_\_\_  
free act and deed, before me.

\_\_\_\_\_  
Notary Public

My commission expires:

SUB-BID PROPOSAL

**Division of Capital Management**

In accordance with M.G.L. Chapter 149, Section 44D, ALL bids will be valid only when accompanied by a current certificate of eligibility and update statement issued by the Division of Capital Asset Management, showing that the Filed Sub-Bidder has the classification matching the Filed Sub-Bid being submitted.

## AGREEMENT

THIS AGREEMENT is by and between the TOWN OF WAREHAM, MASSACHUSETTS ("OWNER") and \_\_\_\_\_ ("CONTRACTOR"), OWNER and CONTRACTOR, hereby agree as follows:

### ARTICLE 1 - WORK

- 1.01. Contractor shall complete all Work as specified or indicated in the Contract Documents including Addenda. The work of this project consists of construction of a concrete equalization basin, odor control facility, denitrification filters, and development of a groundwater well.

### ARTICLE 2 - THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: Water Pollution Control Facility Improvements – Phase 1; Wareham, Massachusetts; Contract No. 2021-WW-01; CW-SRF No. 6642.

### ARTICLE 3 - ENGINEER

- 3.01. The Project has been designed by GHD Inc. (Engineer). GHD Inc. or other Engineer identified by Owner is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in Article 9 of the General and Supplementary Conditions in connection with the completion of the Work in accordance with the Contract Documents.

### ARTICLE 4 - CONTRACT TIMES

#### 4.01. Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

#### 4.02. Days to Achieve Substantial Completion and Final Payment

- A. The Work shall be substantially completed within 340 calendar days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 400 calendar days after the date when the Contract Times commence to run.

#### 4.03. Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.02 above of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 4.03 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$1,900.00 for each calendar day that expires after the time specified in Paragraph 4.03 for Substantial Completion until the Work is substantially complete plus any costs incurred by the Owner as result of penalties assessed or costs incurred to defend or renegotiate the consent order contained in Appendix G. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$850.00 for each calendar day that expires after the time

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specified in Paragraph 4.03 above for completion and readiness for final payment until the Work is completed and ready for final payment.

## **ARTICLE 5 - CONTRACT PRICE**

5.01. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the Bid Form, and the Notice of Award an amount in current funds pursuant to the following:

A. For all Work, a lump sum of

\$\_\_\_\_\_.

B. As per DEP's Policy Memorandum #10, the agreed upon Direct Labor Markup (percentage) for Change Orders on this project shall be per Exhibit D of this Agreement.

## **ARTICLE 6 - PAYMENT PROCEDURES**

6.01. Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02. Progress Payments; Retainage

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

## **ARTICLE 7 - INTEREST**

7.01. Not Applicable

## **ARTICLE 8 - DAVIS BACON ACT REQUIREMENTS**

8.01. Contract and Subcontract provisions

A. The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2012 Appropriations Act, the following clauses:

1. Minimum wages.

a. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, [www.dol.gov](http://www.dol.gov).

b. (A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- 1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- 2) The classification is utilized in the area by the construction industry; and
- 3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination.

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The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(b)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. Payrolls and basic records.
- a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written

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evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- b. (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- 1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- 2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- 3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(b)(B) of this section.

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The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

- c. The contractor or subcontractor shall make the records required under paragraph (a)(3)(a) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

- a. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- b. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are

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employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

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10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

8.02. Contract Provision for Contracts in Excess of \$100,000.

- A. Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (A)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.
  3. Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
  4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (A)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A)(1) through (4) of this section.

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- B. In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### 8.03. Compliance Verification

- A. The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.
- B. The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.
- C. The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.
- D. The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (B) and (C) above.
- E. Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

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## ARTICLE 9 - CONTRACTOR'S REPRESENTATIONS

- 9.01. In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations, ordinances, or codes that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) , if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data", and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data".
  - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, or performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; (3) Contractor's safety precautions and programs.
  - F. Based on the information and observations referred to in the previous paragraph , Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
  - G. Contractor is aware of the general nature of work to be performed by others at the Site that relates to the Work as indicated in the Contract Documents.
  - H. Contractor has given Engineer written notice of all conflicts errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - J. The Contractor acknowledges to and for the benefit of the Town of Wareham ("Purchaser") and the Commonwealth of Massachusetts (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel," that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or

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information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser of the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fee) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of the Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

- 9.02. The Contractor agrees that it will fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons). The Contractor shall not award any subcontracts or purchase any materials from suppliers that appear on the Excluded Parties List System. The Contractor shall include this requirement in each subcontract and require it to be included in all subcontracts regardless of tier. The Contractor shall maintain reasonable records to demonstrate compliance with these requirements.
- 9.03. The fair share goals for disadvantaged business enterprise (DBE) participation for this contract are a minimum of 4.2 percent Disadvantaged Minority Business Enterprise (D/MBE) participation and 4.5 percent Disadvantaged Women Business Enterprise (D/WBE) participation, applicable to the total dollar amount paid for the construction contract. The Contractor shall take all affirmative steps necessary to achieve this goal, and shall provide reports documenting the portion of contract and subcontract dollars paid to DBEs, and its efforts to achieve the goals, with each invoice submitted or at such greater intervals as specified by the Town of Wareham. The contractor shall require similar reports from its subcontractors.
- 9.04. Equal Employment Opportunity/Affirmative Action (EEO/AA) Requirements – During the performance of this contract, the contractor agrees as follows:
- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
  - B. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
  - C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - D. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - E. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or

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pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230

- F. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The contractor will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States." [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970]

9.05. The contractor shall not participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue code 1986, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

## ARTICLE 10 - CONTRACT DOCUMENTS

### 10.01. Contents

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 00520-1 to 00520-16, inclusive).
  - 2. Exhibits to this Agreement (enumerated as follows):
    - a. Bid Form (pages 00400-1 to 00400-5, inclusive).
    - b. Bid Form Attachments (pages 00400-A to 00400-M, inclusive).
    - c. Exhibit A: Notice of Award /Notice to Proceed.
    - d. Exhibit B: Performance Bond and Payment Bond.
    - e. Exhibit C: Certificates of Insurance.
    - f. Exhibit D: Documentation for Contractor's Direct Labor Costs
    - g. Exhibit E: Contractor Certification Massachusetts Diesel Retrofit program
  - 3. General Conditions (pages 1 to 50, inclusive).
  - 4. Supplementary Conditions (pages 00800-1 to 00800-28, inclusive).
  - 5. Appendices to General Conditions and Supplementary Conditions (Appendix A through F, inclusive)

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6. Specifications as listed in the table of contents of the Project Manual.
7. Drawings consisting of 67 sheets with each sheet bearing the following general title: Water Pollution Control Facility Improvements – Phase 1, Wareham, Massachusetts; Contract No. 2021-WW-01; SRF No. 6642, dated April 2021.
8. Addenda (Nos. \_\_\_\_ to \_\_\_\_, inclusive).
9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Amendments and supplements to the Contract Documents per General Conditions Paragraph 3.04.
- B. There are no Contract Documents other than those listed herein.
- C. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 11 - MISCELLANEOUS**

### 11.01. Terms

- A. Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

### 11.02. Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 11.03. Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 11.04. Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

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## 11.05. Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

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IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on \_\_\_\_\_, 20\_\_\_\_, (which is the Effective Date of the Agreement).

OWNER: Town of Wareham, MA

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Derek Sullivan  
Town Administrator

CONTRACTOR: (SEAL)

\_\_\_\_\_  
Signature

By: \_\_\_\_\_ Contractor Name: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Approved as to Form:

Pursuant to M.G.L. c.44, s31C, I certify that an appropriation has been made in the total amount of the contract.

Certified in accordance with Chapter 44, Section 31C and based upon Engineering estimates

\_\_\_\_\_  
Richard Bowen  
Town Counsel

\_\_\_\_\_  
Judith Lauzon  
Town Accountant

\_\_\_\_\_  
Signature

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**AFFIDAVIT**

State of \_\_\_\_\_

}  
}  
}  
}

ss. \_\_\_\_\_, \_\_\_\_\_

County of \_\_\_\_\_

(Bid Opening Date)

The undersigned being duly sworn, deposes and says that he or she is the sole owner, partner, president, treasurer, or other duly authorized agent or office of:

\_\_\_\_\_  
*(Name of bidder as appearing in submitted proposal)*

for work in \_\_\_\_\_ on \_\_\_\_\_  
*(City/Town) (Road)*

and certifies that to his or her own knowledge, said bidder has not either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken into any action in restraint of free competitive bidding in connection with this contract.

\_\_\_\_\_  
*Signature and Title of Person Making Affidavit*

On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me,  
*Day Month Year*

\_\_\_\_\_, the undersigned Notary Public personally appeared  
*Name of Notary Public*

\_\_\_\_\_, proved to me through satisfactory evidence of identity, which was/were  
*Name of Signer*

\_\_\_\_\_ to be the person(s) whose name(s) is/are signed on the preceding  
*Description of Evidence of Identity*

or attached document, in my presence, and who swore and affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief

as partner(s) for \_\_\_\_\_, a partnership.  
*Name of Partnership*

as \_\_\_\_\_ for \_\_\_\_\_, a corporation.  
*Title of Office Name of Corporation*

as attorney in fact for \_\_\_\_\_, the principal.  
*Name of Principal Signer*

as \_\_\_\_\_ for \_\_\_\_\_, a/the \_\_\_\_\_.  
*Type of Capacity Name of Person/Entity Type of Entity*

\_\_\_\_\_  
Signature of Notary Public

Place Notary Seal and/or Any Stamp Above

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

END OF SECTION

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**EXHIBIT A**

**NOTICE OF AWARD  
NOTICE TO PROCEED**

# Notice of Award

Date: \_\_\_\_\_

---

Project: Water Pollution Control Facility Improvements – Phase 1

---

Owner: Town of Wareham

---

Owner's Contract No.: 2021-WW-01

---

Contract: General Construction

---

Engineer's Project No.: 111221642

---

Bidder:

---

Bidder's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

---

---

You are notified that your Bid dated \_\_\_\_\_ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for \_\_\_\_\_.

*[Indicate total Work, alternates, or sections of Work awarded.]*

The Contract Price of your Contract is \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Contract shall be paid in accordance with the [Lump Sum and Unit Prices] set forth in the Bid Form.

*[Insert appropriate data if unit prices are used. Change language for cost-plus contracts.]*

\_\_\_\_\_ copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

\_\_\_\_\_ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to the Owner [\_\_\_\_\_] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent: \_\_\_\_\_

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

---

Owner

By: \_\_\_\_\_  
Authorized Signature

---

Title

Copy to Engineer

# Notice to Proceed

Date: \_\_\_\_\_

Project: Water Pollution Control Facility Improvements – Phase 1

Owner: Town of Wareham

Owner's Contract No.: 2021-WW-01

Contract: General Construction

Engineer's Project No.: 11221642

Contractor:

Contractor's Address: *[send Certified Mail, Return Receipt Requested]*

You are notified that the Contract Times under the above Contract will commence to run on \_\_\_\_\_. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is \_\_\_\_\_, and the date of readiness for final payment is \_\_\_\_\_[(or) the number of days to achieve Substantial Completion is \_\_\_\_\_, and the number of days to achieve readiness for final payment is \_\_\_\_\_].

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insured's and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

\_\_\_\_\_ *[add other requirements]*.

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Given by:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Copy to Engineer

**EXHIBIT B**

**PERFORMANCE BOND  
PAYMENT BOND**

PERFORMANCE BOND

BOND No. \_\_\_\_\_

Know all men by these presents, that

\_\_\_\_\_  
as principal and \_\_\_\_\_ as surety are held and firmly bound  
unto the Town of Wareham, MA in the sum of,

\_\_\_\_\_  
in lawful money of the United States of America, to be paid to the Town of Wareham, for which payments, well  
and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns,  
jointly and severally, firmly by these presents.

Whereas, the said principal has made a contract with the Town of Wareham, MA ("Awarding Authority")  
bearing the date of \_\_\_\_\_, 20\_\_\_\_, for the construction of  
Project No. 11221642 Contract No. 2021-WW-01  
Project Name Water Pollution Control Facility Improvements – Phase 1 .

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

In witness whereof we hereunto set our hand and seals this \_\_\_\_\_ day of 20\_\_\_\_\_ .

\_\_\_\_\_  
(Seal)  
(Print Name of General Contractor)

\_\_\_\_\_  
(Print Name of Surety)

By \_\_\_\_\_  
(Signature – Title)

By \_\_\_\_\_  
(Signature – Title)

Surety Address \_\_\_\_\_  
\_\_\_\_\_



PAYMENT BOND

BOND No. \_\_\_\_\_

Know all men by these presents, that

\_\_\_\_\_ as principal and \_\_\_\_\_ as surety are held and firmly bound unto the Town of Wareham, MA in the sum of,

\_\_\_\_\_ in lawful money of the United States of America, to be paid to the Town of Wareham, MA, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said principal has made a contract with the Town of Wareham, MA ("Awarding Authority") bearing the date of \_\_\_\_\_, 20\_\_\_\_, for the construction of Project No. 11221642 Contract No. 2021-WW-01 Project Name Water Pollution Control Facility Improvements – Phase 1.

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

In witness whereof we hereunto set our hand and seals this \_\_\_\_\_ day of 20\_\_\_\_\_.

\_\_\_\_\_ (Seal)  
(Print Name of General Contractor)

\_\_\_\_\_  
(Print Name of Surety)

By \_\_\_\_\_  
(Signature – Title)

By \_\_\_\_\_  
(Signature – Title)

Surety Address \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT C**

**CERTIFICATES OF INSURANCE**

**EXHIBIT D**

**Documentation of Contractor's Direct Labor Costs**

**EXHIBIT E**

**CONTRACTOR CERTIFICATION  
MASSACHUSETTS DIESEL RETROFIT PROGRAM**



This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly by



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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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## ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

### 1.01 ► *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
  3. ► *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
  7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
  8. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Security of acceptable form, if any, and the Bid Form with any supplements.
  9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
  10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
  11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
  12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
  13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

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► See Supplementary Conditions.

► See Supplementary Conditions.

14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. ► *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

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► See Supplementary Conditions.

32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## 1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - a. does not conform to the Contract Documents; or
  - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
  2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2 – PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

### 2.02 *► Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

### 2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

### 2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

### 2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

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► See Supplementary Conditions.

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
  1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
  3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

**ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.



### 3.02 *Reference Standards*

#### A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

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► See Supplementary Conditions.

### 3.04 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
  - 1. A Field Order;
  - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
  - 3. Engineer's written interpretation or clarification.

### 3.05 *Reuse of Documents*

- A. Contractor and any Subcontractor or Supplier shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
  - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

### 3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

## **ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS**

### 4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any,

of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 ► *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
  - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
  - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
  - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
  - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 ► *Differing Subsurface or Physical Conditions*

- A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
  - 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
  - 2. is of such a nature as to require a change in the Contract Documents; or
  - 3. differs materially from that shown or indicated in the Contract Documents; or
  - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by

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► See Supplementary Conditions.

► See Supplementary Conditions.

Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
  - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
  - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
  - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
  - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
  - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

#### 4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data;
  - b. locating all Underground Facilities shown or indicated in the Contract Documents;

- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *► Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
  1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
  2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

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► See Supplementary Conditions.

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
  - D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
  - E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
  - F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner’s own forces or others in accordance with Article 7.
  - G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
  - H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
  - I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 5 – BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. ► If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

### 5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

### 5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

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► See Supplementary Conditions.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
  2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
  3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
  4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
    - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
    - b. by any other person for any other reason;
  5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
  6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- B. ► The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
  2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
  3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
  4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
  5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

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► See Supplementary Conditions.



6. include completed operations coverage:
  - a. Such insurance shall remain in effect for two years after final payment.
  - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
  1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
  2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
  3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
  5. allow for partial utilization of the Work by Owner;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to

Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

#### 5.07 *Waiver of Rights*

- A. ► Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
  - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
  - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

#### 5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any

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► See Supplementary Conditions.

applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

#### 5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

#### 5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

### **ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES**

#### 6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

#### 6.02 *► Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

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► See Supplementary Conditions.

- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. ► Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
  - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that:

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► See Supplementary Conditions.

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
  - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
  - 1) shall certify that the proposed substitute item will:
    - a) perform adequately the functions and achieve the results called for by the general design,
    - b) be similar in substance to that specified, and
    - c) be suited to the same use as that specified;
  - 2) will state:
    - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
    - b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
    - c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
  - 3) will identify:
    - a) all variations of the proposed substitute item from that specified, and
    - b) available engineering, sales, maintenance, repair, and replacement services; and

- 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. ► *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. ► *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

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► See Supplementary Conditions.

► See Supplementary Conditions.

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
  2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. ► All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

#### 6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the

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► See Supplementary Conditions.

performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. ► Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. ► Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all

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► See Supplementary Conditions.

► See Supplementary Conditions.



fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### 6.12 *Record Documents*

- A. ► Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

#### 6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. ► Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.

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► See Supplementary Conditions.

► See Supplementary Conditions.

- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *►Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
  - 1. *Shop Drawings:*
    - a. Submit number of copies specified in the General Requirements.
    - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

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►See Supplementary Conditions.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. ► Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. *Engineer's Review:*

1. ► Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

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► See Supplementary Conditions.

► See Supplementary Conditions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. ► *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
  1. observations by Engineer;
  2. recommendation by Engineer or payment by Owner of any progress or final payment;
  3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. use or occupancy of the Work or any part thereof by Owner;
  5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
  6. any inspection, test, or approval by others; or
  7. any correction of defective Work by Owner.

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► See Supplementary Conditions.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
  - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
  - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

## **ARTICLE 7 – OTHER WORK AT THE SITE**

### **7.01 *Related Work at Site***

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
  - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
  - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

### **7.02 *Coordination***

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
  - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
  - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
  - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

### **7.03 *Legal Relationships***

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

- C. ► Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

## ARTICLE 8 – OWNER'S RESPONSIBILITIES

### 8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### 8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

### 8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### 8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

### 8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### 8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

### 8.07 *Change Orders*

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

### 8.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

### 8.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

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► See Supplementary Conditions.

8.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION**

9.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *► Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

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► See Supplementary Conditions.



9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 10 – CHANGES IN THE WORK; CLAIMS**

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
  2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
  3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).
- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
  2. approve the Claim; or
  3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

## **ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### 11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:
  - 1. ► Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
  - 2. ► Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
  - 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
  - 4. ► Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
  - 5. Supplemental costs including the following:
    - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

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► See Supplementary Conditions.

► See Supplementary Conditions.

► See Supplementary Conditions.

- b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
- c. ►Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. ►The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. ► *Costs Excluded*: The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

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►See Supplementary Conditions.

►See Supplementary Conditions.

►See Supplementary Conditions.

4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. ► *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 ► *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
1. Contractor agrees that:
    - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
    - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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► See Supplementary Conditions.

► See Supplementary Conditions.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. ► Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
  - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
  - 2. there is no corresponding adjustment with respect to any other item of Work; and
  - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

## ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

### 12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
  - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
  - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
  - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. ► *Contractor's Fee*: The Contractor's fee for overhead and profit shall be determined as follows:
  - 1. a mutually acceptable fixed fee; or
  - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
    - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
    - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such

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► See Supplementary Conditions.

► See Supplementary Conditions.

Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

## 12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

## 12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.



## **ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### 13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

### 13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

### 13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
  - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
  - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
  - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

### 13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation,

inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

#### 13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

#### 13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. repair such defective land or areas; or
  - 2. correct such defective Work; or
  - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

#### 13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

#### 13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims,

costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

## ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.01 ► *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### 14.02 *Progress Payment*

#### A. *Applications for Payments:*

1. ► At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. ► The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

#### B. ► *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent

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► See Supplementary Conditions.

► See Supplementary Conditions.

► See Supplementary Conditions.

► See Supplementary Conditions.

tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work, or
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
  - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
  - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. ► *Payment Becomes Due:*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

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► See Supplementary Conditions.

D. ► *Reduction in Payment:*

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
  - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
  - b. ► Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
  - c. there are other items entitling Owner to a set-off against the amount recommended; or
  - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 ► *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

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► See Supplementary Conditions.

► See Supplementary Conditions.

► See Supplementary Conditions.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

#### 14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. ► Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
  - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
  - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

#### 14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 ► *Final Payment*

##### A. *Application for Payment:*

- 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

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► See Supplementary Conditions.

► See Supplementary Conditions.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
  - b. consent of the surety, if any, to final payment;
  - c. a list of all Claims against Owner that Contractor believes are unsettled; and
  - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

*B. Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

*C. Payment Becomes Due:*

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:



1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

## **ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

### **15.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

### **15.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will justify termination for cause:
  1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
  2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
  3. Contractor's repeated disregard of the authority of Engineer; or
  4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
  1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
  2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
  3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. ► If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
  - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
  - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
  - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

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► See Supplementary Conditions.

## ARTICLE 16 – DISPUTE RESOLUTION

### 16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
  - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
  - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
  - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

## ARTICLE 17 – MISCELLANEOUS

### 17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
  - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
  - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

### 17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

### 17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### 17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final

payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 ► *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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► See Supplementary Conditions.

## SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2007 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated herein, which are applicable to both the singular and plural thereof.

### ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

#### SC-1.01 *Defined Terms*

SC-1.01 Modify existing definitions as follows:

3. Replace the phrase “acceptable to Engineer” in Paragraph 1.01.A.3 of the General Conditions with the phrase “furnished by the Engineer”
22. Replace the definition of *Hazardous Environmental Conditions* and replace with “This includes Disposal Sites and the presence of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.”
23. Replace the definition of *Hazardous Waste* and replace with “The term Hazardous Waste shall have the meaning provided in Massachusetts Contingency Plan, 310 CMR 40 as amended from time to time.”
44. Replace the definition of *Substantial Completion* with “The time at which the work (or a specified part thereof) required by the contract has been completed except for work having a contract price of less than one percent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.”

SC-1.01 Add the following definitions immediately following subparagraph 1.01.A.51:

52. *Engineer's Consultant* – an individual or entity who is subcontracted to work for the Engineer.
53. *Disposal Site*- as provided in the Massachusetts Contingency Plan (MCP), 310 CMR 40 as amended from time to time.
54. *Final Payment*- The time at which the Work (or a specified part thereof) including the work under Substantial Completion and all of the work identified by the Owner as being incomplete or unsatisfactory at the time of Substantial Completion has been completed.
55. *Bid Item Description*: A separate description of each Bid Item listed in the Bid form. Bid Item Descriptions are included in Division 1 of the Specifications.

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## SUPPLEMENTARY CONDITIONS

### ARTICLE 2 - PRELIMINARY MATTERS

#### SC-2.02 *Copies of Documents*

SC-2.02 Delete Paragraph 2.02.A in its entirety and insert the following in its place:

Owner shall furnish to Contractor up to four (4) printed or hard copies of the full size Drawings and Project Manual and one CD with PDF files of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

#### SC-2.03 Commencement of Contract Times; Notice to Proceed

#### SC-2.04 Before Starting Construction

SC-2.05. Amend the first sentence of paragraph 2.05.A of the General Conditions by striking out the following words "Within ten days after the Effective Date of the Agreement," and inserting the following words "Within ten days after the date indicated in the Notice to Proceed"; and as so amended, paragraph 2.05.A remains in effect.

### ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

#### SC-3.01 Intent

SC-3.01 Add the following new paragraph immediately after Paragraph 3.01.C:

- D. Contractor Documents are written in the imperative mood. When direction is given, it shall be understood that the direction is given to Contractor. For example, the phrase "Provide two pumps" shall be understood to mean "Contractor shall provide two pumps."

#### SC-3.03 *Reporting and Resolving Discrepancies*

#### SC-3.03.B *Resolving Discrepancies*

SC-3.03.B Add the following new paragraph immediately after Paragraph 3.03.B.1.b:

- 2. In determining Contract Price with respect to a conflict, error, or discrepancy within the Contract Documents, the Contract Documents shall be given precedence in the following order with Change Orders being the highest precedence for Contract Documents:
  - 1. Laws and Regulations
  - 2. Change Orders
  - 3. Work Change Directives
  - 4. Field Orders
  - 5. Agreement
  - 6. Addenda
  - 7. Supplementary Conditions
  - 8. General Conditions
  - 9. Drawings
  - 10. Specifications
  - 11. Owner's Standard Details
  - 12. Bid Form and all bid submittals

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## SUPPLEMENTARY CONDITIONS

3. Item 30.03.B.2.a (Laws and Regulations) represent minimum requirements for the project. More stringent requirements called for in the Contract Documents shall be incorporated provided they do not conflict with Laws and Regulations.

### SC-3.06 Electronic Data

SC-3.06 Add the following language immediately after the last sentence of Paragraph 3.06.A:

Contractor, Owner, and Engineer may rely upon the following electronic documents:

- None.

## **ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS**

### SC-4.02 *Subsurface and Physical Conditions*

SC-4.02 Add the following new paragraphs immediately after Paragraph 4.02.B:

- C. The following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner:
  1. Boring logs for borings B-1, B-2 and B-3 dated December 12, 2019, and boring log for B-1A dated March 3, 2021; all prepared by Desmond Well Drilling, consisting of 5 pages. Borings are included in the Contract Documents in Appendix A of the Supplementary Conditions.
- D. The following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner:
  1. Drawings dated 1970, prepared by Fay Spofford and Thorndike Inc., entitled Sewage Treatment Plant, Contract 1, 42 sheets.
  2. Drawings dated 1989, prepared by Metcalf & Eddy, entitled Addition and Modifications to the Water Pollution Control Facility, 58 sheets.
  3. Conformed Drawings dated October 2001, prepared by Camp Dresser & McKee Inc., entitled Water Pollution Control Facility Upgrade, 118 sheets.
  4. Drawings dated July 2020, prepared by GHD Inc., entitled Equalization Basins No. 3 and 4, 17 sheets.

Unless otherwise noted, all drawings are Contract Drawings and are not as-built or record drawings. Engineer has not verified the accuracy of these drawings. They are available for reference only.

- E. The reports and drawings identified above are not part of the Contract Documents, but the "technical data" contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Engineer.

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## SUPPLEMENTARY CONDITIONS

- F. Copies of reports and drawings identified in SC-4.02.C and SC-4.02.D that are not included with the Bidding Documents may be examined at the Wareham Water Pollution Control Facility, 6 Tony's Lane, Wareham, MA, during regular business hours.

### SC-4.03 *Differing Subsurface or Physical Conditions*

#### SC-4.03.A *Notice*

SC-4.03.A Delete Paragraph 4.03 A entirely and replace with the following:

If Contractor believes that any subsurface or physical condition that is uncovered or revealed is of a differing condition as defined by M.G.L. Chapter 30, Section 39N, the Contractor shall within 3 days and in accordance with paragraph 10.05 after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16A), notify Owner and Engineer in writing about such conditions. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written or to do so.

### SC-4.06 *Hazardous Environmental Condition at Site*

SC-4.06 Delete paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

- "A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to OWNER.
- B. Not used."

SC 4.06.D Delete Paragraph 4.06.D, and replace with the following:

- "D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall follow the notification requirements of Massachusetts Contingency Plan (MCP) 40.0300 and all other applicable Laws and Regulations. In addition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner, Engineer, DEP, and appropriate authorities with jurisdiction over the site (and promptly, but in no event later than three days thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E."

## ARTICLE 5 - BONDS AND INSURANCE

### SC-5.01 *Performance, Payment and Other Bonds*

SC-5.01.B. Add the following language at the end of paragraph 5.01.B of the General Conditions:

"CONTRACTOR and surety shall jointly complete and execute the Performance and Payment Bond forms included at the end of the Agreement."

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## SUPPLEMENTARY CONDITIONS

### SC-5.04 Contractor's Liability Insurance

SC-5.04 Add the following new Paragraphs immediately after paragraph 5.04.B:

- C. The limits of liability for the insurance required by Paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
1. Workers' Compensation, and related coverages under paragraphs 5.04.A.1 and A.2 of the General Conditions:
    - a. State: Statutory
    - b. Applicable Federal (e.g., Longshoreman's): Statutory
    - c. Employer's Liability: \$1,000,000 each accident  
\$500,000 disease per employee
  2. Contractor's General Liability under paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of Contractor:
    - a. General Aggregate: \$3,000,000
    - b. Products - Completed Operations Aggregate: \$3,000,000
    - c. Personal and Advertising Injury: \$3,000,000
    - d. Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
    - e. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages where applicable.
    - f. Excess or Umbrella Liability
      - 1) General Aggregate: \$3,000,000
      - 2) Each Occurrence: \$3,000,000
  3. Automobile Liability under paragraph 5.04.A.6 of the General Conditions:
    - a. Bodily Injury:  
Each Person \$1,000,000  
Annual Aggregate \$3,000,000
    - b. Property Damage:  
Each Accident \$1,000,000  
Annual Aggregate \$3,000,000
    - c. Combined Single Limit (Bodily Injury and Property Damage)  
Each Accident \$1,000,000

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## SUPPLEMENTARY CONDITIONS

4. The Contractual Liability coverage (included in Commercial General Liability) required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:
    - a. Bodily Injury:

Each Accident	\$1,000,000
Annual Aggregate	\$3,000,000
    - b. Property Damage:

Each Accident	\$1,000,000
Annual Aggregate	\$3,000,000
  5. Builder's Risk (Fire Insurance) in an amount equal to the insurable value of the Contract.
  6. Owner, Engineer, and Engineer's Consultants identified prior to Notice of Award shall be listed as additional insureds. Contractor shall request a listing of Engineer's Consultants to be named prior to obtaining insurance for the project:
- D. The provisions or endorsements necessary to comply with paragraph 5.04.B.5 of the General Conditions shall include the obligation to notify the Owner and Engineer when an aggregate limit of liability required or certified has been reduced by the payment of claim(s).

### SC-5.05 OWNER's Liability Insurance

OWNER does not intend to purchase and maintain OWNER's liability insurance.

### SC-5.06 Property Insurance

Add the following paragraph to paragraph 5.06.A of the General Conditions:

SC-5.06.A. Delete paragraph 5.06.A through E of the General Conditions in its entirety and insert the following in its place:

- "A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. This insurance shall:
1. include the interests of OWNER, CONTRACTOR, Sub-contractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured; Owner and Engineer.
  2. be written on an Installation Floater or "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, falsework, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water

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## SUPPLEMENTARY CONDITIONS

damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
  4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;
  5. allow for partial utilization of the Work by OWNER;
  6. include testing and startup; and
  7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days' written notice; and
  8. comply with the requirements of Paragraph 5.06.C of the General Conditions.
- B. CONTRACTOR shall be responsible for any deductible or self-insured retention.
- C. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph SC-5.06 shall comply with the requirements of paragraph 5.06.C of the General Conditions."

### SC-5.07 Waiver of Rights

SC-5.07.A Modify 5.07A Last sentence after "so issued" by adding "or waive responsibility to fully compensate Owner or Engineer to the extent the insurance does not fully compensate the Owner or Engineer for their respective damages, costs, and losses as required by Contractor under the Contract Documents."

## ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

### SC-6.02 Labor; Working Hours

SC-6.02. Add the following new Paragraphs immediately after Paragraph 6.02.B:

- C. Normal working hours are defined as 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding Holidays. Owner's permission is required should the Contractor work outside of normal working hours. The following are considered Holidays during which work at the Site is not allowed:

· New Year's Day	· Indigenous Peoples' Day/Columbus Day
· Memorial Day	· Thanksgiving
· Independence Day	· Day after Thanksgiving
· Labor Day	· Christmas

- D. Should Contractor's working hours extend outside normal working hours, any and all costs for weekend, Holiday, and/or on Site overtime services of Engineer's or Owner's

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## SUPPLEMENTARY CONDITIONS

personnel, including but not limited to direct salaries, fringe benefits, overhead and profit, administration and supervision, incurred by Owner, will be the sole obligation of Contractor.

### SC-6.05 *Substitutes and "Or Equals"*

SC-6.05 Add the following subparagraph immediately after Subparagraph 6.05.A.1.b:

- c. Contractor provides a line-by-line comparison of the proposed product to the specified product. Line-by-line comparison shall not only include all specified features, but shall also include all other design and/or manufacturing differences between the proposed product and the specified product. Line-by-line comparison shall show no significant design or manufacturing differences that, in the Engineer's opinion, could result in lesser quality, performance, or reliability of the proposed product compared to the specified product.

SC-6.05.A.2. Add the following subparagraph immediately after Subparagraph 6.05.A.2.d of the General Conditions:

- e. If the substitute item requires modifications to the structures, piping, layouts, etc., detailed on the Drawings or described in the Contract Documents, the application shall also include details of proposed modifications necessary to accommodate the substitute item. Such details shall include scaled layouts, dimensions, and other pertinent information to enable Engineer to evaluate the entire application. If the substitute item and proposed modifications are approved, Contractor, at no additional cost to Owner, shall do all work necessary to make such modifications and absorb all costs of any related changes imposed on other contractors. Final details of such modifications shall be prepared and submitted for approval by Contractor in accordance with Specification Section 01300, Submittals.

SC-6.05.A. Add the following paragraph immediately after Paragraph 6.05.A.2 of the General Conditions:

3. Time Constraints: All applications for use of substitutes or 'or equal' items shall be submitted to Engineer within 45 days of the Effective Date of the Agreement. No applications will be considered thereafter unless Contractor produces satisfactory evidence that the specified item is no longer manufactured or is unavailable for the Project.

SC-6.05.C. Add the following subparagraph after Paragraph 6.05.C of the General Conditions:

1. In order to aid Engineer in determining the equality of a proposed 'or equal' or substitute item (when compared to the item actually specified), Contractor shall arrange for the performance of any tests requested by Engineer. The nature, extent, tester and supervisions of such tests including engineering costs, shall be borne by Contractor. Certified test results shall be mailed directly to Engineer for all tests requested.

SC-6.05.D Delete paragraph in its entirety and replace with:

- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee, efficiency guarantee bond, or other surety with respect to any substitute or "or equal" item.

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## SUPPLEMENTARY CONDITIONS

### SC-6.06 *Concerning Subcontractors, Suppliers, and Others*

SC-6.06 Add a new paragraph immediately after Paragraph 6.06.G:

- H. Owner may furnish to any Subcontractor or Supplier, to the extent practical, information about amounts paid to Contractor on account of Work performed for Contractor by a particular Subcontractor or Supplier.

### SC-6.08 *Permits*

SC-6.08.A. Add the following subparagraph to Paragraph 6.08.A of the General Conditions:

SC-6.08.A.1. CONTRACTOR shall obtain and pay for all permits in connection with this project. Further information concerning CONTRACTOR's responsibilities and obligations under the permit(s), are set forth in Section 01010 – Summary of Work.

### SC-6.10 *Taxes*

SC-6.10 Add a new Paragraph immediately after Paragraph 6.10.A:

- B. Owner is exempt from payment of sales and compensating use taxes of the Commonwealth of Massachusetts and of cities and counties thereof on all materials to be incorporated into the Work.
  - 1. Owner qualifies for Massachusetts Sales Tax Exemption under Chapter 757, Section 6, Legislative Acts of 1967, effective January 1, 1968.
  - 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

### SC-6.12 *Record Documents*

SC-6.12.A Add the following paragraph after 6.12.A:

- B. If Owner utilizes any part of the project in accordance with Paragraph GC- 14.05, Contractor shall provide to Engineer for Owner's use, a complete set of record drawings current to the date of Owner's utilization together with all required operation and maintenance manuals, shop drawings, etc., relating to the part of the project being utilized. Contractor shall submit said documents prior to Owner accepting the part of the project to be utilized, and Contractor will be required to submit an updated set of final record documents upon final completion of the project.

### SC- 6.13 *Safety and Precaution*

SC-6.13 Delete paragraph C in its entirety and replace with the following:

- C. Contractor shall comply with the applicable requirements of the Owner's safety programs if any. Any construction personnel on this construction site for this project shall have, at a minimum, an OSHA-10 card and such additional certifications as required by local laws, regulations and ordinances. Copies of OSHA-10 cards shall be submitted at the

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## SUPPLEMENTARY CONDITIONS

beginning of the project and at any time thereafter for each new employee that joins the project for Contractor and all Subcontractors.

### SC-6.16 *Emergencies*

SC-6.16.A Add the following paragraph after Paragraph 6.16.A of the General Conditions:

- B. Contractor shall designate one person to respond to emergencies and act on the Contractor's behalf during off-work hours at the Site. The person's name, address, and telephone number shall be provided to Owner during the preconstruction conference and the designated person shall be on call during off-work hours. Response time shall not exceed one hour after notification is given by Owner and/or Engineer that an emergency exists at the Site.

### SC-6.17 *Shop Drawings and Samples*

SC-6.17.C.2 Replace "or specific written certification" with "certifying".

SC-6.17.D.1 In the first sentence of Paragraph 6.17.D.1, replace "in accordance with the Schedule of Submittals acceptable to Engineer" with "in accordance with Specification Section 01300, Submittals".

SC-6.17.D.1. Add the following after Paragraph 6.17.D.1

- a. Submittal reviews may take up to 45 days for Division 17 submittals and 30 days for submittals under all other Divisions.

SC-6.17 Add the following new paragraphs immediately after Paragraph 6.17.E:

- F. CONTRACTOR shall furnish required submittals (in accordance with Section 01300) with sufficient information and accuracy in order to obtain required approval of an item with no more than three submittals. ENGINEER will record ENGINEER'S time for reviewing subsequent submittals of Shop Drawings, samples, or other items requiring approval and CONTRACTOR shall reimburse OWNER for ENGINEER's charges for such time.
- G. In the event that CONTRACTOR requests a change of a previously approved item, CONTRACTOR shall reimburse OWNER for ENGINEER's charges for its review time unless the need for such change is beyond the control of CONTRACTOR.

## ARTICLE 7 - OTHER WORK

### SC-7.01 Related Work at Site

Add the following paragraph immediately after paragraph 7.01.C of the General Conditions:

"SC-7.01.D. Related Work at the Site to be performed by others is identified as follows:

1. OWNER does not anticipate letting other direct contracts for related work.
2. OWNER does not anticipate performing any work on the Project with his own employees.

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3. OWNER is not aware of any work to be performed at the site by utility owners, except for those precautionary measures taken by utility owners to protect their existing facilities from damage or disruption of service.”

### SC-7.02 Coordination

OWNER does not anticipate letting other direct contracts for the Project.

### SC-7.04 *Claims Between Contractors*

SC-7.04 Add the following new paragraphs immediately after Paragraph 7.03.C:

#### *“7.04 Claims Between Contractors*

- A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor’s performance of the Work at the Site be made by any other contractor against Contractor, Owner, or Engineer, then Contractor (without involving Owner, Engineer) shall (1) remedy the damage, or (2) agree to compensate the other contractor for remedy of the damage, and shall be responsible to Owner and Engineer for all costs, fees and damages including attorney’s fees.
- B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer consultants, to the extent said claim is based on or arises out of Contractor’s performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer on account of any such damage or Claim.
- C. If Contractor is delayed at any time in performing or furnishing the Work by any act or neglect of another contractor, entity, agency or individual and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor’s sole and exclusive remedy with respect to Owner and Engineer, for any delay, disruption, interference, or hindrance caused by any other contractor or entity.”

## **ARTICLE 8 - OWNER’S RESPONSIBILITIES**

(No Amendments to General Conditions.)

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## SUPPLEMENTARY CONDITIONS

### ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

#### SC-9.03 *Project Representative*

SC-9.03.A Add the following new paragraphs immediately after Paragraph 9.03.A:

- B. The Resident Project Representative (RPR) will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall be through or with the full knowledge and approval of Contractor. The RPR shall:
1. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
  2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
  3. *Liaison:*
    - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative, assist in providing information regarding the intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
  4. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
  5. *Shop Drawings and Samples:*
    - a. Record date of receipt of Samples and approved Shop Drawings.
    - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  6. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
  7. *Review of Work and Rejection of Defective Work:*
    - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in

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accordance with the Contract Documents.

- b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

8. *Inspections, Tests, and System Startups:*

- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

9. *Records:*

- a. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- b. Maintain records for use in preparing Project documentation.

10. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Hazardous Environmental Condition.

11. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

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## SUPPLEMENTARY CONDITIONS

12. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
  13. *Completion:*
    - a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
    - b. Participate in a final inspection in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
    - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work.
- C. The RPR shall not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
  2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
  3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
  4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
  5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
  6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
  7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
  8. Authorize Owner to occupy the Project in whole or in part.

## ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

(No Amendments to General Conditions.)

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## SUPPLEMENTARY CONDITIONS

### ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

#### SC-11.01 *Cost of the Work*

SC-11.01.A.1 Delete the second sentence and replace with the following: "Such employees shall only include trade employees, directly performing full time Work and shall not include Superintendent, Foreman, and any other administrative or supervisory positions and any other similar positions."

SC-11.01.A.2 Replace the entire paragraph with the following: "Actual cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith."

SC-11.01.A.4 Replace the entire paragraph with the following: "Costs of land surveyors specifically related to this work."

SC-11.01.A.5.c. Delete Paragraph 11.01.A.5.c in its entirety and insert the following in its place:

#### c. Construction Equipment and Machinery

- 1) Rentals of all construction equipment and machinery actually utilized in the performance of the work, and the parts thereof in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
- 2) Costs for equipment and machinery actually utilized and owned by Contractor or any entity related to the Contractor who has common ownership with the Contractor will be paid at a rate shown for such equipment in the Rental Rate Blue Book for Construction Equipment for equipment in Massachusetts. An hourly rate will be computed by dividing the monthly rates by 176 adjusted by application of the Rate Adjustment Table (for machine age adjustment) plus adjustments to eliminate equipment overhead (indirect ownership) plus regional adjustments. These computed rates will include all operating costs. Costs will include the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, shall cease to accrue when the use thereof is no longer necessary for the changed Work. Equipment or machinery with a value of less than \$1,000 will be considered small tools.
- 3) There shall be no payment for idle or standby equipment.
- 4) For equipment use periods in excess of 8 hours, costs shall be calculated on the daily rate, for equipment use periods in excess of five (5) days, costs shall be calculated on the weekly rate, and for equipment use periods in excess of 4 weeks, costs shall be calculated at the monthly rate.
- 5) The current values of the Rental Rate Blue Book will be used in establishing equipment rates. The version applicable to specific extra work or force account work will be the version in effect as of the first day of work is performed and that

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rate shall apply throughout the period the extra work or force account work is being performed

SC-11.01.A.5 Delete Paragraph i, and replace with:

- i. The costs for additional premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain that are documented.

SC-11.01.B *Costs Excluded*

SC-11.01.B.1 after the word “clerks” in the first sentence, add “claims consultants, general foremen, superintendents,”

SC-11.01.B Add the following paragraphs

6. Costs associated with small tools and hand tools not consumed in the work.
7. Costs associated with vehicles of the superintendents, foremen and other supervisory personnel.
8. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, attorneys and accountants) employed for services specifically related to the Work.
9. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor’s fee.

SC-11.02 *Allowances* Delete 11.02 in its entirety.

SC-11.03 *Unit Price Work*

SC-11.03.D Delete Paragraph 11.03.D in its entirety and insert the following in its place:

- D. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment under the following conditions:
  1. if the Bid price of a particular item of Unit Price Work amounts to 30 percent or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and
  2. if there is no corresponding adjustment with respect to any other item of Work; and
  3. if Contractor believes that Contractor has incurred additional expense as a result thereof; or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, either Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

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4. Adjusted unit prices, if any, shall be applied as follows:
  - a. Quantity Overruns: Applied only to the difference between the total quantity of completed Work and the calculated quantity of Work at the variation limit for a particular item of Unit Price Work.
  - b. Quantity Underruns: The difference between the adjusted unit price and the original unit price (stated in the Agreement) shall be applied to the total quantity of completed Work for a particular item of Unit Price Work.

### **ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES**

#### SC-12.01 *Change of Contract Price*

SC-12.01.C.1 Delete paragraph 12.01.C.1 in its entirety.

SC-12.01.C.2 Delete paragraph 12.01.C.2 in its entirety and replace with:

12.01.C.2 The fee shall be based on the following percentages of the various portions of the Cost of Work:

- a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
- b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
- c. where one or more tiers of subcontracts, materialmen, vendors of manufacturer's, or any of their respective personnel are on the basis of Cost of the Work plus a fee, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2; and that any higher tier Subcontractor and Contractor will each be paid a fee not to exceed five percent of the amount paid to the next lower tier Subcontractor. Regardless of the number of affected subcontractor tiers, on any subcontracted work the total maximum fee to be paid by Owner under this subparagraph shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

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### **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

#### SC-13.03 Tests and Inspections

SC-13.03.C. Add the following language at the end of paragraph 13.03.C of the General Conditions:

“Such inspections, testing, or approvals shall be performed by organizations acceptable to ENGINEER.”

### **ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION**

#### SC-14.01 *Schedule of Values*

SC-14.01.A. Replace the phrase “form of Application for Payment acceptable to Engineer” in the first sentence with the phrase “form of Application for Payment furnished by Engineer.”

#### SC-14.02 *Progress Payment*

SC-14.02.A *Applications for Payments:*

SC-14.02.A. Add the following to the end of Subparagraph 14.02.A.1 of the General Conditions:

By signing the Application and Certificate for Payment, Contractor certifies that all items, units, quantities, and prices of Work and material in the estimate are correct, that all claimed Work has been performed and materials supplied in full accordance with the Contract, and that Contractor has no claims for damages, losses or expense against Owner for compensation in addition to that provided for in the application except such claims for change of Contract Price as Contractor has filed with Engineer and Owner in writing (in accordance with Article 10) prior to the date of his certifying the application.

SC-14.02.A Add the following after paragraph 14,02.A.3

4. Contractor shall submit a claim and lien release with each application for payment in a form acceptable to Owner and Engineer.
5. All applications for payment and all payments shall be in accordance with applicable Laws and Regulations.

SC-14.02.B *Review of Applications:*

SC-14.02.B. Add the following subparagraph after subparagraph 14.02.B.5.d of the General Conditions:

- e. because of Contractor’s failure to submit certifications, affidavits, schedules, or other written information when and as required in the Contract Documents, or Contractor’s failure to make submittals in accordance with the Schedule of Submittals; or
- f. Contractor has failed to comply with the Contract Documents.

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SC-14.02.C. *Payment Becomes Due:*

SC-14.02.C Delete 14.02.C *Payments Become Due* in its entirety, and replace with the following

C. *Progress Payments to the Contractor:*

1. The Owner will make payments in accordance with the following provisions, pursuant to Section 39K of Chapter 30 of the Massachusetts General Laws:
  - a. Within fifteen days after receipt from the Contractor, at the place designated by the Owner if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the Owner will make a periodic payment to the Contractor for the Work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title or to which a subcontractor has title and has authorized the Contractor to transfer title to the Owner, upon certification by the Contractor that he is the lawful owner and that the materials are free from all encumbrances, but less (1) a retention based on its estimate of the fair value of its claims against the Contractor and less (2) a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the Contractor fully completes the Work or substantially completes the Work so that the value of the Work remaining to be done is, in the estimate of the Owner, less than one per cent of the original Contract Price, or (b) the Contractor substantially completes the Work and the Owner takes possession for occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to Subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the Contractor to the Subcontractors under this contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in section thirty-nine F. If the Owner fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the Contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days after receipt of such a periodic estimate from the Contractor, at the place designated by the Owner if such a place is so designated. The Contractor agrees to pay to each Subcontractor a portion of any such interest paid in accordance with the amount due each Subcontractor.
  - b. The awarding authority may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for

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the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the Owner may, within seven days after receipt, return to the Contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.

- c. All periodic estimates shall be submitted to the Owner, or to its designee as set forth in writing to the Contractor, and the date of receipt by the Owner or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and a column listing the amount paid to each Subcontractor and sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the Owner shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.
  - d. A certificate to the effect that the Contractor has fully or substantially completed the Work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.
  - e. Notwithstanding the provisions of this section, at any time after the value of the Work remaining to be done is, in the estimation of the Owner, less than 1 per cent of the adjusted contract price, or the Owner has determined that the Contractor has substantially completed the Work and the Owner has taken possession for occupancy, the Owner may send to the Contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The Contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the Contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the Owner or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the Contractor by certified mail, return receipt requested, the Owner may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the Contractor and such termination shall be without prejudice to any other rights or remedies the Owner may have under the contract. The Owner shall note any such termination in the evaluation form to be filed by the Owner pursuant to the provisions of section 44D of chapter 149.
2. The payment approved will be based on a determination that the Work indicated in the periodic estimate has progressed to the indicated point and is in accordance with the Contract Documents subject to evaluation upon Substantial Completion, to

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results of subsequent tests specified in the Contract Documents and to specific qualifications issued as part of the approval.

SC14.02.D.1. Delete subparagraph b in its entirety and replace with:

- b. Contractor has not fulfilled its obligation under the contract.

Add the following after 14.02.D.3

E. *Payments to Subcontractors:*

1. Pursuant to Section 39F of Chapter 30 of the Massachusetts General Laws, the following provisions (a) through (h) shall apply with respect to payment of Subcontractors:
  - a. Forthwith after the Contractor receives payment on account of a periodic estimate, the Contractor shall pay to each Subcontractor the amount paid for the labor performed and the materials furnished by that Subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.
  - b. Not later than the sixty-fifth day after each Subcontractor substantially completes its Work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of Work, shall be due the Subcontractor; and the Owner shall pay that amount to the Contractor. The Contractor shall forthwith pay to the Subcontractor the full amount received from the Owner less any amount specified in any court Proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.
  - c. Each payment made by the Owner to the Contractor pursuant to Clauses (a) and (b) of this Subparagraph for the labor performed and the materials furnished by a Subcontractor shall be made to the Contractor for the account of that Subcontractor; and the Owner shall take reasonable steps to compel the Contractor to make each such payment to each such Subcontractor. If the Owner has received a demand for direct payment from a Subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in Clauses (a) and (b), the Owner shall act upon the demand as provided in this Paragraph.
  - d. If, within seventy days after the Subcontractor has substantially completed the subcontract Work, the Subcontractor has not received from the Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of work, the Subcontractor may demand direct payment of that balance from the Owner. The demand shall be by a sworn statement delivered to or sent by certified mail to the Owner, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a

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statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract Work shall be valid even if delivered or mailed prior to the seventieth day after the Subcontractor has substantially completed the subcontract Work. Within ten days after the Subcontractor has delivered or so mailed the demand to the Owner and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Owner and a copy shall be delivered to or sent by certified mail to the Subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.

- e. Within fifteen days after receipt of the demand by the Owner, but in no event prior to the seventieth day after substantial completion of the subcontract Work, the Owner shall make direct payment to the Subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount (i) retained by the Owner as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided, that the Owner shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by Clause (d). The Owner shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this Clause.
- f. The Owner shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of Clause (e) in an interest-bearing joint account in the names of the Contractor and the Subcontractor in a bank in Massachusetts selected by the Owner or agreed upon by the Contractor and the Subcontractor and shall notify the Contractor and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the Subcontractor or as determined by decree of a court of competent jurisdiction.
- g. All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to Clause (f) shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a Subcontractor and out of amounts which later become payable to the Contractor and in the order of receipt of such demands from Subcontractors. All direct payments shall discharge the obligation of the Owner to the Contractor to the extent of such payment.
- h. The Owner shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to Clause (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from Subcontractors. All such amounts shall be earmarked for such

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direct payments, and the Subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the Contractor.

- i. If the Subcontractor does not receive payment as provided in Subparagraph (a) or if the Contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the Subcontractor and the Subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the Subcontractor may demand direct payment by following the procedure in Subparagraph (d) and the Contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the Subcontractor performed or furnished the labor and materials for which the Subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the Contractor. Thereafter the Owner shall proceed as provided in Subparagraphs (e), (f), (g) and (h).
2. "Subcontractor" as used in Paragraph 1014.02F shall mean a person approved by the Owner in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor.
3. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Subcontractors in a manner similar to that provided in Clause 14.02.E.1.a
4. Except as set forth in this Paragraph or as may be otherwise required by law, the Owner shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor.

### F. *Payments Withheld*

1. If the Owner is unable to approve an application for payment as provided in Paragraph 1014.02C, it will notify the Contractor. If the Contractor and the Owner cannot agree on a revised amount, the Owner will issue a payment for the amount which it is able to approve. The Owner may also decline to make payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or any part of any payment previously issued, or, notwithstanding that the Owner has issued a payment, the Owner, in addition to and without limitation of any other rights and remedies of the Owner under the Contract Documents, may withhold payment of any amounts claimed to be due by the Contractor and paid by the Owner, in each case to such extent as may be necessary in order to provide for retention covering the fair value of the Owner's claims against the Contractor, which amounts may include, but shall not be limited to, the fair value of costs or losses arising from:
  - a. defective Work not remedied,
  - b. third party claims filed or reasonable evidence indicating probable filing of such claims,
  - c. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,

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- d. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price,
- e. damage to the Owner or another contractor,
- f. reasonable evidence that the Work will not be completed within the Contract Time,
- g. failure to carry out the Work in accordance with the Contract Documents or other default by the Contractor under, or failure of the Contractor to comply with any provisions of, the Contract Documents, or
- h. actual or anticipated claims for damages for delay.

If and when the grounds set forth above are removed without cost to the Owner, payment may be requested and shall be made for amounts withheld because of such grounds.

### SC-14.04 *Substantial Completion*

SC-14.04 Delete 14.04 in its entirety and replace with the following:

#### *“14.04 Substantial Completion*

- A. When the Contractor considers that the Work, or a portion thereof designated by the Owner in the Contract Documents, is substantially completed as defined in Paragraph 14.02c, the Contractor shall prepare and submit to the Owner three complete sets of all warranties and guarantees required by the Contract Documents, and a list of items to be completed or corrected in addition to the certification that the Work has been substantially completed as required by Paragraph 14.02.C. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, the Owner will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include an itemized list of incomplete or unsatisfactory work items as required by Paragraph 14.02.C and shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. The incomplete and unsatisfactory work items shall be completed within the time specified in Paragraph 14.02.C. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be signed by the Owner and the Contractor indicating their written acceptance of the responsibilities assigned to them in such Certificate.
- B. Upon Substantial Completion of the Work or the occupancy or use by the Owner of the Work, or designated portion thereof, and upon application by the Contractor and certification by the Owner, payment will be made in accordance with Paragraph 14.02.C.”

### SC-14.05 *Partial Utilization*

SC-14.05.A.1 In the last sentence, delete the phrase “Paragraph 14.04.A through D” and replace with the phrase “Paragraph 14.04.A through B.”

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### SC-14.07 *Final Payment*

SC-14.07 Delete 14.07.A. in its entirety and replace with the following:

#### *“14.07 Final Completion and Final Payment*

##### A. Application for Payment:

1. Subject to the provisions of Paragraph 14.02.C, if applicable, upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final request for payment, the Owner will promptly make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract fully performed, it will promptly issue a final recommendation for payment stating that, based on its observations and inspections, the Work has been completed and that to its best knowledge, information and belief the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final recommendation, is due and payable. The Owner will not approve final payment until an inspection for final completion has been performed and the Work has been accepted. .
2. Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of the Contractor's surety to final payment and (3), if required by the Owner, other data establishing payment or satisfaction of all obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify it against any such claim or lien. If any such claim or lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such claim or lien, including all costs and reasonable attorneys' fees.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.
4. The acceptance of final payment shall constitute a release and waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of its submission of the final periodic estimate.”

## **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

(No Amendments to General Conditions.)

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### ARTICLE 16 - DISPUTE RESOLUTION

#### SC-16.01 Methods and Procedures

SC-16.01.A. OWNER and CONTRACTOR have agreed that the method and procedure for resolving disputes between them shall be as set forth in paragraph SC-16.02 paragraphs SC-16.02 and SC-16.03 below.

SC-16.01 Add the following new paragraph immediately after paragraph 16.01 of the General Conditions:

#### “SC-16.02 Mediation

- A. OWNER and CONTRACTOR agree that they shall submit any and all unsettled Claims or counterclaims, disputes, or other matters in question between them arising out of or relating to the Contract Documents or the breach thereof to mediation prior to either of them initiating against the other a demand for arbitration pursuant to paragraph SC-16.03, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The 30-day time limit within which to file a demand for arbitration as provided in paragraphs SC-16.03.B and 16.03.C shall be suspended with respect to a dispute submitted to mediation within that time limit and shall remain suspended until 10 days after the termination of the mediation. The mediator of any dispute submitted to mediation under this agreement shall not serve as arbitrator of such dispute unless otherwise agreed.”

### ARTICLE 17 - MISCELLANEOUS

Add the following new paragraphs immediately after Paragraph 17.06.A:

#### SC-17.07 *Labor and Legal Requirements*

- A. Contractor shall abide by all regulations and laws that relate to labor that may affect the Work of this Contract, including Federal Davis-Bacon and Massachusetts Prevailing Wage regulations.
- B. The latest Prevailing Wage Rate Schedules setting forth minimum wages and supplements for this area of the state, together with labor standard provisions and non-discrimination in employment provisions are appended to the Agreement.
- C. The Contractor shall make provision for the disability benefits, unemployment insurance and social security required by law.
- D. The Contractor shall keep himself fully informed of all laws of the State (in which the Project is located) and of the United States of America, and of all municipal laws and ordinances in any manner affecting the Work of this Contract, and of all orders or decrees of any body or tribunal having any jurisdiction or authority in any manner affecting such Work, and shall be responsible for strict compliance therewith. If any clause of this Contract does not conform to any such law, such clause shall be void insofar as it conflicts with such law, and such law shall be operative in lieu thereof.
- E. Each and every provision of law and clause required by law to be inserted in this Contract should be, is and is deemed to be inserted herein, and if through a mistake or otherwise

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any such provision is not inserted, or it is not correctly inserted, then upon the application of either party the Contract shall forthwith be amended physically to make such insertion.

- F. If any provision herein shall be as to destroy the mutuality of this Contract or to render it invalid or illegal, then if such provision shall not appear to have been so material that without it the Contract would not have been made by the parties, it shall not be deemed to form part thereof but the balance of the Contract shall remain in full force and effect.

EXAMPLE OF CHANGE ORDER CALCULATIONS

An example of change order calculation is shown below to demonstrate application of allowable payroll tax percentages, CONTRACTOR's fees, etc. in connection with the requirements of Article 12:

A. Reimbursement to CONTRACTOR for a truck driver and truck rental:

Labor

Basic hourly rate	\$14.10
Health and welfare contribution	\$1.96
Pension fund contribution	<u>+ \$1.71</u>
Chargeable hourly rate	\$17.77
Total for 3 hours .....	\$ 53.31

Payroll Taxes

FICA	7.51%
Unemployment insurance	6.00%
Workers compensation + PLPD*	<u>24.00%</u>
	37.15% x \$14.10 = \$5.24
Total for 3 hours .....	\$ 15.71

Truck Rental @ \$50.00 per hour (for 3 hours)

Total actual labor and materials	\$150.00
CONTRACTOR's Fee (15%) .....	\$219.03
	<u>32.85</u>
Total Cost of Change Order .....	\$251.88

B. Reimbursement to CONTRACTOR if Same Work is Performed by a Subcontractor:

Total actual labor and materials from above (subcontractor)	\$219.03
Subcontractor's Fee (15%) .....	<u>32.85</u>
Total Cost of Subcontractor's Work .....	\$251.88
CONTRACTOR's Fee (5%) .....	<u>12.59</u>
Total Cost of Change Order .....	\$264.47

\*Personnel liability and property damage.

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## SUPPLEMENTARY CONDITIONS

### MINIMUM HOURLY WAGE RATES

The CONTRACTOR and every subcontractor shall post in a prominent and accessible place at the site of the Work, a legible copy of the Federal Wage Determination Rate Schedule (if such is included in the Contract Documents).

The rates established by each schedule are minimum, and all employees shall be paid no less than the established rate listed for each trade or occupation. In case of conflict between schedules in any one trade or occupation, the higher rate listed shall control and such higher rate shall be considered to be the minimum.

State: The minimum rates of wages and schedule of supplements to be provided for the various trades shall be in accordance with the Prevailing Wage Rate Schedule which is included herein.

Minimum Wage Rates as determined by the Commissioner of Department of Labor and Industries under the provision of the Massachusetts General Laws, Chapter 149, Sections 26 to 27D, as amended, apply to this project. It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Minimum Wage Rates for those trades people who may be employed for the proposed work under this contract.

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This document has been modified from its original form as an EJCDC document and the user did not highlight the modification. You are encouraged to read the document carefully and consult Legal Counsel prior to its execution.

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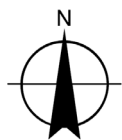
**APPENDIX A**  
**SOIL BORING LOGS**

Cape Cod Test Boring 5 Rayber Road, Orleans, MA 02653 (508) 240-1000 div. Desmond Well Drilling, Inc.		Project GHD, Inc. Wareham WPCF 6 Tony's Lane, Wareham		Boring No. B1A	
				Sheet 1 of 1	
Driller: Thomas E Desmond III Helper: Logan Sage Inspector: Frank Woodfall		Boring location: 6 Tony's Rd, Wareham Ground Surface Elevation: Date start: 03/03/2021 Date end: 03/03/2021			
Sampler consists of a two inch split spoon driven using a 140 lb. hammer falling thirty inches		Notes:		Auger Size: 6 1/4" x 4" H.S.A Casing Size: N/A Screen Size: N/A	
Depth (FT)	NO	PEN/REC	DEPTH/FT	BLOWS 6"	Sample Description
0	1	24/19	0 - 2	6-7-13-13	Loamy; F-M brown sand; trace C brown sand; little silty brown sand. Dry.
-1					
-2	2	24/24	2 - 4	14-14-13-12	F-M brown sand; trace silty brown sand. Dry.
-3					
-4	3	24/13	4 - 6	3-19-10-8	F-M-C brown sand. Dry.
-5					
-6	4	24/4	6 - 8	43-44-19-11	Rock fragment; F-M-C brown sand. Dry.
-7					
-8	5	24/19	8 - 10	3-3-3-6	F-M brown sand. Dry.
-9					
-10	6	24/16	10 - 12	5-5-4-4	F-M-C brown sand. Dry.
-11					
-12	7	24/16	12 - 14	5-5-6-7	F-M brown sand; trace C brown sand. Dry.
-13					
-14	8	24/6	14 - 16	5-11-12-13	F-M brown sand; trace C brown sand. Dry.
-15					
-16	9	24/21	16 - 18	4-4-3-5	F-M brown sand; little C brown sand. Dry.
-17					
-18	10	24/18	18 - 20	2-2-4-3	F-M-C brown sand. Wet.
-19					
↓					
-23	11	24/9	23 - 25	2-2-3-3	F-M-C brown sand. Wet.
-24					
-25					
↓					
-28	12	24/16	28 - 30	2-4-5-8	F-M brown sand. Wet.
-29					
↓					
-33	13	24/16	33 - 35	2-4-7-9	F-M brown sand. Wet.
-34					
↓					
-38	14	24/15	38 - 40	3-4-6-7	F-M brown sand. Wet.
-39					End of boring: 38'
-40					End of sample: 40'
-41					Groundwater encountered: 18'
Granular Soils BLOWS/FT DENSITY		Cohesive Soils BLOWS/FT DENSITY		Proportions Used	Well Installation Key
0 - 4	V. LOOSE	> 2	V. SOFT	Trace 0 - 10%	■ - CONCRETE
4 - 10	LOOSE	2 - 4	SOFT	Little 10 - 20%	■ - SAND PACK
10 - 30	M. DENSE	4 - 8	M. STIFF	Some 20 - 35%	Z - SOIL BACKFILL
30 - 50	DENSE	8 - 15	STIFF	And 35 - 50%	▨ - BENTONITE
> 50	V. DENSE	15 - 30	V. STIFF		⊞ - SCREEN
		> 30	HARD		▽ - APPROX. WATER LEVEL
<b>CAPE COD TEST BORING</b>				<b>BORING NO. B1A</b>	



SOURCE: GOOGLE EARTH

Wareham WPCF  
 Design of Additional EQ  
 Basins



**Figure 1 -**  
 Boring Locations at Wareham  
 WPCF

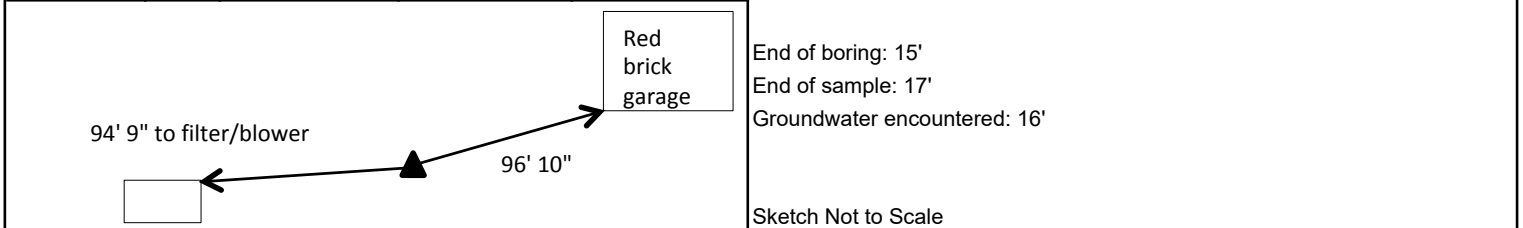
Project No. TBD  
 Report No.  
 Date 11/11/19

Cape Cod Test Boring 5 Rayber Road, Orleans, MA 02653 (508) 240-1000 div. Desmond Well Drilling, Inc.	Project GHD/Town of Wareham Town of Wareham WPFC Wareham, MA	Boring No. B1
		Sheet 1 of 1

Driller: Patrick Desmond	Boring location: Wareham WPFC
Helper: Derek Goodlin	Ground Surface Elevation:
Inspector: Craig Curtain	Date start: 12/12/2019 Date end: 12/12/2019

Sampler consists of a two inch split spoon driven using a 140 lb. hammer falling thirty inches	Notes:	Auger Size: 6 1/4" x 4" H.S.A Casing Size: N/A Screen Size: N/A
------------------------------------------------------------------------------------------------	--------	-----------------------------------------------------------------------

Depth (FT)	Sample				Sample Description
	NO	PEN/REC	DEPTH/FT	BLOWS 6"	
0			0 - 5		Vacuum truck. F-M brown sand, cobble. F-M-C brown sand, trace gravel. Dry.
-1					
-2					
-3					
-4					
-5	1	24/16	5 - 7	4-9-10-10	F-M-C brown sand, trace gravel. Dry.
-6					F-M-C brown sand, trace gravel. Dry.
-7	2	24/16	7 - 9	7-7-7-7	
-8					F-M gray sand. Dry.
-9	3	24/20	9 - 11	2-4-6-6	
-10					F-M-C gray sand. Dry.
-11	4	24/22	11 - 13	4-4-4-5	
-12					F-M-C gray sand; trace gravel. Damp.
-13	5	24/19	13 - 15	4-4-5-5	
-14					F-M-C gray sand; trace gravel. Wet.
-15	6	24/20	15 - 17	4-4-5-3	
-16					
-17					
-18					
-19					
-20					
-21					
-22					
-23					
-24					
-25					
-26					
-27					



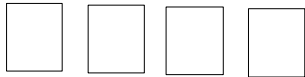
Granular Soils		Cohesive Soils		Proportions Used	Well Installation Key
BLOWS/FT	DENSITY	BLOWS/FT	DENSITY		
0 - 4	V. LOOSE	> 2	V. SOFT	Trace 0 - 10% Little 10 - 20% Some 20 - 35% And 35 - 50%	■ - CONCRETE ■ - SAND PACK Z - SOIL BACKFILL ▨ - BENTONITE † - SCREEN ▽ - APPROX. WATER LEVEL
4 - 10	LOOSE	2 - 4	SOFT		
10 - 30	M. DENSE	4 - 8	M. STIFF		
30 - 50	DENSE	8 - 15	STIFF		
> 50	V. DENSE	15 - 30	V. STIFF		
		> 30	HARD		

Cape Cod Test Boring 5 Rayber Road, Orleans, MA 02653 (508) 240-1000 div. Desmond Well Drilling, Inc.	Project GHD/Town of Wareham Town of Wareham WPFC Wareham, MA	Boring No. B2
		Sheet 1 of 1

Driller: Patrick Desmond	Boring location: Wareham WPFC
Helper: Derek Goodlin	Ground Surface Elevation:
Inspector: Craig Curtain	Date start: 12/12/2019 Date end: 12/12/2019

Sampler consists of a two inch split spoon driven using a 140 lb. hammer falling thirty inches	Notes:	Auger Size: 6 1/4" x 4" H.S.A Casing Size: N/A Screen Size: N/A
------------------------------------------------------------------------------------------------	--------	-----------------------------------------------------------------------

Depth (FT)	Sample				Sample Description
	NO	PEN/REC	DEPTH/FT	BLOWS 6"	
0			0 - 5		Vacuum truck. F-M-C brown sand. Dry.
-1					
-2					
-3					
-4					
-5	1	24/18	5 - 7	4-3-3-6	F-M-C light brown sand, trace gravel. Dry.
-6					
-7	2	24/18	7 - 9	5-6-6-6	F-M-C light brown sand, trace gravel. Dry.
-8					
-9	3	24/18	9 - 11	5-6-6-8	F-M-C light brown sand, trace gravel. Dry.
-10					
-11	4	24/18	11 - 13	3-4-6-7	F-M-C light brown sand, trace gravel. Dry.
-12					
-13	5	24/20	13 - 15	5-7-7-8	F-M-C light brown sand, trace gravel. Dry.
-14					
-15	6	24/18	15 - 17	4-6-6-6	F-M-C light brown sand, trace gravel. Dry.
-16					
-17	7	24/20	17 - 19	4-3-3-3	F-M-C light brown sand, trace gravel. Wet.
-18					
-19					
-20					
-21					
-22					
-23					
-24					
-25					
-26					
-27					



End of boring: 17'  
End of sample: 19'  
Groundwater encountered: 18'

Sketch Not to Scale

Granular Soils		Cohesive Soils		Proportions Used	Well Installation Key
BLOWS/FT	DENSITY	BLOWS/FT	DENSITY		
0 - 4	V. LOOSE	> 2	V. SOFT	Trace 0 - 10% Little 10 - 20% Some 20 - 35% And 35 - 50%	■ - CONCRETE ■ - SAND PACK Z - SOIL BACKFILL ▨ - BENTONITE † - SCREEN ▽ - APPROX. WATER LEVEL
4 - 10	LOOSE	2 - 4	SOFT		
10 - 30	M. DENSE	4 - 8	M. STIFF		
30 - 50	DENSE	8 - 15	STIFF		
> 50	V. DENSE	15 - 30	V. STIFF		
		> 30	HARD		

Cape Cod Test Boring 5 Rayber Road, Orleans, MA 02653 (508) 240-1000 div. Desmond Well Drilling, Inc.		Project GHD/Town of Wareham Town of Wareham WPFC Wareham, MA		Boring No. B3	
Driller: Patrick Desmond Helper: Derek Goodlin Inspector: Craig Curtain		Boring location: Wareham WPFC Ground Surface Elevation: Date start: 12/12/2019		Sheet 1 of 1 Date end: 12/12/2019	
Sampler consists of a two inch split spoon driven using a 140 lb. hammer falling thirty inches		Notes:		Auger Size: 6 1/4" x 4" H.S.A Casing Size: N/A Screen Size: N/A	
Depth (FT)	NO	PEN/REC	DEPTH/FT	BLOWS 6"	Sample Description
0			0 - 5		Vacuum truck. F-M-C brown sand. Dry.
-1					
-2					
-3					
-4					
-5	1	24/13	5 - 7	12-11-10-5	F-M-C light brown sand, trace gravel and stone. Dry.
-6					
-7	2	24/12	7 - 9	6-7-7-6	F-M-C light brown sand, trace gravel and stone. Dry.
-8					
-9	3	24/17	9 - 11	5-7-5-4	F-M-C light brown sand, trace gravel and stone. Dry.
-10					
-11	4	24/16	11 - 13	2-2-4-4	F-M-C light brown sand and gravel. Dry.
-12					
-13	5	24/20	13 - 15	4-8-8-7	F-M-C light brown sand, trace gravel. Dry.
-14					
-15	6	24/18	15 - 17	8-11-17-16	F-M-C light brown sand and gravel. Dry.
-16					
-17	7	24/12	17 - 19	16-14-12-9	F-M-C light brown sand and gravel. Wet.
-18					
-19					
-20					
-21					
-22					
-23					
-24					
-25					
-26					
-27					
End of boring: 17' End of sample: 19' Groundwater encountered: 18'					
Sketch Not to Scale					
Granular Soils		Cohesive Soils		Proportions Used	Well Installation Key
BLOWS/FT	DENSITY	BLOWS/FT	DENSITY		■ - CONCRETE
0 - 4	V. LOOSE	> 2	V. SOFT	Trace 0 - 10%	■ - SAND PACK
4 - 10	LOOSE	2 - 4	SOFT	Little 10 - 20%	Z - SOIL BACKFILL
10 - 30	M. DENSE	4 - 8	M. STIFF	Some 20 - 35%	▨ - BENTONITE
30 - 50	DENSE	8 - 15	STIFF	And 35 - 50%	⊕ - SCREEN
> 50	V. DENSE	15 - 30	V. STIFF		▽ - APPROX. WATER LEVEL
		> 30	HARD		
<b>CAPE COD TEST BORING</b>				<b>BORING NO. B3</b>	

**APPENDIX B**

**AMERICAN IRON AND STEEL REQUIREMENTS**



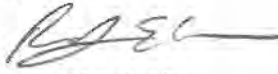
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

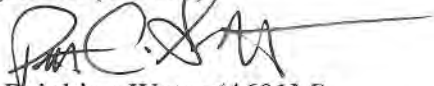
MAR 20 2014

OFFICE OF WATER

**MEMORANDUM**

SUBJECT: Implementation of American Iron and Steel provisions of P.L. 113-76,  
Consolidated Appropriations Act, 2014

FROM: <sup>For</sup> Andrew D. Sawyers, Director   
Office of Wastewater Management (4201M)

Peter C. Grevatt, Director   
Office of Ground Water and Drinking Water (4601M)

TO: Water Management Division Directors  
Regions I - X

P.L. 113-76, Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel (AIS)” requirement in section 436 that requires Clean Water State Revolving Loan Fund (CWSRF) and Drinking Water State Revolving Loan Fund (DWSRF) assistance recipients to use iron and steel products that are produced in the United States for projects for the construction, alteration, maintenance, or repair of a public water system or treatment works if the project is funded through an assistance agreement executed beginning January 17, 2014 (enactment of the Act), through the end of Federal Fiscal Year 2014.

Section 436 also sets forth certain circumstances under which EPA may waive the AIS requirement. Furthermore, the Act specifically exempts projects where engineering plans and specifications were approved by a State agency prior to January 17, 2014.

The approach described below explains how EPA will implement the AIS requirement. The first section is in the form of questions and answers that address the types of projects that must comply with the AIS requirement, the types of products covered by the AIS requirement, and compliance. The second section is a step-by-step process for requesting waivers and the circumstances under which waivers may be granted.



## Implementation

The Act states:

Sec. 436. (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out

the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

The following questions and answers provide guidance for implementing and complying with the AIS requirements:

### **Project Coverage**

#### **1) What classes of projects are covered by the AIS requirement?**

All treatment works projects funded by a CWSRF assistance agreement, and all public water system projects funded by a DWSRF assistance agreement, from the date of enactment through the end of Federal Fiscal Year 2014, are covered. The AIS requirements apply to the entirety of the project, no matter when construction begins or ends. Additionally, the AIS requirements apply to all parts of the project, no matter the source of funding.

#### **2) Does the AIS requirement apply to nonpoint source projects or national estuary projects?**

No. Congress did not include an AIS requirement for nonpoint source and national estuary projects unless the project can also be classified as a 'treatment works' as defined by section 212 of the Clean Water Act.

#### **3) Are any projects for the construction, alteration, maintenance, or repair of a public water system or treatment works excluded from the AIS requirement?**

Any project, whether a treatment works project or a public water system project, for which engineering plans and specifications were approved by the responsible state agency prior to January 17, 2014, is excluded from the AIS requirements.

#### **4) What if the project does not have approved engineering plans and specifications but has signed an assistance agreement with a CWSRF or DWSRF program prior to January 17, 2014?**

The AIS requirements do not apply to any project for which an assistance agreement was signed prior to January 17, 2014.

**5) What if the project does not have approved engineering plans and specifications, but bids were advertised prior to January 17, 2014 and an assistance agreement was signed after January 17, 2014?**

If the project does not require approved engineering plans and specifications, the bid advertisement date will count in lieu of the approval date for purposes of the exemption in section 436(f).

**6) What if the assistance agreement that was signed prior to January 17, 2014, only funded a part of the overall project, where the remainder of the project will be funded later with another SRF loan?**

If the original assistance agreement funded any construction of the project, the date of the original assistance agreement counts for purposes of the exemption. If the original assistance agreement was only for planning and design, the date of that assistance agreement will count for purposes of the exemption only if there is a written commitment or expectation on the part of the assistance recipient to fund the remainder of the project with SRF funds.

**7) What if the assistance agreement that was signed prior to January 17, 2014, funded the first phase of a multi-phase project, where the remaining phases will be funded by SRF assistance in the future?**

In such a case, the phases of the project will be considered a single project if all construction necessary to complete the building or work, regardless of the number of contracts or assistance agreements involved, are closely related in purpose, time and place. However, there are many situations in which major construction activities are clearly undertaken in phases that are distinct in purpose, time, or place. In the case of distinct phases, projects with engineering plans and specifications approval or assistance agreements signed prior to January 17, 2014 would be excluded from AIS requirements while those approved/signed on January 17, 2014, or later would be covered by the AIS requirements.

**8) What if a project has split funding from a non-SRF source?**

Many States intend to fund projects with “split” funding, from the SRF program and from State or other programs. Based on the Act language in section 436, which requires that American iron and steel products be used in any project for the construction, alteration, maintenance, or repair of a public water system or treatment works receiving SRF funding between and including January 17, 2014 and September 30, 2014, any project that is funded in whole or in part with such funds must comply with the AIS requirement. A “project” consists of all construction necessary to complete the building or work regardless of the number of contracts or assistance agreements involved so long as all contracts and assistance agreements awarded are closely related in purpose, time and place. This precludes the intentional splitting of SRF projects into separate and smaller contracts or assistance agreements to avoid AIS coverage on some portion of a larger

project, particularly where the activities are integrally and proximately related to the whole. However, there are many situations in which major construction activities are clearly undertaken in separate phases that are distinct in purpose, time, or place, in which case, separate contracts or assistance agreement for SRF and State or other funding would carry separate requirements.

**9) What about refinancing?**

If a project began construction, financed from a non-SRF source, prior to January 17, 2014, but is refinanced through an SRF assistance agreement executed on or after January 17, 2014 and prior to October 1, 2014, AIS requirements will apply to all construction that occurs on or after January 17, 2014, through completion of construction, unless, as is likely, engineering plans and specifications were approved by a responsible state agency prior to January 17, 2014. There is no retroactive application of the AIS requirements where a refinancing occurs for a project that has completed construction prior to January 17, 2014.

**10) Do the AIS requirements apply to any other EPA programs, besides the SRF program, such as the Tribal Set-aside grants or grants to the Territories and DC?**

No, the AIS requirement only applies to funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12)

**Covered Iron and Steel Products**

**11) What is an iron or steel product?**

For purposes of the CWSRF and DWSRF projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the public water system or treatment works:

- Lined or unlined pipes or fittings;
- Manhole Covers;
- Municipal Castings (defined in more detail below);
- Hydrants;
- Tanks;
- Flanges;
- Pipe clamps and restraints;
- Valves;
- Structural steel (defined in more detail below);
- Reinforced precast concrete; and
- Construction materials (defined in more detail below).

**12) What does the term ‘primarily iron or steel’ mean?**

‘Primarily iron or steel’ places constraints on the list of products above. For one of the listed products to be considered subject to the AIS requirements, it must be made of greater than 50% iron or steel, measured by cost. The cost should be based on the material costs.

**13) Can you provide an example of how to perform a cost determination?**

For example, the iron portion of a fire hydrant would likely be the bonnet, body and shoe, and the cost then would include the pouring and casting to create those components. The other material costs would include non-iron and steel internal workings of the fire hydrant (i.e., stem, coupling, valve, seals, etc). However, the assembly of the internal workings into the hydrant body would not be included in this cost calculation. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required. An exception to this definition is reinforced precast concrete, which is addressed in a later question.

**14) If a product is composed of more than 50% iron or steel, but is not listed in the above list of items, must the item be produced in the US? Alternatively, must the iron or steel in such a product be produced in the US?**

The answer to both question is no. Only items on the above list must be produced in the US. Additionally, the iron or steel in a non-listed item can be sourced from outside the US.

**15) What is the definition of steel?**

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of steel covers carbon steel, alloy steel, stainless steel, tool steel and other specialty steels.

**16) What does ‘produced in the United States’ mean?**

Production in the United States of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the

material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

**17) Are the raw materials used in the production of iron or steel required to come from US sources?**

No. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-US sources.

**18) If an above listed item is primarily made of iron or steel, but is only at the construction site temporarily, must such an item be produced in the US?**

No. Only the above listed products made primarily of iron or steel, permanently incorporated into the project must be produced in the US. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.

**19) What is the definition of ‘municipal castings’?**

Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are:

- Access Hatches;
- Ballast Screen;
- Benches (Iron or Steel);
- Bollards;
- Cast Bases;
- Cast Iron Hinged Hatches, Square and Rectangular;
- Cast Iron Riser Rings;
- Catch Basin Inlet;
- Cleanout/Monument Boxes;
- Construction Covers and Frames;
- Curb and Corner Guards;
- Curb Openings;
- Detectable Warning Plates;
- Downspout Shoes (Boot, Inlet);
- Drainage Grates, Frames and Curb Inlets;
- Inlets;
- Junction Boxes;
- Lampposts;
- Manhole Covers, Rings and Frames, Risers;

Meter Boxes;  
Service Boxes;  
Steel Hinged Hatches, Square and Rectangular;  
Steel Riser Rings;  
Trash receptacles;  
Tree Grates;  
Tree Guards;  
Trench Grates; and  
Valve Boxes, Covers and Risers.

## **20) What is ‘structural steel’?**

Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

## **21) What is a ‘construction material’ for purposes of the AIS requirement?**

Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

## **22) What is not considered a ‘construction material’ for purposes of the AIS requirement?**

Mechanical and electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples (including their appurtenances necessary for their intended use and operation) are NOT considered construction materials: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and

data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

**23) If the iron or steel is produced in the US, may other steps in the manufacturing process take place outside of the US, such as assembly?**

No. Production in the US of the iron or steel used in a listed product requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

**24) What processes must occur in the US to be compliant with the AIS requirement for reinforced precast concrete?**

While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing bar and wire must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin.

If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered to be a construction material and must be produced in the US.

**Compliance**

**25) How should an assistance recipient document compliance with the AIS requirement?**

In order to ensure compliance with the AIS requirement, specific AIS contract language must be included in each contract, starting with the assistance agreement, all the way down to the purchase agreements. Sample language for assistance agreements and contracts can be found in Appendix 3 and 4.

EPA recommends the use of a step certification process, similar to one used by the Federal Highway Administration. The step certification process is a method to ensure that producers adhere to the AIS requirement and assistance recipients can verify that products comply with the AIS requirement. The process also establishes accountability and better enables States to take enforcement actions against violators.

Step certification creates a paper trail which documents the location of the manufacturing process involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer,



processor, etc) of the iron and steel products certifies that their step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification can be quite simple. Typically, it includes the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer's responsible party. Attached, as Appendix 5, are sample certifications. These certifications should be collected and maintained by assistance recipients.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes occurred in the US. While this type of certification may be acceptable, it may not provide the same degree of assurance. Additional documentation may be needed if the certification is lacking important information. Step certification is the best practice.

**26) How should a State ensure assistance recipients are complying with the AIS requirement?**

In order to ensure compliance with the AIS requirement, States SRF programs must include specific AIS contract language in the assistance agreement. Sample language for assistance agreements can be found in Appendix 3.

States should also, as a best practice, conduct site visits of projects during construction and review documentation demonstrating proof of compliance which the assistance recipient has gathered.

**27) What happens if a State or EPA finds a non-compliant iron and/or steel product permanently incorporated in the project?**

If a potentially non-compliant product is identified, the State should notify the assistance recipient of the apparent unauthorized use of the non-domestic component, including a proposed corrective action, and should be given the opportunity to reply. If unauthorized use is confirmed, the State can take one or more of the following actions: request a waiver where appropriate; require the removal of the non-domestic item; or withhold payment for all or part of the project. Only EPA can issue waivers to authorize the use of a non-domestic item. EPA may use remedies available to it under the Clean Water Act, the Safe Drinking Water Act, and 40 CFR part 31 grant regulations, in the event of a violation of a grant term and condition.

It is recommended that the State work collaboratively with EPA to determine the appropriate corrective action, especially in cases where the State is the one who identifies the item in noncompliance or there is a disagreement with the assistance recipient.

If fraud, waste, abuse, or any violation of the law is suspected, the Office of Inspector General (OIG) should be contacted immediately. The OIG can be reached at 1-

888-546-8740 or [OIG\\_Hotline@epa.gov](mailto:OIG_Hotline@epa.gov). More information can be found at this website: <http://www.epa.gov/oig/hotline.htm>.

## **28) How do international trade agreements affect the implementation of the AIS requirements?**

The AIS provision applies in a manner consistent with United States obligations under international agreements. Typically, these obligations only apply to direct procurement by the entities that are signatories to such agreements. In general, SRF assistance recipients are not signatories to such agreements, so these agreements have no impact on this AIS provision. In the few instances where such an agreement applies to a municipality, that municipality is under the obligation to determine its applicability and requirements and document the actions taken to comply for the State.

### **Waiver Process**

The statute permits EPA to issue waivers for a case or category of cases where EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent.

In order to implement the AIS requirements, EPA has developed an approach to allow for effective and efficient implementation of the waiver process to allow projects to proceed in a timely manner. The framework described below will allow States, on behalf of the assistance recipients, to apply for waivers of the AIS requirement directly to EPA Headquarters. Only waiver requests received from states will be considered. Pursuant to the Act, EPA has the responsibility to make findings as to the issuance of waivers to the AIS requirements.

### **Definitions**

The following terms are critical to the interpretation and implementation of the AIS requirements and apply to the process described in this memorandum:

Reasonably Available Quantity: The quantity of iron or steel products is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.

Satisfactory Quality: The quality of iron or steel products, as specified in the project plans and designs.

Assistance Recipient: A borrower or grantee that receives funding from a State CWSRF or DWSRF program.

## Step-By-Step Waiver Process

### Application by Assistance Recipient

Each local entity that receives SRF water infrastructure financial assistance is required by section 436 of the Act to use American made iron and steel products in the construction of its project. However, the recipient may request a waiver. Until a waiver is granted by EPA, the AIS requirement stands, except as noted above with respect to municipalities covered by international agreements.

The waiver process begins with the SRF assistance recipient. In order to fulfill the AIS requirement, the assistance recipient must in good faith design the project (where applicable) and solicit bids for construction with American made iron and steel products. It is essential that the assistance recipient include the AIS terms in any request for proposals or solicitations for bids, and in all contracts (see Appendix 3 for sample construction contract language). The assistance recipient may receive a waiver at any point before, during, or after the bid process, if one or more of three conditions is met:

1. Applying the American Iron and Steel requirements of the Act would be inconsistent with the public interest;
2. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
3. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Proper and sufficient documentation must be provided by the assistance recipient. A checklist detailing the types of information required for a waiver to be processed is attached as Appendix 1.

Additionally, it is strongly encouraged that assistance recipients hold pre-bid conferences with potential bidders. A pre-bid conference can help to identify iron and steel products needed to complete the project as described in the plans and specifications that may not be available from domestic sources. It may also identify the need to seek a waiver prior to bid, and can help inform the recipient on compliance options.

In order to apply for a project waiver, the assistance recipient should email the request in the form of a Word document (.doc) to the State SRF program. It is strongly recommended that the State designate a single person for all AIS communications. The State SRF designee will review the application for the waiver and determine whether the necessary information has been included. Once the waiver application is complete, the State designee will forward the application to either of two email addresses. For CWSRF waiver requests, please send the application to: [cwsrfwaiver@epa.gov](mailto:cwsrfwaiver@epa.gov). For DWSRF waiver requests, please send the application to: [dwsrfwaiver@epa.gov](mailto:dwsrfwaiver@epa.gov).

## Evaluation by EPA

After receiving an application for waiver of the AIS requirements, EPA Headquarters will publish the request on its website for 15 days and receive informal comment. EPA Headquarters will then use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.

In the event that EPA finds that adequate documentation and justification has been submitted, the Administrator may grant a waiver to the assistance recipient. EPA will notify the State designee that a waiver request has been approved or denied as soon as such a decision has been made. Granting such a waiver is a three-step process:

1. Posting – After receiving an application for a waiver, EPA is required to publish the application and all material submitted with the application on EPA’s website for 15 days. During that period, the public will have the opportunity to review the request and provide informal comment to EPA. The website can be found at: [http://water.epa.gov/grants\\_funding/aisrequirement.cfm](http://water.epa.gov/grants_funding/aisrequirement.cfm)
2. Evaluation – After receiving an application for waiver of the AIS requirements, EPA Headquarters will use the checklist in Appendix 2 to determine whether the application properly and adequately documents and justifies the statutory basis cited for the waiver – that it is quantitatively and qualitatively sufficient – and to determine whether or not to grant the waiver.
3. Signature of waiver approval by the Administrator or another agency official with delegated authority – As soon as the waiver is signed and dated, EPA will notify the State SRF program, and post the signed waiver on our website. The assistance recipient should keep a copy of the signed waiver in its project files.

## Public Interest Waivers

EPA has the authority to issue public interest waivers. Evaluation of a public interest waiver request may be more complicated than that of other waiver requests so they may take more time than other waiver requests for a decision to be made. An example of a public interest waiver that might be issued could be for a community that has standardized on a particular type or manufacturer of a valve because of its performance to meet their specifications. Switching to an alternative valve may require staff to be trained on the new equipment and additional spare parts would need to be purchased and stocked, existing valves may need to be unnecessarily replaced, and portions of the system may need to be redesigned. Therefore, requiring the community to install an alternative valve would be inconsistent with public interest.

EPA also has the authority to issue a public interest waiver that covers categories of products that might apply to all projects.

EPA reserves the right to issue national waivers that may apply to particular classes of assistance recipients, particular classes of projects, or particular categories of iron or steel products. EPA may develop national or (US geographic) regional categorical waivers through the identification of similar circumstances in the detailed justifications presented to EPA in a waiver request or requests. EPA may issue a national waiver based on policy decisions regarding the public's interest or a determination that a particular item is not produced domestically in reasonably available quantities or of a sufficient quality. In such cases, EPA may determine it is necessary to issue a national waiver.

If you have any questions concerning the contents of this memorandum, you may contact us, or have your staff contact Jordan Dorfman, Attorney-Advisor, State Revolving Fund Branch, Municipal Support Division, at [dorfman.jordan@epa.gov](mailto:dorfman.jordan@epa.gov) or (202) 564-0614 or Kiri Anderer, Environmental Engineer, Infrastructure Branch, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto:anderer.kirsten@epa.gov) or (202) 564-3134.

Attachments

## Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to help ensure that all appropriate and necessary information is submitted to EPA. EPA recommends that States review this checklist carefully and provide all appropriate information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
<p>General</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following information:               <ul style="list-style-type: none"> <li>— Description of the foreign and domestic construction materials</li> <li>— Unit of measure</li> <li>— Quantity</li> <li>— Price</li> <li>— Time of delivery or availability</li> <li>— Location of the construction project</li> <li>— Name and address of the proposed supplier</li> <li>— A detailed justification for the use of foreign construction materials</li> </ul> </li> <li>• Waiver request was submitted according to the instructions in the memorandum</li> <li>• Assistance recipient made a good faith effort to solicit bids for domestic iron and steel products, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor</li> </ul>		
<p>Cost Waiver Requests</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following information:               <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers</li> </ul> </li> </ul>		
<p>Availability Waiver Requests</p> <ul style="list-style-type: none"> <li>• Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested:               <ul style="list-style-type: none"> <li>— Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials</li> <li>— Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers.</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials</li> </ul> </li> <li>• Waiver request includes a statement from the prime contractor and/or supplier confirming the non-availability of the domestic construction materials for which the waiver is sought</li> <li>• Has the State received other waiver requests for the materials described in this waiver request, for comparable projects?</li> </ul>		

## Appendix 2: HQ Review Checklist for Waiver Request

Instructions: To be completed by EPA. Review all waiver requests using the questions in the checklist, and mark the appropriate box as Yes, No or N/A. Marks that fall inside the shaded boxes may be grounds for denying the waiver. If none of your review markings fall into a shaded box, the waiver is eligible for approval if it indicates that one or more of the following conditions applies to the domestic product for which the waiver is sought:

1. The iron and/or steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
2. The inclusion of iron and/or steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

Review Items	Yes	No	N/A	Comments
<b>Cost Waiver Requests</b> <ul style="list-style-type: none"> <li>• Does the waiver request include the following information?               <ul style="list-style-type: none"> <li>— Comparison of overall cost of project with domestic iron and steel products to overall cost of project with foreign iron and steel products</li> <li>— Relevant excerpts from the bid documents used by the contractors to complete the comparison</li> <li>— A sufficient number of bid documents or pricing information from domestic sources to constitute a reasonable survey of the market</li> </ul> </li> <li>• Does the Total Domestic Project exceed the Total Foreign Project Cost by more than 25%?</li> </ul>				
<b>Availability Waiver Requests</b> <ul style="list-style-type: none"> <li>• Does the waiver request include supporting documentation sufficient to show the availability, quantity, and/or quality of the iron and/or steel product for which the waiver is requested?               <ul style="list-style-type: none"> <li>— Supplier information or other documentation indicating availability/delivery date for materials</li> <li>— Project schedule</li> <li>— Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of materials</li> </ul> </li> <li>• Does supporting documentation provide sufficient evidence that the contractors made a reasonable effort to locate domestic suppliers of materials, such as a description of the process for identifying suppliers and a list of contacted suppliers?</li> <li>• Based on the materials delivery/availability date indicated in the supporting documentation, will the materials be unavailable when they are needed according to the project schedule? (By item, list schedule date and domestic delivery quote date or other relevant information)</li> <li>• Is EPA aware of any other evidence indicating the non-availability of the materials for which the waiver is requested? Examples include:               <ul style="list-style-type: none"> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in the same State</li> <li>— Multiple waiver requests for the materials described in this waiver request, for comparable projects in other States</li> <li>— Correspondence with construction trade associations indicating the non-availability of the materials</li> </ul> </li> <li>• Are the available domestic materials indicated in the bid documents of inadequate quality compared those required by the project plans, specifications, and/or permits?</li> </ul>				

### **Appendix 3: Example Loan Agreement Language**

ALL ASSISTANCE AGREEMENT MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN SRF ASSISTANCE AGREEMENTS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE LAW:

Comply with all federal requirements applicable to the Loan (including those imposed by the 2014 Appropriations Act and related SRF Policy Guidelines) which the Participant understands includes, among other, requirements that all of the iron and steel products used in the Project are to be produced in the United States (“American Iron and Steel Requirement”) unless (i) the Participant has requested and obtained a waiver from the Agency pertaining to the Project or (ii) the Finance Authority has otherwise advised the Participant in writing that the American Iron and Steel Requirement is not applicable to the Project.

Comply with all record keeping and reporting requirements under the Clean Water Act/Safe Drinking Water Act, including any reports required by a Federal agency or the Finance Authority such as performance indicators of program deliverables, information on costs and project progress. The Participant understands that (i) each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities and (ii) failure to comply with the Clean Water Act/Safe Drinking Water Act and this Agreement may be a default hereunder that results in a repayment of the Loan in advance of the maturity of the Bonds and/or other remedial actions.



#### **Appendix 4: Sample Construction Contract Language**

ALL CONTRACTS MUST HAVE A CLAUSE REQUIRING COMPLIANCE WITH THE AIS REQUIREMENT. THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS IN PROJECTS THAT USE SRF FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW:

The Contractor acknowledges to and for the benefit of the City of \_\_\_\_\_ (“Purchaser”) and the \_\_\_\_\_ (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

## Appendix 5: Sample Certifications

The following information is provided as a sample letter of **step** certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (XXXXXXXXXX)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

\_\_\_\_\_

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

The following information is provided as a sample letter of certification for AIS compliance. Documentation must be provided on company letterhead.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Certification for Project (XXXXXXXXXXXX)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. XXXX
2. XXXX
3. XXXX

Such process took place at the following location:

\_\_\_\_\_

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 27 2015

OFFICE OF WATER

**DECISION MEMORANDUM**

**SUBJECT:** National Product Waiver for Minor Components within Iron and Steel Products (with Cost Ceiling) for State Revolving Fund Projects

**FROM:** Kenneth J. Kopocis *Kenneth J. Kopocis*  
Deputy Assistant Administrator

The U.S. Environmental Protection Agency is hereby granting a national product waiver pursuant to the "American Iron and Steel" provisions of the Clean Water Act and Public Law 113-235, the "Consolidated and Further Continuing Appropriations Act, 2015," (hereinafter referred to as "the Acts") for minor components within a product under an established cost ceiling.<sup>1</sup> The waiver will permit projects funded by the Clean Water State Revolving Fund or Drinking Water State Revolving Fund to use non-domestically produced miscellaneous minor components within an otherwise domestically produced iron and steel product for up to 5 percent of the total material cost of the product. These products could be prohibited absent this waiver. This waiver is retroactive, and so also applies to products purchased before the signature date of this waiver.

Coverage: The items covered by this waiver include miscellaneous minor components within iron and steel products as defined in the AIS provisions of the Acts. The specific minor components in covered iron and steel products will vary by product and manufacturer. Pursuant to this waiver, non-domestically produced miscellaneous minor components comprising up to 5 percent of the total material cost of an otherwise domestically produced iron and steel product may be used. This waiver does not exempt the whole product from the AIS requirements, and the primary iron or steel components of the product must be produced domestically. Unless subject to a separate waiver, all other iron and steel components in these products must still meet the AIS requirements. Valves and hydrants are also subject to the cost ceiling requirements described here. This waiver supersedes the EPA's previous guidance issued on May 30, 2014, (Question 1) related to minor components in valves and hydrants.

The coverage of this waiver is different from that of the existing national de minimis waiver. While the national de minimis waiver covers entire products (when those products are generally of low cost and incidental to the construction of the project), this waiver covers minor components within an iron and steel product. In addition, the national de minimis waiver is intended for assistance recipients to use for their projects, while this minor components waiver is intended to allow manufacturers to certify that their products comply with the AIS requirements.

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<sup>1</sup> Absent a waiver, all treatment works and drinking water facilities that are constructed, in whole or in part, with funds from the CWSRF or the DWSRF, must use American made iron and steel. The EPA is allowed under certain circumstances to provide waivers of this requirement.

Rationale: The AIS provisions require recipients of CWSRF and DWSRF assistance to use specific domestically-produced iron and steel products in their project, unless the Agency determines it is necessary to waive this requirement. The EPA has authority to issue waivers in accordance with Section 608(c)(1) of the Clean Water Act and the AIS provisions extended by P.L. 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015,” under the authority of Section 424(b)(1). The provisions state in part: “[the requirements] shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency... finds that... applying subsection (a) would be inconsistent with the public interest.”

Many product manufacturers and suppliers identified significant compliance challenges absent this waiver. Water and wastewater utilities are generally unable to obtain a range of AIS compliant iron and steel products (such as valves, hydrants and pipe restraints) that contain 100 percent domestic components. The manufacturers stated that the origin of a significant proportion of very small minor components cannot be reliably tracked or even discerned. They provided examples of product lines that would need duplicative inventories of extremely low-cost miscellaneous minor components in order to supply AIS compliant products. Manufacturers also raised concerns related to challenges of inventory tracking, inventory control and excessive costs associated with duplicative inventory needed to supply utilities with essential domestic products.

The EPA concludes that requiring manufacturers and suppliers to overcome the challenges identified above would be inconsistent with the public’s interest. In order to balance the reliability, availability and maximum supply of domestically produced iron and steel products, it is acceptable for a manufacturer to incorporate a relatively small proportion of miscellaneous minor components of non-domestic or unknown origin within an otherwise domestically manufactured product.

Legal Authority: Legal authority for the AIS requirements for CWSRF projects is included under Sec. 608(c)(1) of the Clean Water Act and previously under P.L. 113-76, “Consolidated Appropriations Act, 2014,” under the authority of Section 436(b)(1). Legal authority for the AIS requirements for DWSRF projects is included under P.L. 113-235, the “Consolidated and Further Continuing Appropriations Act, 2015”, under the authority of Section 424(b)(1) and also previously under P.L. 113-76. This waiver will continue in force for DWSRF projects under any continuing resolutions or statutes that use similar language as Section 424 of the “Consolidated and Further Continuing Appropriations Act, 2015.”

If you have any questions concerning the contents of this memorandum, please contact Timothy Connor, Chemical Engineer, Municipal Support Division, at [connor.timothy@epa.gov](mailto:connor.timothy@epa.gov) or (202) 566-1059 or Kiri Anderer, Environmental Engineer, Drinking Water Protection Division, at [anderer.kirsten@epa.gov](mailto:anderer.kirsten@epa.gov) or (202) 564-3134.

**APPENDIX C**  
**DBE PROVISIONS**

**CONSTRUCTION BID SPECIFICATIONS  
SPECIAL PROVISIONS FOR DISADVANTAGED BUSINESS ENTERPRISES  
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF MUNICIPAL SERVICES**

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BACKGROUND**

In May 2008 a new United States Environmental Protection Agency (EPA) rule became effective that changed the Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) Program to a Disadvantaged Business Enterprise (DBE) Program.

For firms to qualify under the old MBE/WBE program they needed to be socially disadvantaged and had to be certified by the State Office of Minority and Women Business Assistance (SOMWBA), recently renamed the Supplier Diversity Office (SDO). Under the new DBE rule, the firms must be both **socially** and **economically** disadvantaged, citizens of the United States, and certified as a DBE. Women and certain minorities are presumed to be socially disadvantaged. The economic disadvantage is measured by the owner's initial and continuing personal net worth of less than \$1,320,000.

Because the Clean Water Act requires the use of MBEs and WBEs, these firms will still be utilized in the State Revolving Fund (SRF) Loan Program, but they must also be certified as DBEs.

SDO (formerly SOWMBA) will continue to be the certifying agency for the SRF program.

**BID SPECIFICATIONS**

**I.** In this contract, the percentage of business activity to be performed by disadvantaged business enterprise(s) (DBE) shall not be less than the following percentages of the total contract price or the percentage submitted by the contractor in the Schedule of Participation, whichever is greater:

Disadvantaged MBE (D/MBWE) 4.2%      Disadvantaged WBE (D/WBE) 4.5%

## II. DEFINITIONS

For the purpose of these provisions, the following terms are defined as follows:

- A. Awarding Authority – Entity that awards a prime contract under a State Revolving Fund loan.
- B. Bidder - Any individual, partnership, joint venture, corporation, or firm submitting a price, directly or through an authorized representative, for the purpose of performing construction or construction related activities under a Contract.
- C. Certified DBE – A DBE certified by the United States Small Business Administration, under its 8(a) Business Development Program (13 CFR part 124, subpart A) or its Small Disadvantaged Business Program (13 CFR part 124, subpart B); The United States Department of Transportation (DOT), under its regulations for Participation by DBEs in DOT programs (49 CFR parts 23 and 26); or SDO in accordance with 40 CFR part 33; provided that the certification meets the U.S. citizenship requirement under 40 CFR §33.202 or §33.203.
- D. Compliance Unit - A subdivision of MassDEP’s Affirmative Action Office designated to ensure compliance under these provisions.
- E. Contractor - Any business that contracts or subcontracts for construction, demolition, renovation, survey, or maintenance work in the various classifications customarily used in work and that is acting in this capacity under the subject contract.
- F. Construction Related Services - Those services performed at the work site ancillary to, and/or in support of, the construction work, such as hauling, trucking, equipment operation, surveying or other technical services, etc. For the purposes hereof, supply and delivery of materials (e.g. pre-cast concrete elements) to the site by a supplier who has manufactured those goods, or substantially altered them before re-sales shall be considered as “construction related services
- G. Construction Work - The activities at the work site, or labor and use of materials in the performance of constructing, reconstructing, erecting, demolishing, altering, installing, disassembling, excavating, etc, all or part of the work required by the Contract Documents.
- H. Disadvantaged Business Enterprise (DBE) - An entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102-389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.



- I. Equipment Rental Firm - A firm that owns equipment and assumes actual and contractual responsibility for renting said equipment to perform a useful function of the work of the contract consistent with normal industry practice
- J. Good Faith Efforts – The race and/or gender neutral measures described in 40 CFR 33, subpart C.
- K. HUBZone - A historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian reservation.
- L. HUBZone small business concern - A small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
- M. Joint Venture - An agreement between SDO certified DBE and a non-DBE or non-DBE controlled enterprise.
  - 1. A pairing of companies will be considered a DBE joint venture if the SDO certified DBE which is part of the relationship has more than 51% of the profits that are derived from that project.
  - 2. A joint venture between a certified DBE subcontractor and a non DBE subcontractor, in which the DBE for that proportion of the joint venture’s contract equal to the DBE participation in the joint venture.
  - 3. Whenever a general bid is filed by a joint venture with a certified DBE participant in the joint venture that does not exercise more than 51% control over management and profits, that joint venture shall be entitled to credit as a DBE for that portion of the joint venture’s contract equal to the DBE participation in the joint venture. Minority As deemed by SDO.
- N. Labor surplus area firm (LSAF) - A concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.
- O. Letter of Intent – Certified document signed by the principal(s) of the DBE with respect to the work to be performed under contract.
- P. Local Government Unit (LGU) – A city, town, or municipal district which applies for a loan under the Water Pollution Abatement Trust Program.
- Q. Material Supplier – A vendor certified by SDO as a DBE in sales to supply industry from an established place of business or source of supply, and that vendor.

1. Manufactures goods from raw materials, or substantially utilizes them in the work, or substantially alters them before resale, entitling the general contractor to DBE credit for 100% of the purchase order.
  2. Provides and maintains a storage facility for materials utilized in the work, entitling the general contractor to DBE credit for 10% of the purchase order
- R. Minority and Women Business Enterprise (M/WBE) – Any business concern certified by the SDO as a bona-fide M/WBE. A bona-fide M/WBE is a business whose minority group/women ownership interests are real, which have at least 51% ownership and control over management and operation.
- S. Percent of Total Price – Is the percentage to be paid to the DBE, work they perform, as compared to the total bid price
- T. Recipient - An agency, person or political subdivision which has been awarded or received financial assistance by the Trust or MassDEP.
- U. Small business, small business concern or small business enterprise (SBE) - A concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.
- V. Small business in a rural area (SBRA) - A small business operating in an area identified as a rural county with a code 6-9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980.
- W. SDO – The Supplier Diversity Office.
- X. Subcontractor – A company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an award of financial assistance.
- Y. Total Contract Price – The total amount of compensation to be paid for all materials, work or services rendered in the performance of the contract
- Z. Trust – The Massachusetts Water Pollution Abatement Trust established by M.G.L. c.29.

### **III. REQUIREMENTS FOR CONTRACT AWARD**

DBE packages must be submitted by the two lowest bidders on the project. Following bid opening, the LGU shall notify the two lowest bidders to submit DBE packages to the LGU or the LGUs consultant, as directed. By the close of business on the third business day after notification, the two lowest bidders, including a bidder who is a MBE, WBE or DBE, shall submit the following information:

- A. A Schedule of Participation (Form EEO-DEP-190). The Schedule of Participation shall list those certified DBEs the bidder intends to use in fulfilling the contract obligations, the nature of the work to be performed by each certified DBE subcontractor and the total price they are to be paid.
  - 1. A listing of bona-fide services such as a professional, technical, consultant or managerial services, assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, and reasonable fees or commissions charged.
  - 2. A listing of haulers, truckers, or delivery services, not the contractors, including reasonable fees for delivery of said materials or supplies to be included on the project.
- A. A Letter of Intent (Form EEO-DEP-191) for each DBE the bidder intends to use on the project. The Letter of Intent shall include, among other things, a reasonable description of the work the certified DBE is proposing to perform and the prices the certified DBE proposes to charge for the work. A Letter of Intent shall be jointly signed by the certified DBE and the General Contractor who proposes to use them in the performance of the Contract.
- B. The SDO "DBE Certification" as prepared by each certified DBE.
- C. A completed Request for Waiver form and backup documentation should the goals not be achieved (See IV below).

### **IV. REQUIREMENTS FOR MODIFICATION OR WAIVERS.**

The bidder shall make every possible effort to meet the minimum requirements of certified DBE participation. If the percentage of DBE participation submitted by the bidder on its Schedule of Participation (EEO-DEP-190) does not meet the minimum requirements, the bid may be rejected by the Awarding Authority and found not to be eligible for award of the contract.

In the event that the bidder is unable to meet the minimum requirements of DBE participation, the bidder shall submit with his/her submittal required in Section III. Requirement of Contract Award a Request for Waiver form (EEO-DEP-490). The Awarding Authority shall review the waiver request to determine if the request should proceed. If approved by the Awarding Authority, the Awarding Authority shall submit the waiver request and supporting documentation, with a recommendation to MassDEP within five days of receipt of the Request for Waiver. MassDEP in conjunction with the project manager, Compliance Unit, will determine whether the waiver will be granted.

The waiver request shall include detailed information as specified below to establish that the bidder has made a good faith effort to comply with the minimum requirements of DBE participation specified in Part I. In addition, the bidder must show that such efforts were undertaken well in advance of the time set for opening of bids to allow adequate response. A waiver request shall include the following:

- A. A detailed record of the effort made to contact and negotiate with the certified DBE, including, but not limited to:
  - 1. names, addresses and telephone numbers of all such companies contacted;
  - 2. copies of written notices(s) which were sent to certified DBE potential subcontractors, prior to bid opening;
  - 3. a detailed statement as to why each subcontractor contacted (i) was not willing to do the job or (ii) was not qualified to perform the work as solicited; and
  - 4. in the case(s) where a negotiated price could not be reached the bidder should detail what efforts were made to reach an agreement on a competitive price;
  - 5. copies of advertisements, dated not less than ten (10) days prior to bid opening, as appearing in general publications, trade-oriented publications, and applicable minority/ women-focused media detailing the opportunities for participation.
- B. MassDEP may require the bidder to produce such additional information as it deems appropriate.
- C. No later than fifteen (15) days after MassDEP receives all required information and documentation, it shall make a decision in writing, whether the waiver is granted and shall provide that determination to the bidder and Awarding Authority. If the waiver request is denied, the facts upon which a denial is based will be set forth in writing. If the waiver request is denied, the bid shall be rejected by the Awarding Authority, or the contract will be determined ineligible for SRF funding.

If a Request for Waiver is denied by MassDEP and the bid is rejected by the Awarding Authority, the Awarding Authority may then move to the second bidder on the project. At the Awarding Authority's discretion, it may collect a DBE package from the third bidder on the project.

## **V. DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION**

### **A. Reporting Requirements**

1. The Contractor's utilization of certified DBEs will be documented based upon submittal of the LGU's monthly Payment Requisitions as reported on Form-2000. The Form-2000 form will show all certified DBEs performing work on the project regardless of any billing activity for that month. For auditing and accounting purposes, the Contractor periodically may be required to submit copies of canceled checks verifying that payments have been made to the certified DBE as listed on the schedule. The Contractor may also be required to submit current schedules on utilization of all DBEs to indicate when their services will commence and be billed for.
2. During the life of the Contract, the Contractor's fulfillment of the percentage requirements in Part I shall be determined with reference to the Contract price as follows:
  - A. If the price in the Contract executed exceeds the base bid price (e.g., because an alternate was selected or because unit prices were used in awarding the Contract), the Contractor shall submit for approval by MassDEP a revised Schedule of Participation by certified DBEs satisfying the percentage requirements and such other information concerning additional DBE participation as may be requested by MassDEP.
  - B. If the Contract price increases after execution due to change orders or other adjustments, MassDEP may require the Contractor to subcontract additional work or to purchase additional goods and services from certified DBEs up to the percentages stated in Part I.

## **VI. COMPLIANCE**

- A. If the Schedule or any of the Letters of Intent are materially incomplete or not submitted in a timely manner, the LGU may rescind its vote of award; treat the bid informal as to substance and reject the bid. If the bid is incomplete in any other respect than the Schedule the LGU with the approval of MassDEP may waive the informalities upon satisfactory completion of the required information by the Contractor and the certified DBE as applicable.
- B. If the LGU finds that the percentage of certified DBE participation submitted by the contractor on its Schedule does not meet the percentage requirement in Part I, it shall rescind its vote of award and find such contractor not to be eligible for award of the contract.

- C. The Contractor shall not perform with its own organization, or subcontract to any other primary or subcontractor any work designated for the named certified DBEs on the schedule submitted by the Contractor under Part III without the approval of MassDEP.
- D. A Contractor's compliance with the percentage requirement in Part I shall continue to be determined by reference to the required percentage of the total contract price as stated in Section I even though the total of actual contract payments may be greater or less than the bid price.
- E. If the Contractor for reasons beyond its control cannot comply with Part III in accordance with the Schedule submitted under Part III, Section B, the contractor must submit to MassDEP as soon as they are aware of the deficiency, the reason for its inability to comply. Proposed revisions to the Schedule stating how the contractor intends to meet its obligations under these conditions must be submitted within ten (10) working days of notification.
- F. If the Contractor becomes aware by any means that that DBE is no longer certified, the Contractor shall immediately notify MassDEP. The Contractor shall use good faith efforts to retain a substitute certified DBE.
- G. If a certified DBE listed by the bidder in its Schedule of M/WBE contractors fails to obtain a performance or payment bond requested by the bidder, said failure shall not entitle the bidder to avoid the requirements of Part III (A). After a bidder has been awarded the contract, he shall not change the certified DBE listed in its Schedule at the time of the award or make any other such substitutions without the written approval of MassDEP.

## **VII. SANCTIONS**

- A. If the Contractor does not comply with the terms of these Special Provisions, the Awarding Authority may (1) suspend any payment for the work that should have been performed by a certified DBE pursuant to the schedule, or (2) require specific performance of the Contractor's obligation by requiring the Contractor to subcontract with a DBE for any contract or specialty item at the contract price established for that item in the proposal submitted by the Contractor.
- B. To the extent that the Contractor has not complied with the terms of these Special Provisions, the Awarding Authority may retain in connection with Estimates and Payments an amount determined by multiplying the bid price of this contract by the percentage in Section I, less the amount paid to DBE's for work performed under the contract and any payments already suspended under VII A.
- C. The Awarding Authority may suspend, terminate or cancel this contract, in whole or in part, or may call upon the Contractor's surety to perform all terms and conditions in the contract, unless the contractor is able to demonstrate his compliance with the terms

of these Special Provisions, and further deny to the Contractor, the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three years.

- D. In any proceeding involving the imposition of sanctions by the Awarding Authority, no sanctions shall be imposed if the Awarding Authority finds that the contractor has taken every possible measure to comply with these Special Provisions or that some other justifiable reason exists for waiving these Special Provisions in whole or in part.
- E. The contract shall provide such information as is necessary in the judgment of the Awarding Authority to ascertain its compliance with the terms of these Special Provisions.
- F. A contractor shall have the right to request suspension of any sanctions imposed under this section upon demonstrating that he is in compliance with these Special Provisions.

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION  
 MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 DIVISION OF MUNICIPAL SERVICES

**SCHEDULE OF PARTICIPATION FOR SRF CONSTRUCTION**

**Project Title:** \_\_\_\_\_ **Project Location:** \_\_\_\_\_

**Disadvantaged Minority Business Enterprise Participation in the SRF Loan Work**

Name & Address of D/MBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		
<b>Total D/MBE Commitment:</b>		<b>\$</b>
<b>Percentage D/MBE Participation = (Total D/MBE Commitment) / (Bid Price) =</b>		<b>%</b>

**Disadvantaged Women Business Enterprise Participation in the SRF Loan Work**

Name & Address of D/WBE	Nature of Participation	Dollar Value of Participation
1.		
2.		
3.		
<b>Total D/WBE Commitment:</b>		<b>\$</b>
<b>Percentage D/WBE Participation = (Total D/WBE Commitment) / ( Bid Price) =</b>		<b>%</b>

The Bidder agrees to furnish implementation reports as required by MassDEP to indicate the D/MBEs and D/WBE(s) which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

Name of Bidder: \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Signature

NOTE: Participation of a DBE may be counted in only their certified category; the same dollar participation cannot be used in computing the percentage of D/MBE participation and again of D/WBE participation.



**LETTER OF INTENT FOR SRF CONSTRUCTION**

This form is to be completed by the D/MBE and D/WBE and must be submitted by the Bidder as part of the bid. A separate form must be completed for each D/MBE and D/WBE involved in the project.

Project Title: \_\_\_\_\_ Project Location: \_\_\_\_\_

**TO:** \_\_\_\_\_  
(Name of Bidder)

**FROM:** \_\_\_\_\_  
(Please Indicate Status [ ] D/MBE or [ ] D/WBE)

° I/we intend to perform work in connection with the above project as (check one):

- |                                                 |                                                      |
|-------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> An individual          | <input type="checkbox"/> A partnership               |
| <input type="checkbox"/> A corporation          | <input type="checkbox"/> A joint venture with: _____ |
| <input type="checkbox"/> Other (explain): _____ |                                                      |

° It is understood that if you are awarded the contract, you intend to enter into an agreement to perform the activity described below for the prices indicated.

**DBE PARTICIPATION**

Description of Activity	Date of Project Commencement	\$ Amount	% Bid Price
		\$	%

° The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above referenced project.

<b>BIDDER</b>		<b>DBE</b>	
(Authorized Original Signature)	Date	(Authorized Original Signature)	Date
ADDRESS:		ADDRESS:	
TELEPHONE #:		TELEPHONE #:	
FEIN:		FEIN:	

**ORIGINALS:**

- ° Compliance Mgr. City/Town Project Location
- ° DEP Program Manager for DEP's AAO Director

**\* Attach a copy of current (within 2 years) DBE Certification**

**DBE CERTIFICATION OF UNITED STATES CITIZENSHIP**

For the SRF program, under the EPA Disadvantage Business Enterprise (DBE) Rule, a DBE must be owned or controlled by a socially and economically disadvantaged person that is also a **citizen of the United States** (See 40 CFR 33.202). “Ownership” is defined at 13 CFR 124.105 and “control” is defined at 13 CFR 124.106.

DBEs are certified for the SRF program through the Supplier Diversity Office using the federal Department of Transportation (DOT) DBE rules. EPA allows the use of DBEs certified under the DOT rules as long as they are also United States citizens. To ensure compliance with the EPA rule, MassDEP must verify United States citizenship through the completion of the following form for each DBE used on the project.

SRF Project Number \_\_\_\_\_

Contract Number \_\_\_\_\_

Contract Title \_\_\_\_\_

DBE Subcontractor \_\_\_\_\_

The undersigned, on behalf of the above named DBE subcontractor, hereby certifies that the DBE firm is either owned or controlled by a person or persons that are citizens of the United States.

\_\_\_\_\_  
Printed Name and Title of DBE Signatory

\_\_\_\_\_  
DBE Signature

\_\_\_\_\_  
Date

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**DBE SUBCONTRACTOR PARTICIPATION FORM**

The United States Environmental Protection Agency (EPA) requires that this form be provided to all subcontractors on the project. At the option of the subcontractor, this form may be filled out and submitted directly to the EPA DBE Coordinator.

NAME OF SUBCONTRACTOR	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	E-MAIL ADDRESS
PRIME CONTRACTOR NAME:	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

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CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

_____	_____
Subcontractor Signature	Title/Date

**REQUEST FOR WAIVER FOR SRF CONSTRUCTION**

Upon exhausting all known sources and making every possible effort to meet the minimum requirements for DBE participation, the Bidder may seek relief either partially or entirely from these requirements by submitting a completed waiver package by the close of business on the third business day after notification by the LGU. Failure to comply with this process shall be cause to reject the bid thereby rendering the Bidder not eligible for award of the contract.

**General Information**

Project Title: \_\_\_\_\_ Project Location: \_\_\_\_\_  
Bid Opening (time/date) \_\_\_\_\_  
Bidder: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_ Ext. \_\_\_\_\_

**Minimum Requirements**

The bidder must demonstrate that good faith efforts were undertaken to comply with the percentage goals as specified. The firm seeking relief must show that such efforts were taken appropriately in advance of the time set for opening bid proposals to allow adequate time for response(s) by submitting the following:

- A. A detailed record of the effort made to contact and negotiate with disadvantaged minority and/or woman owned businesses, including:
  - 1. names, addresses, telephone numbers and contact dates of all such companies contacted;
  - 2. copies of written notice(s) which were sent to DBE potential subcontractors prior to bid opening;
  - 3. a detailed statement as to why each subcontractor contacted (i) was not willing to do the job or (ii) was not qualified to perform the work as solicited; and
  - 4. in the case(s) where a negotiated price could not be reached the bidder should detail what efforts were made to reach an agreement on a competitive price.
  - 5. copies of advertisements, dated not less than ten (10) days prior to bid opening, as appearing in general publications, trade-oriented publications, and applicable minority/women-focused media detailing the opportunities for participation;

- B. MassDEP may require the bidder to produce such additional information as it deems appropriate.
- C. No later than fifteen (15) days after submission of all required information and documentation, MassDEP shall make a determination, in writing, whether the waiver request is granted and shall provide that determination to the bidder and Awarding Authority. If the waiver request is denied, the facts upon which a denial is based will be set forth in writing.

CERTIFICATION

The undersigned herewith certifies that the above information and appropriate attachments are true and accurate to the best of my knowledge and that I have been authorized to act on behalf of the bidder in this matter.

---

(authorized original signature)

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DATE





**APPENDIX D**

**DEP POLICY MEMOS  
and  
POLICY FOR REVIEW OF SEWER LINE/WATER SUPPLY PROTECTION**



**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**BUREAU OF WATER RESOURCES**  
**DIVISION OF MUNICIPAL SERVICES POLICIES**

The Division of Municipal Services (DMS) has established the following policies for all Division financially-assisted projects.

**POLICY MEMORANDUM NO. PM-1**

**EASEMENTS AND RIGHTS OF WAY**

Prior to the approval of financial assistance for construction, the owner shall obtain and shall thereafter retain, a fee simple or such estate or interest in the site of construction and rights of access as will assure undisturbed use and possession for the purpose of construction and operation for the estimated life of the project. The Division may refuse to approve financial assistance until it has received from the owner sufficient assurances that such interests have been obtained. Unless the Division otherwise notifies the owner, the certificate (under pains and penalties of perjury) of the owner's legal representative shall constitute such sufficient assurance.

Additional cost which result from interruptions of construction or extensions of contract time caused by the owner's failure to obtain the necessary interests in land shall be ineligible for financial assistance, and all such additional costs shall be borne by the owner.

**POLICY MEMORANDUM NO. PM-2**

**PERMITS**

The owner shall be responsible for identifying and obtaining all federal, state, local and railroad permits required by the nature and location of construction, including but not limited to building construction permits and permits for street and highway cuts and openings, and all such permits shall be listed in a separate permits section of the contract documents. To the extent possible, such permits shall be obtained by the owner prior to the solicitation of bids for construction, and copies of all permits so obtained shall be included in the said permits section. The status of the application for each permit, including the permit conditions, and costs, not obtained prior to the solicitation of bids shall also be indicated in the contract documents permits section. The Division may refuse to approve financial assistance for construction unless and until it has received from the owner sufficient assurances that all necessary permits have been or will be obtained prior to the commencement of construction.

## Policy Memorandum No. PM-2 – Permits (Con't)

The contractor shall be responsible for obtaining all permits required of his equipment, work force, or particular operations (such as blasting) in the performance of the contract and not otherwise specified in the two preceding paragraphs as to be obtained by the owner. These permit fees shall be paid by the contractor.

The owner shall be responsible for the payment of all other permit fees required by the construction.

The following permits shall not be eligible for financial participation by the Department of Environmental Protection (DEP).

- Permits and insurance for construction in railroads' rights of way;
- Building permits;
- Permits for opening public streets and other public or municipal rights of way;
- Permits for the use of explosives;
- Permits for the disposal of waste materials;
- Permits and fees for connecting to municipal utilities.

Permits required by extraordinary circumstances and not specifically excluded from eligibility above may be eligible for DEP participation. For such permits to be so eligible, the owner or his representative must notify the DEP project engineer in advance of obtaining such permit and receive from the engineer specific agreement that such permit will be eligible for DEP participation. Eligibility for such participation will not be made retroactively.

Additional costs which result from interruptions of construction or extensions of contract time resulting from the owner's or the contractor's failure to obtain the necessary permits may be ineligible for participation.

## **POLICY MEMORANDUM NO. PM-3**

## **FIELD CONTROLS**

The Owner shall be responsible for indicating on the contract drawings all easement limits and all property and other control lines for locating the principal component parts of the work together with those elevations and bench marks used in the design of the work, all hereinafter referred to as "field controls". Where easement and property limits have not previously been established in the field, the owner shall be responsible for establishment of such limits. From the information provided by the Owner, unless otherwise specified, the Contractor shall develop and make all layouts required for construction, such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

Whenever he has reason to believe that an error exists or whenever he is otherwise unable to locate the field controls, the contractor shall promptly notify the owner and the owner's engineer of such error with appropriate documentation.

**POLICY MEMORANDUM NO. PM-4****RECORD DRAWINGS**

The Owner shall be responsible for the preparation of all record drawings required by this contract. This responsibility may be delegated to the Owner's representative. The responsibility for preparation of record drawings shall not be delegated or transferred to the contractor. They may use the contractor's and sub-contractor's certified AS BUILT drawings along with their own marked up set in the preparation of the Record Drawings.

Division approved contract drawings shall be revised upon completion of the contract to reflect any changes made and/or final quantities, as appropriate.

**POLICY MEMORANDUM NO. PM-5****PLAN SCALE**

Unless otherwise approved in advance by the Division, the horizontal scale for construction plans for non-structural facilities shall be 1" = 40'. A larger horizontal scale shall be used where appropriate to show sufficient detail to construct the project. The vertical scale for construction plans for non-structural facilities shall be 1" = 4'. Based on the best information available at the time of their preparation, the location of underground utilities and support structures for overhead utilities shall be shown on the plans.

Unless otherwise exempted in advance by the Division, construction plans shall be updated whenever the date of the advertisement for bids for the construction of such facilities is more than one year after the date of approval by the Division or EPA; and in the case of approval by both such agencies, the later approval date shall be used in determining the need for update.

The consulting engineer shall receive adequate compensation for updating plans and specifications, and such additional cost shall be eligible for assistance to the extent not otherwise prohibited by USEPA and Division regulations and program guidance.

All revision, or review without need for revision, shall be noted and dated on the plans prior to advertisement of the project for bid.

**POLICY MEMORANDUM NO. PM-6****BORINGS LOGS**

All soil borings shall be taken as close as practicable to the construction line, and the location of all such borings shall be clearly indicated on the contract drawings. The plan view shall show the location and boring number of each boring. The profile view shall show the location, elevation, and depth of each soil boring, the location of each change in soil stratum, the groundwater level, and the average of blow counts at each five foot interval. As a minimum, boring logs to be submitted with the plans and specifications shall show the name of the company taking the borings, the soil classification, the number of blows per foot of penetration, the groundwater elevation, and the date on which the borings were taken.

As part of the submission of plans and specification for approval, the owner's representative shall include written justification for the lesser frequency and depth of borings where their interval is more than approximately 300' or their depth is less than 50% below depth of pipe invert.

**POLICY MEMORANDUM NO. PM-7**

**BREAKDOWN OF BID ITEMS**

The following items shall, where applicable, be listed separately in the bid documents.

- 1. Mobilization
- 2. Pavement
  - a. Municipal
    - i. temporary
    - ii. permanent
  - b. State
    - i. temporary
    - ii. permanent
- 3. Concrete cradle or encasement  
(to be identified where applicable)
- 4. Rock-Excavation
- 5. Wood or steel sheeting left in place
- 6. Excavation of unsuitable materials below grade.
- 7. Select and/or borrow material
- 8. Dewatering
- 9. Special Dewatering (coffer dam)

Mobilization costs are the costs of initiating the contract, exclusive of the cost of materials. Payment for mobilization shall be a lump sum at the price bid for this item in the proposal and shall be payable when the contractor is operational on the site. For purposes of this policy, “operational” shall mean the substantial commencement of work on site.

The lump sum price bid for mobilization shall not exceed five per centum (5%) of the total amount of the bid.

**POLICY MEMORANDUM NO. PM-8**

**PAVEMENT**

All roads and trenches therein shall be refilled and repaved in accordance with specifications provided by the owner in the contract documents. Please note that this policy may be excludable on federally assisted projects where bid alternative items may be required (i.e. trench width vs. full width pavement). You are advised to seek project specific clarification.

Loan eligibility shall be limited to the following:

- A. Where the depth of the pipe invert is 0 to 8’, the maximum pavement widths which shall be eligible for financial assistance are as follows:

<u>Nominal Pipe Diameter</u>	<u>Maximum Eligible Widths</u>	
	<u>Initial Pavement</u>	<u>Permanent Trench</u>
0-24”	6’-6”	8’-6”

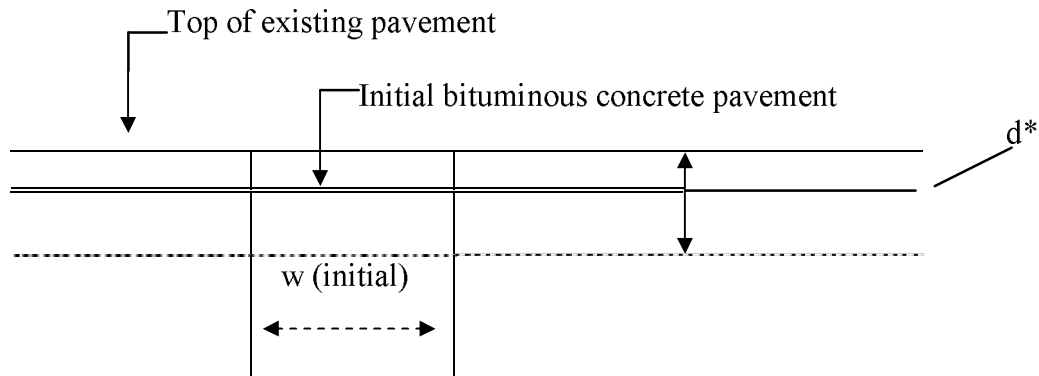
Where the nominal pipe diameter is greater than 24” the maximum eligible width for initial re-paving shall be the nominal diameter of the pipe plus four (4) feet, and for permanent trench re-paving the maximum eligible width shall be the nominal pipe diameter plus six (6) feet.

- B. For each additional four (4) feet (or fraction thereof) of pipe invert depth, add three feet to the eligible width limits stated in paragraph A.

Policy Memorandum No. PM-8 – Pavement (Con't)

At the design phase of a project the owner has the option to elect either Initial Pavement with Option I (Permanent Trench replacement) or Initial with Option II (curb to curb over initial)

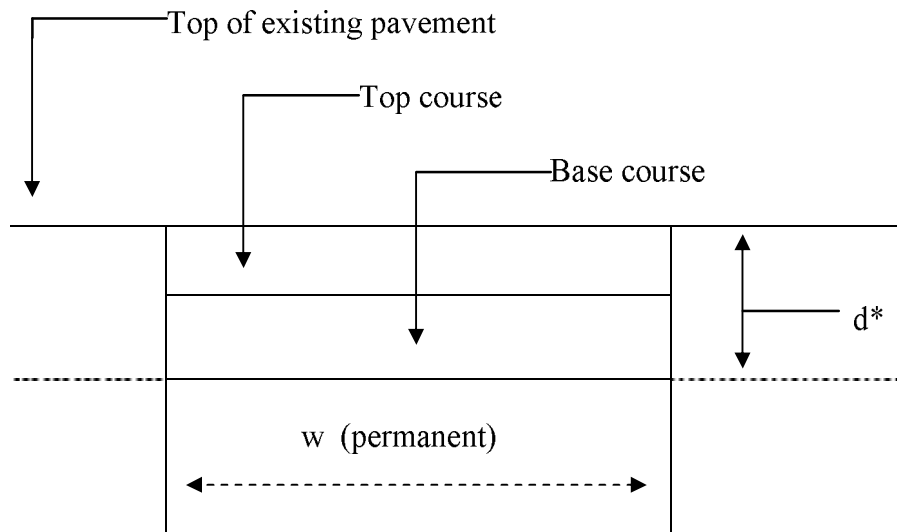
Initial Pavement



d\* = depth of existing pavement to a maximum of 3 inches (see general notes #3)

w = maximum eligible Initial pavement width as described in paragraphs "A" & "B" on page DEP-DMS-CG's-P4.

OPTION I Permanent Trench Pavement

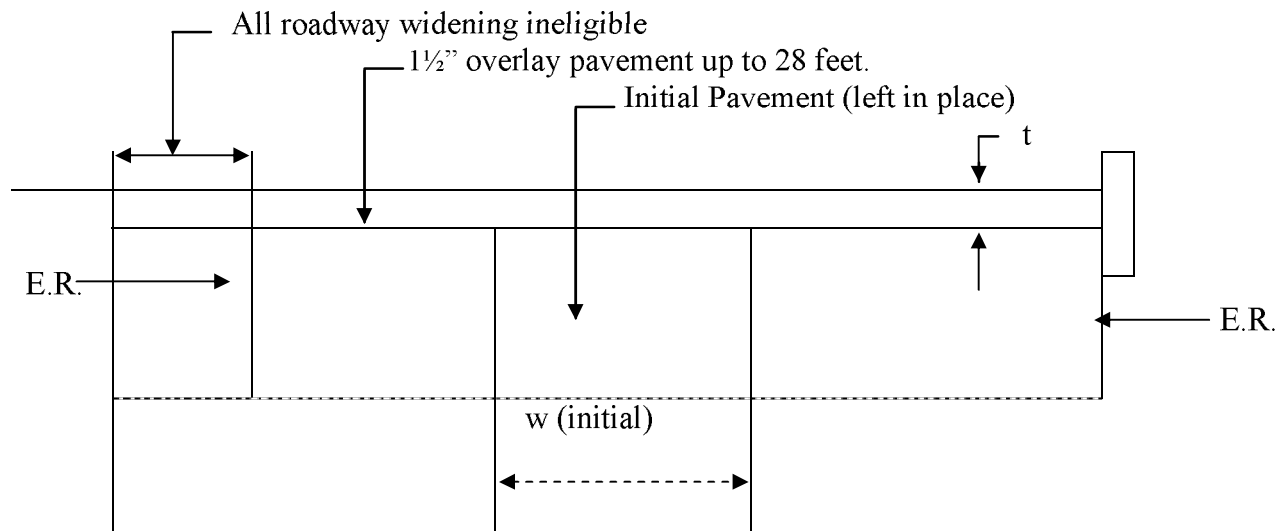


d\* = depth of existing pavement trench to a maximum of 3 inches (see general notes #3)

w = maximum eligible permanent pavement width as described in paragraphs "A" & "B". equals initial width plus 2 feet and includes:

- Cutting edges for the permanent trench
- Removal of initial patch plus two feet of existing pavement
- Fine grading/compacting gravel
- Placement of Permanent Trench pavement in two courses.

OPTION II Curb to Curb Pavement (overlay pavement for roadways up to 28 feet)



E.R. = edge of existing paved roadway

t = one and one half inch (1 1/2") overlay of bituminous concrete pavement

GENERAL NOTES:

1. Repavement of settled areas and crown restoration within the trench limits shall be the responsibility of the contractor.
2. Leveling outside the trench limits shall be the responsibility of the owner.
3. Sewer trench re-fill and pavement re-paving on public ways under the jurisdiction of the Massachusetts Department of Public Works, the Metropolitan District Commission, or other such agency shall be in accordance with permit(s) issued therefore by that Department or Commission, as the case may be.
4. The Division will consider requests for increase in the participating pay limits defined in paragraphs A and B, when such increases are, in the Division's opinion, reasonable. Such requests should be documented in writing and submitted to the Division in a timely manner.
5. Projects which deviate from the above options are required to seek Division review and approval.

**POLICY MEMORANDUM NO. PM-9**

**PIPE TESTING**

Monthly payment estimates shall be prepared in accordance with contract documents. All pipe shall be tested in accordance with the contract documents and sound engineering practice. If, after 60 days following submission of a monthly payment estimate for pipe items, the pipe for which payment is requested has not been successfully tested, the owner may withhold up to 10% of the amount requested for such pipe items until the pipe has been so tested. However, in the case of a major (pipe diameter 24 inches or greater) interceptor pipe installation, sums retained by the owner pursuant to this policy memorandum shall not exceed two per centum (2%) of the costs of such pipe items.

**POLICY MEMORANDUM NO. PM-10**

**CHANGE ORDERS**

Executed change orders submitted to the Division for review and processing for financial assistance must be prepared on the attached Change Order Forms (PM-10, Attachment 1, pages A-1 & A-2) with a duplicate copy, calculation sheet(s) (PM-10, Attachment 2), and all other supporting documentation necessary for evaluation. Failure to comply with these instructions will result in delays in processing the change order and/or limited financial assistance.

M.G.L. c.44, s.31C requires that the auditor, accountant, or other municipal officer having similar duties must certify that adequate funding in an amount sufficient to cover the total cost of the change order has been made. Change orders will not be processed or approved until this certification is made on the face of the Change Order Form (PM-10 Attachment 1).

**Payment of Change Orders:**

Payment of all change orders shall be in accordance with the relevant provisions of Massachusetts General laws, Chapter 30, Section 39G for non-building construction and Section 39K for building construction.

Payment of change orders shall be made in accordance with one of the following three methods:

- A. Existing unit prices as set forth in the contract; or
  - B. Agreed upon lump sum or unit prices; or
  - C. Time and materials
- A. Payment for work for which there is a unit price in the contract:

Where the contract contains a unit price for work and the Engineer orders a change for work of the same kind as other work contained in the contract and is performed under similar physical conditions, the contractor may accept full and final payment at the contract unit price(s) for the acceptable quantities.

Policy Memorandum No. PM-10 – Change Orders (Con't)

B. Payment for work or materials for which no price is contained in the contract:

If the Engineer directs, the contractor shall submit promptly in writing to the Engineer and offer to do the required work on a lump sum or unit price basis, as specified by the Engineer. The stated price, either lump sum or unit price, shall be divided so as to show that it is the sum of:

- (1) The estimated cost of labor, plus
- (2) Direct Labor Cost, plus
- (3) Material and Freight Costs, plus
- (4) Equipment Costs, plus
- (5) An amount not to exceed 20% of the sum of items (1) through (4) for overhead and profit, plus (if applicable),
- (6) In the case of work done by a subcontractor an amount not to exceed 7 ½ %, for the general contractor of the sum of items (1) through (4) for his overhead and profit, less, if applicable,
- (7) Credits for work deleted from the contract.

C. Payment for work on a time and materials basis:

Unless an agreed lump sum and/or unit price is obtained from above and is so stated in the change price, the contractor shall accept as full payment for which no other agreement is contained in contract, and amount equal to:

- (1) The estimated cost of Labor, plus
- (2) Direct Labor Cost, plus
- (3) Material and Freight Costs, plus
- (4) Equipment Costs, plus
- (5) An amount not to exceed 20% of the sum of items (1) through (4) for overhead and profit, plus (if applicable),
- (6) In the case of work done by a subcontractor an amount not to exceed 7 ½ %, for the general contractor of the sum of items (1) through (4) for his overhead and profit, less, if applicable,
- (7) Credits for work deleted from the contract.

Explanation of items (1) through (7) as outlined in “B” and “C”:

- (1) Labor – Only those workers employed on the project who are doing the extra work, including the foreman in charge, are allowable. General foremen, superintendents, or other supervisory personnel are considered to be included in the overhead markup as provided in items (5) and/or (6). Hourly labor rates in excess of those as listed in the contract wage rates (Federal or State, whichever applies) require documentation. As a minimum, an explanation and the appropriate copy of the certified payroll are required.



Policy Memorandum No. PM-10 – Change Orders (Con’t)

(2) Direct Labor Costs - These costs are limited to those which are required in the contract document. Coverage in excess of the contract provisions, secured by the contractor/subcontractor(s) at his option, are ineligible for financial assistance. The following list of typical direct labor charges is provided for your assistance and is in no way intended to be complete or all encompassing:

- Workman’s Compensation
- Federal/State: Social Security Tax and Unemployment Tax;
- Health, Welfare and Pension Benefits; (this cost is included in the wage rates appearing in the Mass. Wage Rates of the contract specifications)
- Liability Insurance:   Bodily Injury;  
                                Excess Umbrella;  
                                Property damage;  
                                Public Liability
  
- Blasters Insurance                     )
- )
- Builders Risk Insurance                )
- )
- Experience Modification Insurance    )      If applied to any required  
                                                      )      direct labor costs.
- )
- Surcharges                                )

Following the Notice of Intent to Award, the Owner shall require the Low Bidder to submit the percentage to be used for the Direct Labor Cost markup, along with the breakdown of how it is calculated (this number shall be required and submitted to MassDEP before and Authorization to Award is issued by DMS). This documented direct labor cost may be adjusted upon the submission of new documentation which demonstrates both how and why it has changed.

(3) Material and Freight – Only those materials required as a result of the change order and reasonable freight charges for delivery of same are allowable.

Policy Memorandum No. PM-10 – Change Orders (Con't)

- (4) Equipment – Only the equipment required as a result of the change order is allowable. Equipment rental rates shall be governed by the current Nielson/Dataquest Rental Rate bluebook for Construction Equipment (the “Bluebook”). In determining the rental rate the following shall apply:
- (a) For equipment already on the project – the monthly prorated rental rate by the hourly use shall be applicable;
  - (b) For equipment not on the project the daily rate, the weekly rate, or monthly rate will prevail, whichever will prove to be most cost effective. Small tools and manual equipment are examples of costs not allowable under this item. These costs are considered to be included in the overhead markup as provided in items (5) and/or (6) (1 month (normal use) = 176 hours)
- (5) & (6) Overhead and Profit – All other costs not previously mentioned are considered to be included in this item, be it for the general contractor or subcontractor(s).
- (7) Credits – Work deleted, material and equipment removed from the contractor, stored and/or returned shall be credited to the cost of the change order, less costs.

The Contractor shall furnish itemized statements of the cost of the work ordered and shall give the Engineer access to all accounts, bills and vouchers relating thereto; and unless the Contractor shall furnish such itemized statements, and access to all accounts, bills and vouchers, he shall not be entitled to payment for any items of extra work for which such information is sought by the Engineer. Deviations from any of the above will be reviewed for financial assistance on a case-by-case basis.

The change order will be prepared in such manner as to clearly separate Eligible and Ineligible Costs.

# CHANGE ORDER FORM

SRF Number \_\_\_\_\_  
Public Entity \_\_\_\_\_  
Contract Number \_\_\_\_\_  
Change Order Number \_\_\_\_\_

Contract Amount (As Bid) \$ \_\_\_\_\_

Net Change in Contract Price (this change order) \$ \_\_\_\_\_

Total Adjusted Contract Price (including this and all other change orders) \$ \_\_\_\_\_

This change order extends the time to complete the work by \_\_\_\_\_ calendar days.

The extended completion date is \_\_\_\_\_

This change order checked by \_\_\_\_\_  
(Chief) Resident Engineer Date

This change order is requested by: \_\_\_\_\_

This change order is recommended by: \_\_\_\_\_

\_\_\_\_\_  
Consultant Engineer P.E. Number Date

The undersigned agree to the terms of the change order.

\_\_\_\_\_  
Contractor Date

\_\_\_\_\_  
Owner Date

Certification of Appropriation under M.G.L. c.44, §31C: Adequate funding in an amount sufficient to cover the total cost of this change order is available.

By: \_\_\_\_\_  
Certification Officer (Auditor, accountant, treasurer) Date

Do not write below: this space reserved for STATE AGENCY APPROVAL

DEP/DMS

**CHANGE ORDER FORM (Continued)**

PM-10 Attachment 1

Page 2 of 2

Public Entity \_\_\_\_\_

SRF No: \_\_\_\_\_ Contract No. \_\_\_\_\_ Change Order No. \_\_\_\_\_

Contract Title: \_\_\_\_\_

Owner's Name: \_\_\_\_\_

Owner's Address: \_\_\_\_\_

Contractor's Name: \_\_\_\_\_

Contractor's Address: \_\_\_\_\_

Description of Change

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason for Change

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### CALCULATION SHEET

(1) Labor

Foreman	10 hrs @ \$10.00/hr.	\$	100.00
Engineer	10 hrs @ 8.50/hr		85.00
Operator	10 hrs @ 9.50/hr		95.00
Laborers	24 hrs @ 7.00/hr		<u>168.00</u>
			\$448.00

(2) Direct Labor Cost (use the agreed upon Direct Labor Cost)

*	(30)% of \$448		
*	(Used for example purposes only)		134.00

(3) Materials & Freight

150 l.f. of 12" pipe @ \$2.00/l.f.		\$	300.00
15 v.f. precast SMH			1,700.00
Freight (slip # _____ Enclosed)			<u>25.00</u>
			2,025.00

(4) Equipment

1 Backhoe	10 hrs @ \$80.00/hr	\$	800.00
1 Truck-crane	10 hrs @ \$100.00/hr		<u>1,000.00</u>
			1,800.00
Total (Items 1 through 4)			4,407.00

(5) 20% markup for Overhead, Profit

20% of \$4,407			881.00
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(6) 7 ½% markup for general contractor (if subcontractor is involved)

7 ½% of \$4,407			331.00
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(7) Credits (deductibles)

- 323.00

Total Cost      \$    5,296.00

Reminder:      Provide support documentation as necessary i.e. vouchers, correspondence,  
Calculation, photographs, reports .....

**POLICY MEMORANDUM NO. PM-11**

**UTILITY RELOCATION**

The construction of treatment facilities, sewers, pumping stations, force mains and appurtenant work can cause the relocation of utilities. Costly relocation can sometimes be minimized by early communication and cooperation of the representatives of the municipality (owner) and the utilities.

Every possible effort should be made by the owner and each utility to establish the location of existing utilities in the vicinity of the proposed construction. The owner or its consulting engineer should make every reasonable effort to design the proposed construction so that relocation of existing utilities is minimized whenever possible. If the proposed construction is in an area of many existing utilities or in an otherwise critical area, the utilities are encouraged to mark the location of their existing utilities at the site during the design phase of the project.

During the design phase of the project, the municipality should provide timely notice to all utilities known or thought to have facilities in or proximate to the site of such future construction.

**POLICY MEMORANDUM NO. PM-12**

**REFUNDABLE DEPOSITS FOR PLANS AND SPECIFICATIONS**

For each set of project plans and specifications provided, the owner may require a deposit in form of cash or other appropriate security, in an amount sufficient to cover the costs of production of such plans and specifications.

Upon return of the plans and specifications to the owner within a reasonable time and in good condition, such deposit shall be refunded.

Actual mailing costs, if any, shall be borne by the party requesting such plans and specifications.

**POLICY MEMORANDUM NO. PM-13**

**BID OPENING PROCEDURES**

As a minimum, bid documents shall be reviewed/inspected for conformance to the following bid opening procedure in the order presented below. Failure to comply with any of these steps shall render the bid non-responsive and upon determination of such non-responsiveness, such bid shall be rejected immediately, set aside, and shall receive no further consideration.

**Bid Opening Procedure**

Step #1. Timeliness – The bid must be filed at the place and within the time specified therefore in the invitation to bid, and no bid shall be accepted after such time. The time at which a bid is filed should be time/date stamped or otherwise prominently noted on the bid;

Policy Memorandum No. PM-13 – Bid Opening Procedures (Con't)

Step #2. Bid Security – Properly executed bid security, in the amount and terms specified in the invitation to bid (equal to 5% of Base Bid or Highest Possible Amount considering all alternatives) shall be placed in a seal envelope and attached to the outside of the envelope containing the bid at the time of its submission;

A. Bid Bond

The Bid bond must be dated On or Before the Bid Date;  
Issued by a Bonding Company Licensed in Massachusetts;  
Accompanied by a Current Power of Attorney;  
Signed by Surety;

B. Check

The Check must be a Certified, Cashiers or Bank Treasurer's;  
Dated On or Before the Bid Date;

Step #3. Bid Signature – The bid and all accompanying documents so required shall be signed by the bidder or its authorized representative before submission;

Step #4. Addenda – All addenda shall be sent certified mail, return receipt requested, by the owner to all individuals and organizations which have received plans and specifications and shall be mailed not later than five days prior to the date established for submission of bids. All bidders shall include with their bids written acknowledgement of receipt of all addenda, which acknowledgement may be on a form provided therefore by the owner.

Alternates – Any Alternates shall be acknowledged.

Step #5. Written Dollar Amounts – The total dollar amount of each bid shall be read, and the three lowest bids shall be selected for further consideration. The remaining bids shall then be set aside. The three apparent low bids shall be read to determine whether the unit price for each line item of each bid has been written therein in words. If it has not, such bid shall be rejected and shall receive no further consideration. ***Bid amounts shall be consistent (words vs. numbers) and if words and numbers differ, the words govern.*** This procedure shall then be repeated with the next apparent low bid until three are acceptable which have all the unit prices written in words, at which time the lowest bid shall be announced as the apparent low bidder, and the bid opening procedure shall be closed.

The Division recommends that this policy memorandum be included in all contract specifications and that the owner's evaluator(s) use the attached form (PM-13 Attachment 1) for bid opening procedures.

The Contractor's Bid Opening Checklist also attached hereto, is for use by each contractor to assure that his bid conforms with this policy memorandum. It is recommended that the checklist (PM-13 Attachment 2) be included in information for bidders, or at the end of the bid proposal, or in some other prominent part of the bid specifications

**FORM FOR BID OPENING PROCEDURES**  
(to be completed by the owner's evaluator(s))

CONTRACT NO.: \_\_\_\_\_ DATE: \_\_\_\_\_

CONTRACT NAME: \_\_\_\_\_ BID OPENING TIME: \_\_\_\_\_

All non-responsive bids shall be rejected forthwith by the awarding authority upon determination of such bids' non-responsiveness at the time bids are opened and read. Failure to comply with any one of the requirements shall render the bid non-responsive, and upon determination of such non-responsiveness such bid shall be rejected and receive no further consideration.

BIDDER	A = Acceptable		N-R = Non-Responsive (explain reasons on supplemental sheet & attach)		COMPLIANCE (CIRCLE ONE)
	1. TIMELINESS	2. BID SECURITY	3. SIGNATURE	4. ADDENDA ALTERNATIVES	
1					YES NO
2					YES NO
3					YES NO
4					YES NO
5					YES NO
6					YES NO
7					YES NO
8					YES NO
9					YES NO
10					YES NO
11					YES NO
12					YES NO

Evaluator(s) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



**BID OPENING PROCEDURES  
CONTRACTORS CHECKLIST**

CONTRACT NO.: \_\_\_\_\_ BIDDER: \_\_\_\_\_ DATE: \_\_\_\_\_

All non-responsive bids shall be rejected forthwith by the awarding authority upon determination of such bids' non-responsiveness at the time bids are opened and read. Failure to comply with one or more of the following requirements shall render the bid non-responsive, and upon determination of such non-responsiveness such bid shall be rejected and receive no further consideration.

ITEM	REQUIREMENTS	COMPLIANCE (CIRCLE 1)		REASONS FOR REJECTION
		Yes	No; Rejected	
1. Timeliness	Bid filed w/in time specified	Yes	No; Rejected	
2. Bid Security	Appropriate and properly Executed security w/bid.	Yes	No; Rejected	
3. Signature	Bid signed by authorized Representative	Yes	No; Rejected	
4. Addenda	All addenda acknowledge Any alternative	Yes	No; Rejected	
5. Dollar Amount	Dollar amount in words Specified for each line item in bid	Yes	No; Rejected	

**POLICY MEMORANDUM NO. PM-14**

**PAYMENT FOR ROCK EXCAVATION**

There shall be in the contract documents a separate pay item for rock excavation. For such purposes, “rock” shall mean igneous, sedimentary, metamorphic, and conglomerate rock, which for excavation must be drilled, blasted, broken, or ripped by power tools. Boulders and concrete structures one cubic yard or greater, however removed, are included within this definition of rock for payment purposes. At the option of the owner or his representative a separate pay item for boulders, concrete structures, or concrete road base may be used.

<u>Depth From Ground Surface</u> <u>To Invert Pipe</u>	<u>Pay Width</u> <u>(Nominal Pipe Diameter)</u>	
* 0 – 12’	<u>0-24”</u>	<u>Over 24”</u>
* Over 12’ – 20’	5’0”	D+3’0”
	7’0”	D+5’

Engineer’s plans and specifications shall establish pay limits below pipe and structures.

- See PM-14 Attachment 1 (typical cross section)

Payment width for depths over twenty feet (20’) shall be determined on a case-by-case basis consistent with the foregoing chart.

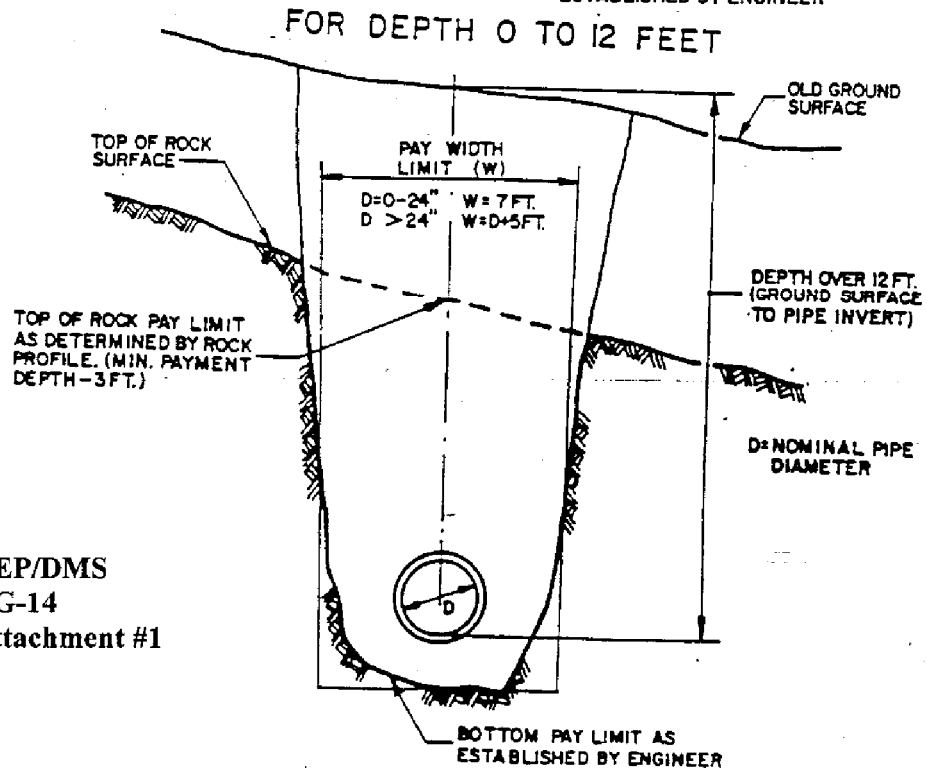
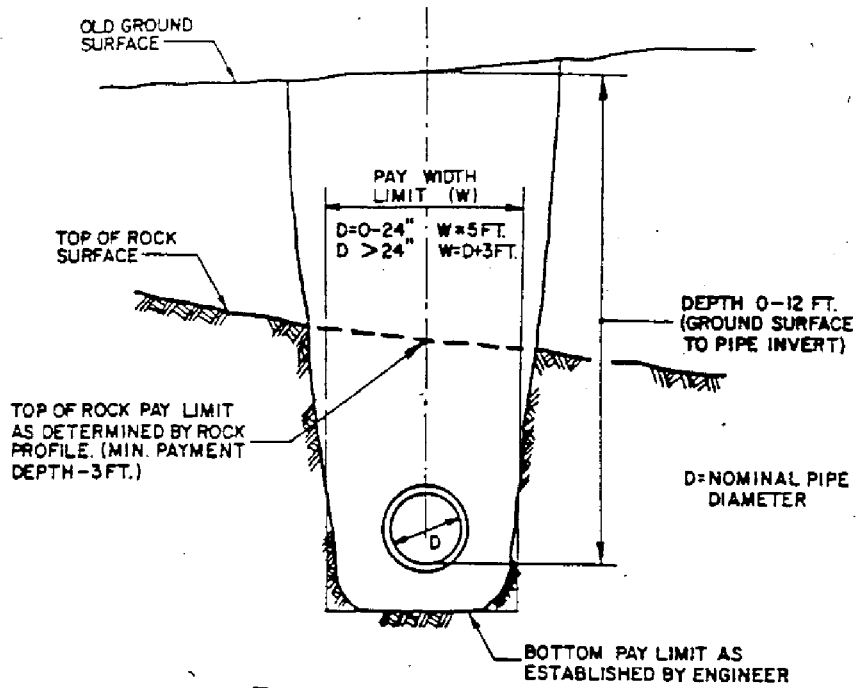
The pay limit for rock removal outside proposed manholes shall commence one foot (1’) outside the widest dimension of the structure of shall be the maximum connecting trench width, whichever is greater.

Payment depth for rock which is encountered in a trench shall be no less than three feet (3’) when removal can be accomplished only by drilling and blasting or by use of jack (air or hydraulic) hammers.

Payment for rock removed, using the same or equal equipment as utilized for normal trench excavation, shall be limited to the actual depth removed within the limits established by the contract documents.

Boulders encountered within the pay limits of excavation, whose volume is one cubic yard or greater, part of which extends outside said limits shall be paid in accordance with the actual volume excavated.

# CG-14 ROCK EXCAVATION



DEP/DMS  
CG-14  
Attachment #1

**POLICY MEMORANDUM NO. PM-15**

**TRAFFIC POLICE**

The reasonable costs for police details required for traffic control on a construction project which receives financial assistance shall be considered as an eligible administrative cost. A police detail item shall not be included as a bid item in the contract documents.

“Police” as used in this memorandum includes local, county, capital, state, regular and auxiliary police.

**Owner’s Responsibility**

It shall be the owner’s responsibility to submit in writing the hourly rate of pay to be established for detailed traffic police and each change in rate during the course of the project. It is the owner’s responsibility to arrange, document and pay for such police details. The owner or its representative shall meet with the police chief or other officer in charge of police detail duty to review contract needs. The owner shall maintain a daily record of the following:

- a. Officer’s name
- b. Hours worked
- c. Location of assignment
- d. Hourly rate

**POLICY MEMORANDUM NO. PM-16**

**DOCUMENTATION REQUIRED TO  
SUBSTANTIATE CONTRACT QUANTITIES**

<u>Unit</u>	<u>Documentation required</u>
Acres (A)	Location, station, offset and calculations. Location = Street right-of-way, etc; Station = Point on Baseline; Offset = Distance left or right of Baseline
Cubic Yard (C.Y.)	Location, stations, widths, depths, calculations and Cross sections as necessary
Each (Ea.)	Location, station, and offset.
Gallon (Gal.)	Location, stations, calculations (if appropriate) and delivery slips.
Hour (Hr.)	Hours and location.
Linear Feet (L.F.)	Location, stations, and offsets.
Month (Mo.)	Location, period of time and calculations if applicable.

1000 Foot Board Measure (MFBM)	Location, stations, offset, elevations, grade, and calculations.  Attach invoices where applicable.
Pound (Lb.)	Locations, stations, and calculations (if applicable). Attach Delivery weight slips.
Square Feet (S.F.)	Locations, stations and calculations
Square Yard (S.Y.)	Locations, stations and calculations
Ton	Locations, stations and calculations (if applicable). Attach Delivery weight slips.
Vertical Feet (V.F.)	Locations, stations, elevations, and offsets.

Note:

1. All of the above, that apply must be submitted with a final payment request or change order as applicable.
2. Where in place measurement is not possible or practical, delivery slips may be used to substantiate quantities.
3. Change orders – See PM-10 in which some of the above may be applicable in justifying materials, equipment and labor.
4. When necessary, itemized quantities must be separated into eligible and non-eligible units with separate calculations to justify eligible costs.
5. Overruns and underruns of any specific item shall be explained with an appropriate sentence or paragraph.
6. On all quantities, units of payment shall be maintained at the project site and shall be updated daily so that upon field inspection by the C.O.E., EPA or DMS, the quantities paid to date can be substantiated.
7. In the case of unforeseen conditions, photos should be submitted with the applicable item in addition to the recommended documentation.
8. Documentation of units of payment shall be clearly legible and cross referenced to the applicable sheets of the record drawings.
9. For record drawings policy, please see PM-4.

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DMS Policies 1 through 16 Approved By:

Steven J. McCurdy  
Division of Municipal Services

**DWS POLICY 88-02**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**POLICY FOR REVIEW OF SEWER LINE/WATER SUPPLY PROTECTION**

The Department of Environmental Protection seeks to protect existing and potential water supplies from the potentially negative effects of leaking sewer lines through the adoption of a Department policy on this subject.

The following restrictions will apply to new sewer construction statewide:

Gravel Packed Wells

- ~ Within the 400 foot radius protective distance around gravel packed wells, all sewer lines and appurtenances are prohibited, unless they are necessary to eliminate existing and/or potential sources of pollution to the well.

Tubular Wells

- ~ Within the 250 foot radius protective distance around tubular wells, all sewer lines and appurtenances are prohibited, unless they are necessary to eliminate existing and/or potential sources of pollution to the well.

Gravel Packed and Tubular Wells

- ~ Within a minimum radius of 2,640 feet or unless otherwise documented by an appropriate study specifically defining the area of influence and approved by the Division of Water Supply, all sewer lines and appurtenances will be designed and constructed for maximum water tightness.
- Force Mains or Pressure Sewers: shall be tested at 150% above maximum operating pressure or 150 p.s.i. whichever is greater. Testing shall conform to the requirements of the American Water works Association (AWWA) standard c 600.
- Gravity Sewers: shall be tested by approved methods which will achieve test results for infiltration or exfiltration of less than 100 gallons/inch diameter/mile/24 hours.
- Manholes: shall be installed with watertight covers with locking or bolted and gasketed assemblies. Testing for infiltration/exfiltration shall conform to the same standards as the maximum allowed for pipes in the manhole as required for gravity sewers, indicated above.
- Satisfactory test results for Force Mains, Manholes and Gravity Sewers shall be performed prior to the expiration of the contractor's one year guarantee period.
- All pumping stations within this zone shall have standby power high water alarms telemetered to an appropriated location that is manned at all times. An emergency contingency plan must be developed by the owner and approved by the BWR.
- A minimum of Class B bedding as defined by WPCF-MOP9 must be used for all piping.
- Service connections (laterals and house connections) shall be rigidly inspected by the appropriate municipal official. Certified inspection reports shall be submitted to the BWR.

### Bedrock Wells

The above requirements are the same for bedrock wells, with the Department reserving the right to require more stringent controls on a case-by-case basis.

### Surface Water Supplies

- ~ Within 100 feet of all surface water supplies and tributaries all sewer lines and appurtenances are prohibited except as required to cross tributaries or to eliminate existing or potential pollution to the water supply. In the latter case, watertight construction methods shall be use.
- ~ Tributary stream crossings shall employ watertight construction methods of sewer lines and manholes. Watertight construction must extend 100 feet to either side of the stream.
- ~ Within 1,000 feet of surface water supplies and tributaries, all pumping stations shall have standby power and high water alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the owner of the wastewater treatment facility and submitted to the BWR for approval.
- ~ Beyond 1,000 feet and within the watershed of surface water supplies the Department may in specific circumstances after review, require additional controls.

### Potential Public Water Supplies

The above requirements also apply to potential public water supplies.

### Baseline Date Requirements

Two (2) copies of an appropriately scaled map(s) shall be submitted to the Department which details the proposed sewers and/or appurtenances and also includes the following:

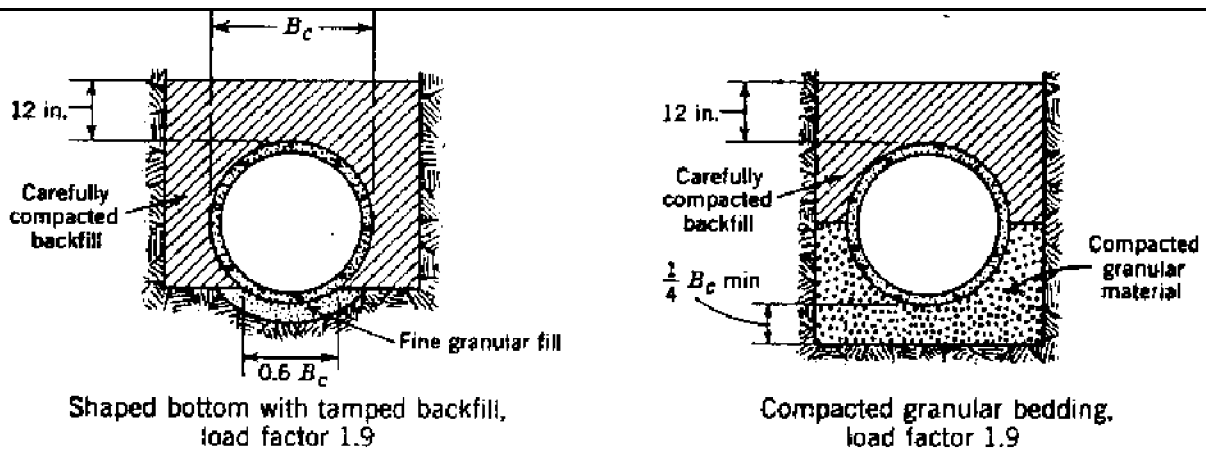
- (1) the location of all nearby existing or potential surface water supplies, tributaries thereto, and watershed boundaries;
- (2) the location of existing and potential public and municipal potable groundwater supply wells.

The Department reserves the right to impose more restrictive measures than those contained in this policy as deemed appropriate.

### Definitions

- Appurtenances – all attachments to sewer lines necessary for the transport and operation and maintenance of sewer lines, including manholes, pumping station, siphons, etc.
- Area of influence – that area of an aquifer which contributes water to a well under the most severe recharge and pumping condition that can be realistically anticipated (i.e. pumping at the safe yield of the well for 180 days without any natural recharge occurring). It is bounded by the groundwater divides which result from pumping the well and by the contact of the edge of the aquifer with less permeable materials such as till and bedrock. At some locations, streams and lakes may form recharge boundaries.
- Potential public water supply – areas designated by communities for water supply purposes where land has been set aside and Department approved pump tests conducted and surface water supplies as defined below.
- Surface Water Supply – Waters classified as Class A by the DWPC.
- Public Water Supply Systems – as defined in 310 CMR 22.02 (DEP Drinking Water Regulations).
- Class B Bedding – as defined in WPCF Manual of Practice No. 9.

APPROVED: (Signature on File)



**Class B---First-Class Bedding** – Class B bedding may be achieved by either of two construction methods:

- a. **Shaped Bottom with Tamped Backfill.** The bottom of the trench excavation shall be shaped to conform to a cylindrical surface with a radius at least 2 in. (5 cm) greater than the radius to the outside of the pipe and with a width sufficient to allow six-tenths of the width of the pipe barrel to be bedded in fine granular fill placed in the shaped excavation. Carefully compacted backfill shall be placed at the sides of the pipe to a thickness of at least 12 in. (30 cm) above the top of the pipe. Shaped trench bottoms are difficult to achieve under current construction conditions.
- b. **Compacted Granular Bedding with Tamped Backfill.** The pipe shall be bedded in compacted granular material placed on a flat trench bottom. The granular bedding shall have a minimum thickness of one-fourth the outside pipe diameter and shall extend halfway up the pipe barrel at the sides. The remainder of the side fills and a minimum depth of 12 in. (30 cm) over the top of the pipe shall be filled with carefully compacted material.





COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY  
Governor

KERRY HEALEY  
Lieutenant Governor

ELLEN ROY HERZFELDER  
Secretary

LAUREN A. LISS  
Commissioner

**Review Of Sewer Line/Water Supply Protection**

Effective Date: 1-23-03

DWP Policy #: BRP/DWM/WS/P03-1

Program Applicability: All Boston and regional BRP programs

Supersedes DWS Policy #: 88-02 Review of Sewer Line/Water Supply Protection

Approved by: Glenn Haas, Director, Division of Watershed Management

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**PURPOSE:** This policy was amended in 2003 and 2013 to reflect current terminology and program goals. Minor changes have been made to DWS Policy #88-02 without affecting the intent of that document. The original policy, dated 4-15-88, was adopted to implement the Department of Environmental Protection (then DEQE) policy statement dated February 2, 1988.

**Policy**

It is the Program's policy to implement fully the Review of Sewer Line/Water Supply Protection policy of the Department which is attached hereto and made a part hereof.

**Department of Environmental Protection**  
**Policy For Review of Sewer Line/Water Supply Protection**

The intent of this policy is to protect existing and potential drinking water supplies from potentially negative effects of leaking sewer lines. This policy will apply to new sewer construction and replacement sewer construction statewide.

**Gravel Packed and Tubular Wells**

- Within the Zone I protective distance around gravel packed wells, all sewer lines and appurtenances are prohibited, unless they are necessary to eliminate existing and/or potential sources of pollution to the well.
- Within an Interim Wellhead Protection Area (IWPA) or unless otherwise documented by an appropriate study specifically defining the Zone II and approved by the Drinking Water Program, all sewer lines and appurtenances will be designed and constructed for maximum watertightness.
  - **Force Mains or Pressure Sewers:** shall be tested at 150% above maximum operating pressure or 150 p.s.i. whichever is greater. Testing shall conform to the requirements of the American Water Works Association (AWWA) standard C 600.
  - **Gravity Sewers:** shall be tested by approved methods which will achieve test results for infiltration or exfiltration of less than 100 gallons/inch diameter/mile/24 hours.
  - **Manholes:** in the Zone I shall be installed with watertight covers with locking or bolted and gasketed assemblies. Testing for infiltration/exfiltration shall conform to the same standard as the maximum allowed for pipes in the manhole as required for gravity sewers, indicated above.
  - Satisfactory test results for Force Mains, Manholes and Gravity Sewers shall be performed prior to the expiration of the contractor's one year guarantee period.
  - All pumping stations within this zone shall have standby power high water alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the pumping station owner and approved by the Department.
  - A minimum of Class B bedding as defined by Water Pollution Control Federation-Manual No.9 must be used for all piping.
  - Service connections (laterals and house connections) shall be rigidly inspected by the appropriate municipal official. Certified inspection reports shall be submitted to the Department.

**Bedrock Wells**

The above requirements are the same for bedrock wells, with the Department reserving the right to require more stringent controls as necessary to protect public health. Such additional controls may be necessary due to the potential for quicker flow transport through bedrock fracture systems.

## **Surface Water Supplies**

- Within the Zone A of all surface water supplies and tributaries, all sewer lines and appurtenances are prohibited except as required to cross tributaries or to eliminate existing or potential pollution to the water supply. In the latter case watertight construction methods shall be used as described above.
- Tributary stream crossings shall employ watertight construction methods of sewer lines and manholes. Watertight construction must be employed within the Zone A.
- Within 1,000 feet of surface water supplies and tributaries, all pumping stations shall have standby power and high water alarms telemetered to an appropriate location that is manned at all times. An emergency contingency plan must be developed by the owner of the wastewater treatment facility and submitted to the Department for approval.
- Beyond 1,000 feet, and within the watershed of surface water supplies, the Department may in specific circumstances, after review, require additional controls when deemed necessary for protection of public health.

## **Potential Public Water Supplies**

The above requirements also apply to potential public water supplies. A proposed drinking water source that is proceeding through the Source Approval Process and has an approved Zone II/Zone A, and/or an approved withdrawal rate associated with it, will be considered a potential public water supply.

## **Baseline Data Requirements**

Two (2) copies of an appropriately scaled map(s) shall be submitted to the Department which details the proposed sewers and/or appurtenances and also includes the following:

1. the location of all nearby existing or potential surface water supplies, tributaries thereto, and watershed boundaries;
2. the location of existing and potential public and municipal potable groundwater supply wells.

The Department reserves the right to impose more restrictive measures than those contained in this policy as deemed necessary to protect public health.

## **Definitions**

- Appurtenances - all attachments to sewer lines necessary for the transport and operation and maintenance of sewer lines, including manholes, pumping stations, siphons, etc.
- Class B Bedding – as defined in WPCF Manual of Practice No. 9.
- Interim Wellhead Protection Area (IWPA) – For public water systems using wells or wellfields that lack a DEP approved Zone II, the Department will apply an interim wellhead protection area. This interim wellhead protection area shall be a one-half mile radius measured from the well or wellfield for sources whose approved pumping rate is 100,000 gpd or greater. For wells or

wellfields that pump less than 100,000 gpd, the IWPA radius is proportional to the approved pumping rate which may be calculated according to the following equation: IWPA radius in feet =  $[32 \times \text{pumping rate in gallons per minute}] + 400$ . [This equation is equivalent to the second graph in Appendix D of the 2001 Guidelines and Policies for Public Water Systems.] A default IWPA radius shall be applied to transient noncommunity (TNC) and nontransient noncommunity (NTNC) wells when there is no metered rate of withdrawal or no approved pumping rate. The default IWPA radius shall be 500 feet for TNC wells and 750 feet for NTNC wells.

- Public Water Supply Systems – as defined in 310 CMR 22.02 (DEP Drinking Water Regulations).
- Surface Water Supply – Waters classified as Class A by the Department.
- Zone A – (a) the land area between the surface water source and the upper boundary of the bank; (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of the watershed, whichever is less; and (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body, or edge of watershed, whichever is less.
- Zone I – the protective radius required around a public water supply well or wellfield. For public water system wells with approved yields of 100,000 gpd or greater, the protective radius is 400 feet. Tubular wellfields require a 250 foot protective radius. Protective radii for all other public water system wells are determined by the following equation: Zone I radius in feet =  $[150 \times \log \text{ of pumping rate in gpd}] - 350$ . [This equation is equivalent to the graph in Appendix C.] A default Zone I radius shall be applied to transient noncommunity (TNC) and nontransient noncommunity (NTNC) wells when radii cannot be calculated because there is no metered rate of withdrawal or no approved pumping rate. The default Zone I radius shall be 100 feet for TNC wells and 250 feet for NTNC wells.
- Zone II – that area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at the approved yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till and bedrock. In some cases, streams and lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary).

**APPENDIX E**

**CONTRACT SUPPLEMENT  
AND  
STATUTORY PROVISIONS  
FOR  
MASSACHUSETTS PUBLIC CONSTRUCTION CONTRACTS  
(Vertical Construction)**

## CONTRACT SUPPLEMENT

### STATUTORY PROVISIONS FOR MASSACHUSETTS PUBLIC CONSTRUCTION CONTRACTS

The following provisions are required by requirements of Massachusetts statutes governing public works construction contracts in the Commonwealth of Massachusetts. Any other provisions required by statute to be included herein shall be deemed to be so included, and are incorporated herein by reference as if set forth herein in full. In addition, the parties recognize that the other rights, duties and obligations with respect to public construction contracts are provided for by statute, notwithstanding the fact that they are not provided for in the Contract Documents. In the case of conflict between the provisions and the Contract Documents, the provisions of this Contract Supplement shall govern. In the case of conflict between the provisions of this Contract Supplement and the provisions of any applicable statute, the statutory provisions shall govern.

Chapter 30 - Section 39F

Chapter 149 - Section 44G

Chapter 30 - Section 39I

Chapter 149 - Section 44H

Chapter 30 - Section 39J

Chapter 149 - Section 44J

Chapter 30 - Section 39K

Chapter 30 - Section 39L

Chapter 30 - Section 39M, M $\frac{1}{2}$

Chapter 30 - Section 39N

Chapter 30 - Section 39O

Chapter 30 - Section 39P

Chapter 30 - Section 39R

Chapter 82 - Section 40

Chapter 149 - Section 34

Chapter 149 - Section 44A, 44A $\frac{1}{2}$

Chapter 149 - Section 44B

Chapter 149 - Section 44C

Chapter 149 - Section 44D, 44D $\frac{1}{2}$

Chapter 149 - Section 44E, 44E $\frac{1}{2}$

Chapter 149 - Section 44F

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title III</b>	LAWS RELATING TO STATE OFFICERS
<b>Chapter 30</b>	GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES
<b>Section 39F</b>	CONSTRUCTION CONTRACTS; ASSIGNMENT AND SUBROGATION; SUBCONTRACTOR DEFINED; ENFORCEMENT OF CLAIM FOR DIRECT PAYMENT; DEPOSIT, REDUCTION OF DISPUTED AMOUNTS

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Section 39F. (1) Every contract awarded pursuant to sections forty-four A to L, inclusive, of chapter one hundred and forty-nine shall contain the following subparagraphs (a) through (i) and every contract awarded pursuant to section thirty-nine M of chapter thirty shall contain the following subparagraphs (a) through (h) and in each case those subparagraphs shall be binding between the general contractor and each subcontractor.

(a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.

(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The demand

shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the general contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a general contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.



(i) If the subcontractor does not receive payment as provided in subparagraph (a) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g) and (h).

(2) Any assignment by a subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of section twenty-nine of chapter one hundred forty-nine shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the awarding authority or which are on deposit pursuant to subparagraph (f) of paragraph (1) shall be subordinate to the rights of all subcontractors who are entitled to be paid under this section and who have not been paid in full.

(3) "Subcontractor" as used in this section (i) for contracts awarded as provided in sections forty-four A to forty-four H, inclusive, of chapter one hundred forty-nine shall mean a person who files a sub-bid and receives a subcontract as a result of that filed sub-bid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, (ii) for contracts awarded as provided in paragraph (a) of section thirty-nine M of chapter thirty shall mean a person approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the commonwealth not awarded as provided in forty-four A to forty-four H, inclusive, of chapter one hundred forty-nine shall also mean a person contracting with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.

(4) A general contractor or a subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposited as provided in subparagraph (f) of paragraph 1 by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in subparagraph (f) of paragraph 1 by a petition in equity in the superior court against the awarding authority and the general contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. Sections fifty-nine and fifty-nine B of chapter two hundred thirty-one shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to sections fifty-nine and fifty-nine B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any subcontractor with the petition of one or more subcontractors or the same general contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the

fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a subcontractor filing a demand for direct payment for which no funds due the general contractor are available for direct payment shall have a right to file a petition in court of equity against the awarding authority claiming a demand for direct payment is premature and such subcontractor must file the petition before the awarding authority has made a direct payment to the subcontractor and has made a deposit of the disputed portion as provided in part (iii) of subparagraph (e) and in subparagraph (f) of paragraph (1).

(5) In any petition to collect any claim for which a subcontractor has filed a demand for direct payment the court shall, upon motion of the general contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority as provided in part (iii) of subparagraph (e) and in subparagraph (f) of paragraph (1) any amount held under a trustee writ or pursuant to a restraining order or injunction.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title III</b>	LAWS RELATING TO STATE OFFICERS
<b>Chapter 30</b>	GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES
<b>Section 39I</b>	DEVIATIONS FROM PLANS AND SPECIFICATIONS

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Section 39I. Every contractor having a contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public building or public works for the commonwealth, or of any political subdivision thereof, shall perform all the work required by such contract in conformity with the plans and specifications contained therein. No wilful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the awarding authority or by the engineer or architect in charge of the work who is duly authorized by the awarding authority to approve such deviations. In order to avoid delays in the prosecution of the work required by such contract such deviation from the plans or specifications may be authorized by a written order of the awarding authority or such engineer or architect so authorized to approve such deviation. Within thirty days thereafter, such written order shall be confirmed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the contracting agency and the contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the contracting authority.

Such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the work contracted for.

Whoever violates any provision of this section wilfully and with intent to defraud shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than six months, or both.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title III</b>	LAWS RELATING TO STATE OFFICERS
<b>Chapter 30</b>	GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES
<b>Section 39J</b>	PUBLIC CONSTRUCTION CONTRACTS; EFFECT OF DECISIONS OF CONTRACTING BODY OR ADMINISTRATIVE BOARD

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Section 39J. Notwithstanding any contrary provision of any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public works by the commonwealth, or by any county, city, town, district, board, commission or other public body, when the amount of the contract is more than five thousand dollars in the case of the commonwealth and more than two thousand dollars in the case of any county, city, town, district, board, commission or other public body, a decision, by the contracting body or by any administrative board, official or agency, or by any architect or engineer, on a dispute, whether of fact or of law, arising under said contract shall not be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily is unsupported by substantial evidence, or is based upon error of law.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title III</b>	LAWS RELATING TO STATE OFFICERS
<b>Chapter 30</b>	GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES
<b>Section 39K</b>	PUBLIC BUILDING CONSTRUCTION CONTRACTS; PAYMENTS

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Section 39K. Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building by the commonwealth, or by any county, city, town, district, board, commission or other public body, when the amount is more than five thousand dollars in the case of the commonwealth and more than two thousand dollars in the case of any county, city, town, district, board, commission or other public body, shall contain the following paragraph:— Within fifteen days (30 days in the case of the commonwealth, including local housing authorities) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances, but less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one per cent of the original contract price, or (b) the contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such a periodic estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.

All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and a column listing the amount paid to each subcontractor and sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the awarding authority shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.

A certificate of the architect to the effect that the contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.

Notwithstanding the provisions of this section, at any time after the value of the work remaining to be done is, in the estimation of the awarding authority, less than 1 per cent of the adjusted contract price, or the awarding authority has determined that the contractor has substantially completed the work and the awarding authority has taken possession for occupancy, the awarding authority may send to the general contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The general contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the general contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the awarding authority or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the general contractor by certified mail, return receipt requested, the awarding authority may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the general contractor and such termination shall be without prejudice to any other rights or remedies the awarding authority may have under the contract. The awarding authority shall note any such termination in the evaluation form to be filed by the awarding authority pursuant to the provisions of section 44D of chapter 149.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title III</b>	LAWS RELATING TO STATE OFFICERS
<b>Chapter 30</b>	GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES
<b>Section 39L</b>	PUBLIC CONSTRUCTION WORK BY FOREIGN CORPORATIONS; RESTRICTIONS AND REPORTS

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Section 39L. The commonwealth and every county, city, town, district, board, commission or other public body which, as the awarding authority, requests proposals, bids or sub-bids for any work in the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or other public works (1) shall not enter into a contract for the work with, and shall not approve as a subcontractor furnishing labor and materials for a part of the work, a foreign corporation which has not filed with the awarding authority a certificate of the state secretary stating that the corporation has complied with requirements of section 15.03 of subdivision A of Part 15 of chapter 156D and the date of compliance, and further has filed all annual reports required by section 16.22 of subdivision B of Part 16 of said chapter 156D, and (2) shall report to the state secretary and to the department of corporations and taxation any foreign corporation performing work under such contract or subcontract, and any person, other than a corporation, performing work under such contract or subcontract, and residing or having a principal place of business outside the commonwealth.

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<b>Title III</b>	LAWS RELATING TO STATE OFFICERS
<b>Chapter 30</b>	GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES
<b>Section 39M</b>	CONTRACTS FOR CONSTRUCTION AND MATERIALS; MANNER OF AWARDING

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Section 39M. (a) Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is and estimated by the awarding authority to cost less than \$10,000 dollars shall be obtained through the exercise of sound business practices as defined in section 2 of chapter 30B. The awarding authority shall make and keep a record of each procurement that, at a minimum, shall include the name and address of the person from whom the services were procured. An awarding authority that utilizes a vendor on a statewide contract procured through the operational services division, or a blanket contract procured by the awarding authority pursuant to this section, shall be deemed to have obtained the contract through sound business practices.

Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is estimated by the awarding authority to cost not less than \$10,000 but not more than \$50,000 shall be awarded to the responsible bidder offering to perform the contract at the lowest price. The awarding authority shall make public notification of the contract and shall seek written responses from no fewer than 3 persons who customarily perform such work. For purposes of this subsection, the term "public notification" shall include, but need not be limited to, posting, at least 2 weeks before the time specified in the notification for the receipt of responses, the contract and scope-of-work statement: (1) on the website of the awarding authority, (2) on the COMMBUYS system administered by the operational services division, (3) in the central register published pursuant to section 20A of chapter 9 and (4) in a conspicuous place in or near the primary office of the awarding authority; provided, however, that if the awarding authority obtains a minimum of 2 written responses from a vendor list established through a blanket contract or a statewide contract procured through the operational services division, and the lowest of those written responses is deemed acceptable to the awarding authority, public notification is not required. The solicitation shall include a scope-of-work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the awarding authority and the time period within which the work shall be completed. The awarding authority shall record the names and addresses of all persons from whom written responses were sought, the names of the persons submitting written responses and the date and amount of each written response.

An awarding authority may utilize a vendor list established through a statewide contract procured through the operational services division to identify 1 or more of the persons from whom it will seek written responses for purposes of this subsection. An awarding authority may also procure a



blanket contract to establish a listing of vendors in certain defined categories of work that are under contract to provide services for multiple individual tasks of not more than \$50,000 each, and from whom written responses will be sought. Any such blanket contract procured by the awarding authority shall be procured pursuant to this section or sections 44A to 44J, inclusive, of chapter 149 which are applicable to projects over \$50,000.

Every contract for the construction, reconstruction, alteration, remodeling or repair of any public work, or for the purchase of any material, as hereinafter defined, by the commonwealth, or political subdivision thereof, or by any county, city, town, district or housing authority that is estimated by the awarding authority to cost more than \$50,000, and every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, as defined by subsection (1) of section 44A of chapter 149, estimated to cost more than \$50,000 but not more than \$150,000, shall be awarded to the lowest eligible responsible bidder on the basis of competitive bids publicly opened and read by the awarding authority forthwith upon expiration of the time for the filing thereof; provided, however, that such awarding authority may reject any and all bids, if it is in the public interest to do so. Every bid for such contract shall be accompanied by a bid deposit in the form of: (1) a bid bond, (2) cash, or (3) a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the awarding authority. The amount of the bid deposit shall be 5 per cent of the value of the bid. Any person submitting a bid pursuant to this section shall, on such bid, certify as follows:

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

(Name of person signing bid)

(Company)

This subsection shall not apply to the award of any contract subject to the provisions of sections 44A to 44J, inclusive, of chapter 149 and every such contract shall continue to be awarded as provided therein. In cases of extreme emergency: (1) caused by enemy attack, sabotage or other such hostile actions or (2) resulting from an imminent security threat explosion, fire, flood, earthquake, hurricane, tornado or other such catastrophe, an awarding authority may, without competitive bids and notwithstanding any general or special law, award contracts otherwise subject to this subsection to perform work and to purchase or rent materials and equipment, all as may be necessary for temporary repair and restoration to service of any and all public work in order to preserve the health and safety of persons or property; provided, that this exception shall not apply to any permanent reconstruction, alteration, remodeling or repair of any public work.

(b) Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be

furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials.

(c) The term "lowest responsible and eligible bidder" shall mean the bidder: (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; (4) who, where the provisions of section 8B of chapter 29 apply, shall have been determined to be qualified thereunder; and (5) who obtains within 10 days of the notification of contract award the security by bond required under section 29 of chapter 149; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority; provided further, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable.

(d) The provisions of this section shall not apply (1) to the extent that they prevent the approval of such specifications by any contributing federal agency, (2) to materials purchased under specifications of the state department of highways at prices established by the said department pursuant to advertisement and bidding in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety, (3) to any transaction between the commonwealth and any of its political subdivisions or between the commonwealth and any public service corporation, and (4) to any contract of not more than \$50,000 awarded by a governmental body, as defined by section two of chapter thirty B, in accordance with the provisions of section five of said chapter thirty B; and (5) to any contract solely for the purchase of material awarded by a governmental body, as defined by section 2 of chapter 30B, in accordance with section 5 of said chapter 30B, or procured through the operational services division pursuant to sections 22 and 52 of chapter 7.

(e) The word "material" as used in this section shall mean and include any article, assembly, system, or any component part thereof.

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<b>Section 39M1/2</b>	PROJECT OVERSIGHT; OWNER'S REPRESENTATIVE; QUALIFICATIONS; PROCUREMENT; POWERS AND DUTIES

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Section 39M1/2. (a) The following words shall have the following meanings unless the context clearly requires otherwise:

"Certified estimate of cost", a good-faith estimate based on the best available information and made by the most senior official in the agency responsible for the contract, accounting for all expenses which could be reasonably foreseen including, but not limited to, those involving design, construction, management, acquisition and disposition of rights of way and contingency costs.

"Cost-plus basis", a form of compensation in which a premium is added to the actual cost of service to determine a total amount to be paid.

"Major contract", a contract by which the commonwealth or any of its public agencies or authorities is to procure the construction, repair or rehabilitation of a publicly-owned highway, railway, bridge, tunnel, building platform or any component thereof and for which the certified estimate of cost exceeds \$50,000,000, or a contract or lease by which the commonwealth or any of its public agencies or authorities is to procure, directly or indirectly, the construction, repair or rehabilitation of a privately-owned, publicly-used highway, railway, bridge, tunnel, building platform or any component thereof.

"Oversight cost estimate", an estimate developed by the commonwealth or any agency thereof, prior to the engagement of an owner's representative, of the anticipated total cost of the services of that representative. "Owner's representative", an individual registered by the commonwealth as a professional engineer, who has not less than 5 years of experience in the construction and supervision of construction of the type which is the subject of the pertinent major contract in nature, scope and complexity.

"Owner's representative" shall mean an individual registered by the commonwealth as a professional engineer, who has not less than 5 years of experience in the construction and supervision of construction of the type which is the subject of the pertinent major contract in nature, scope and complexity.

(b) The commonwealth or any agency or authority thereof shall engage and maintain an owner's representative to provide professional project oversight with regard to any major contract. Such representative shall be an individual employed by a corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity engaged in the practice of providing project management services for public construction of the nature, scope and complexity which is the subject of the contract. A public agency may designate an existing employee as owner's representative subject to the conditions set forth in subsection (c).

(c) An existing employee of a public agency may act as its owner's representative if the following conditions are met:

(1) the employee meets or exceeds the qualifications set forth in subsection (b);

- (2) the employee has suitable experience in the construction and supervision of projects of the nature, scope and complexity of the relevant major contract; and
- (3) The employee and his employer have entered into a memorandum of understanding, contract or other comparable document establishing the independence of the employee as being equal to that of an owner's representative contracted from the private sector;
- (d) An owner's representative shall certify in writing, under the pains and penalties of perjury, that his sole responsibility shall be to the commonwealth and the agency which has retained his services. The independent owner's representative shall be wholly independent of the designer, general contractor or any subcontractor involved in the public works project and shall attest to the same in a sworn statement.
- (e) An owner's representative shall be subject to chapter 268A.
- (f) An owner's representative shall be selected and retained prior to the award of a major contract by any public agency; provided, however, that such agency shall select and procure the services of the owner's representative through a process which is documented in writing, incorporates the evaluation of qualifications and experience and is competitive in nature. The process shall utilize a system of written applications which shall be retained for inspection for a period of not less than 6 months following the selection of an owner's representative. The process shall also be promulgated in writing by the inspector general prior to the commencement of any hiring process pursuant to this section.
- (g) Any major contract executed prior to the selection of an owner's representative shall be null and void as against public policy. Prior to the award of any major contract, the public agency seeking to award the contract shall certify in writing to the inspector general that an owner's representative has been selected.
- (h) Any individual, organization or agency eligible to receive information from an owner's representative shall do so in a form and manner approved and promulgated by the inspector general. Upon receipt of such request, the owner's representative shall respond within 60 days. Such response shall contain the requested information, indicate why it is not available to the party requesting it or indicate a date certain when the information will be available and the date on which it will be provided. A party denied information pursuant to this section may appeal such denial to the inspector general.
- (i) The owner's representative shall conduct a peer review of engineering elements on its projects.
- (j) The owner's representative shall be the primary manager of cost recovery and value engineering on the project.
- (k) The owner's representative shall enjoy unfettered access to project work sites, documents, and correspondence.
- (l) The owner's representative shall file reports on the project, under oath, not later than December 31 of each year in which their contract is in effect, to the inspector general, to the secretary of transportation and public works, the house and senate chairs of the joint committee on transportation and to the state auditor.
- (m) The inspector general shall promulgate regulations governing the operations and actions of owner's representatives which shall include, but not be limited to, sanctions for misfeasance, malfeasance and the failure to adhere to any contracts or agreements executed pursuant to this section.

(n) In no instance shall an awarding agency execute a contract that pays the independent owner's representative on a cost-plus basis. Awarding agencies shall establish an oversight cost estimate for the work of an owner's representative prior to the hiring of the owner's representative.

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<b>Section 39N</b>	CONSTRUCTION CONTRACTS; EQUITABLE ADJUSTMENT IN CONTRACT PRICE FOR DIFFERING SUBSURFACE OR LATENT PHYSICAL CONDITIONS

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Section 39N. Every contract subject to section forty-four A of chapter one hundred and forty-nine or subject to section thirty-nine M of chapter thirty shall contain the following paragraph in its entirety and an awarding authority may adopt reasonable rules or regulations in conformity with that paragraph concerning the filing, investigation and settlement of such claims:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

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<b>Section 39O</b>	CONTRACTS FOR CONSTRUCTION AND MATERIALS; SUSPENSION, DELAY OR INTERRUPTION DUE TO ORDER OF AWARDING AUTHORITY; ADJUSTMENT IN CONTRACT PRICE; WRITTEN CLAIM

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Section 39O. Every contract subject to the provisions of section thirty-nine M of this chapter or subject to section forty-four A of chapter one hundred forty-nine shall contain the following provisions (a) and (b) in their entirety and, in the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the general contractor or the subcontractor may have against each other.

(a) The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

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

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<b>Section 39P</b>	CONTRACTS FOR CONSTRUCTION AND MATERIALS; AWARDING AUTHORITY'S DECISIONS ON INTERPRETATION OF SPECIFICATIONS, ETC.; TIME LIMIT; NOTICE

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Section 39P. Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the awarding authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.



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<b>Section 39Q</b>	CONTRACTS FOR CAPITAL FACILITY CONSTRUCTION; CONTENTS; ANNUAL CLAIMS REPORT

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Section 39Q. (1) Every contract awarded by any state agency as defined by section thirty-nine A of chapter seven for the construction, reconstruction, alteration, remodeling, repair or demolition of any capital facility as defined by the aforesaid section thirty-nine A shall contain the following subparagraphs (a) through (d) in their entirety:

(a) Disputes regarding changes in and interpretations of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures, which shall constitute the exclusive method for resolving such disputes. Written notice of the matter in dispute shall be submitted promptly by the claimant to the chief executive official of the state agency which awarded the contract or his designee. No person or business entity having a contract with a state agency shall delay, suspend, or curtail performance under that contract as a result of any dispute subject to this section. Any disputed order, decision or action by the agency or its authorized representative shall be fully performed or complied with pending resolution of the dispute.

(b) Within thirty days of submission of the dispute to the chief executive official of the state agency or his designee, he shall issue a written decision stating the reasons therefor, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within thirty days, he shall notify the parties to the dispute in writing of the reasons why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a decision within the thirty-day period or within the additional time period specified in such written notice shall be deemed to constitute a denial of the claim and shall authorize resort to the appeal procedure described below. The decision of the chief executive official or his designee shall be final and conclusive unless an appeal is taken as provided below.

(c) Within twenty-one calendar days of the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises his option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The hearing officer shall issue a final decision as expeditiously as possible, but in no event more than one

hundred and twenty calendar days after conclusion of the adjudicatory hearing, unless the decision is delayed by a request for extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, he shall notify all parties of the reasons for the delay and the date when the decision will issue. Failure to issue a decision within the one hundred and twenty-day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay.

(d) When the amount in dispute is less than ten thousand dollars, a contractor who is party to the dispute may elect to submit the appeal to a hearing officer experienced in construction law for expedited hearing in accordance with the informal rules of practice and procedure of the division of hearing officers. An expedited hearing under this subparagraph shall be available at the sole option of the contractor. The hearing officer shall issue a decision no later than sixty days following the conclusion of any hearing conducted pursuant to this subparagraph. The hearing officer's decision shall be final and conclusive, and shall not be set aside except in cases of fraud.

(2) The commissioner of administration shall require the division of hearings officers to prepare annually a report concerning the construction contract claims submitted to the division during the preceding twelve months, in such form as the commissioner shall prescribe. The report shall contain, at a minimum, the following information: the number of claims submitted; the names of all parties to each such claim; a brief description of the claim; the date of submission and of disposition of the claim; its disposition, whether by settlement, withdrawal, default or written decision; and the number of claims currently pending. The original of the report shall be submitted to the commissioner of administration by January fifteenth, and a copy shall be filed with the state librarian and shall be a public document.

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<b>Section 39R</b>	KEEPING AND MAINTAINING OF BOOKS, RECORDS AND ACCOUNTS; STATEMENT OF MANAGEMENT ON INTERNAL ACCOUNTING CONTROL; FINANCIAL STATEMENTS; ENFORCEMENT

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Section 39R. (a) The words defined herein shall have the meaning stated below whenever they appear in this section:

(1) "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to sections thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.

(2) "Contract" means any contract awarded or executed pursuant to sections thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A through forty-four H, inclusive, of chapter one hundred and forty-nine, which is for amount or estimated amount greater than one hundred thousand dollars.

(3) "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

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

(5) "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a *certified* opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

(6) "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he has made and sets forth his opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed

statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.

(7) "Management", when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.

(8) Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

(b) Subsection (a)(2) hereof notwithstanding, every agreement or contract awarded or executed pursuant to sections thirty-eight A1/2 to thirty-eight O, inclusive, of chapter seven, or eleven C of chapter twenty-five A, and pursuant to section thirty-nine M of chapter thirty or to section forty-four A through H, inclusive, of chapter one hundred and forty-nine, shall provide that:

(1) The contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor, and

(2) until the expiration of six years after final payment, the office of inspector general, and the commissioner of capital asset management and maintenance shall have the right to examine any books, documents, papers or records of the contractor or of his subcontractors that directly pertain to, and involve transactions relating to, the contractor or his subcontractors, and

(3) if the agreement is a contract as defined herein, the contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his description the date of the change and reasons therefor, and shall accompany said description with a letter from the contractor's independent certified public accountant approving or otherwise commenting on the changes, and

(4) if the agreement is a contract as defined herein, the contractor has filed a statement of management on internal accounting controls as set forth in paragraph (c) below prior to the execution of the contract, and

(5) if the agreement is a contract as defined herein, the contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph (d) below.

(c) Every contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the contractor and its subsidiaries reasonably assures that:

(1) transactions are executed in accordance with management's general and specific authorization;

(2) transactions are recorded as necessary

i. to permit preparation of financial statements in conformity with generally accepted accounting principles, and

ii. to maintain accountability for assets;

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

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

Every contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he has examined the statement of management on internal accounting controls, and expressing an opinion as to

(1) whether the representations of management in response to this paragraph and paragraph (b) above are consistent with the result of management's evaluation of the system of internal accounting controls; and

(2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.

(d) Every contractor awarded a contract by the commonwealth or by any political subdivision thereof shall annually file with the commissioner of capital asset management and maintenance during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the awarding authority upon request.

(e) The office of inspector general, the commissioner of capital asset management and maintenance and any other awarding authority shall enforce the provisions of this section. The commissioner of capital asset management and maintenance may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of chapter thirty A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations and guidelines may be applicable to all awarding authorities. A contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to section forty-four C of chapter one hundred and forty-nine.

(f) Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in section seven of chapter four and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of clause (2) of paragraph (b).

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XIV</b>	PUBLIC WAYS AND WORKS
<b>Chapter 82</b>	THE LAYING OUT, ALTERATION, RELOCATION AND DISCONTINUANCE OF PUBLIC WAYS, AND SPECIFIC REPAIRS THEREON
<b>Section 40</b>	DEFINITIONS

Section 40. The following words, as used in this section and sections 40A to 40E, inclusive, shall have the following meanings:—

"Company", natural gas pipeline company, petroleum or petroleum products pipeline company, public utility company, cable television company, and municipal utility company or department that supply gas, electricity, telephone, communication or cable television services or private water companies within the city or town where such excavation is to be made.

"Description of excavation location", such description shall include the name of the city or town, street, way, or route number where appropriate, the name of the streets at the nearest intersection to the excavation, the number of the buildings closest to the excavation or any other description, including landmarks, utility pole numbers or other information which will accurately define the location of the excavation.

"Emergency", a condition in which the safety of the public is in imminent danger, such as a threat to life or health or where immediate correction is required to maintain or restore essential public utility service.

"Excavation", an operation for the purpose of movement or removal of earth, rock or the materials in the ground including, but not limited to, digging, blasting, augering, backfilling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, jacking in, trenching, tunneling and demolition of structures, excluding excavation by tools manipulated only by human power for gardening purposes and use of blasting for quarrying purposes.

"Excavator", any entity including, but not limited to, a person, partnership, joint venture, trust, corporation, association, public utility, company or state or local government body which performs excavation operations.

"Premark", to delineate the general scope of the excavation or boring on the paved surface of the ground using white paint, or stakes or other suitable white markings on nonpaved surfaces. No premarking shall be acceptable if such marks can reasonably interfere with traffic or pedestrian control or are misleading to the general public. Premarking shall not be required of any continuous excavation that is over 500 feet in length.

"Safety zone", a zone designated on the surface by the use of standard color-coded markings which contains the width of the facilities plus not more than 18 inches on each side.

"Standard color-coded markings", red - electric power lines, cables, conduit or light cables; yellow - gas, oil, street petroleum, or other gaseous materials; orange - communications cables or conduit, alarm or signal lines; blue - water, irrigation and slurry lines; green - sewer and drain lines; white - premark of proposed excavation.

"System", the underground plant damage prevention system as defined in section 76D of chapter 164.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44A</b>	DEFINITIONS APPLICABLE TO SECS. 44A TO 44H; COMPETITIVE BIDS ON CONSTRUCTION, ETC., OF PUBLIC WORKS; AWARD; BONDS; EXTREME EMERGENCY SITUATIONS; RECORDS CONTRACTS NOT SUBJECTED TO COMPETITIVE BID PROCESS

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Section 44A. (1) The words defined in this section shall have the meaning set forth below whenever they appear in sections forty-four A through forty-four H, inclusive, of this chapter unless indicated otherwise or unless the context in which they are used clearly requires a different meaning.

"Commissioner", means the commissioner of the division of capital asset management and maintenance or his designee.

"Public Agency" means a department, agency, board, commission, authority, or other instrumentality of the commonwealth or political subdivision of the commonwealth, or two or more subdivisions thereof but not including the Massachusetts Bay Transportation Authority;

"Responsible" means demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with the provisions of section forty-four D of this chapter;

"Eligible" means able to meet all requirements for bidders or offerors set forth in sections forty-four A through forty-four H of this chapter and not debarred from bidding under section forty-four C of this chapter or any other applicable law, and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

"Modular Building", a pre-designed building or units of a pre-designed building assembled and equipped with internal plumbing, electrical or similar systems prior to movement to the site where such units are attached to each other and such building is affixed to a foundation and connected to external utilities; or any portable structure with walls, a floor, and a roof, designed or used for the shelter of persons or property, transportable in one or more sections and affixed to a foundation and connected to external utilities.

"Procurement", buying, purchasing, or otherwise acquiring and installing a modular building, and all functions that pertain to the acquisition and installation of a modular building, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Proprietary environmental technology systems", systems, in the town of Nantucket, including solid waste related equipment, supporting structures, and buildings, designed, manufactured, and produced under exclusive individual right to sell such product, pertaining to solid waste related environmental protection or remediation. Such systems shall include, but not be limited to, sequential, turnkey, construction management, design/build procurement, and the phasing of such procurement, including approval of design and construction stages as separate or combined phases.

(A) Every contract or procurement for the construction, reconstruction, installation, demolition, maintenance or repair of a building by a public agency estimated to cost less than \$10,000 shall be obtained through the exercise of sound business practices as defined in section 2 of chapter 30B. The public agency shall make and keep a record of each procurement that, at a minimum, shall include the name and address of the person from whom the services were procured. A public agency that utilizes a vendor on a statewide contract procured through the operational services division of the commonwealth, or a blanket contract procured by the public agency pursuant to this subsection, shall be deemed to have obtained the contract through sound business practices.

(B) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building estimated to cost not less than \$10,000 but not more than \$50,000 shall be awarded to the responsible person offering to perform the contract at the lowest price. The public agency shall make public notification of the contract and shall seek written responses from no fewer than 3 persons who customarily perform such work. The solicitation shall include a scope-of-work statement that defines the work to be performed and provides potential responders with sufficient information regarding the objectives and requirements of the public agency and the time period within which the work shall be completed. The public agency shall record the names and addresses of all persons from whom written responses were sought, the names of the persons submitting written responses and the date and amount of each written response. A public agency may utilize a vendor list established through a statewide contract procured through the operational services division to identify 1 or more of the persons from whom it will seek written responses for purposes of this paragraph. A public agency may also procure a blanket contract to establish a listing of vendors in certain defined categories of work that are under contract to provide services for multiple individual tasks of not more than \$50,000 each, and from whom written responses will be sought. Any such blanket contract procured by the awarding authority shall be procured pursuant to either section 39M of chapter 30 or sections 44A to 44J, inclusive, of chapter 149 which are applicable to projects over \$50,000. For purposes of this paragraph, the term "public notification" shall include, but not be limited to, posting at least 2 weeks before the time specified in the notification for the receipt of responses, the contract and scope-of-work statement: (1) on the website of the public agency, (2) on the COMMBUYS system administered by the operational services division, (3) in the central register published pursuant to section 20A of chapter 9 and (4) in a conspicuous place in or near the primary office of the public agency; provided, however, that if the public agency obtains a minimum of 2 written responses from a vendor list established through a blanket contract or a statewide contract procured through the operational services division, and the lowest of those written responses is deemed acceptable to the public agency, public notification is not required.

(C) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than \$50,000 but not more than \$150,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of section 39M of chapter 30, shall be awarded to the lowest responsible and eligible bidder on the basis of competitive bids publicly opened and read in accordance with the procedure set forth in said section 39M of said chapter 30. The term



"pumping station" as used in this section shall mean a building or other structure which houses solely pumps and appurtenant electrical and plumbing fixtures.

(D) Every contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency estimated to cost more than \$150,000, except for a pumping station to be constructed as an integral part of a sewer construction or water construction project bid under the provisions of section 39M of chapter 30, shall be awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in accordance with the procedure set forth in section 44A to 44H, inclusive.

(E) When the general court has approved the use of an alternative mode of procurement of construction for a project pursuant to section 7E of chapter 29, the awarding authority responsible for procuring construction services for the project shall follow the policies and procedures of this section and of section 44B to 44H, inclusive, to the extent compatible with the mode of construction procurement selected.

(F) Notwithstanding paragraph (E), a public agency may undertake the procurement of modular buildings, in accordance with section 44E. A public agency may procure site work for modular buildings, including but not limited to, construction of foundations, installations, and attachment to external utilities, or any portion of site work, either in combination with the procurement of modular buildings pursuant to section 44E or on the basis of competitive bids pursuant to the paragraph (E). Notwithstanding the paragraph (E), a public agency may procure energy management services in accordance with section 11C of chapter 25A and regulations promulgated thereunder.

(G) Every contract by a state agency or state assisted contract for design, construction, reconstruction, installation, demolition, maintenance or repair shall set forth the participation goals of minority and women workers to be employed on each such contract and the processes and procedures to ensure compliance with those workforce participation goals, including reporting and enforcement provisions.

(3) The award of every such contract in connection with which approval by an officer, board or agency of the federal government is required shall be made within thirty days, Saturdays, Sundays and legal holidays excluded, after such approval; and the award of every contract subject to this section in connection with which approval by an officer, board or agency of the federal government is not required shall be made within thirty days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids therefor. If the bidder selected as the general contractor fails to perform his agreement to execute a contract in accordance with the terms of his bid and furnish a performance bond and also a labor and materials or payment bond as stated in his bid in accordance with section forty-four E, an award shall be made to the next lowest responsible and eligible bidder, subject to the provisions of sections forty-four A to forty-four H, inclusive, of this chapter. The thirty-day time limit shall not be applicable to a second or subsequent award made after expiration of the time limit with the consent of said next lowest responsible and eligible bidder, and made because the original award made within the time limit was invalid, or because the bidder failed to execute the contract or to provide a performance bond and labor and materials or payment bond.

(4) In cases of extreme emergency, the awarding authority may, with the prior approval of the commissioner, award a contract for that portion of the work necessary to preserve the health or safety of persons or property or to

alleviate an imminent security threat on the basis of such competitive bids or proposals as it can obtain in time to care for the extreme emergency and without public opening of the bids or proposals.

Where the nature of the emergency prevents the awarding authority from obtaining the prior approval of the commissioner, the awarding authority may contract for the necessary work without said prior approval; provided, however, that the approval of the commissioner shall still be sought at the earliest possible time; and provided, further, that if the commissioner at that time fails to approve the emergency determination the awarding authority shall promptly cease all work for which the emergency determination was denied. In such cases, the contractor shall be entitled to payment for the fair value of the labor and materials furnished prior to cessation of the work.

The commissioner shall maintain a record of all contracts awarded pursuant to this subsection, containing a description of the circumstances and the reasons for the commissioner's determination.

(5) (a) Notwithstanding the provisions of this section or any other general or special law to the contrary, a municipality may enter into a contract for proprietary environmental technology systems as defined in subsection (1) of this section without said contract being subject to the competitive bid process as set forth in sections thirty-eight A 1/2 to thirty-eight O, inclusive, of chapter seven; this section and sections forty-four B to forty-four H, inclusive, of this chapter, and section thirty-nine M of chapter thirty; provided that the awarding authority meets the conditions set forth and receives the approvals required in paragraph (b) of this subsection.

(b) Prior to the issuance of any request for proposal with respect to the awarding of any contract pursuant to the provisions of paragraph (a) of this subsection, the awarding authority shall meet or obtain each of the following conditions or required approvals: (1) the municipality shall appoint qualified persons to conduct a thorough review of all available environmental technology, including both proprietary and non-proprietary environmental technology, and if the conclusion of this review is that a contract for proprietary environmental technology systems is in the public interest, such conclusion shall be supported by sound documented reasons in writing available for public inspection; (2) the city council, the board of selectmen, or the town meeting shall take a majority vote finding that it is in the public interest to enter into a contract for proprietary environmental technology systems, as defined in subsection (1) of this section, providing such vote is supported by the conclusion of the review conducted pursuant to condition (1); (3) both the attorney general and the commissioner of the department of environmental protection shall grant written approval; (4) said contract shall be subject to any limitation in the waiver of sections thirty-eight A 1/2 to thirty-eight O, inclusive, of chapter seven, sections forty-four A to forty-four H of chapter one hundred and forty-nine, and section thirty-nine M of chapter thirty imposed by either the attorney general or the commissioner of the department of environmental protection as a condition for a grant of approval by said officers; and (5) every proprietary environmental technology systems contract shall be as compatible with sections thirty-eight A to thirty-eight O, inclusive, of chapter seven, sections forty-four A to forty-four H of chapter one hundred and forty-nine, and section thirty-nine M of chapter thirty as is feasible for the procurement of the proprietary environmental technology systems chosen.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44A</b>	FAIR COMPETITION FOR BIDDERS ON CONSTRUCTION
<b>1/2</b>	

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Section 44A 1/2. (a) A public agency, before entering into a contract for design services pursuant to section 38D or section 38K of chapter 7, shall contract for the services of an owner's project manager to serve as the public agency's agent and consultant during the planning, design and implementation of a contract for the construction, reconstruction, installation, demolition, maintenance or repair of any building by the public agency estimated to cost not less than \$1,500,000. The duties of the owner's project manager shall include, but need not be limited to, providing advice and consultation with respect to design, value engineering, scope of the work, cost estimating, general contractor and subcontractor prequalification, pursuant to section 44D 1/2 or 44D 3/4 when applicable, scheduling, construction and the selection, negotiation with and oversight of a designer and a general contractor for the project, ensuring the preparation of time schedules which shall serve as control standards for monitoring performance of the building project, and assisting in project evaluation including, but not limited to, written evaluations of the performance of the design professional, contractors, and subcontractors. For the purposes of this subsection, the term "owner's project manager" shall mean an individual, corporation, partnership, sole proprietorship, joint stock company, joint venture, or other entity engaged in the practice of providing project management services for the construction and supervision of construction of buildings. The owner's project manager shall be a person who is registered by the commonwealth as an architect or professional engineer and who has at least 5 years experience in the construction and supervision of construction of buildings or a person, if not registered as an architect or professional engineer, who has at least 7 years experience in the construction and supervision of construction of buildings. The owner's project manager shall be independent of the designer, general contractor or any sub-contractor involved in the building project.

(b) Notwithstanding subsection (a), a public agency may assign an existing employee to serve as the owner's project manager, if that employee meets or exceeds the minimum qualifications as outlined in subsection (a) and has experience in the construction and supervision of construction of buildings of similar size and scope of complexity as the project to which he is assigned.

(c) The public agency shall use a qualifications based selection process to procure the services of an owner's project manager.

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title XXI** LABOR AND INDUSTRIES

**Chapter** LABOR AND INDUSTRIES  
**149**

**Section 44B** PLANS AND SPECIFICATIONS; BID DEPOSITS

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Section 44B. (1) The awarding authority shall prepare for bidding purposes a sufficient number of sets of plans and specifications so that there will be available without cost or charge, except for a fully refundable deposit for return of the same in good condition, one complete set of specifications and plans drawn on a scale of not less than one-eighth inch to one foot except for site plans and which have not been mechanically reduced, for each person requesting the same.

The awarding authority shall prepare and update daily a list of persons who have requested a set of plans and specifications, indicating clearly which plans and specifications or pages thereof were requested. Such list shall be posted prominently at the office of the awarding authority and sent on a weekly basis to the central register published by the state secretary pursuant to section twenty of chapter nine, and such other publications as the commissioner designates.

(2) Every bid submitted for a contract subject to section forty-four A and every sub-bid submitted in connection with such a contract for a subtrade pursuant to section forty-four F shall be accompanied by a bid deposit in the form of a bid bond, or cash, or a certified check on, or a treasurer's or cashier's check issued by, a responsible bank or trust company, payable to the commonwealth or public agency in the name of which the contract for the work is to be executed. A bid bond shall be (a) in a form satisfactory to the awarding authority, (b) with a surety company qualified to do business in the commonwealth and satisfactory to the awarding authority and (c) conditioned upon the faithful performance by the principal of the agreements contained in the bid.

The amount of such bid deposit shall be five per cent of the value of the bid.

(3) All bid deposits of general bidders, except those of the three lowest responsible and eligible general bidders, shall be returned within five days, Saturdays, Sundays and legal holidays excluded, after the opening of the general bids. The bid deposits of the three lowest responsible and eligible general bidders shall be returned upon the execution and delivery of the general contract or, if no award is made, upon the expiration of the time prescribed in section forty-four A for making an award; except that, if any general bidder who fails to perform his agreement to execute a contract and furnish a performance bond and also a labor and materials or payment bond as stated in his bid in accordance with section forty-four E, his bid deposit shall become and be the property of the commonwealth or the public agency to which it is payable, as liquidated damages; provided that the amount of the bid deposit which becomes the property of the commonwealth or the public agency 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, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the general bidder, his bid deposit shall be returned to him.

(4) All bids deposits of sub-bidders, except (a) those 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, shall be returned within five days, Saturdays, Sundays and legal holidays excluded, after the opening of the general bids. The bid deposits of sub-bidders not returned pursuant to the preceding sentence shall be returned within 5 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 sub-contract with the general bidder selected as the general contractor, contingent upon the execution of the general contract, and, if required to do so pursuant to the prequalification process under section 44D3/4 or if requested to do so in the general bid by such general bidder, to furnish a performance and payment bond as stated in his sub-bid in accordance with subsection (2) of section 44F, the bid deposit of that sub-bidder shall become and be the property of the commonwealth or the governmental unit thereof to which it is payable, as liquidated damages; provided, that the amount of the bid deposit which becomes the property of the commonwealth or the governmental unit thereof 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, bona fide clerical or mechanical error of a substantial nature, or other unforeseen circumstances affecting any such sub-bidder, his bid deposit shall be returned to him.

(5) In addition to the provisions for the return of bid deposits in the first sentence of subsection (3) and (4) upon a receipt of a bid bond in an amount not less than the amount of the required bid deposit, an awarding authority shall return any bid deposit of a bidder forthwith after public opening of bids. The bid bond shall be in an amount and in the form provided in subsection (2).

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title XXI** LABOR AND INDUSTRIES

**Chapter 149** LABOR AND INDUSTRIES

**Section 44C** SUSPENSION OR DEBARMENT OF CONTRACTORS

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Section 44C. The commissioner may suspend or debar contractors in accordance with the provisions of section twenty-nine F of chapter twenty-nine.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44D</b>	SUBMISSION OF BID OR OFFER; APPLICATION FOR CERTIFICATION

Section 44D. (1) (a) Every bid or offer submitted for a contract subject to section forty-four A shall be accompanied by a copy of a certificate of eligibility issued by the commissioner showing that the bidder or offeror has the classification and capacity rating to perform the work required. The bid or offer shall also be accompanied by an update statement in such form as the commissioner shall prescribe. A blank copy of such form shall be furnished by the awarding authority to every person or business entity requesting a copy. The update form shall provide space for information regarding all projects completed by the bidder or offeror since the date of certification of eligibility, all projects which the bidder or offeror currently has under contract including the percentage of work on such projects not completed, the names and qualifications of the personnel who will have supervisory responsibility for the performance of the contract, any significant changes in the bidder's or offeror's financial position or business organization since the date of certification of eligibility, and such other relevant information as the commissioner shall prescribe. The bidder or offeror shall also include in its bid or offer and update statement the list of completed construction projects submitted to the division in its most recent application for contractor certification. Any bid or offer submitted without the appropriate certificate and update statement shall be invalid.

(b) The applicant shall certify under penalties of perjury at the conclusion of the application to bid that there have been no substantial changes in his financial position or business organization other than those changes noted within the application since the applicant's most recent prequalification statement and that the bid to be made will be in all respects bonafide, fair and made without collusion or fraud with any other person. "Person" here means any natural person, joint venture, partnership, corporation or other business or legal entity which sells materials, equipment or supplies used in or for, or engages in the performance of, the same or similar construction, reconstruction, installation, demolition, maintenance or repair work or any part thereof.

(2) The division of capital asset management and maintenance shall accept applications for certification in such form as the commissioner shall prescribe, signed by the applicant under penalties of perjury, supplying information concerning the applicant's form of organization, its principals and key personnel; the applicant's experience on public and private construction projects over the past five years or on the twenty projects most recently completed; all legal or administrative proceedings currently pending against the applicant or concluded adversely to the applicant within the past five years which relate to the procurement or performance of any public or private construction contract, the nature of any financial, personal or familial relationship to any public or private construction project owners listed on the application as constituting prior construction experience; and such other information as the commissioner shall deem relevant to the determination of the applicant's qualifications and responsibility. The application shall include

a statement of financial condition prepared by a certified public accountant which shall contain information concerning the applicant's current assets and liabilities, plant and equipment; bank and credit references, bonding company and maximum bonding capacity; and such other information as the commissioner shall deem relevant to an evaluation of the applicant's financial capacity and responsibility. The information contained in the application shall be current at the time of filing; provided, however, that the statement of financial condition shall pertain to the applicant's most recent, completed fiscal year. Any materially false statement in the application or update statement may, in the discretion of the awarding authority, result in termination of any contract awarded the applicant by the awarding authority, and shall constitute cause for debarring the applicant from future public work as provided in section 44C and shall subject the applicant to the punishments for perjury as set forth in section 1 of chapter 268. An application for a certificate of eligibility shall not be a public record as defined in section 7 of chapter 4.

(3) The division of capital asset management and maintenance shall evaluate every applicant on the basis of the application and on relevant past performance according to procedures and criteria which the commissioner shall prescribe by regulations or guidelines, including evidence of the applicant's ability to advance the commonwealth's goals under section 44A3/4 and section 6 of chapter 7C. Such criteria shall include the following: — the record of the applicant's performance including, where available, written evaluations of the applicant's performance on public and private jobs over the past five years; the applicant's prior experience on projects of various size and type; the experience and qualifications of supervisory personnel; the maximum amount of work the applicant is capable of undertaking as demonstrated by the applicant's financial condition, bonding capacity, size of previous projects, and present and anticipated work commitments; information on and evidence of the applicant's compliance record with respect to minority-owned business and women-owned business inclusion goals and workforce inclusion goals, if applicable; and any other relevant criteria which the commissioner may prescribe. The regulations and guidelines shall provide that, to the extent possible, the criteria considered shall be assigned separate designated numerical values and weights, and the applicant shall be assigned an overall numerical rating on the basis of all criteria. The applicant shall indicate among categories established by the commissioner the classes of work and aggregate amount of work for which certification is sought. The division of capital asset management and maintenance shall issue a certificate as warranted by the evaluation which shall be effective for one year from the date issued, showing the classes of work and aggregate amount of work on which the applicant is eligible to bid. Said certificate shall include the number of prior construction projects evaluated by the division of capital asset management and maintenance, the contractor's average numerical value on those projects evaluated, and the number of projects given numerical values below a passing score, as defined by the division's regulations or guidelines, during each of the previous 5 years.

(4) The division of capital asset management and maintenance shall promptly notify an applicant of its preliminary determination regarding the conditions of the certification, or a denial of certification, or of decertification pursuant to this section, and the reasons therefor. An applicant aggrieved by the division's preliminary determination may, within five business days of receipt of notice, request copies of the information upon which the division relied in making its preliminary determination. Within ten business days of receipt of



notice, the applicant may submit further information to the division with a request for reconsideration. The division shall issue a final determination regarding an application for certification within thirty business days from the date of its preliminary determination, unless the applicant and the division agree to extend the thirty day period.

Any applicant aggrieved by the final determination of the division may appeal in writing to the attorney general within five business days of receipt of final notice thereof. Within thirty calendar days of such appeal, the attorney general shall investigate the matter and issue a written decision. The attorney general may institute and prosecute proceedings in the superior court to enforce the provisions of this section on the same terms as set forth in section forty-four H. Following such decision by the attorney general, or failure to render a decision within the thirty-day period, either the division or the applicant may seek remedies at law.

(5) The commissioner may, upon receipt of additional information regarding a contractor's qualifications, decertify a contractor or reduce the classes of work and amount of work on which the contractor is eligible to bid during the period for which the contractor was prequalified. Upon such a decision, the commissioner shall follow the procedures established by this section.

(6) In determining who is the lowest responsible and eligible bidder as required in paragraph (2) of section forty-four A, the awarding authority shall consider the information submitted by the bidder in the update statement. If the awarding authority determines that the low bidder is not responsible and eligible, the awarding authority shall reject the bidder and evaluate the next low bidder in accordance with this section; the awarding authority shall give notice of such action to the division of capital asset management and maintenance.

In determining which is the most advantageous offer, the awarding authority shall consider the information submitted by the offerors on the update statement.

(7) The division of capital asset management and maintenance shall develop a standard contractor evaluation form that shall be completed by every public agency as defined in section 44A, upon completion of a building project under its control, and submitted to the division for the contractor's qualification file. The official from the public agency, or the owner's representative, shall certify that the information contained on the contractor evaluation form represents, to the best of his knowledge, a true and accurate analysis of the contractor's performance record on that contract. The public agency shall mail a copy of the contractor evaluation form to the contractor and the contractor shall, within 30 days, submit a written response to the division disputing any information contained in the evaluation form and setting forth any additional information concerning the building project or the oversight of the contract by the public agency that may be relevant to the evaluation of the contractor's performance on the contract. The division shall attach any such response to the evaluation form for inclusion in the contractor's qualification file. No person shall be liable for any injury or loss to a contractor as a result of the completion of a contractor evaluation form as required by this section unless the individual completing the form has been found by a court of competent jurisdiction to have acted in a willful, wanton or reckless manner. If a suit is commenced by a contractor against a public employee, an owner's representative, an architect or an engineer who has completed a contractor evaluation form as required by this section seeking to recover damages resulting from injury caused by such evaluation, the public agency for whom such evaluation form was completed, or the commonwealth if such evaluation was completed for a state agency, shall provide for the

legal representation of said employee, owner's representative, architect or engineer. Such public agency, or the commonwealth, shall also indemnify such person from all financial loss and expenses, including but not limited to legal fees and filing costs, in an amount not to exceed \$1,000,000. No such person shall be indemnified for losses other than legal fees and filing costs under this section if such person is found by a court or a jury to have acted in a willful, wanton or reckless manner. Evaluations, including any responses submitted by the contractor, submitted to the division pursuant to this subsection shall be a public record as defined in section 7 of chapter 4.

At approximately the 50 per cent completion stage of a building project under its control, the awarding authority shall advise the contractor in writing of the awarding authority's preliminary evaluation of the contractor's performance on the project for informational purposes.

Any public agency that fails to complete and submit the contractor evaluation form, together with any written response by any contractor, to the division within 70 days of the completion of a project shall be ineligible for the receipt of any public funds disbursed by the commonwealth for the purposes of any public buildings or public works projects.

(8) With the exception of subsection (7), this section shall not apply to sub-bidders.

(9) The commissioner may issue such rules, regulations, orders, guidelines and policies as deemed necessary or expedient to effectuate the purposes of this section.

(10) All applications submitted by contractors for certification in the category of asbestos removal shall contain evidence of a current license issued under section six B. Failure to furnish such evidence shall require the division of capital asset management and maintenance to find the applicant ineligible to bid. A general contractor who subcontracts the asbestos removal work must certify in writing to the awarding authority that if awarded the contract, the general contractor will subcontract the work involving the removal, containment, or encapsulation of asbestos or material containing asbestos to a subcontractor who is licensed under said section six B.

In no event shall any public contract involving the removal, containment or encapsulation of asbestos or material containing asbestos be performed by anyone other than a general contractor or subcontractor licensed to perform such work.

(11)(i) Every sub-bid submitted for a contract subject to section 44A shall be accompanied by a copy of a certificate of eligibility issued by the commissioner showing that the sub-bidder has been certified to participate on public construction projects and to perform the work required. The sub-bid shall also be accompanied by an update statement in a form as the commissioner shall prescribe. A blank copy of the form shall be furnished by the awarding authority to every person or business entity requesting a copy. The update form shall provide space for information regarding all projects in which the sub-bidder participated on since the date of certification of eligibility, all projects which the sub-bidder currently has under contract including the percentage of work on such projects not completed, the names and qualifications of the personnel who will have supervisory responsibility for the performance of the contract, any significant changes in the sub-bidder's financial position or business organization since the date of certification of eligibility, and such other relevant information as the commissioner shall prescribe. The sub-bidder shall also include in its bid and update statement the list of completed construction projects submitted to the

division in its most recent application for subcontractor certification. Any sub-bid submitted without the appropriate certificate and update statement shall be invalid.

(ii) The applicant shall certify under penalties of perjury at the conclusion of the application to bid that there have been no substantial changes in his financial position or business organization other than those changes noted within the application since the applicant's most recent update statement and that the sub-bid to be made will be in all respects bonafide, fair and made without collusion or fraud with any other person. As used in this subsection, "Person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity which sells materials, equipment or supplies used in or for, or engages in the performance of, the same or similar construction, reconstruction, installation, demolition, maintenance or repair work or any part thereof.

(12) The division of capital asset management and maintenance shall accept applications for subcontractor certification in a form as the commissioner shall prescribe, signed by the applicant under penalties of perjury, supplying information concerning the applicant's form of organization, its principals and key personnel; the applicant's experience on public and private construction projects over the past 3 years or on the 10 projects on which the applicant most recently performed work; all legal or administrative proceedings currently pending against the applicant or concluded adversely to the applicant within the past 3 years which relate to the procurement or performance of any public or private construction contract, the nature of any financial, personal or familial relationship to any public or private construction project owners listed on the application as constituting prior construction experience; and such other information as the commissioner considers relevant to the determination of the applicant's qualifications and responsibility. The application shall include a statement of financial condition prepared by a certified public accountant which shall include, but not necessarily be limited to, information concerning the applicant's current assets and liabilities, bank and credit references, bonding company and maximum bonding capacity; and such other information as the commissioner shall consider relevant to an evaluation of the applicant's financial capacity and responsibility. The information contained in the application shall be current at the time of filing; but, the statement of financial condition shall pertain to the applicant's most recent, completed fiscal year. Any materially false statement in the application or update statement may, in the discretion of the awarding authority, result in termination of any contract awarded the applicant by the awarding authority, and shall constitute cause for debarring the applicant from future public work as provided in section 44C and shall subject the applicant to the punishments for perjury as set forth in section 1 of chapter 268. Applications for a certificate of eligibility shall not be a public record as defined in section 7 of chapter 4.

Every applicant shall pay to the division, upon filing his application for subcontractor certification, a nonrefundable fee to be determined annually by the commissioner of administration and finance under section 3B of chapter 7. The application fee shall not be less than \$100.

(13) The division of capital asset management and maintenance shall evaluate every applicant on the basis of the application and on relevant past performance according to procedures and criteria which the commissioner shall prescribe by regulations or guidelines. Such criteria shall include the record of the applicant's performance including, where available, written evaluations of the applicant's performance on public and private jobs over the past 3 years; the experience and qualifications of supervisory personnel; and

any other relevant criteria that the commissioner may prescribe. The regulations and guidelines shall provide that, to the extent possible, the criteria considered shall be assigned separate designated numerical values and weights, and the applicant shall be assigned an overall numerical rating on the basis of all criteria. The applicant shall indicate among categories established by the commissioner the class of work for which certification is sought. The division of capital asset management and maintenance shall issue a certificate as warranted by the evaluation which shall be effective for 1 year from the date issued, showing the class of work on which the applicant is eligible to bid. The certificate shall include the number of prior construction projects evaluated by the division of capital asset management and maintenance, the contractor's average numerical value on those projects evaluated, and the number of projects given numerical values below a passing score, as defined by the division's regulations or guidelines, during each of the previous 3 years.

(14) The division of capital asset management and maintenance shall promptly notify an applicant of its preliminary determination regarding the conditions of the certification, or a denial of certification, or of decertification pursuant to this section, and the reasons therefor. An applicant aggrieved by the division's preliminary determination may, within 5 business days of receipt of notice, request copies of the information upon which the division relied in making its preliminary determination. Within 10 business days of receipt of notice, the applicant may submit further information to the division with a request for reconsideration. The division shall issue a final determination regarding an application for certification within 30 business days from the date of its preliminary determination, unless the applicant and the division agree to extend the 30-day period.

Any applicant aggrieved by the final determination of the division may appeal in writing to the attorney general within 5 business days of receipt of final notice thereof. Within 30 calendar days of the appeal, the attorney general shall investigate the matter and issue a written decision. The attorney general may institute and prosecute proceedings in the superior court to enforce this section on the same terms as set forth in section 44H. Following the decision by the attorney general, or failure to render a decision within the 30-day period, either the division or the applicant may seek remedies at law.

(15) The commissioner may, upon receipt of additional information regarding a subcontractor's qualifications, decertify a subcontractor. Upon that decision, the commissioner shall follow the procedures established by this section.

(16) The division of capital asset management and maintenance shall develop a standard subcontractor evaluation form that shall be completed by every public agency as defined in section 44A, upon completion of a building project under its control, and submitted to the division for the subcontractor's qualification file. The official from the public agency, or the owner's representative, shall certify that the information contained on the contractor evaluation form represents, to the best of his knowledge, a true and accurate analysis of the contractor's performance record on that contract. The public agency shall mail a copy of the subcontractor evaluation form to the subcontractor and the subcontractor shall, within 30 days, submit a written response to the division disputing any information contained in the evaluation form and setting forth any additional information concerning the building project or the oversight of the contract that may be relevant to the evaluation of the subcontractor's performance on the contract. The division shall attach any such response to the evaluation form for inclusion in the subcontractor's qualification file. No person shall be liable for any injury or loss to a subcontractor as a result of the completion of a subcontractor evaluation form

as required by this section unless the individual completing the form has been found by a court of competent jurisdiction to have acted in a willful, wanton or reckless manner. If a suit is commenced by a subcontractor against a public employee, an owner's representative, an architect or an engineer who has completed a subcontractor evaluation form as required by this section seeking to recover damages resulting from injury caused by such evaluation, the public agency for whom the evaluation form was completed, or the commonwealth if the evaluation was completed for a state agency, shall provide for the legal representation of the employee, owner's representative, architect or engineer. The public agency, or the commonwealth, shall also indemnify the person from all financial loss and expenses, including but not limited to legal fees and filing costs, in an amount not to exceed \$1,000,000. No person shall be indemnified for losses other than legal fees and filing costs under this section if the person is found by a court or a jury to have acted in a willful, wanton or reckless manner.

Evaluations, including any responses submitted by the contractor, submitted to the division pursuant to this subsection shall be a public record as defined in section 7 of chapter 4.

Any public agency that fails to complete and submit the subcontractor evaluation form, together with any written response by any subcontractor, to the division within 90 days of the completion of a project shall be ineligible to receive any public funds disbursed by the commonwealth for the purposes of any public buildings or public works projects.

(17) The commissioner may issue rules, regulations, orders, guidelines and policies considered necessary or expedient to effectuate the purposes of this section.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44D 1/2</b>	GENERAL CONTRACTOR BIDS; PREQUALIFICATION PROCEDURES

Section 44D 1/2. (a) Notwithstanding section 44E, an awarding authority on contracts subject to section 44A and which are estimated to cost not less than \$10,000,000 shall prequalify general contractors to submit general bids in accordance with the provisions of subsections (a) to (j), inclusive; provided, that on such contracts subject to section 44A and which are estimated to cost not less than \$100,000 but not more than \$10,000,000, an awarding authority may elect to prequalify general contractors to submit general bids in accordance with subsections (a) to (j), inclusive. When prequalifying general contractors, the awarding authority shall initiate said prequalification through the solicitation of responses to a request for qualifications pursuant to subsection (d) of this section.

(b)(1) Notwithstanding subsection (a), the division of capital asset management and maintenance, the Massachusetts Port Authority, the Massachusetts Water Resources Authority, the Massachusetts State Colleges Building Authority, and the University of Massachusetts Building Authority, hereinafter referred to as "exempt agencies", shall not be subject to said subsection (a), but may elect to prequalify general contractors to submit general bids in accordance with the subsections (c) to (j), inclusive.

(2) For cases involving security sensitive information as defined by subclause (n) of clause Twenty-sixth of section 7 of chapter 4 and in order to maintain the confidentiality of security sensitive information, the awarding authority may, with prior approval of the commissioner, implement a prequalification process whereby the awarding authority selects a final list of a minimum of 3 general contractors who are eligible to submit bids and the awarding authority may award a contract to the lowest bidder amongst the final list of bidders. The commissioner of the division of capital asset management and maintenance shall promulgate regulations to implement this paragraph.

(c) Before issuing a request for qualifications, hereinafter referred to as RFQ, the awarding authority shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted in response to the RFQ issued pursuant to subsection (d). The prequalification committee shall be comprised of 1 representative of the designer and 3 representatives of the awarding authority. One of the representatives of the awarding authority shall be the owner's project manager if an owner's project manager is required on the building project pursuant to this section.

(d) When prequalifying general contractors, the awarding authority shall initiate the prequalification process through public notice of the building project and the solicitation of responses to the RFQ from general contractors. The public notice and solicitation shall include:

(1) the time and date for receipt of responses to the RFQ, the address of the office to which the responses are to be delivered, and the timeframe in which the public agency will respond to said responses;

(2) a general description of the project;

- (3) the evaluation procedure and the criteria for the prequalification of general contractors, including the point rating system, and the schedule for the evaluation process;
- (4) the anticipated schedule and estimated construction cost for the building project;
- (5) a listing of the project team including the awarding authority, the designer, and awarding authority's owner's project manager, if applicable;
- (6) a statement indicating that the RFQ will be used to prequalify general contractors who will be invited to submit a bid pursuant to section 44E;
- (7) a prohibition against any unauthorized communication or contact with the public agency outside of official pre-bid meetings; and if desired,
- (8) any limitation on the size and number of pages to be included in the response to the RFQ desired by the public agency.

(e) The awarding authority shall require interested general contractors to submit a statement of qualifications in response to the RFQ issued pursuant to subsection (d). The RFQ shall require only the information contained in paragraphs (1) to (4), inclusive, of this subsection, and shall identify the specific point allocation for each category and sub-category of information. Within each category of information, public agencies may use discretion in allocating points among the subcategories, consistent with the total points for the category.

(1) *Management Experience (50 points; minimum of 25 required for approval):—*

- (i) Business owners, The name, title, years with firm of the owner(s) of the business.
- (ii) Management personnel, The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel.
- (iii) Similar project experience, The project name(s), description, original contract sum, final contract sum with explanation, and date completed of similar projects.
- (iv) Terminations, A list of any projects on which the firm was terminated or failed to complete the work.
- (v) Legal proceedings, A list of all legal or administrative proceedings currently pending against the general contractor or concluded adversely to the general contractor within the past 5 years which relate to the procurement or performance of any public or private construction contract.
- (vi) Safety record, The 3-year history of the firm's workers' compensation experience modifier.
- (vii) Compliance Record, Information on and evidence of evidence of the firm's compliance record with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable.

(2) *References (30 points; minimum of 15 required for approval):*

- (i) project references, References from owners and architects for all projects listed in clause (iii) of paragraph (1), including project names and the names of the owners and architects, with address, telephone and fax number, and contact person for each.
- (ii) Credit references, A minimum of 5 credit references, including the telephone and fax number of contact person from key suppliers, vendors and banks.

(iii) Public project record, A list of all completed public building construction project or projects as defined in section 44A during the past 3 years with owner's name, address, telephone and fax number and contact person.

(3) *Capacity to Complete Projects (20 points; minimum of 10 required for approval):*

(i) Audited financial statement for the most recent fiscal year, provided that financial information submitted shall remain confidential and shall not be a public record under section 7 of chapter 4.

(ii) Revenue under contract for the next 3 fiscal years.

(4) Mandatory requirements, for which no points are assigned:

(i) A commitment letter for payment and performance bonds at 100 per cent of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570.

(ii) A certificate of eligibility issued by the division of capital asset management and maintenance pursuant to section 44D, showing a capacity rating sufficient for the project, and an update statement.

The statement of qualifications shall be signed under pains and penalties of perjury.

(f) The public notice and solicitation required in subsection (d) shall be advertised in a newspaper of general circulation in the area in which the building project is located, in the central register pursuant to section 20A of chapter 9, and within the COMMBUYS system. The public notice and solicitation shall be given not less than 2 weeks before the deadline for submitting responses to the RFQ.

(g) The awarding authority shall not open the statement of qualifications publicly, but shall open them in the presence of 1 or more witnesses at the time specified in the RFQ. At the opening of responses, the awarding authority shall prepare a register of responders which shall include the name of each responder who submitted a statement of qualifications to said request for qualifications. The register of responders shall be open for public inspection. Upon completion of the evaluations, the contents of the statements of qualifications shall be open to the public. The financial information contained in the statements of qualifications shall not be a public record as defined in section 7 of chapter 4.

(h) The prequalification committee established pursuant to subsection (c) shall evaluate each statement of qualifications using solely the criteria provided in the RFQ. Only general contractors achieving a minimum score of 70 shall be prequalified and invited to submit bids consistent with the section 44E. The prequalification committee shall select a minimum of 3 qualified general contractors to submit bids pursuant to said section 44E. Any general contractor invited to submit a bid pursuant to this subsection shall be subject to sections 44B and 44D.

A general contractor's score shall be made available to the general contractor upon request. The decision of the prequalification committee shall be final and shall not be subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

(i) Notwithstanding subsections (a) to (h), inclusive, if the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was required pursuant to said subsection (a), the awarding authority shall reject all responses and issue at least 1 new request for qualifications and, if the awarding authority still



prequalifies less than 3 general contractors to submit bids pursuant to said section (h), then the awarding authority may reject all responses and issue a new request for qualifications, invite general bids pursuant to sections 44B to 44E, inclusive, or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2 prequalified general contractors. If the awarding authority qualifies less than 3 general contractors to submit bids pursuant to said subsection (h) and the prequalification process was initiated at the option of the awarding authority pursuant to said subsection (a), the awarding authority may reject all responses and issue a new request for qualifications, invite general bids pursuant to said sections 44B to 44E, inclusive, without further prequalification, or, if the awarding authority prequalifies at least 2 general contractors, then the awarding authority may invite bids from the 2 prequalified general contractors. An awarding authority re-issuing a request for qualifications under this subsection may stipulate that a general contractor prequalified for a particular project during the first prequalification review by the awarding authority will remain prequalified for that particular project without further submission by the general contractor or review by the awarding authority, for not more than 120 days from the due date of the responses from the first request for qualifications issued to general contractors for the project.

(j) Regulations and procedures shall be promulgated by the commissioner of the division of capital asset management and maintenance to implement this section and to ensure that the prequalification process set forth in subsections (a) to (i), inclusive, is sufficient, fair and consistent.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44D 3/4</b>	SUBCONTRACTOR SUB-BIDS; PREQUALIFICATION PROCEDURES

Section 44D 3/4. (a) Notwithstanding section 44E, an awarding authority on contracts subject to section 44A which are estimated to cost not less than \$10,000,000 shall prequalify subcontractors to submit sub-bids in accordance with the provisions of subsections (a) to (j), inclusive; provided that, on contracts subject to section 44A which are estimated to cost not less than \$100,000 and not more than \$10,000,000, an awarding authority may elect to prequalify subcontractors to submit sub-bids in accordance with subsections (a) to (i), inclusive. The prequalification process shall be for all sub-bid classes of work listed in subsection (1) of section 44F that meet or exceed the threshold value for sub-bid work of said subsection (1) of said section 44F. When prequalifying the subcontractors, the awarding authority shall initiate the prequalification process through the solicitation of responses to a request for qualifications pursuant to subsection (d) of this section.

(b) Notwithstanding subsection (a), the division of capital asset management and maintenance, the Massachusetts Port Authority, the Massachusetts Water Resources Authority, the Massachusetts State Colleges Building Authority, and the University of Massachusetts Building Authority, hereinafter called exempt agencies, shall not be subject to said subsection (a), but may elect to prequalify subcontractors to submit sub-bids in accordance with subsections (c) to (j), inclusive.

(c) Before issuing a request for qualifications, hereinafter called RFQ, the awarding authority shall establish a prequalification committee for the purpose of reviewing and evaluating responses submitted in response to the RFQ issued pursuant to subsection (d). The prequalification committee shall be comprised of 1 representative of the designer and 3 representatives of the awarding authority. One of the representatives of the awarding authority shall be the owner's project manager if an owner's project manager is required on the building project pursuant to section 44A 1/2.

(d) When prequalifying subcontractors, the awarding authority shall initiate the prequalification process through public notice of the building project and the solicitation of responses to the RFQ from subcontractors; but, the public notice and solicitation shall include:

- (1) the time and date for receipt of responses to the RFQ, the address of the office to which the responses are to be delivered, and the timeframe in which the public agency will respond to said responses;
- (2) the evaluation procedure and the criteria for the prequalification of subcontractors, including the point rating system, and the schedule for the evaluation process;
- (3) a general description of the project and the subcontractor's class of work;
- (4) the anticipated schedule and estimated construction cost for the project;
- (5) a listing of the project team including the awarding authority, designer, and awarding authority's owner's project manager, if applicable;

(6) a statement indicating that the RFQ will be used to prequalify subcontractors that will be invited to submit a bid pursuant to sections 44E and 44F;

(7) a prohibition against any unauthorized communication or contact with the awarding authority outside of official pre-bid meetings; and if desired,

(8) a limitation on the size and number of pages to be included in the response to the RFQ.

(e) The awarding authority shall require interested subcontractors to submit a statement of qualifications in response to the RFQ issued pursuant to subsection (d); provided that the RFQ shall require only the information contained in paragraphs (1) to (4), inclusive, of this paragraph, and shall identify the specific point allocation for each category and sub-category of information. Within each category of information, the awarding authorities may use discretion in allocating points among the subcategories, consistent with the total points for the category.

(1) *Management Experience (50 points; minimum of 25 required for approval):*

(i) Business owners, The name, title, years with firm of the owner(s) of the business.

(ii) Management personnel, The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel.

(iii) Similar project experience, The project name(s), description, description of scope, original trade contract sum, final trade contract sum with explanation and date completed of similar projects.

(iv) Terminations, A list of any projects on which the subcontractor was terminated or failed to complete the work.

(v) Legal proceedings, A list of all legal or administrative proceedings currently pending against the subcontractor or concluded adversely to the subcontractor within the past 3 years which relate to the procurement or performance of any public or private construction contract. Legal proceedings shall not include any actions that primarily involve personal injury or workers' compensation claims, or where the sole cause of action involves the subcontractor's exercise of its rights for direct payment under section 39F of chapter 30.

(vi) Safety Record—The 3 year history of the subcontractor's workers' compensation experience modifier.

(2) *References (30 points; minimum of 15 required for approval):*

(i) Project references, References from owners and architects for all projects listed in clause (iii) of paragraph (1) including project name, client's name, address, telephone and fax number, and contact person.

(ii) Credit references, A minimum of 5 credit references, including telephone and fax number of contact person from key suppliers, vendors and banks.

(iii) Public project record, A list of all completed public building construction project as defined in section 44A during past 3 years with client's name, address, telephone and fax number and contact person.

(3) *Capacity to Complete Projects (20 points; minimum of 10 required for approval):*

(i) Annual revenue for prior 3 fiscal years, provided that financial information submitted shall remain confidential and shall not be a public record under section 7 of chapter 4. There shall be no requirement for submission of

financial statements.

(ii) Revenue under contract for the next 3 fiscal years.

(4) *Mandatory requirement, for which no points are assigned:*

A commitment letter for payment and performance bonds at 100 per cent of the estimated contract value from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570.

The statement of qualifications shall be signed under pains and penalties of perjury.

(f) The public notice and solicitation required in subsection (d) shall be advertised in a newspaper of general circulation in the area in which the building project is located, in the central register pursuant to section 20A of chapter 9, and within the COMMBUYS system. The public notice and solicitation shall be given not less than 2 weeks before the deadline for submitting responses to the RFQ.

(g) The awarding authority shall not open the responses to the RFQ publicly, but shall open them in the presence of 1 or more witnesses at the time specified in the RFQ. At the opening of responses, the awarding authority shall prepare a register of responders which shall include the name of each responder who submitted a statement of qualifications to said request for qualifications. The register of responders shall be open for public inspection. Upon completion of the evaluation of the responses, the contents of the statements of qualifications shall be open to the public; but, the financial information contained in the statements of qualifications shall not be a public record as defined in section 7 of chapter 4.

(h) Upon receipt of the statement of qualifications submitted by subcontractors, the prequalification committee established pursuant to subsection (c) shall evaluate each statement of qualifications using solely the criteria provided in the RFQ pursuant to paragraph (e). Only subcontractors achieving a minimum score of 70 shall be prequalified and invited to submit bids consistent with the provisions of section 44E. The prequalification committee shall select a minimum of 3 qualified subcontractors to submit bids pursuant to said section 44E. The subcontractor invited to submit a bid pursuant to this subsection shall be subject to section 44B.

A subcontractor's score shall be made available to the subcontractor upon request. The decision of the prequalification committee shall be final and shall not be subject to appeal except on grounds of arbitrariness, capriciousness, fraud or collusion.

(i) Notwithstanding subsections (a) to (h), inclusive, if the awarding authority qualifies less than 3 subcontractors in a particular trade to submit bids pursuant to said subsection (h) and the prequalification process was required pursuant to said subsection (a), the awarding authority shall reject all responses and issue at least 1 new request for qualifications and, if the awarding authority still prequalifies less than 3 subcontractors to submit filed sub-bids pursuant to said subsection (h), then the awarding authority may reject all responses and issue a new request for qualifications, invite filed sub-bids pursuant to sections 44B to 44E, inclusive, without further prequalification, or, if the awarding authority prequalifies at least 2 subcontractors in the particular trade, then the awarding authority may invite bids from the 2 prequalified subcontractors. If the awarding authority qualifies less than 3 subcontractors to submit filed sub-bids pursuant to said subsection (h) and the prequalification process was initiated at the option of the awarding authority pursuant to said subsection (a), the awarding authority

may reject all responses and issue a new request for qualifications, invite filed sub-bids pursuant to said sections 44B to 44E, inclusive, without further prequalification, or, if the awarding authority prequalifies at least 2 subcontractors in the particular trade, then the awarding authority may invite filed sub-bids from the 2 prequalified subcontractors. An awarding authority re-issuing a request for qualifications under this subsection may stipulate that a subcontractor prequalified for a particular project during the first prequalification review by the awarding authority will remain prequalified for that particular project without further submission by the subcontractor or review by the awarding authority for not more than 120 days from the due date of the responses from the first request for qualifications issued to subcontractors for the project.

(j) The commissioner of the division of capital asset management and maintenance, in conjunction with the inspector general, shall promulgate regulations and procedures to implement this section and to ensure that the prequalification process set forth in subsections (a) to (i), inclusive, is sufficient, fair and consistent.

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title XXI** LABOR AND INDUSTRIES

**Chapter 149** LABOR AND INDUSTRIES

**Section 44E** FILING OF BIDS; FORMS; MODULAR BUILDINGS

Section 44E. (1) Whenever general bids are invited for a contract subject to section 44A and whenever sub-bids are invited in connection with such a contract subject to subsection (1) of section 44F, the awarding authority shall prescribe 1 place for filing the general bids and 1 place for filing the sub-bids, which need not be the same place. Notwithstanding any general or special law, ordinance or by-law to the contrary, a bidder shall not be required to file a duplicate of his bid or sub-bid in any other place. For all projects where prequalification of general contractors is required, or where an awarding authority has elected to prequalify general contractors pursuant to subsection (a) of section 44D 1/2, an awarding authority shall request bids only from general contractors who have been so prequalified pursuant to subsections (a) to (j), inclusive, of section 44D 1/2. For all projects where prequalification of subcontractors is required, or where an awarding authority has elected to prequalify subcontractors pursuant to subsection (a) of section 44D 3/4, an awarding authority shall request bids only from subcontractors who have been so prequalified pursuant to subsections (a) to (j), inclusive, of section 44D 3/4.

(2) Every general bid submitted for a contract subject to section forty-four A shall be submitted on a form furnished by the awarding authority and containing the following provisions:

FORM FOR GENERAL BID

To the Awarding Authority:

A. The Undersigned proposes to furnish all labor and materials required for \_\_\_\_\_ in \_\_\_\_\_,  
(project)

Massachusetts, in accordance with the accompanying plans and specifications prepared by \_\_\_\_\_ for  
(name of architect or engineer)

the contract price specified below, subject to additions and deductions according to the terms of the specifications.

B. This bid includes addenda numbered \_\_\_\_\_

C. The proposed contract price is \_\_\_\_\_ dollars (\$\_\_\_\_\_).

For alternate No. \_\_\_\_\_ Add \$ \_\_\_\_\_; Subtract \_\_\_\_\_  
(Repeat preceding line for each alternate)

D. The subdivision of the proposed contract price is as follows:

Item 1. The work of the general contractor, being all work other than that covered by Item 2. \$ \_\_\_\_\_

Item 2. Sub-bids as follows:—



The undersigned agrees that each of the above named sub-bidders will be used for the work indicated at the amount stated, unless a substitution is made. The undersigned further agrees to pay the premiums for the performance and payment bonds furnished by sub-bidders as requested herein and that all of the cost of all such premiums is included in the amount set forth in Item 1 of this bid.

The undersigned agrees that if he is selected as general contractor, he will promptly confer with the awarding authority on the question of sub-bidders; and that the awarding authority may substitute for any sub-bid listed above a sub-bid filed with the awarding authority by another sub-bidder for the sub-trade against whose standing and ability the undersigned makes no objection; and that the undersigned will use all such finally selected sub-bidders at the amounts named in their respective sub-bids and be in every way as responsible for them and their work as if they had been originally named in this general bid, the total contract price being adjusted to conform thereto.

E. The undersigned agrees that, if he is selected as general contractor, he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this 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 the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price; provided, however, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards made subject to section 44A.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of General Bidder)

By \_\_\_\_\_  
(Name of Person Signing Bid and Title)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City and State)

(3) General bids shall be for the complete work as specified and shall include the names of sub-bidders and the amounts of their sub-bids; and the general contractor shall be selected on the basis of such general bids. Every general bid which is not accompanied by a bid deposit as prescribed by paragraph (2) of section forty-four B, or which otherwise does not conform with sections forty-four A to forty-four H, inclusive, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for, shall be invalid; and the awarding authority shall reject every such bid. No such bid shall be rejected because of the failure to submit prices for, or information relating to, any item or items for which no specific space is provided in the bid form furnished by the awarding authority, but this sentence shall not be applicable to any failure to furnish prices or information required by this section.

General bids shall be publicly opened and read by the awarding authority forthwith after the time limit for filing thereof.

The bid price shall be the price set forth in a clearly designated place on the bid form for that purpose. No general bid shall be rejected (1) because the sum of the prices for all work of the general contractor and sub-bids does not equal the general bid price set forth on the bid form for that purpose or (2) because of error in setting forth the name, the sub-bid price of a sub-bidder, or the total sub-bids as long as the sub-bidder or sub-bidders designated are clearly identifiable, or (3) because the plans and specifications do not accompany the bid or are not submitted with the bid.

(4) A public agency may procure modular buildings in accordance with the provisions of this section.

The provisions of sections twenty-six to twenty-seven G, inclusive, shall not apply to the manufacture of modular buildings procured pursuant to this section, but shall apply to all work ordinarily and customarily performed on modular buildings at building sites, including, but not limited to, construction of foundations, attachment to external utilities, and installation and assembly of modular unit, including any assembly performed at any site in the commonwealth other than a place of manufacture. All applicable provisions of building codes and other laws shall apply thereto.

The procurement of a modular building shall be deemed a building project for purposes of section thirty-nine A of chapter seven. The division of capital asset management and maintenance shall exercise control and supervision of the procurement of modular buildings by state agencies to the extent provided by sections forty A and forty B of chapter seven.

An awarding authority shall not procure a modular building to replace another modular building unless it has first certified that such replacement is necessary, cost-effective over the long term, and not detrimental to the public policy and interest and has set forth, in writing, a detailed explanation of its reasons for such certification.

When an awarding authority procures modular buildings as authorized by this section the awarding authority shall solicit competitive sealed proposals through a request for proposals which shall include:

- (1) the time and date for receipt of proposals, the address of the office to which the proposals are to be delivered, and the maximum time for proposal acceptance by the awarding authority;
- (2) the purchase description and all evaluation criteria that will be utilized;
- (3) all contractual terms and conditions applicable to the procurement; provided, however, that the contract may incorporate by reference a plan submitted by the selected offeror for providing the modular buildings;



(4) a notice that every proposal shall be accompanied by a copy of an appropriate certificate of eligibility issued by the commissioner pursuant to section forty-four D, together with an update statement; and

(5) except where the request for proposals calls for manufacture or delivery to the building site, a notice that every proposal shall be accompanied by a certification that the offeror is able to furnish labor that can work in concert with all other elements of labor employed or to be employed at the site of installation.

The request for proposals may incorporate documents by reference; provided, however, that the request for proposals specifies where prospective offerors may obtain such documents. The request for proposals shall provide for the separate submission of price, and shall indicate when and how the offerors shall submit the price. The awarding authority shall make copies of the request for proposals available to all persons on an equal basis.

Public notice of the request for proposals for modular buildings shall be published in accordance with the provisions of section forty-four J.

The awarding authority shall not open the proposals publicly, but shall open them in the presence of one or more witnesses at the time specified in the request for proposals. Notwithstanding the provisions of section seven of chapter four, until the completion of the evaluation, or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening of proposals the awarding authority shall prepare a register of proposals. The register of proposals shall be open for public inspection. The awarding authority may open the price proposals at a later time, and shall open the price proposals so as to avoid disclosure to the individuals evaluating the proposals on the basis of criteria other than price.

The awarding authority shall designate the individual or individuals responsible for the evaluation of the proposals on the basis of criteria other than price. The designated individuals shall prepare their evaluations based solely on the criteria set forth in the request for proposals. Such criteria shall include all standards by which acceptability will be determined as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose, and shall also include all other measures that will be utilized. The evaluations shall specify in writing:

- (1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous, or unacceptable and the reasons for such rating;
- (2) a composite rating for each proposal and the reasons for such rating;
- (3) recommendations for revisions, if any, to each proposed plan for providing the modular buildings which should be obtained by negotiation prior to awarding the contract to the offeror of the proposal; and
- (4) whether the modular buildings were manufactured within the commonwealth and whether such modular buildings were manufactured within the United States but outside the commonwealth.

The awarding authority shall unconditionally accept a proposal except as provided by this paragraph. An offeror may correct, modify or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for the opening of proposals. After such opening, an offeror may not change the price or any other provisions of the proposal in a manner prejudicial to the interest of the awarding authority or fair competition. The awarding authority shall waive minor informalities or

allow the offeror to correct them. If a mistake and the intended offer are clearly evident on the face of the document, the awarding authority shall correct the mistake to reflect the intended correct offer and so notify the offeror in writing, and the offeror may not withdraw the offer. The awarding authority may permit an offeror to withdraw an offer if a mistake is clearly evident on the face of the document but the intended correct offer is not similarly evident.

Taking into consideration price and the evaluation criteria set forth in the request for proposals, the awarding authority shall determine the most advantageous proposal from a responsible, responsive, and eligible offeror. In determining the most advantageous proposal, the awarding authority shall give preference, other considerations being equal, in the following order: (a) modular buildings manufactured within the commonwealth; and (b) modular buildings manufactured outside of the commonwealth but within the United States. The awarding authority may condition an award on successful negotiation of any revisions recommended in the evaluation and shall explain in writing the reasons for omitting any such revisions from the contract. The awarding authority shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement.

If the awarding authority awards the contract to an offeror who did not submit the lowest price, the awarding authority shall explain the reasons for the award in writing, specifying in reasonable detail the basis for determining that the quality of modular buildings under the contract will not exceed the awarding authority's actual needs or that the anticipated performance of the selected offeror justifies the additional cost, and shall maintain such explanation in its files for at least six years from the date of final payment under the contract.

Prior to execution of a contract pursuant to this section, the selected offeror shall furnish to the awarding authority a payment bond and a performance bond of a surety company qualified to issue bonds in the commonwealth and satisfactory to the awarding authority each in the sum of the contract price; provided, however, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44E 1/2</b>	RENOVATION AND REPAIR OF STATE HOUSE AND HISTORIC SUFFOLK COUNTY COURTHOUSE; SOLICITATION OF BIDS; EVALUATION OF BIDS; CONTRACT AWARD; PAYMENT AND PERFORMANCE BONDS

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Section 44E 1/2. The commissioner of capital asset management and maintenance may procure construction contracts for the renovation or repair of the state house and the historic Suffolk County courthouse in accordance with the provisions of this section.

The procurement of a contract for the renovation or repair of the state house or the historic Suffolk County courthouse shall be deemed a building project for purposes of section 39A of chapter 7.

When the commissioner procures a contract for the renovation or repair of the state house or the historic Suffolk County courthouse as authorized by this section, the commissioner shall solicit competitive sealed proposals through issuance of a request for proposals. The request shall include:

- (1) the time and date by which proposals shall be received, the address of the office to which the proposals shall be delivered and the maximum time for proposal acceptance by the division;
- (2) the purchase description and all criteria that shall be utilized in evaluating proposals;
- (3) all contractual terms and conditions applicable to the procurement but the contract may incorporate by reference a plan submitted by the selected offeror for renovating or repairing the state house or the historic Suffolk County courthouse;
- (4) a notice stating that every proposal shall be accompanied by a copy of an appropriate certificate of eligibility issued by the commissioner pursuant to section 44D, together with an update statement; and
- (5) a notice stating that every proposal shall be accompanied by a certification that the offeror is able to furnish labor that can work in concert with all other elements of labor employed or to be employed at the state house or the historic Suffolk County courthouse.

The request for proposals may incorporate documents by reference so long as the request for proposals specifies where prospective offerors may obtain such documents. The request for proposals shall provide for the separate submission of a price proposal and shall indicate when and how an offeror shall submit the price proposal. The division shall make copies of the request for proposals available to all persons on an equal basis.

Public notice of the request for proposals for the renovation or repair of the state house or the historic Suffolk County courthouse shall be published in accordance with the provisions of section 44J.

The division shall not open the proposals publicly, but shall open them in the presence of at least one witness at the time specified in the request for proposals. Notwithstanding section 7 of chapter 4, until the completion of the evaluation or until the time for acceptance specified in the request for proposals, whichever occurs earlier, the contents of the proposals shall remain confidential and shall not be disclosed to competing offerors. At the opening

of proposals the division shall prepare a register of proposals. The register of proposals shall be open for public inspection. The division shall open the price proposals at a later time and shall open the price proposals in a manner that ensures that the content of the price proposals is not disclosed to the individuals evaluating the proposals on the basis of criteria other than price.

The division shall designate the individuals responsible for the evaluation of the proposals on the basis of criteria other than price. The designated individuals shall prepare their evaluations based solely on the criteria set forth in the request for proposals. Such criteria shall include all standards by which acceptability shall be determined as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose, and shall also include all other measures that shall be utilized. The evaluations shall specify in writing:

- (1) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous or unacceptable, and the reasons for such rating;
- (2) a composite rating for each proposal and the reasons for such rating; and
- (3) recommendations for revisions, if any, to each proposed plan for the renovation or repair of the state house or the historic Suffolk County courthouse which shall be obtained by negotiation prior to awarding the contract to the offeror of the proposal.

The division shall unconditionally accept a proposal except as provided by this paragraph. An offeror may correct, modify or withdraw a proposal by written notice received in the office designated in the request for proposals prior to the time and date set for the opening of proposals. After such opening, an offeror may not change the price or any other provisions of the proposal in a manner prejudicial to the interests of the division or fair competition. The division shall waive minor informalities or allow the offeror to correct them. If a mistake and the intended offer are clearly evident on the face of the document, the division shall correct the mistake to reflect the intended correct offer and so notify the offeror in writing, and the offeror may not withdraw the offer. The division may permit an offeror to withdraw an offer if a mistake is clearly evident on the face of the document but the intended correct offer is not similarly evident.

Taking into consideration price and the evaluation criteria set forth in the request for proposals, the commissioner shall determine the most advantageous proposal from a responsible, responsive and eligible offeror. If a responsible, responsive and eligible offeror submits the lowest price and has received a composite rating of highly advantageous on the basis of criteria other than price, then the commissioner shall determine that offeror's proposal to be the most advantageous proposal. If the offeror who submits the lowest price has not received a composite rating of highly advantageous on the basis of criteria other than price, then the commissioner may, but shall not be required to, determine that the lowest price proposal from among those proposals that have received a composite rating of highly advantageous on the basis of criteria other than price, is the most advantageous proposal. The commissioner may condition an award on successful negotiation of any revisions recommended in the evaluation and shall explain in writing the reasons for omitting any such revisions from the contract. The division shall award the contract by written notice to the selected offeror within the time for acceptance specified in the request for proposals. The parties may extend the time for acceptance by mutual agreement.

If the commissioner awards the contract to an offeror who did not submit the lowest price, the commissioner shall explain the reasons for the award in writing, specifying in reasonable detail the basis for determining that the anticipated performance of the selected offeror justifies the additional cost, and the division shall maintain such explanation in its files for at least six years from the date of final payment under the contract.

Prior to execution of a contract pursuant to this section, the selected offeror shall furnish to the division a payment bond and a performance bond of a surety company qualified to issue bonds in the commonwealth and satisfactory to the division each in the sum of the contract price.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44F</b>	PLANS AND SPECIFICATIONS; SUB-BIDS; FORM; CONTENTS

Section 44F. (1)(a) Every contract subject to section forty-four A shall include specifications and, if deemed necessary or convenient by the awarding authority, plans, detailing all labor and materials to be furnished thereunder. Such specifications shall have a separate section for each of the following classes of work if in the estimate of the awarding authority such class of work will exceed \$25,000: (a) roofing and flashing; (b) metal windows; (c) waterproofing, damp-proofing and caulking; (d) miscellaneous and ornamental iron; (e) lathing and plastering; (f) acoustical tile; (g) marble; (h) tile; (i) terrazzo; (j) resilient floors; (k) glass and glazing; (l) painting; (m) plumbing; (n) heating, ventilating and air-conditioning; (o) electrical work, including direct electrical radiation for heating; (p) elevators; (q) masonry work; (r) fire protection sprinkler system as defined in section 81 of chapter 146; and (s) any other class of work for which the awarding authority deems it necessary or convenient to receive sub-bids, provided that the awarding authority may, in addition, receive a combined sub-bid on the marble, tile and terrazzo work, but in that event, the marble, tile and terrazzo work shall each be a class of work for which the sub-bidder must list the information in a clearly designated place on the bid form for that purpose. Each separate section in the specifications prescribed or provided for by this paragraph shall state the time limit for filing sub-bids with the awarding authority, shall specify by number each sheet of plans showing work to be done by the subcontractor under such section, and shall require the subcontractor to install all materials to be furnished by him under such section other than materials which in the opinion of the awarding authority it is not customary under then current trade practices for such subcontractor to install and the installation of which is expressly required by another section of the specifications. Each class of work set forth in a separate section of the specifications pursuant to this section shall be a sub-trade designated in the appropriate category of the general bid form and shall be the matter of subcontract made on the basis of sub-bids in accordance with the procedure set forth in sections forty-four F(1) —(5).

Each separate section of the specifications required by the provisions of this section shall contain a paragraph describing by class of work and by reference to paragraph numbers in that section, each class of work, if any, requiring labor and materials which, in the opinion of the awarding authority based upon an investigation of the work involved, is customarily performed in that sub-trade under subcontract with a sub-bidder for that sub-trade, and which is estimated by the awarding authority to cost in excess of \$25,000, and only each class of work so described shall be a class of work for which sub-bidder for that sub-trade must list the information required in the appropriate place designated on the bid form for that purpose.

Every contract subject to section forty-four A shall include specifications for the installation of weather protection and shall require that the general contractor shall install the same and that he shall furnish adequate heat in the

area so protected during the months of November through March. Standards for such specifications shall be established by the commissioner of planning and operations in the executive office for administration and finance.

*[There is no paragraph (b) of subsection (1).]*

(2) Every sub-bid submitted in connection with a contract subject to section forty-four A for a sub-trade designated in item 2 of the general bid form pursuant to section forty-four E shall be submitted on a form furnished by the awarding authority and containing the following provisions:

FORM FOR SUB-BID

To all General Bidders Except those Excluded:

A. The undersigned proposes to furnish all labor and materials required for completing, in accordance with the hereinafter described plans, specifications and addenda, all the work specified in Section No. \_\_\_\_\_ of the specifications and in any plans specified in such section, prepared by

\_\_\_\_\_ for \_\_\_\_\_ in

(name of architect or engineer)(project)

\_\_\_\_\_, Massachusetts, for the contract

(city or town)

sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

For Alternate No. \_\_\_\_\_; Add \$ \_\_\_\_\_ Subtract \$ \_\_\_\_\_

*[Repeat preceding line for each alternate]*

B. This sub-bid includes addenda numbered \_\_\_\_\_

C. This sub-bid

may be used by any general bidder except:

\_\_\_\_\_  
\_\_\_\_\_

may only be used by the following general bidders:

\_\_\_\_\_  
\_\_\_\_\_

[To exclude general bidders, insert "X" in one box only and fill in blank following that box. Do not answer C if no general bidders are excluded.]

D. The undersigned agrees that, if he is selected as a sub-bidder, he will, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, execute with such general bidder a subcontract in accordance with the terms of this sub-bid, and contingent upon the execution of the general contract, and, if requested so to do in the general bid by the general bidder, who shall pay the premiums therefor, or if prequalification is required pursuant to section 44D 3/4, furnish a performance and payment bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority, in the full sum of the subcontract price.

E. The names of all persons, firms and corporations furnishing to the undersigned labor or labor and materials for the class or classes or part thereof of work for which the provisions of the section of the specifications for this sub-trade require a listing in this paragraph, including the undersigned if customarily furnished by persons on his own payroll and in the absence of a contrary provision in the specifications, the name of each such class of work or part thereto and the bid price for such class of work or part thereof are:



[Do not give bid price for any class or part thereof furnished by undersigned.]

F. The undersigned agrees that the above list of bids to the undersigned represents bona fide bids based on the hereinbefore described plans, specifications and addenda and that, if the undersigned is awarded the contract, they will be used for the work indicated at the amounts stated, if satisfactory to the awarding authority.

G. The undersigned further agrees to be bound to the general contractor by the terms of the hereinbefore described plans, specifications, including all general conditions stated therein, and addenda, and to assume toward him all the obligations and responsibilities that he, by those documents, assumes toward the owner.

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

1. Have been in business under present business name

\_\_\_\_\_ years.

2. Ever failed to complete any work awarded?

3. List one or more recent buildings with names of the general contractor and architect on which you served as a sub-contractor for work of similar character as required for the above-named building.



4. Bank reference \_\_\_\_\_

I. The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that he will comply fully with all laws and regulations applicable to awards of subcontracts subject to section 44F.

The undersigned further certifies under penalties of perjury that this sub-bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of Sub-bidder)

By \_\_\_\_\_

(Title and Name of Person Signing Bid)



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(Business Address)

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(City and State)

(3) Every sub-bid in connection with a contract subject to section forty-four A for a sub-trade designated on the general bid form pursuant to section forty-four F(2) shall be for the complete work of the sub-trade as specified, and shall be filed with the awarding authority, in a sealed envelope, before twelve o'clock noon at least four days, Saturdays, Sundays and legal holidays excluded, before the day fixed by the awarding authority for the opening of general bids, and forthwith after the time limit for the filing thereof shall be publicly opened and read by the awarding authority, which, within two days thereafter, Saturdays, Sundays and legal holidays excluded, shall reject every sub-bid which is not accompanied by a bid deposit as prescribed in subsection (2) of section forty-four B, or which otherwise does not conform with sections forty-four A to forty-four H, inclusive, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, or which contains any addition not called for; provided, however, that the failure of the awarding authority to reject such a sub-bid within such period shall not validate such a sub-bid nor preclude the awarding authority from subsequently rejecting it. Not later than the second day, Saturdays, Sundays and legal holidays excluded, before the day fixed by the awarding authority for the opening of general bids, the awarding authority shall mail to every person on record as having taken a set of plans and specifications list of sub-bidders arranged by sub-trades and listing for each sub-trade the name, address and sub-bid price of every sub-bidder submitting a sub-bid thereon not rejected by the awarding authority and the general bidders excluded from using such sub-bid. A person shall not be named by a general bidder as a sub-bidder for a sub-trade on the general bid form unless such person is included for such sub-trade in said list. If a general bidder not excluded in said list from doing so names as a sub-bidder for a sub-trade on the general bid form a person included for such sub-trade in said list at the sub-bid price stated in said list, neither the general bid of such general bidder nor the general contract executed on the basis of such general bid shall be invalid or rejected because of the invalidity of such sub-bid, or because of error in said list, nor shall such general bid be rejected nor shall such general contract be invalid because of any invalid action taken by the awarding authority in connection with any sub-bid or sub-bids; but there shall be substitution of sub-bidders and adjustment of contract price as if paragraph (c) of section forty-four F(4) were applicable. No sub-bid shall be rejected because of the failure to submit prices for or information relating to, any item or items for which no space is provided in the sub-bid form furnished by the awarding authority; but this sentence shall not be applicable to any failure to furnish prices or information required by section forty-four F to be furnished in the Form for Sub-Bid.

Every sub-bidder duly filing a sub-bid with the awarding authority as aforesaid shall be bound thereby to every general bidder not excluded therein from the use thereof; and any variance from such sub-bid communicated to a general bidder shall be of no effect.

A performance and payment bond furnished by the subcontractor, either pursuant to the requirements of the prequalification process as established in section 44D 3/4 or at the request of a general contractor set forth in the general bid form, shall be for the benefit of the general contractor; shall secure the performance of the subcontract by the subcontractor; and shall indemnify and hold harmless the general contractor and the surety or sureties under the labor and materials or payment bond furnished by the general

contractor to the awarding authority against (i) any and all loss and expense arising out of any and all claims in connection with the performance of the subcontract which would be required to be paid under the labor and materials or payment bond furnished by the general contractor to the awarding authority and (ii) attorneys' fees in the event that the subcontractor, after notice, fails to assume the defense of and defend such claims.

Each sub-bidder shall list in the sub-bid form the name and bid price of each person, firm or corporation performing each class of work or part thereof for which the section of the specifications for that sub-trade requires such listing; provided that, in the absence of a contrary provision in the specifications, any sub-bidder may, without listing any bid price, list his own name for any such class of work or part thereof and perform that work with persons on his own payroll, if such sub-bidder, after sub-bid opening, shows to the satisfaction of the awarding authority that he does customarily perform such class of work or the part thereof with employees on his own payroll who are mechanics or laborers as referred to in section twenty-six, and is qualified so to do.

If a sub-trade for which the awarding authority is required to take filed sub-bids constitutes the predominant work of the contract, the awarding authority may include that sub-trade work as part of the general bidder's work. The awarding authority shall award the general contract to the lowest responsible and eligible bidder who customarily performs that sub-trade with employees on his own payroll who are mechanics or laborers as referred to in said section twenty-six, except for any part of that sub-trade customarily performed by sub-contractors.

(4)(a)(1) If no sub-bid is filed for a sub-trade designated in the general bid form or if the only sub-bids which are filed are restricted to the use of one or more general bidders, the awarding authority may state, in an addendum issued with the list of sub-bidders required by subsection (3), that the general bidder shall include in the cost of his own work an amount to cover all the work required for any such sub-trade. The general contractor shall cause the work covered by such sub-trade to be done by a qualified and responsible sub-contractor, subject to the written approval of the awarding authority. If the awarding authority determines that any sub-contractor chosen by the general contractor under this section is not qualified or responsible, the general contractor shall obtain another sub-contractor who is satisfactory to the awarding authority with no adjustment in the general contractor's price.

(2) If a rejection of all sub-bids, other than as set forth above, for such a sub-trade occurs pursuant to subsection (1) of section forty-four E or subsection (3) of this section, the awarding authority shall state, in an addendum issued with the list of sub-bidders required by said subsection (3), the amount to be included by a general bidder on the general bid form for such sub-trade; and without in any way affecting other sub-bidders who have conformed to the prescribed bidding procedure, new sub-bids for such sub-trade shall be requested forthwith by written invitation to three or more qualified sub-bidders and shall be publicly opened and read by the awarding authority at a time and place to be specified in such invitation. The general contractor shall cause the work covered by such sub-trade to be done by the lowest responsible and eligible sub-bidder against whose standing and ability the general contractor makes no objection or, if there is no such sub-bidder, by such sub-contractor against whose standing and ability the general contractor makes no objection and for such sum as the general contractor and the awarding authority may agree upon; and the contract price shall be adjusted by the difference between the sub-contract sum and the amount stated in the addendum. The general bidder shall include in the cost of his own work on the general bid form all expenses and profits on account of such adjustments.

(b) If, after the selection of the lowest responsible and eligible general bidder, it be decided to consider sub-bidders other than the ones named by such general bidder in his general bid, the awarding authority and such general bidder shall jointly consider all filed sub-bids not rejected under section forty-four F(3). Any agreement to substitute a sub-bid for the one named in the selected general bid shall result in an adjustment of the general bid price by the difference between the amount of the sub-bid originally named and the amount of the sub-bid substituted therefor. If by such substitutions the total adjusted general bid price of the general bidder first selected becomes greater than the original general bid price of the second lowest responsible and eligible general bidder, then the latter shall be selected and his sub-bidders similarly considered. If, by substitutions as hereinbefore provided, the total adjusted general bid price of the second selected general bidder becomes greater than the total adjusted general bid price of the general bidder first selected or greater than the original general bid price of the third lowest responsible and eligible general bidder, then the bidder having the lower of these two general bid prices shall be selected; provided, that if the third lowest responsible and eligible general bidder is selected, his sub-bidders shall be similarly considered. The general bidder finally selected by the aforementioned process of substitutions shall be the general bidder to whom the contract shall be awarded.

(c) If a selected sub-bidder fails, within 5 days, Saturdays, Sundays and legal holidays excluded, after presentation of a subcontract by the general bidder selected as the general contractor, to perform his agreement to execute a subcontract in the form hereinafter set forth with such general bidder, contingent upon the execution of the general contract, and, if required to do so pursuant to the prequalification process under section 44D 3/4 or if requested to do so by such general bidder in the general bid, to furnish a performance and payment bond as stated in his sub-bid such general bidder and the awarding authority shall select, from the other sub-bids duly filed with the awarding authority for such sub-trade and not rejected under section 44H the lowest responsible and eligible sub-bidder at the amount named in his sub-bid as so filed against whose standing and ability the general contractor makes no objection, and the contract price shall be adjusted by the difference between the amount of the sub-bid and the amount of the sub-bid of the delinquent sub-bidder.

The subcontract shall be in the following form:

SUBCONTRACT

THIS AGREEMENT MADE THIS \_\_\_ DAY OF \_\_\_ (insert year), by and between \_\_\_ a corporation organized and existing under the laws of \_\_\_ an individual doing business as \_\_\_ hereinafter called the "Contractor" and \_\_\_ a corporation organized and existing under the laws of \_\_\_ an individual doing business as \_\_\_ hereinafter called the "Subcontractor".

WITNESSETH that the Contractor and the Subcontractor for the considerations hereafter named, agree as follows:

1. The Subcontractor agrees to furnish all labor and materials required for the completion of all work specified in Section No. \_\_\_\_\_ of the specifications for \_\_\_\_\_ (Name of Sub-Trade) and the plans referred to therein and addenda No. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ for the

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(complete title of the project and the project number taken from the title page of the specifications)all as prepared by

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(Name of Architect or Engineer) for the sum of \_\_\_ (\$\_\_\_) and the Contractor agrees to pay the Subcontractor said sum for said work. This price includes the following alternates (and other items set forth in the sub-bid):  
 Alternate No(s). \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_,  
 \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_,

(a) The Subcontractor agrees to be bound to the Contractor by the terms of the hereinbefore described plans; specifications (including all general conditions stated therein) and addenda No. \_\_\_\_, and \_\_\_\_, and \_\_\_\_, and to assume to the Contractor all the obligations and responsibilities that the Contractor by those documents assumes to the

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(Awarding Authority) hereinafter called the "Awarding Authority", except to the extent that provisions contained therein are by their terms or by law applicable only to the Contractor.

(b) The Contractor agrees to be bound to the Subcontractor by the terms of the hereinbefore described documents and to assume to the Subcontractor all the obligations and responsibilities that the Awarding Authority by the terms of the hereinbefore described documents assumes to the Contractor, except to the extent that provisions contained therein are by their terms or by law applicable only to the Awarding Authority.

2. The Contractor agrees to begin, prosecute and complete the entire work specified by the Awarding Authority in an orderly manner so that the Subcontractor will be able to begin, prosecute and complete the work described in this subcontract; and, in consideration thereof, upon notice from the Contractor, either oral or in writing, the Subcontractor agrees to begin, prosecute and complete the work described in this Subcontract in an orderly manner and with due consideration to the date or time specified by the Awarding Authority for the completion of the entire work.

3. The Subcontractor agrees to furnish to the Contractor within a reasonable time after the execution of this subcontract, evidence of workers' compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Awarding Authority by the Contractor.

4. The Contractor agrees that no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

5. This agreement is contingent upon the execution of a general contract between the Contractor and the Awarding Authority for the complete work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date and year first above-written.

SEAL  
 ATTEST \_\_\_\_\_

\_\_\_\_\_  
 (Name of Subcontractor)

By \_\_\_\_\_

SEAL  
 ATTEST \_\_\_\_\_

\_\_\_\_\_  
 (Name of Contractor)

By \_\_\_\_\_

In the event that the contract between the general contractor and the awarding authority does not contain provisions granting to the awarding authority the right to terminate the general contract when the general contractor encounters financial difficulties or fails to make satisfactory progress, the general contractor may insert the following paragraph:

If the Subcontractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Contractor, or otherwise be guilty of a substantial violation of any provision of the contract, then the Contractor may, without prejudice to any other right or remedy and after giving the Subcontractor and his surety, if any, seven days' written notice, terminate the employment of the Subcontractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Subcontractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price shall exceed the expense of finishing the work including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Subcontractor. If such expense shall exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor.

The contractor and subcontractor shall have the right to seek damages for breach of a subcontract without terminating the subcontract or ceasing performance thereunder.

All sub-bidders when finally selected shall be notified in writing of their selection within forty-eight hours thereafter by the general bidder.

In each case of substitution of a sub-bidder for a sub-bidder listed in the general bid of the selected general contractor, the selected general contractor may require the substituted sub-bidder to furnish a performance and payment bond, and the premiums for same shall be added to the general bidder's price for work to be performed by him except where the selected general contractor had indicated in his general bid that the original sub-bidder designated for that sub-trade, in which substitution was made, would be required to furnish such bond.

In the instances enumerated in paragraphs (1), (2) and (3) of this section, the general bidder's price for work to be performed by him shall also be adjusted by the amount of the change in the premium for the general contractor's performance bond and his labor and materials or payment bond caused by the substitution.

(5) If a general bidder customarily performs, with employees on his own payroll who are mechanics or laborers as referred to in section twenty-six, a sub-trade for which the awarding authority invites sub-bids, he may submit a sub-bid for such sub-trade which shall be considered on a par with other sub-bids, and he shall also list under the appropriate sub-bid category in his general bid his own name and sub-bid price for such sub-trade. No such sub-bid shall be considered unless the general bidder can show (a) he does so customarily perform such sub-trade, and (b) he is qualified to do the sub-trade work.

In lieu of listing his name and sub-bid price in his general bid, such general bidder may list the name and amount of the lowest responsible and eligible sub-bidder for that sub-trade if (a) such sub-bidder's price is lower than his,

(b) such sub-bid is available for his use; and (c) such sub-bid is not restricted to his use alone or to his use and that of another general bidder, or bidders.

<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44G</b>	ALLOWANCES; ALTERNATES; WEATHER PROTECTION DEVICES

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Section 44G. (A) "Allowance" as used herein means a sum of money covering one or more items of labor or labor and materials which is designated in bid documents and which general bidders are required to use in computing their bids. The use of such allowances shall be prohibited in the award of any contract subject to the provisions of section forty-four A.

Whenever the designer is unable to supply specifications for any item prior to the solicitation of bids, such item shall not be included in any contract subject to the provisions of section forty-four A. The awarding authority shall solicit bids for every such item separately pursuant to the provisions of section forty-four A after specifications for that item are prepared.

(B) Every alternate contained in the form for general bids shall be listed in a numerical sequence in order of priority. When the awarding authority decides to consider alternates in determining the lowest eligible and responsible bidder, the awarding authority shall consider the alternates in descending numerical sequence, such that no single alternate shall be considered unless every alternate preceding it on the list has been added to or subtracted from the base bid price.

(C) The use of options other than alternates in bid documents or bid forms subject to section forty-four A shall be prohibited under all circumstances.

(D) Every contract subject to section forty-four A shall include specifications for the installation of weather protection and shall require that the contractor shall install the same and that he shall furnish adequate heat in the area so protected during the months of November through March. Standards for such specifications shall be established by the commissioner or his designee.

**Part I** ADMINISTRATION OF THE GOVERNMENT

**Title XXI** LABOR AND INDUSTRIES

**Chapter** LABOR AND INDUSTRIES  
**149**

**Section 44H** ENFORCEMENT

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Section 44H. Except as otherwise provided by sections 44A to 44H, inclusive, and except for the consideration and determination after contract award as to whether an item is equal to an item named or described in the specifications for a contract, the attorney general or his designee shall enforce sections 44A to 44H, inclusive, of this chapter and section 39M of chapter 30, sections 38C to 38N, inclusive, of chapter 7, and chapter 149A. The attorney general shall have all the necessary powers to require compliance therewith including the power to institute and prosecute proceedings in the superior court to restrain the award of contracts and the performance of contracts in all cases where, after investigation of the facts, he has made a finding that the award or performance has resulted in violation, directly or indirectly, of said sections 44A to 44H, inclusive, or of said section 39M or of said sections 38C to 38N, inclusive, or of said chapter 149A, and he shall not be required to pay the clerk of the court any entry fee in connection with the institution of the proceeding.



<b>Part I</b>	ADMINISTRATION OF THE GOVERNMENT
<b>Title XXI</b>	LABOR AND INDUSTRIES
<b>Chapter 149</b>	LABOR AND INDUSTRIES
<b>Section 44J</b>	INVITATIONS TO BID; NOTICE; CONTENTS; VIOLATIONS; PENALTY

Section 44J. (1) No public agency or authority of the commonwealth or any political subdivision thereof shall award any contract for which competitive bids are required pursuant to section forty-four A of this chapter or section thirty-nine M of chapter thirty, or for which competitive proposals are required pursuant to subsection (4) of section forty-four E of this chapter or section eleven C of chapter twenty-five A, unless a notice inviting bids or proposals therefor shall have been posted no less than one week prior to the time specified in such notice for the receipt of said bids or proposals in a conspicuous place in or near the offices of the awarding authority, and shall have remained posted until the time so specified, and unless such notice shall also have been published at least once not less than two weeks prior to the time so specified in the central register published by the secretary of state pursuant to section twenty A of chapter nine and in a newspaper of general circulation in the locality of the proposed project, and on the COMMBUYS system administered by the operational services division. Said notice shall also be published at such other times and in such other newspapers or trade periodicals as the commissioner of capital asset management and maintenance may require, having regard to the locality of the work involved.

(2) Said notice shall specify the time and place where plans and specifications of the proposed work may be had; the time and place of submission of general bids; and the time and place for opening of the general bids. For contracts subject to the provisions of sections forty-four A to H, inclusive, of this chapter, said notice shall also specify the time and place for submission of filed sub-bids, where required pursuant to section forty-four F; and the time and place for opening of said filed sub-bids.

Said notice shall also provide sufficient facts concerning the nature and scope of such project, the type and elements of construction, and such other information as will assist applicants in deciding to bid on such contract.

(3) No contract or preliminary plans and specifications shall be split or divided for the purpose of evading the provisions of this section.

(4) General bids and filed sub-bids for any contract subject to this section shall be in writing and shall be opened in public at the time and place specified in the posted or published notice, and after being so opened shall be open to public inspection.

(5) The provisions of this section shall not apply to any transaction between the commonwealth and any public service corporation.

(6) The provisions of this section may be waived in cases of extreme emergency involving the health and safety of the people and their property, upon the written approval of said commissioner. The written approval shall contain a description of the circumstances and the reasons for the commissioner's determination.

(7) Whoever violates any provision of this section shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one-half years, or by both said fine and imprisonment; and in

the event of final conviction, said person shall be incapable of holding any office of honor, trust or profit under the commonwealth or under any county, district or municipal agency.

Each and every person who shall cause or conspire to cause any contract or preliminary plans and specifications to be split or divided for the purpose of evading the provisions of this section shall forfeit and pay to the commonwealth, a political subdivision thereof or other awarding authority subject to this section, the sum of not more than five thousand dollars and, in addition, such person or persons shall pay, apportioned among them, double the amount of damages which the commonwealth or political subdivision thereof or other awarding authority may have sustained by reason of the doing of such act, together with the costs of the action.

(8) If an awarding authority rejects all general bids or does not receive any general bids, and advertises for a second opening of general bids with the original filed sub-bids as set forth in subsection (1) of section forty-four E the notice for receipt of such general bids may be published in the central register and elsewhere as required not less than one week prior to the time specified for such second opening of general bids.

(9) No request for proposals or invitation for bids issued under sections 38A 1/2 to 38O, inclusive, of chapter 7, section 11C of chapter 25A, section 39M of chapter 30, this section and sections 44A to 44H, inclusive, shall be advertised if the awarding authority's cost estimate is greater than 1 year old.

**APPENDIX F**

**PREVAILING WAGE RATES  
DAVIS BACON WAGE RATES**



CHARLES D. BAKER  
Governor

KARYN E. POLITO  
Lt. Governor

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT  
DEPARTMENT OF LABOR STANDARDS

Prevailing Wage Rates

As determined by the Director under the provisions of the  
Massachusetts General Laws, Chapter 149, Sections 26 to 27H

ROSALIN ACOSTA  
Secretary  
MICHAEL FLANAGAN  
Director

**Awarding Authority:** Town of Wareham  
**Contract Number:** 2021-WW-01 **City/Town:** WAREHAM  
**Description of Work:** Water Pollution Control Facility Improvements Phase 1 - Construction of a concrete equalization basin, odor control facility, denitrification filters, and development of a groundwater well.  
**Job Location:** 6 Tony's Lane

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Information about Prevailing Wage Schedules for Awarding Authorities and Contractors

- This wage schedule applies only to the specific project referenced at the top of this page and uniquely identified by the “Wage Request Number” on all pages of this schedule.
  - An Awarding Authority must request an updated wage schedule from the Department of Labor Standards (“DLS”) if it has not opened bids or selected a contractor within 90 days of the date of issuance of the wage schedule. For CM AT RISK projects (bid pursuant to G.L. c.149A), the earlier of: (a) the execution date of the GMP Amendment, or (b) the bid for the first construction scope of work must be within 90-days of the wage schedule issuance date.
  - The wage schedule shall be incorporated in any advertisement or call for bids for the project as required by M.G.L. c. 149, § 27. The wage schedule shall be made a part of the contract awarded for the project. The wage schedule must be posted in a conspicuous place at the work site for the life of the project in accordance with M.G.L. c. 149 § 27. The wages listed on the wage schedule must be paid to employees performing construction work on the project whether they are employed by the prime contractor, a filed sub-bidder, or any sub-contractor.
  - All apprentices working on the project are required to be registered with the Massachusetts Department of Labor Standards, Division of Apprentice Standards (DLS/DAS). Apprentice must keep his/her apprentice identification card on his/her person during all work hours on the project. An apprentice registered with DAS may be paid the lower apprentice wage rate at the applicable step as provided on the prevailing wage schedule. **Any apprentice not registered with DLS/DAS regardless of whether or not they are registered with any other federal, state, local, or private agency must be paid the journeyworker's rate for the trade.**
  - The wage rates will remain in effect for the duration of the project, except in the case of multi-year public construction projects. For construction projects lasting longer than one year, awarding authorities must request an updated wage schedule. Awarding authorities are required to request these updates no later than two weeks before the anniversary of the date the contract was executed by the awarding authority and the general contractor. For multi-year CM AT RISK projects, awarding authority must request an annual update no later than two weeks before the anniversary date, determined as the earlier of: (a) the execution date of the GMP Amendment, or (b) the execution date of the first amendment to permit procurement of construction services. Contractors are required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. The annual update requirement is not applicable to 27F “rental of equipment” contracts.
  - Every contractor or subcontractor which performs construction work on the project is required to submit weekly payroll reports and a Statement of Compliance directly to the awarding authority by mail or email and keep them on file for three years. Each weekly payroll report must contain: the employee’s name, address, occupational classification, hours worked, and wages paid. Do not submit weekly payroll reports to DLS. A sample of a payroll reporting form may be obtained at <http://www.mass.gov/dols/pw>.
  - Contractors with questions about the wage rates or classifications included on the wage schedule have an affirmative obligation to inquire with DLS at (617) 626-6953.
  - Employees not receiving the prevailing wage rate set forth on the wage schedule may report the violation to the Fair Labor Division of the office of the Attorney General at (617) 727-3465.
  - Failure of a contractor or subcontractor to pay the prevailing wage rates listed on the wage schedule to all employees who perform construction work on the project is a violation of the law and subjects the contractor or subcontractor to civil and criminal penalties.
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Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
<b>Construction</b>						
(2 AXLE) DRIVER - EQUIPMENT <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$35.15	\$12.91	\$14.82	\$0.00	\$62.88
	06/01/2021	\$35.95	\$12.91	\$14.82	\$0.00	\$63.68
	08/01/2021	\$35.95	\$13.41	\$14.82	\$0.00	\$64.18
	12/01/2021	\$35.95	\$13.41	\$16.01	\$0.00	\$65.37
(3 AXLE) DRIVER - EQUIPMENT <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$35.22	\$12.91	\$14.82	\$0.00	\$62.95
	06/01/2021	\$36.02	\$12.91	\$14.82	\$0.00	\$63.75
	08/01/2021	\$36.02	\$13.41	\$14.82	\$0.00	\$64.25
	12/01/2021	\$36.02	\$13.41	\$16.01	\$0.00	\$65.44
(4 & 5 AXLE) DRIVER - EQUIPMENT <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$35.34	\$12.91	\$14.82	\$0.00	\$63.07
	06/01/2021	\$36.14	\$12.91	\$14.82	\$0.00	\$63.87
	08/01/2021	\$36.14	\$13.41	\$14.82	\$0.00	\$64.37
	12/01/2021	\$36.14	\$13.41	\$16.01	\$0.00	\$65.56
ADS/SUBMERSIBLE PILOT <i>PILE DRIVER LOCAL 56 (ZONE 1)</i>	08/01/2020	\$103.05	\$9.40	\$23.12	\$0.00	\$135.57
For apprentice rates see "Apprentice- PILE DRIVER"						
AIR TRACK OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2020	\$35.41	\$8.60	\$16.06	\$0.00	\$60.07
	06/01/2021	\$36.33	\$8.60	\$16.06	\$0.00	\$60.99
	12/01/2021	\$37.24	\$8.60	\$16.06	\$0.00	\$61.90
	06/01/2022	\$38.14	\$8.60	\$16.06	\$0.00	\$62.80
	12/01/2022	\$38.99	\$8.60	\$16.06	\$0.00	\$63.65
	06/01/2023	\$39.89	\$8.60	\$16.06	\$0.00	\$64.55
	12/01/2023	\$40.79	\$8.60	\$16.06	\$0.00	\$65.45
For apprentice rates see "Apprentice- LABORER"						
ASBESTOS WORKER (PIPES & TANKS) <i>HEAT &amp; FROST INSULATORS LOCAL 6 (SOUTHERN MASS)</i>	12/01/2020	\$38.10	\$12.80	\$9.45	\$0.00	\$60.35
ASPHALT RAKER <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
ASPHALT/CONCRETE/CRUSHER PLANT-ON SITE <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.98	\$13.50	\$15.70	\$0.00	\$79.18
	06/01/2021	\$51.08	\$13.50	\$15.70	\$0.00	\$80.28
	12/01/2021	\$52.23	\$13.50	\$15.70	\$0.00	\$81.43
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
BACKHOE/FRONT-END LOADER <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.98	\$13.50	\$15.70	\$0.00	\$79.18
	06/01/2021	\$51.08	\$13.50	\$15.70	\$0.00	\$80.28
	12/01/2021	\$52.23	\$13.50	\$15.70	\$0.00	\$81.43
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
BARCO-TYPE JUMPING TAMPER <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
BLOCK PAVER, RAMMER / CURB SETTER <i>LABORERS - ZONE 2</i>	12/01/2020	\$35.41	\$8.60	\$16.06	\$0.00	\$60.07
	06/01/2021	\$36.33	\$8.60	\$16.06	\$0.00	\$60.99
	12/01/2021	\$37.24	\$8.60	\$16.06	\$0.00	\$61.90
	06/01/2022	\$38.14	\$8.60	\$16.06	\$0.00	\$62.80
	12/01/2022	\$38.99	\$8.60	\$16.06	\$0.00	\$63.65
	06/01/2023	\$39.89	\$8.60	\$16.06	\$0.00	\$64.55
	12/01/2023	\$40.79	\$8.60	\$16.06	\$0.00	\$65.45
For apprentice rates see "Apprentice- LABORER"						
BOILER MAKER <i>BOILERMAKERS LOCAL 29</i>	01/01/2020	\$46.10	\$7.07	\$17.98	\$0.00	\$71.15

**Apprentice - BOILERMAKER - Local 29**

**Effective Date - 01/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	65	\$29.97	\$7.07	\$11.69	\$0.00	\$48.73
2	65	\$29.97	\$7.07	\$11.69	\$0.00	\$48.73
3	70	\$32.27	\$7.07	\$12.59	\$0.00	\$51.93
4	75	\$34.58	\$7.07	\$13.49	\$0.00	\$55.14
5	80	\$36.88	\$7.07	\$14.38	\$0.00	\$58.33
6	85	\$39.19	\$7.07	\$15.29	\$0.00	\$61.55
7	90	\$41.49	\$7.07	\$16.18	\$0.00	\$64.74
8	95	\$43.80	\$7.07	\$17.09	\$0.00	\$67.96

**Notes:**

**Apprentice to Journeyworker Ratio:1:4**

BRICK/STONE/ARTIFICIAL MASONRY (INCL. MASONRY WATERPROOFING) <i>BRICKLAYERS LOCAL 3 (NEW BEDFORD)</i>	02/01/2021	\$55.75	\$11.39	\$22.09	\$0.00	\$89.23
	08/01/2021	\$57.15	\$11.39	\$22.25	\$0.00	\$90.79
	02/01/2022	\$57.74	\$11.39	\$22.25	\$0.00	\$91.38

**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - BRICK/PLASTER/CEMENT MASON - Local 3 New Bedford**

**Effective Date - 02/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$27.88	\$11.39	\$22.09	\$0.00	\$61.36
2	60	\$33.45	\$11.39	\$22.09	\$0.00	\$66.93
3	70	\$39.03	\$11.39	\$22.09	\$0.00	\$72.51
4	80	\$44.60	\$11.39	\$22.09	\$0.00	\$78.08
5	90	\$50.18	\$11.39	\$22.09	\$0.00	\$83.66

**Effective Date - 08/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$28.58	\$11.39	\$22.25	\$0.00	\$62.22
2	60	\$34.29	\$11.39	\$22.25	\$0.00	\$67.93
3	70	\$40.01	\$11.39	\$22.25	\$0.00	\$73.65
4	80	\$45.72	\$11.39	\$22.25	\$0.00	\$79.36
5	90	\$51.44	\$11.39	\$22.25	\$0.00	\$85.08

**Notes:**

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**Apprentice to Journeyworker Ratio:1:5**

<b>BULLDOZER/GRADER/SCRAPER</b> <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
<b>CAISSON &amp; UNDERPINNING BOTTOM MAN</b> <i>LABORERS - FOUNDATION AND MARINE</i>	12/01/2020	\$41.05	\$8.60	\$17.47	\$0.00	\$67.12
	06/01/2021	\$42.07	\$8.60	\$17.47	\$0.00	\$68.14
	12/01/2021	\$43.08	\$8.60	\$17.47	\$0.00	\$69.15
For apprentice rates see "Apprentice- LABORER"						
<b>CAISSON &amp; UNDERPINNING LABORER</b> <i>LABORERS - FOUNDATION AND MARINE</i>	12/01/2020	\$39.90	\$8.60	\$17.47	\$0.00	\$65.97
	06/01/2021	\$40.92	\$8.60	\$17.47	\$0.00	\$66.99
	12/01/2021	\$41.93	\$8.60	\$17.47	\$0.00	\$68.00
For apprentice rates see "Apprentice- LABORER"						
<b>CAISSON &amp; UNDERPINNING TOP MAN</b> <i>LABORERS - FOUNDATION AND MARINE</i>	12/01/2020	\$39.90	\$8.60	\$17.47	\$0.00	\$65.97
	06/01/2021	\$40.92	\$8.60	\$17.47	\$0.00	\$66.99
	12/01/2021	\$41.93	\$8.60	\$17.47	\$0.00	\$68.00
For apprentice rates see "Apprentice- LABORER"						
<b>CARBIDE CORE DRILL OPERATOR</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
CARPENTER	03/01/2021	\$43.54	\$9.40	\$18.95	\$0.00	\$71.89
CARPENTERS -ZONE 2 (Eastern Massachusetts)	09/01/2021	\$44.19	\$9.40	\$18.95	\$0.00	\$72.54
	03/01/2022	\$44.79	\$9.40	\$18.95	\$0.00	\$73.14
	09/01/2022	\$45.44	\$9.40	\$18.95	\$0.00	\$73.79
	03/01/2023	\$46.04	\$9.40	\$18.95	\$0.00	\$74.39

**Apprentice - CARPENTER - Zone 2 Eastern MA**

**Effective Date - 03/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$21.77	\$9.40	\$1.73	\$0.00	\$32.90
2	60	\$26.12	\$9.40	\$1.73	\$0.00	\$37.25
3	70	\$30.48	\$9.40	\$13.76	\$0.00	\$53.64
4	75	\$32.66	\$9.40	\$13.76	\$0.00	\$55.82
5	80	\$34.83	\$9.40	\$15.49	\$0.00	\$59.72
6	80	\$34.83	\$9.40	\$15.49	\$0.00	\$59.72
7	90	\$39.19	\$9.40	\$17.22	\$0.00	\$65.81
8	90	\$39.19	\$9.40	\$17.22	\$0.00	\$65.81

**Effective Date - 09/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$22.10	\$9.40	\$1.73	\$0.00	\$33.23
2	60	\$26.51	\$9.40	\$1.73	\$0.00	\$37.64
3	70	\$30.93	\$9.40	\$13.76	\$0.00	\$54.09
4	75	\$33.14	\$9.40	\$13.76	\$0.00	\$56.30
5	80	\$35.35	\$9.40	\$15.49	\$0.00	\$60.24
6	80	\$35.35	\$9.40	\$15.49	\$0.00	\$60.24
7	90	\$39.77	\$9.40	\$17.22	\$0.00	\$66.39
8	90	\$39.77	\$9.40	\$17.22	\$0.00	\$66.39

**Notes:**

% Indentured After 10/1/17; 45/45/55/55/70/70/80/80  
 Step 1&2 \$30.72/ 3&4 \$36.75/ 5&6 \$55.37/ 7&8 \$61.45

**Apprentice to Journeyworker Ratio:1:5**

CARPENTER WOOD FRAME	04/01/2020	\$22.66	\$7.21	\$4.80	\$0.00	\$34.67
CARPENTERS-ZONE 3 (Wood Frame)	04/01/2021	\$23.16	\$7.21	\$4.80	\$0.00	\$35.17
	04/01/2022	\$23.66	\$7.21	\$4.80	\$0.00	\$35.67
	04/01/2023	\$24.16	\$7.21	\$4.80	\$0.00	\$36.17

All Aspects of New Wood Frame Work



**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - CARPENTER (Wood Frame) - Zone 3**

**Effective Date - 04/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	60	\$13.60	\$7.21	\$0.00	\$0.00	\$20.81
2	60	\$13.60	\$7.21	\$0.00	\$0.00	\$20.81
3	65	\$14.73	\$7.21	\$0.00	\$0.00	\$21.94
4	70	\$15.86	\$7.21	\$0.00	\$0.00	\$23.07
5	75	\$17.00	\$7.21	\$3.80	\$0.00	\$28.01
6	80	\$18.13	\$7.21	\$3.80	\$0.00	\$29.14
7	85	\$19.26	\$7.21	\$3.80	\$0.00	\$30.27
8	90	\$20.39	\$7.21	\$3.80	\$0.00	\$31.40

**Effective Date - 04/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	60	\$13.90	\$7.21	\$0.00	\$0.00	\$21.11
2	60	\$13.90	\$7.21	\$0.00	\$0.00	\$21.11
3	65	\$15.05	\$7.21	\$0.00	\$0.00	\$22.26
4	70	\$16.21	\$7.21	\$0.00	\$0.00	\$23.42
5	75	\$17.37	\$7.21	\$3.80	\$0.00	\$28.38
6	80	\$18.53	\$7.21	\$3.80	\$0.00	\$29.54
7	85	\$19.69	\$7.21	\$3.80	\$0.00	\$30.70
8	90	\$20.84	\$7.21	\$3.80	\$0.00	\$31.85

**Notes:**

% Indentured After 10/1/17; 45/45/55/55/70/70/80/80  
 Step 1&2 \$17.41/ 3&4 \$19.67/ 5&6 \$26.87/ 7&8 \$29.14

**Apprentice to Journeyworker Ratio:1:5**

CEMENT MASONRY/PLASTERING BRICKLAYERS LOCAL 3 (NEW BEDFORD)	01/01/2020	\$49.07	\$12.75	\$22.41	\$0.62	\$84.85
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**Apprentice - CEMENT MASONRY/PLASTERING - Eastern Mass (New Bedford)**

**Effective Date - 01/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$24.54	\$12.75	\$15.41	\$0.00	\$52.70
2	60	\$29.44	\$12.75	\$17.41	\$0.62	\$60.22
3	65	\$31.90	\$12.75	\$18.41	\$0.62	\$63.68
4	70	\$34.35	\$12.75	\$19.41	\$0.62	\$67.13
5	75	\$36.80	\$12.75	\$20.41	\$0.62	\$70.58
6	80	\$39.26	\$12.75	\$21.41	\$0.62	\$74.04
7	90	\$44.16	\$12.75	\$22.41	\$0.62	\$79.94

**Notes:**

Steps 3,4 are 500 hrs. All other steps are 1,000 hrs.

**Apprentice to Journeyworker Ratio:1:3**

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
CHAIN SAW OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
CLAM SHELLS/SLURRY BUCKETS/HEADING MACHINES <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$50.98	\$13.50	\$15.70	\$0.00	\$80.18
	06/01/2021	\$52.08	\$13.50	\$15.70	\$0.00	\$81.28
	12/01/2021	\$53.23	\$13.50	\$15.70	\$0.00	\$82.43
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
COMPRESSOR OPERATOR <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$33.00	\$13.50	\$15.70	\$0.00	\$62.20
	06/01/2021	\$33.75	\$13.50	\$15.70	\$0.00	\$62.95
	12/01/2021	\$34.54	\$13.50	\$15.70	\$0.00	\$63.74
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
DELEADER (BRIDGE) <i>PAINTERS LOCAL 35 - ZONE 2</i>	01/01/2021	\$52.06	\$8.25	\$22.75	\$0.00	\$83.06

**Apprentice - PAINTER Local 35 - BRIDGES/TANKS**

**Effective Date - 01/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$26.03	\$8.25	\$0.00	\$0.00	\$34.28
2	55	\$28.63	\$8.25	\$6.16	\$0.00	\$43.04
3	60	\$31.24	\$8.25	\$6.72	\$0.00	\$46.21
4	65	\$33.84	\$8.25	\$7.28	\$0.00	\$49.37
5	70	\$36.44	\$8.25	\$19.39	\$0.00	\$64.08
6	75	\$39.05	\$8.25	\$19.95	\$0.00	\$67.25
7	80	\$41.65	\$8.25	\$20.51	\$0.00	\$70.41
8	90	\$46.85	\$8.25	\$21.63	\$0.00	\$76.73

**Notes:**

Steps are 750 hrs.

**Apprentice to Journeyworker Ratio:1:1**

DEMO: ADZEMAN <i>LABORERS - ZONE 2</i>	12/01/2020	\$40.05	\$8.60	\$17.32	\$0.00	\$65.97
	06/01/2021	\$41.07	\$8.60	\$17.32	\$0.00	\$66.99
	12/01/2021	\$42.08	\$8.60	\$17.32	\$0.00	\$68.00
	06/01/2022	\$43.08	\$8.60	\$17.32	\$0.00	\$69.00
	12/01/2022	\$44.08	\$8.60	\$17.32	\$0.00	\$70.00
	06/01/2023	\$45.08	\$8.60	\$17.32	\$0.00	\$71.00
	12/01/2023	\$46.33	\$8.60	\$17.32	\$0.00	\$72.25

For apprentice rates see "Apprentice- LABORER"

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
DEMO: BACKHOE/LOADER/HAMMER OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2020	\$41.05	\$8.60	\$17.32	\$0.00	\$66.97
	06/01/2021	\$42.07	\$8.60	\$17.32	\$0.00	\$67.99
	12/01/2021	\$43.08	\$8.60	\$17.32	\$0.00	\$69.00
	06/01/2022	\$44.08	\$8.60	\$17.32	\$0.00	\$70.00
	12/01/2022	\$45.08	\$8.60	\$17.32	\$0.00	\$71.00
	06/01/2023	\$46.08	\$8.60	\$17.32	\$0.00	\$72.00
	12/01/2023	\$47.33	\$8.60	\$17.32	\$0.00	\$73.25
For apprentice rates see "Apprentice- LABORER"						
DEMO: BURNERS <i>LABORERS - ZONE 2</i>	12/01/2020	\$40.80	\$8.60	\$17.32	\$0.00	\$66.72
	06/01/2021	\$41.82	\$8.60	\$17.32	\$0.00	\$67.74
	12/01/2021	\$42.83	\$8.60	\$17.32	\$0.00	\$68.75
	06/01/2022	\$43.83	\$8.60	\$17.32	\$0.00	\$69.75
	12/01/2022	\$44.83	\$8.60	\$17.32	\$0.00	\$70.75
	06/01/2023	\$45.83	\$8.60	\$17.32	\$0.00	\$71.75
	12/01/2023	\$47.08	\$8.60	\$17.32	\$0.00	\$73.00
For apprentice rates see "Apprentice- LABORER"						
DEMO: CONCRETE CUTTER/SAWYER <i>LABORERS - ZONE 2</i>	12/01/2020	\$41.05	\$8.60	\$17.32	\$0.00	\$66.97
	06/01/2021	\$42.07	\$8.60	\$17.32	\$0.00	\$67.99
	12/01/2021	\$43.08	\$8.60	\$17.32	\$0.00	\$69.00
	06/01/2022	\$44.08	\$8.60	\$17.32	\$0.00	\$70.00
	12/01/2022	\$45.08	\$8.60	\$17.32	\$0.00	\$71.00
	06/01/2023	\$46.08	\$8.60	\$17.32	\$0.00	\$72.00
	12/01/2023	\$47.33	\$8.60	\$17.32	\$0.00	\$73.25
For apprentice rates see "Apprentice- LABORER"						
DEMO: JACKHAMMER OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2020	\$40.80	\$8.60	\$17.32	\$0.00	\$66.72
	06/01/2021	\$41.82	\$8.60	\$17.32	\$0.00	\$67.74
	12/01/2021	\$42.83	\$8.60	\$17.32	\$0.00	\$68.75
	06/01/2022	\$43.83	\$8.60	\$17.32	\$0.00	\$69.75
	12/01/2022	\$44.83	\$8.60	\$17.32	\$0.00	\$70.75
	06/01/2023	\$45.83	\$8.60	\$17.32	\$0.00	\$71.75
	12/01/2023	\$47.08	\$8.60	\$17.32	\$0.00	\$73.00
For apprentice rates see "Apprentice- LABORER"						
DEMO: WRECKING LABORER <i>LABORERS - ZONE 2</i>	12/01/2020	\$40.05	\$8.60	\$17.32	\$0.00	\$65.97
	06/01/2021	\$41.07	\$8.60	\$17.32	\$0.00	\$66.99
	12/01/2021	\$42.08	\$8.60	\$17.32	\$0.00	\$68.00
	06/01/2022	\$43.08	\$8.60	\$17.32	\$0.00	\$69.00
	12/01/2022	\$44.08	\$8.60	\$17.32	\$0.00	\$70.00
	06/01/2023	\$45.08	\$8.60	\$17.32	\$0.00	\$71.00
	12/01/2023	\$46.33	\$8.60	\$17.32	\$0.00	\$72.25
For apprentice rates see "Apprentice- LABORER"						
DIRECTIONAL DRILL MACHINE OPERATOR <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
DIVER <i>PILE DRIVER LOCAL 56 (ZONE 1)</i>	08/01/2020	\$68.70	\$9.40	\$23.12	\$0.00	\$101.22
For apprentice rates see "Apprentice- PILE DRIVER"						

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
DIVER TENDER <i>PILE DRIVER LOCAL 56 (ZONE 1)</i>	08/01/2020	\$49.07	\$9.40	\$23.12	\$0.00	\$81.59
For apprentice rates see "Apprentice- PILE DRIVER"						
DIVER TENDER (EFFLUENT) <i>PILE DRIVER LOCAL 56 (ZONE 1)</i>	08/01/2020	\$73.60	\$9.40	\$23.12	\$0.00	\$106.12
For apprentice rates see "Apprentice- PILE DRIVER"						
DIVER/SLURRY (EFFLUENT) <i>PILE DRIVER LOCAL 56 (ZONE 1)</i>	08/01/2020	\$103.05	\$9.40	\$23.12	\$0.00	\$135.57
For apprentice rates see "Apprentice- PILE DRIVER"						
DRAWBRIDGE OPERATOR (Construction) <i>DRAWBRIDGE - SEIU LOCAL 888</i>	07/01/2020	\$26.77	\$6.67	\$3.93	\$0.16	\$37.53
ELECTRICIAN <i>ELECTRICIANS LOCAL 223</i>	09/01/2020	\$43.66	\$10.90	\$14.66	\$0.00	\$69.22

**Apprentice - ELECTRICIAN - Local 223**

**Effective Date - 09/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	40	\$17.46	\$10.90	\$0.52	\$0.00	\$28.88
2	45	\$19.65	\$10.90	\$0.59	\$0.00	\$31.14
3	50	\$21.83	\$10.90	\$0.65	\$0.00	\$33.38
4	55	\$24.01	\$10.90	\$6.28	\$0.00	\$41.19
5	60	\$26.20	\$10.90	\$6.77	\$0.00	\$43.87
6	65	\$28.38	\$10.90	\$7.24	\$0.00	\$46.52
7	70	\$30.56	\$10.90	\$7.73	\$0.00	\$49.19
8	75	\$32.75	\$10.90	\$8.21	\$0.00	\$51.86

**Notes:**

**Apprentice to Journeyworker Ratio:2:3\*\*\***

ELEVATOR CONSTRUCTOR <i>ELEVATOR CONSTRUCTORS LOCAL 4</i>	01/01/2021	\$63.47	\$15.88	\$19.31	\$0.00	\$98.66
	01/01/2022	\$65.62	\$16.03	\$20.21	\$0.00	\$101.86

**Apprentice - ELEVATOR CONSTRUCTOR - Local 4**

**Effective Date - 01/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$31.74	\$15.88	\$0.00	\$0.00	\$47.62
2	55	\$34.91	\$15.88	\$19.31	\$0.00	\$70.10
3	65	\$41.26	\$15.88	\$19.31	\$0.00	\$76.45
4	70	\$44.43	\$15.88	\$19.31	\$0.00	\$79.62
5	80	\$50.78	\$15.88	\$19.31	\$0.00	\$85.97

**Effective Date - 01/01/2022**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$32.81	\$16.03	\$0.00	\$0.00	\$48.84
2	55	\$36.09	\$16.03	\$20.21	\$0.00	\$72.33
3	65	\$42.65	\$16.03	\$20.21	\$0.00	\$78.89
4	70	\$45.93	\$16.03	\$20.21	\$0.00	\$82.17
5	80	\$52.50	\$16.03	\$20.21	\$0.00	\$88.74

**Notes:**

Steps 1-2 are 6 mos.; Steps 3-5 are 1 year

**Apprentice to Journeyworker Ratio:1:1**

ELEVATOR CONSTRUCTOR HELPER	01/01/2021	\$44.43	\$15.88	\$19.31	\$0.00	\$79.62
ELEVATOR CONSTRUCTORS LOCAL 4	01/01/2022	\$45.93	\$16.03	\$20.21	\$0.00	\$82.17
For apprentice rates see "Apprentice - ELEVATOR CONSTRUCTOR"						
FENCE & GUARD RAIL ERECTOR	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
LABORERS - ZONE 2	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
FIELD ENG.INST.PERSON-BLDG,SITE,HVY/HWY	11/01/2020	\$45.23	\$13.00	\$15.70	\$0.00	\$73.93
OPERATING ENGINEERS LOCAL 4	05/01/2021	\$46.38	\$13.00	\$15.70	\$0.00	\$75.08
	11/01/2021	\$47.38	\$13.00	\$15.70	\$0.00	\$76.08
	05/01/2022	\$48.53	\$13.00	\$15.70	\$0.00	\$77.23
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
FIELD ENG.PARTY CHIEF-BLDG,SITE,HVY/HWY	11/01/2020	\$46.74	\$13.00	\$15.70	\$0.00	\$75.44
OPERATING ENGINEERS LOCAL 4	05/01/2021	\$47.90	\$13.00	\$15.70	\$0.00	\$76.60
	11/01/2021	\$48.91	\$13.00	\$15.70	\$0.00	\$77.61
	05/01/2022	\$50.07	\$13.00	\$15.70	\$0.00	\$78.77
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
FIELD ENG.ROD PERSON-BLDG,SITE,HVY/HWY <i>OPERATING ENGINEERS LOCAL 4</i>	11/01/2020	\$22.73	\$13.00	\$15.70	\$0.00	\$51.43
	05/01/2021	\$23.41	\$13.00	\$15.70	\$0.00	\$52.11
	11/01/2021	\$24.01	\$13.00	\$15.70	\$0.00	\$52.71
	05/01/2022	\$24.68	\$13.00	\$15.70	\$0.00	\$53.38
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
FIRE ALARM INSTALLER <i>ELECTRICIANS LOCAL 223</i>	09/01/2020	\$43.66	\$10.90	\$14.66	\$0.00	\$69.22
For apprentice rates see "Apprentice- ELECTRICIAN"						
FIRE ALARM REPAIR / MAINTENANCE <i>/ COMMISSIONINGELECTRICIANS LOCAL 223</i>	09/01/2020	\$36.86	\$10.90	\$12.45	\$0.00	\$60.21
For apprentice rates see "Apprentice- TELECOMMUNICATIONS TECHNICIAN"						
FIREMAN (ASST. ENGINEER) <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$40.75	\$13.50	\$15.70	\$0.00	\$69.95
	06/01/2021	\$41.66	\$13.50	\$15.70	\$0.00	\$70.86
	12/01/2021	\$42.61	\$13.50	\$15.70	\$0.00	\$71.81
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
FLOORCOVERER <i>FLOORCOVERERS LOCAL 2168 ZONE I</i>	03/01/2021	\$48.59	\$9.40	\$19.25	\$0.00	\$77.24
	09/01/2021	\$49.39	\$9.40	\$19.25	\$0.00	\$78.04
	03/01/2022	\$50.19	\$9.40	\$19.25	\$0.00	\$78.84

**Apprentice - FLOORCOVERER - Local 2168 Zone I**

**Effective Date - 03/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$24.30	\$9.40	\$1.79	\$0.00	\$35.49
2	55	\$26.72	\$9.40	\$1.79	\$0.00	\$37.91
3	60	\$29.15	\$9.40	\$13.88	\$0.00	\$52.43
4	65	\$31.58	\$9.40	\$13.88	\$0.00	\$54.86
5	70	\$34.01	\$9.40	\$15.67	\$0.00	\$59.08
6	75	\$36.44	\$9.40	\$15.67	\$0.00	\$61.51
7	80	\$38.87	\$9.40	\$17.46	\$0.00	\$65.73
8	85	\$41.30	\$9.40	\$17.46	\$0.00	\$68.16

**Effective Date - 09/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$24.70	\$9.40	\$1.79	\$0.00	\$35.89
2	55	\$27.16	\$9.40	\$1.79	\$0.00	\$38.35
3	60	\$29.63	\$9.40	\$13.88	\$0.00	\$52.91
4	65	\$32.10	\$9.40	\$13.88	\$0.00	\$55.38
5	70	\$34.57	\$9.40	\$15.67	\$0.00	\$59.64
6	75	\$37.04	\$9.40	\$15.67	\$0.00	\$62.11
7	80	\$39.51	\$9.40	\$17.46	\$0.00	\$66.37
8	85	\$41.98	\$9.40	\$17.46	\$0.00	\$68.84

**Notes:** Steps are 750 hrs.  
 % After 09/1/17; 45/45/55/55/70/70/80/80 (1500hr Steps)  
 Step 1&2 \$33.03/ 3&4 \$39.64/ 5&6 \$59.08/ 7&8 \$65.73

**Apprentice to Journeyworker Ratio:1:1**

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
FORK LIFT/CHERRY PICKER <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.98	\$13.50	\$15.70	\$0.00	\$79.18
	06/01/2021	\$51.08	\$13.50	\$15.70	\$0.00	\$80.28
	12/01/2021	\$52.23	\$13.50	\$15.70	\$0.00	\$81.43
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
GENERATOR/LIGHTING PLANT/HEATERS <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$33.00	\$13.50	\$15.70	\$0.00	\$62.20
	06/01/2021	\$33.75	\$13.50	\$15.70	\$0.00	\$62.95
	12/01/2021	\$34.54	\$13.50	\$15.70	\$0.00	\$63.74
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
GLAZIER (GLASS PLANK/AIR BARRIER/INTERIOR SYSTEMS) <i>GLAZIERS LOCAL 1333</i>	06/01/2020	\$39.18	\$10.80	\$10.45	\$0.00	\$60.43

**Apprentice - GLAZIER - Local 1333**

**Effective Date - 06/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$19.59	\$10.80	\$1.80	\$0.00	\$32.19
2	56	\$22.04	\$10.80	\$1.80	\$0.00	\$34.64
3	63	\$24.49	\$10.80	\$2.45	\$0.00	\$37.74
4	69	\$26.94	\$10.80	\$2.45	\$0.00	\$40.19
5	75	\$29.39	\$10.80	\$3.15	\$0.00	\$43.34
6	81	\$31.83	\$10.80	\$3.15	\$0.00	\$45.78
7	88	\$34.28	\$10.80	\$10.45	\$0.00	\$55.53
8	94	\$36.73	\$10.80	\$10.45	\$0.00	\$57.98

**Notes:**

**Apprentice to Journeyworker Ratio:1:3**

HOISTING ENGINEER/CRANES/GRADALLS <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.98	\$13.50	\$15.70	\$0.00	\$79.18
	06/01/2021	\$51.08	\$13.50	\$15.70	\$0.00	\$80.28
	12/01/2021	\$52.23	\$13.50	\$15.70	\$0.00	\$81.43

**Classification**

**Effective Date   Base Wage   Health   Pension   Supplemental Unemployment   Total Rate**

**Apprentice - OPERATING ENGINEERS - Local 4**

**Effective Date - 12/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	55	\$27.49	\$13.50	\$0.00	\$0.00	\$40.99
2	60	\$29.99	\$13.50	\$15.70	\$0.00	\$59.19
3	65	\$32.49	\$13.50	\$15.70	\$0.00	\$61.69
4	70	\$34.99	\$13.50	\$15.70	\$0.00	\$64.19
5	75	\$37.49	\$13.50	\$15.70	\$0.00	\$66.69
6	80	\$39.98	\$13.50	\$15.70	\$0.00	\$69.18
7	85	\$42.48	\$13.50	\$15.70	\$0.00	\$71.68
8	90	\$44.98	\$13.50	\$15.70	\$0.00	\$74.18

**Effective Date - 06/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	55	\$28.09	\$13.50	\$0.00	\$0.00	\$41.59
2	60	\$30.65	\$13.50	\$15.70	\$0.00	\$59.85
3	65	\$33.20	\$13.50	\$15.70	\$0.00	\$62.40
4	70	\$35.76	\$13.50	\$15.70	\$0.00	\$64.96
5	75	\$38.31	\$13.50	\$15.70	\$0.00	\$67.51
6	80	\$40.86	\$13.50	\$15.70	\$0.00	\$70.06
7	85	\$43.42	\$13.50	\$15.70	\$0.00	\$72.62
8	90	\$45.97	\$13.50	\$15.70	\$0.00	\$75.17

**Notes:**

**Apprentice to Journeyworker Ratio:1:6**

HVAC (DUCTWORK) SHEETMETAL WORKERS LOCAL 17 - B	10/01/2020	\$36.91	\$13.50	\$16.55	\$2.01	\$68.97
	04/01/2021	\$37.66	\$13.50	\$16.55	\$2.03	\$69.74
	10/01/2021	\$38.66	\$13.50	\$16.55	\$2.06	\$70.77
	04/01/2022	\$39.66	\$13.50	\$16.55	\$2.09	\$71.80

For apprentice rates see "Apprentice- SHEET METAL WORKER"

HVAC (ELECTRICAL CONTROLS) ELECTRICIANS LOCAL 223	09/01/2020	\$43.66	\$10.90	\$14.66	\$0.00	\$69.22
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For apprentice rates see "Apprentice- ELECTRICIAN"

HVAC (TESTING AND BALANCING - AIR) SHEETMETAL WORKERS LOCAL 17 - B	10/01/2020	\$36.91	\$13.50	\$16.55	\$2.01	\$68.97
	04/01/2021	\$37.66	\$13.50	\$16.55	\$2.03	\$69.74
	10/01/2021	\$38.66	\$13.50	\$16.55	\$2.06	\$70.77
	04/01/2022	\$39.66	\$13.50	\$16.55	\$2.09	\$71.80

For apprentice rates see "Apprentice- SHEET METAL WORKER"

HVAC (TESTING AND BALANCING - WATER) PLUMBERS & PIPEFITTERS LOCAL 51	08/31/2020	\$44.69	\$10.15	\$19.80	\$0.00	\$74.64
	08/30/2021	\$46.69	\$10.15	\$19.80	\$0.00	\$76.64

For apprentice rates see "Apprentice- PIPEFITTER" or "PLUMBER/PIPEFITTER"

HVAC MECHANIC PLUMBERS & PIPEFITTERS LOCAL 51	08/31/2020	\$44.69	\$10.15	\$19.80	\$0.00	\$74.64
	08/30/2021	\$46.69	\$10.15	\$19.80	\$0.00	\$76.64

For apprentice rates see "Apprentice- PIPEFITTER" or "PLUMBER/PIPEFITTER"



Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
HYDRAULIC DRILLS <i>LABORERS - ZONE 2</i>	12/01/2020	\$35.41	\$8.60	\$16.06	\$0.00	\$60.07
	06/01/2021	\$36.33	\$8.60	\$16.06	\$0.00	\$60.99
	12/01/2021	\$37.24	\$8.60	\$16.06	\$0.00	\$61.90
	06/01/2022	\$38.14	\$8.60	\$16.06	\$0.00	\$62.80
	12/01/2022	\$38.99	\$8.60	\$16.06	\$0.00	\$63.65
	06/01/2023	\$39.89	\$8.60	\$16.06	\$0.00	\$64.55
	12/01/2023	\$40.79	\$8.60	\$16.06	\$0.00	\$65.45

For apprentice rates see "Apprentice- LABORER"

INSULATOR (PIPES & TANKS) <i>HEAT &amp; FROST INSULATORS LOCAL 6 (SOUTHERN MASS)</i>	09/01/2020	\$44.10	\$13.80	\$17.14	\$0.00	\$75.04
	09/01/2021	\$46.50	\$13.80	\$17.14	\$0.00	\$77.44
	09/01/2022	\$48.95	\$13.80	\$17.14	\$0.00	\$79.89

**Apprentice - ASBESTOS INSULATOR (Pipes & Tanks) - Local 6 Southern MA**

**Effective Date - 09/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$22.05	\$13.80	\$12.42	\$0.00	\$48.27
2	60	\$26.46	\$13.80	\$13.36	\$0.00	\$53.62
3	70	\$30.87	\$13.80	\$14.31	\$0.00	\$58.98
4	80	\$35.28	\$13.80	\$15.25	\$0.00	\$64.33

**Effective Date - 09/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$23.25	\$13.80	\$12.42	\$0.00	\$49.47
2	60	\$27.90	\$13.80	\$13.36	\$0.00	\$55.06
3	70	\$32.55	\$13.80	\$14.31	\$0.00	\$60.66
4	80	\$37.20	\$13.80	\$15.25	\$0.00	\$66.25

**Notes:**

Steps are 1 year

**Apprentice to Journeyworker Ratio:1:4**

IRONWORKER/WELDER <i>IRONWORKERS LOCAL 37</i>	03/16/2021	\$42.46	\$7.70	\$17.10	\$0.00	\$67.26
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**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - IRONWORKER - Local 37**

**Effective Date - 03/16/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	70	\$29.72	\$7.70	\$17.10	\$0.00	\$54.52
2	75	\$31.85	\$7.70	\$17.10	\$0.00	\$56.65
3	80	\$33.97	\$7.70	\$17.10	\$0.00	\$58.77
4	85	\$36.09	\$7.70	\$17.10	\$0.00	\$60.89
5	90	\$38.21	\$7.70	\$17.10	\$0.00	\$63.01
6	95	\$40.34	\$7.70	\$17.10	\$0.00	\$65.14

**Notes:**

**Apprentice to Journeyworker Ratio:1:4**

<b>JACKHAMMER &amp; PAVING BREAKER OPERATOR</b>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
<i>LABORERS - ZONE 2</i>	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95

For apprentice rates see "Apprentice- LABORER"

<b>LABORER</b>	12/01/2020	\$34.66	\$8.60	\$16.06	\$0.00	\$59.32
<i>LABORERS - ZONE 2</i>	06/01/2021	\$35.58	\$8.60	\$16.06	\$0.00	\$60.24
	12/01/2021	\$36.49	\$8.60	\$16.06	\$0.00	\$61.15
	06/01/2022	\$37.39	\$8.60	\$16.06	\$0.00	\$62.05
	12/01/2022	\$38.24	\$8.60	\$16.06	\$0.00	\$62.90
	06/01/2023	\$39.14	\$8.60	\$16.06	\$0.00	\$63.80
	12/01/2023	\$40.04	\$8.60	\$16.06	\$0.00	\$64.70

**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - LABORER - Zone 2**

**Effective Date - 12/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	60	\$20.80	\$8.60	\$16.06	\$0.00	\$45.46
2	70	\$24.26	\$8.60	\$16.06	\$0.00	\$48.92
3	80	\$27.73	\$8.60	\$16.06	\$0.00	\$52.39
4	90	\$31.19	\$8.60	\$16.06	\$0.00	\$55.85

**Effective Date - 06/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	60	\$21.35	\$8.60	\$16.06	\$0.00	\$46.01
2	70	\$24.91	\$8.60	\$16.06	\$0.00	\$49.57
3	80	\$28.46	\$8.60	\$16.06	\$0.00	\$53.12
4	90	\$32.02	\$8.60	\$16.06	\$0.00	\$56.68

**Notes:**

**Apprentice to Journeyworker Ratio:1:5**

<b>LABORER: CARPENTER TENDER</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.66	\$8.60	\$16.06	\$0.00	\$59.32
	06/01/2021	\$35.58	\$8.60	\$16.06	\$0.00	\$60.24
	12/01/2021	\$36.49	\$8.60	\$16.06	\$0.00	\$61.15
	06/01/2022	\$37.39	\$8.60	\$16.06	\$0.00	\$62.05
	12/01/2022	\$38.24	\$8.60	\$16.06	\$0.00	\$62.90
	06/01/2023	\$39.14	\$8.60	\$16.06	\$0.00	\$63.80
	12/01/2023	\$40.04	\$8.60	\$16.06	\$0.00	\$64.70

For apprentice rates see "Apprentice- LABORER"

<b>LABORER: CEMENT FINISHER TENDER</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.66	\$8.60	\$16.06	\$0.00	\$59.32
	06/01/2021	\$35.58	\$8.60	\$16.06	\$0.00	\$60.24
	12/01/2021	\$36.49	\$8.60	\$16.06	\$0.00	\$61.15
	06/01/2022	\$37.39	\$8.60	\$16.06	\$0.00	\$62.05
	12/01/2022	\$38.24	\$8.60	\$16.06	\$0.00	\$62.90
	06/01/2023	\$39.14	\$8.60	\$16.06	\$0.00	\$63.80
	12/01/2023	\$40.04	\$8.60	\$16.06	\$0.00	\$64.70

For apprentice rates see "Apprentice- LABORER"

<b>LABORER: HAZARDOUS WASTE/ASBESTOS REMOVER</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.75	\$8.60	\$16.12	\$0.00	\$59.47
	06/01/2021	\$35.67	\$8.60	\$16.12	\$0.00	\$60.39
	12/01/2021	\$36.58	\$8.60	\$16.12	\$0.00	\$61.30
	06/01/2022	\$37.48	\$8.60	\$16.12	\$0.00	\$62.20
	12/01/2022	\$38.33	\$8.60	\$16.12	\$0.00	\$63.05
	06/01/2023	\$39.23	\$8.60	\$16.12	\$0.00	\$63.95
	12/01/2023	\$40.13	\$8.60	\$16.12	\$0.00	\$64.85

For apprentice rates see "Apprentice- LABORER"

<b>Classification</b>	<b>Effective Date</b>	<b>Base Wage</b>	<b>Health</b>	<b>Pension</b>	<b>Supplemental Unemployment</b>	<b>Total Rate</b>
<b>LABORER: MASON TENDER</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
<b>LABORER: MULTI-TRADE TENDER</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.66	\$8.60	\$16.06	\$0.00	\$59.32
	06/01/2021	\$35.58	\$8.60	\$16.06	\$0.00	\$60.24
	12/01/2021	\$36.49	\$8.60	\$16.06	\$0.00	\$61.15
	06/01/2022	\$37.39	\$8.60	\$16.06	\$0.00	\$62.05
	12/01/2022	\$38.24	\$8.60	\$16.06	\$0.00	\$62.90
	06/01/2023	\$39.14	\$8.60	\$16.06	\$0.00	\$63.80
	12/01/2023	\$40.04	\$8.60	\$16.06	\$0.00	\$64.70
For apprentice rates see "Apprentice- LABORER"						
<b>LABORER: TREE REMOVER</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.66	\$8.60	\$16.06	\$0.00	\$59.32
	06/01/2021	\$35.58	\$8.60	\$16.06	\$0.00	\$60.24
	12/01/2021	\$36.49	\$8.60	\$16.06	\$0.00	\$61.15
	06/01/2022	\$37.39	\$8.60	\$16.06	\$0.00	\$62.05
	12/01/2022	\$38.24	\$8.60	\$16.06	\$0.00	\$62.90
	06/01/2023	\$39.14	\$8.60	\$16.06	\$0.00	\$63.80
	12/01/2023	\$40.04	\$8.60	\$16.06	\$0.00	\$64.70
This classification applies to the removal of standing trees, and the trimming and removal of branches and limbs when related to public works construction or site clearance incidental to construction . For apprentice rates see "Apprentice- LABORER"						
<b>LASER BEAM OPERATOR</b> <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
<b>MARBLE &amp; TILE FINISHERS</b> <i>BRICKLAYERS LOCAL 3 - MARBLE &amp; TILE</i>	02/01/2021	\$42.57	\$11.39	\$20.14	\$0.00	\$74.10
	08/01/2021	\$43.69	\$11.39	\$20.30	\$0.00	\$75.38
	02/01/2022	\$44.16	\$11.39	\$20.30	\$0.00	\$75.85

**Classification**

**Effective Date   Base Wage   Health   Pension   Supplemental Unemployment   Total Rate**

**Apprentice - MARBLE & TILE FINISHER - Local 3 Marble & Tile**

**Effective Date - 02/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$21.29	\$11.39	\$20.14	\$0.00	\$52.82
2	60	\$25.54	\$11.39	\$20.14	\$0.00	\$57.07
3	70	\$29.80	\$11.39	\$20.14	\$0.00	\$61.33
4	80	\$34.06	\$11.39	\$20.14	\$0.00	\$65.59
5	90	\$38.31	\$11.39	\$20.14	\$0.00	\$69.84

**Effective Date - 08/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$21.85	\$11.39	\$20.30	\$0.00	\$53.54
2	60	\$26.21	\$11.39	\$20.30	\$0.00	\$57.90
3	70	\$30.58	\$11.39	\$20.30	\$0.00	\$62.27
4	80	\$34.95	\$11.39	\$20.30	\$0.00	\$66.64
5	90	\$39.32	\$11.39	\$20.30	\$0.00	\$71.01

**Notes:**

**Apprentice to Journeyworker Ratio:1:3**

MARBLE MASONS, TILELAYERS & TERRAZZO MECH BRICKLAYERS LOCAL 3 - MARBLE & TILE	02/01/2021	\$55.77	\$11.39	\$22.08	\$0.00	\$89.24
	08/01/2021	\$57.17	\$11.39	\$22.24	\$0.00	\$90.80
	02/01/2022	\$57.74	\$11.39	\$22.24	\$0.00	\$91.37

**Classification**

**Effective Date   Base Wage   Health   Pension   Supplemental Unemployment   Total Rate**

**Apprentice - MARBLE-TILE-TERRAZZO MECHANIC - Local 3 Marble & Tile**

**Effective Date - 02/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$27.89	\$11.39	\$22.08	\$0.00	\$61.36
2	60	\$33.46	\$11.39	\$22.08	\$0.00	\$66.93
3	70	\$39.04	\$11.39	\$22.08	\$0.00	\$72.51
4	80	\$44.62	\$11.39	\$22.08	\$0.00	\$78.09
5	90	\$50.19	\$11.39	\$22.08	\$0.00	\$83.66

**Effective Date - 08/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$28.59	\$11.39	\$22.24	\$0.00	\$62.22
2	60	\$34.30	\$11.39	\$22.24	\$0.00	\$67.93
3	70	\$40.02	\$11.39	\$22.24	\$0.00	\$73.65
4	80	\$45.74	\$11.39	\$22.24	\$0.00	\$79.37
5	90	\$51.45	\$11.39	\$22.24	\$0.00	\$85.08

**Notes:**

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**Apprentice to Journeyworker Ratio:1:5**

MECH. SWEEPER OPERATOR (ON CONST. SITES) <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88

For apprentice rates see "Apprentice- OPERATING ENGINEERS"

MECHANICS MAINTENANCE <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88

For apprentice rates see "Apprentice- OPERATING ENGINEERS"

MILLWRIGHT (Zone 2) <i>MILLWRIGHTS LOCAL 1121 - Zone 2</i>	01/04/2021	\$39.72	\$9.40	\$20.45	\$0.00	\$69.57
	01/03/2022	\$40.97	\$9.40	\$20.45	\$0.00	\$70.82
	01/02/2023	\$42.22	\$9.40	\$20.45	\$0.00	\$72.07

**Apprentice - MILLWRIGHT - Local 1121 Zone 2**

**Effective Date - 01/04/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	55	\$21.85	\$9.40	\$5.58	\$0.00	\$36.83
2	65	\$25.82	\$9.40	\$16.90	\$0.00	\$52.12
3	75	\$29.79	\$9.40	\$17.92	\$0.00	\$57.11
4	85	\$33.76	\$9.40	\$18.93	\$0.00	\$62.09

**Effective Date - 01/03/2022**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	55	\$22.53	\$9.40	\$5.58	\$0.00	\$37.51
2	65	\$26.63	\$9.40	\$16.90	\$0.00	\$52.93
3	75	\$30.73	\$9.40	\$17.92	\$0.00	\$58.05
4	85	\$34.82	\$9.40	\$18.93	\$0.00	\$63.15

**Notes:** Step 1&2 Appr. indentured after 1/1/2020 receive no pension, but do receive annuity. (Step 1 \$5.58, Step 2 \$6.50)  
Steps are 2,000 hours

**Apprentice to Journeyworker Ratio:1:5**

MORTAR MIXER LABORERS - ZONE 2	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95

For apprentice rates see "Apprentice- LABORER"

OILER (OTHER THAN TRUCK CRANES, GRADALLS) OPERATING ENGINEERS LOCAL 4	12/01/2020	\$23.20	\$13.50	\$15.70	\$0.00	\$52.40
	06/01/2021	\$23.75	\$13.50	\$15.70	\$0.00	\$52.95
	12/01/2021	\$24.33	\$13.50	\$15.70	\$0.00	\$53.53

For apprentice rates see "Apprentice- OPERATING ENGINEERS"

OILER (TRUCK CRANES, GRADALLS) OPERATING ENGINEERS LOCAL 4	12/01/2020	\$27.97	\$13.50	\$15.70	\$0.00	\$57.17
	06/01/2021	\$28.61	\$13.50	\$15.70	\$0.00	\$57.81
	12/01/2021	\$29.29	\$13.50	\$15.70	\$0.00	\$58.49

For apprentice rates see "Apprentice- OPERATING ENGINEERS"

OTHER POWER DRIVEN EQUIPMENT - CLASS II OPERATING ENGINEERS LOCAL 4	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88

For apprentice rates see "Apprentice- OPERATING ENGINEERS"

PAINTER (BRIDGES/TANKS) PAINTERS LOCAL 35 - ZONE 2	01/01/2021	\$52.06	\$8.25	\$22.75	\$0.00	\$83.06
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**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - PAINTER Local 35 Zone 2 - Spray/Sandblast - Repaint**

**Effective Date - 01/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$20.51	\$8.25	\$0.00	\$0.00	\$28.76
2	55	\$22.56	\$8.25	\$6.16	\$0.00	\$36.97
3	60	\$24.61	\$8.25	\$6.72	\$0.00	\$39.58
4	65	\$26.66	\$8.25	\$7.28	\$0.00	\$42.19
5	70	\$28.71	\$8.25	\$19.39	\$0.00	\$56.35
6	75	\$30.77	\$8.25	\$19.95	\$0.00	\$58.97
7	80	\$32.82	\$8.25	\$20.51	\$0.00	\$61.58
8	90	\$36.92	\$8.25	\$21.63	\$0.00	\$66.80

**Notes:**  
Steps are 750 hrs.

**Apprentice to Journeyworker Ratio:1:1**

PAINTER / TAPER (BRUSH, NEW) *	01/01/2021	\$41.56	\$8.25	\$22.75	\$0.00	\$72.56
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\* If 30% or more of surfaces to be painted are new construction, NEW paint rate shall be used. PAINTERS LOCAL 35 - ZONE 2

**Apprentice - PAINTER - Local 35 Zone 2 - BRUSH NEW**

**Effective Date - 01/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$20.78	\$8.25	\$0.00	\$0.00	\$29.03
2	55	\$22.86	\$8.25	\$6.16	\$0.00	\$37.27
3	60	\$24.94	\$8.25	\$6.72	\$0.00	\$39.91
4	65	\$27.01	\$8.25	\$7.28	\$0.00	\$42.54
5	70	\$29.09	\$8.25	\$19.39	\$0.00	\$56.73
6	75	\$31.17	\$8.25	\$19.95	\$0.00	\$59.37
7	80	\$33.25	\$8.25	\$20.51	\$0.00	\$62.01
8	90	\$37.40	\$8.25	\$21.63	\$0.00	\$67.28

**Notes:**  
Steps are 750 hrs.

**Apprentice to Journeyworker Ratio:1:1**

PAINTER / TAPER (BRUSH, REPAINT)	01/01/2021	\$39.62	\$8.25	\$22.75	\$0.00	\$70.62
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PAINTERS LOCAL 35 - ZONE 2

**Classification**

**Effective Date   Base Wage   Health   Pension   Supplemental Unemployment   Total Rate**

**Apprentice - PAINTER Local 35 Zone 2 - BRUSH REPAINT**

**Effective Date - 01/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$19.81	\$8.25	\$0.00	\$0.00	\$28.06
2	55	\$21.79	\$8.25	\$6.16	\$0.00	\$36.20
3	60	\$23.77	\$8.25	\$6.72	\$0.00	\$38.74
4	65	\$25.75	\$8.25	\$7.28	\$0.00	\$41.28
5	70	\$27.73	\$8.25	\$19.39	\$0.00	\$55.37
6	75	\$29.72	\$8.25	\$19.95	\$0.00	\$57.92
7	80	\$31.70	\$8.25	\$20.51	\$0.00	\$60.46
8	90	\$35.66	\$8.25	\$21.63	\$0.00	\$65.54

**Notes:**

Steps are 750 hrs.

**Apprentice to Journeyworker Ratio:1:1**

PANEL & PICKUP TRUCKS DRIVER <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$34.98	\$12.91	\$14.82	\$0.00	\$62.71
	06/01/2021	\$35.78	\$12.91	\$14.82	\$0.00	\$63.51
	08/01/2021	\$35.78	\$13.41	\$14.82	\$0.00	\$64.01
	12/01/2021	\$35.78	\$13.41	\$16.01	\$0.00	\$65.20
PIER AND DOCK CONSTRUCTOR (UNDERPINNING AND DECK) <i>PILE DRIVER LOCAL 56 (ZONE 1)</i> For apprentice rates see "Apprentice- PILE DRIVER"	08/01/2020	\$49.07	\$9.40	\$23.12	\$0.00	\$81.59
PILE DRIVER <i>PILE DRIVER LOCAL 56 (ZONE 1)</i>	08/01/2020	\$49.07	\$9.40	\$23.12	\$0.00	\$81.59

**Apprentice - PILE DRIVER - Local 56 Zone 1**

**Effective Date - 08/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$24.54	\$9.40	\$23.12	\$0.00	\$57.06
2	60	\$29.44	\$9.40	\$23.12	\$0.00	\$61.96
3	70	\$34.35	\$9.40	\$23.12	\$0.00	\$66.87
4	75	\$36.80	\$9.40	\$23.12	\$0.00	\$69.32
5	80	\$39.26	\$9.40	\$23.12	\$0.00	\$71.78
6	80	\$39.26	\$9.40	\$23.12	\$0.00	\$71.78
7	90	\$44.16	\$9.40	\$23.12	\$0.00	\$76.68
8	90	\$44.16	\$9.40	\$23.12	\$0.00	\$76.68

**Notes:**

% Indentured After 10/1/17; 45/45/55/55/70/70/80/80  
Step 1&2 \$34.01/ 3&4 \$41.46/ 5&6 \$62.80/ 7&8 \$69.25

**Apprentice to Journeyworker Ratio:1:5**

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
PIPELAYER <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
PLUMBER & PIPEFITTER <i>PLUMBERS &amp; PIPEFITTERS LOCAL 51</i>	08/31/2020	\$44.69	\$10.15	\$19.80	\$0.00	\$74.64
	08/30/2021	\$46.69	\$10.15	\$19.80	\$0.00	\$76.64

**Apprentice - PLUMBER/PIPEFITTER - Local 51**

**Effective Date - 08/31/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	40	\$17.88	\$10.15	\$2.50	\$0.00	\$30.53
2	50	\$22.35	\$10.15	\$2.50	\$0.00	\$35.00
3	60	\$26.81	\$10.15	\$8.73	\$0.00	\$45.69
4	70	\$31.28	\$10.15	\$10.60	\$0.00	\$52.03
5	80	\$35.75	\$10.15	\$17.45	\$0.00	\$63.35

**Effective Date - 08/30/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	40	\$18.68	\$10.15	\$2.50	\$0.00	\$31.33
2	50	\$23.35	\$10.15	\$2.50	\$0.00	\$36.00
3	60	\$28.01	\$10.15	\$8.73	\$0.00	\$46.89
4	70	\$32.68	\$10.15	\$10.60	\$0.00	\$53.43
5	80	\$37.35	\$10.15	\$17.45	\$0.00	\$64.95

**Notes:**

Steps 2000hrs. Prior 9/1/05; 40/40/45/50/55/60/65/75/80/85

**Apprentice to Journeyworker Ratio:1:3**

PNEUMATIC CONTROLS (TEMP.) <i>PLUMBERS &amp; PIPEFITTERS LOCAL 51</i>	08/31/2020	\$44.69	\$10.15	\$19.80	\$0.00	\$74.64
	08/30/2021	\$46.69	\$10.15	\$19.80	\$0.00	\$76.64

For apprentice rates see "Apprentice- PIPEFITTER" or "PLUMBER/PIPEFITTER"

PNEUMATIC DRILL/TOOL OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95

For apprentice rates see "Apprentice- LABORER"

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
POWDERMAN & BLASTER <i>LABORERS - ZONE 2</i>	12/01/2020	\$35.66	\$8.60	\$16.06	\$0.00	\$60.32
	06/01/2021	\$36.58	\$8.60	\$16.06	\$0.00	\$61.24
	12/01/2021	\$37.49	\$8.60	\$16.06	\$0.00	\$62.15
	06/01/2022	\$38.39	\$8.60	\$16.06	\$0.00	\$63.05
	12/01/2022	\$39.24	\$8.60	\$16.06	\$0.00	\$63.90
	06/01/2023	\$40.14	\$8.60	\$16.06	\$0.00	\$64.80
	12/01/2023	\$41.04	\$8.60	\$16.06	\$0.00	\$65.70
For apprentice rates see "Apprentice- LABORER"						
POWER SHOVEL/DERRICK/TRENCHING MACHINE <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.98	\$13.50	\$15.70	\$0.00	\$79.18
	06/01/2021	\$51.08	\$13.50	\$15.70	\$0.00	\$80.28
	12/01/2021	\$52.23	\$13.50	\$15.70	\$0.00	\$81.43
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
PUMP OPERATOR (CONCRETE) <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.98	\$13.50	\$15.70	\$0.00	\$79.18
	06/01/2021	\$51.08	\$13.50	\$15.70	\$0.00	\$80.28
	12/01/2021	\$52.23	\$13.50	\$15.70	\$0.00	\$81.43
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
PUMP OPERATOR (DEWATERING, OTHER) <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$33.00	\$13.50	\$15.70	\$0.00	\$62.20
	06/01/2021	\$33.75	\$13.50	\$15.70	\$0.00	\$62.95
	12/01/2021	\$34.54	\$13.50	\$15.70	\$0.00	\$63.74
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
READY-MIX CONCRETE DRIVER <i>TEAMSTERS 653 - Southeastern Concrete (Weymouth)</i>	08/01/2020	\$23.50	\$12.41	\$6.90	\$0.00	\$42.81
	05/01/2021	\$24.00	\$12.41	\$6.90	\$0.00	\$43.31
	08/01/2021	\$24.00	\$12.91	\$6.90	\$0.00	\$43.81
	05/01/2022	\$24.50	\$12.91	\$6.90	\$0.00	\$44.31
	08/01/2022	\$24.50	\$13.41	\$6.90	\$0.00	\$44.81
	05/01/2023	\$25.00	\$13.41	\$6.90	\$0.00	\$45.31
	08/01/2023	\$25.00	\$13.91	\$6.90	\$0.00	\$45.81
RECLAIMERS <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
RIDE-ON MOTORIZED BUGGY OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
ROLLER/SPREADER/MULCHING MACHINE <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
ROOFER (Inc.Roofers Waterproofing &Roofers Damproofg) <i>ROOFERS LOCAL 33</i>	02/01/2021	\$46.60	\$12.28	\$17.15	\$0.00	\$76.03
	08/01/2021	\$48.03	\$12.28	\$17.15	\$0.00	\$77.46
	02/01/2022	\$49.46	\$12.28	\$17.15	\$0.00	\$78.89

**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - ROOFER - Local 33**

**Effective Date - 02/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$23.30	\$12.28	\$4.31	\$0.00	\$39.89
2	60	\$27.96	\$12.28	\$17.15	\$0.00	\$57.39
3	65	\$30.29	\$12.28	\$17.15	\$0.00	\$59.72
4	75	\$34.95	\$12.28	\$17.15	\$0.00	\$64.38
5	85	\$39.61	\$12.28	\$17.15	\$0.00	\$69.04

**Effective Date - 08/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$24.02	\$12.28	\$4.31	\$0.00	\$40.61
2	60	\$28.82	\$12.28	\$17.15	\$0.00	\$58.25
3	65	\$31.22	\$12.28	\$17.15	\$0.00	\$60.65
4	75	\$36.02	\$12.28	\$17.15	\$0.00	\$65.45
5	85	\$40.83	\$12.28	\$17.15	\$0.00	\$70.26

**Notes:** \*\* 1:5, 2:6-10, the 1:10; Reroofing: 1:4, then 1:1  
 Step 1 is 2000 hrs.; Steps 2-5 are 1000 hrs.  
 (Hot Pitch Mechanics' receive \$1.00 hr. above ROOFER)

**Apprentice to Journeyworker Ratio:\*\***

ROOFER SLATE / TILE / PRECAST CONCRETE	02/01/2021	\$46.85	\$12.28	\$17.15	\$0.00	\$76.28
ROOFERS LOCAL 33	08/01/2021	\$48.28	\$12.28	\$17.15	\$0.00	\$77.71
	02/01/2022	\$49.71	\$12.28	\$17.15	\$0.00	\$79.14

For apprentice rates see "Apprentice- ROOFER"

SHEETMETAL WORKER	10/01/2020	\$36.91	\$13.50	\$16.55	\$2.01	\$68.97
SHEETMETAL WORKERS LOCAL 17 - B	04/01/2021	\$37.66	\$13.50	\$16.55	\$2.03	\$69.74
	10/01/2021	\$38.66	\$13.50	\$16.55	\$2.06	\$70.77
	04/01/2022	\$39.66	\$13.50	\$16.55	\$2.09	\$71.80

**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - SHEET METAL WORKER - Local 17-B**

**Effective Date - 10/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	40	\$14.76	\$13.50	\$4.02	\$0.99	\$33.27
2	45	\$16.61	\$13.50	\$4.02	\$1.06	\$35.19
3	50	\$18.46	\$13.50	\$10.48	\$1.30	\$43.74
4	55	\$20.30	\$13.50	\$10.48	\$1.36	\$45.64
5	60	\$22.15	\$13.50	\$13.52	\$1.48	\$50.65
6	65	\$23.99	\$13.50	\$13.78	\$1.54	\$52.81
7	70	\$25.84	\$13.50	\$14.03	\$1.60	\$54.97
8	75	\$27.68	\$13.50	\$14.28	\$1.66	\$57.12
9	80	\$29.53	\$13.50	\$14.54	\$1.73	\$59.30
10	85	\$31.37	\$13.50	\$14.79	\$1.79	\$61.45

**Effective Date - 04/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	40	\$15.06	\$13.50	\$4.02	\$0.98	\$33.56
2	45	\$16.95	\$13.50	\$4.02	\$1.03	\$35.50
3	50	\$18.83	\$13.50	\$10.48	\$1.28	\$44.09
4	55	\$20.71	\$13.50	\$10.48	\$1.34	\$46.03
5	60	\$22.60	\$13.50	\$13.52	\$1.49	\$51.11
6	65	\$24.48	\$13.50	\$13.78	\$1.55	\$53.31
7	70	\$26.36	\$13.50	\$14.03	\$1.62	\$55.51
8	75	\$28.25	\$13.50	\$14.28	\$1.68	\$57.71
9	80	\$30.13	\$13.50	\$14.54	\$1.75	\$59.92
10	85	\$32.01	\$13.50	\$14.79	\$1.81	\$62.11

**Notes:**

**Apprentice to Journeyworker Ratio:1:3**

SPECIALIZED EARTH MOVING EQUIP < 35 TONS <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$35.44	\$12.91	\$14.82	\$0.00	\$63.17
	06/01/2021	\$36.24	\$12.91	\$14.82	\$0.00	\$63.97
	08/01/2021	\$36.24	\$13.41	\$14.82	\$0.00	\$64.47
	12/01/2021	\$36.24	\$13.41	\$16.01	\$0.00	\$65.66
SPECIALIZED EARTH MOVING EQUIP > 35 TONS <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$35.73	\$12.91	\$14.82	\$0.00	\$63.46
	06/01/2021	\$36.53	\$12.91	\$14.82	\$0.00	\$64.26
	08/01/2021	\$36.53	\$13.41	\$14.82	\$0.00	\$64.76
	12/01/2021	\$36.53	\$13.41	\$16.01	\$0.00	\$65.95
SPRINKLER FITTER <i>SPRINKLER FITTERS LOCAL 550 - (Section B) Zone 2</i>	03/01/2021	\$56.21	\$10.00	\$21.25	\$0.00	\$87.46

**Classification**

**Effective Date    Base Wage    Health    Pension    Supplemental Unemployment    Total Rate**

**Apprentice - SPRINKLER FITTER - Local 550 (Section B) Zone 2**

**Effective Date - 03/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	35	\$19.67	\$10.00	\$11.99	\$0.00	\$41.66
2	40	\$22.48	\$10.00	\$12.70	\$0.00	\$45.18
3	45	\$25.29	\$10.00	\$13.41	\$0.00	\$48.70
4	50	\$28.11	\$10.00	\$14.13	\$0.00	\$52.24
5	55	\$30.92	\$10.00	\$14.84	\$0.00	\$55.76
6	60	\$33.73	\$10.00	\$15.55	\$0.00	\$59.28
7	65	\$36.54	\$10.00	\$16.26	\$0.00	\$62.80
8	70	\$39.35	\$10.00	\$16.98	\$0.00	\$66.33
9	75	\$42.16	\$10.00	\$17.69	\$0.00	\$69.85
10	80	\$44.97	\$10.00	\$18.40	\$0.00	\$73.37

**Notes:** Apprentice entered prior 9/30/10:  
40/45/50/55/60/65/70/75/80/85  
Steps are 850 hours

**Apprentice to Journeyworker Ratio:1:3**

STEAM BOILER OPERATOR <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88

For apprentice rates see "Apprentice- OPERATING ENGINEERS"

TAMPERS, SELF-PROPELLED OR TRACTOR DRAWN <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88

For apprentice rates see "Apprentice- OPERATING ENGINEERS"

TELECOMMUNICATION TECHNICIAN <i>ELECTRICIANS LOCAL 223</i>	09/01/2020	\$36.86	\$10.90	\$12.45	\$0.00	\$60.21
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**Apprentice - TELECOMMUNICATION TECHNICIAN - Local 223**

**Effective Date - 09/01/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

**Notes:** See Electrician Apprentice Wages  
Telecom Apprentice Wages shall be the same as the Electrician Apprentice Wages

**Apprentice to Journeyworker Ratio:2:3\*\*\***

TERRAZZO FINISHERS <i>BRICKLAYERS LOCAL 3 - MARBLE &amp; TILE</i>	02/01/2021	\$54.69	\$11.39	\$22.09	\$0.00	\$88.17
	08/01/2021	\$56.09	\$11.39	\$22.25	\$0.00	\$89.73
	02/01/2022	\$56.68	\$11.39	\$22.25	\$0.00	\$90.32

**Apprentice - TERRAZZO FINISHER - Local 3 Marble & Tile**

**Effective Date - 02/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$27.35	\$11.39	\$22.09	\$0.00	\$60.83
2	60	\$32.81	\$11.39	\$22.09	\$0.00	\$66.29
3	70	\$38.28	\$11.39	\$22.09	\$0.00	\$71.76
4	80	\$43.75	\$11.39	\$22.09	\$0.00	\$77.23
5	90	\$49.22	\$11.39	\$22.09	\$0.00	\$82.70

**Effective Date - 08/01/2021**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	50	\$28.05	\$11.39	\$22.25	\$0.00	\$61.69
2	60	\$33.65	\$11.39	\$22.25	\$0.00	\$67.29
3	70	\$39.26	\$11.39	\$22.25	\$0.00	\$72.90
4	80	\$44.87	\$11.39	\$22.25	\$0.00	\$78.51
5	90	\$50.48	\$11.39	\$22.25	\$0.00	\$84.12

**Notes:**

**Apprentice to Journeyworker Ratio:1:3**

TEST BORING DRILLER <i>LABORERS - FOUNDATION AND MARINE</i>	12/01/2020	\$41.30	\$8.60	\$17.47	\$0.00	\$67.37
	06/01/2021	\$42.32	\$8.60	\$17.47	\$0.00	\$68.39
	12/01/2021	\$43.33	\$8.60	\$17.47	\$0.00	\$69.40
For apprentice rates see "Apprentice- LABORER"						
TEST BORING DRILLER HELPER <i>LABORERS - FOUNDATION AND MARINE</i>	12/01/2020	\$40.02	\$8.60	\$17.47	\$0.00	\$66.09
	06/01/2021	\$41.04	\$8.60	\$17.47	\$0.00	\$67.11
	12/01/2021	\$42.05	\$8.60	\$17.47	\$0.00	\$68.12
For apprentice rates see "Apprentice- LABORER"						
TEST BORING LABORER <i>LABORERS - FOUNDATION AND MARINE</i>	12/01/2020	\$39.90	\$8.60	\$17.47	\$0.00	\$65.97
	06/01/2021	\$40.92	\$8.60	\$17.47	\$0.00	\$66.99
	12/01/2021	\$41.93	\$8.60	\$17.47	\$0.00	\$68.00
For apprentice rates see "Apprentice- LABORER"						
TRACTORS/PORTABLE STEAM GENERATORS <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.45	\$13.50	\$15.70	\$0.00	\$78.65
	06/01/2021	\$50.54	\$13.50	\$15.70	\$0.00	\$79.74
	12/01/2021	\$51.68	\$13.50	\$15.70	\$0.00	\$80.88
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
TRAILERS FOR EARTH MOVING EQUIPMENT <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$36.02	\$12.91	\$14.82	\$0.00	\$63.75
	06/01/2021	\$36.82	\$12.91	\$14.82	\$0.00	\$64.55
	08/01/2021	\$36.82	\$13.41	\$14.82	\$0.00	\$65.05
	12/01/2021	\$36.82	\$13.41	\$16.01	\$0.00	\$66.24
TUNNEL WORK - COMPRESSED AIR <i>LABORERS (COMPRESSED AIR)</i>	12/01/2020	\$52.13	\$8.60	\$17.92	\$0.00	\$78.65
	06/01/2021	\$53.15	\$8.60	\$17.92	\$0.00	\$79.67
	12/01/2021	\$54.16	\$8.60	\$17.92	\$0.00	\$80.68
For apprentice rates see "Apprentice- LABORER"						



Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
TUNNEL WORK - COMPRESSED AIR (HAZ. WASTE) <i>LABORERS (COMPRESSED AIR)</i>	12/01/2020	\$54.13	\$8.60	\$17.92	\$0.00	\$80.65
	06/01/2021	\$55.15	\$8.60	\$17.92	\$0.00	\$81.67
	12/01/2021	\$56.16	\$8.60	\$17.92	\$0.00	\$82.68
For apprentice rates see "Apprentice- LABORER"						
TUNNEL WORK - FREE AIR <i>LABORERS (FREE AIR TUNNEL)</i>	12/01/2020	\$44.20	\$8.60	\$17.92	\$0.00	\$70.72
	06/01/2021	\$45.22	\$8.60	\$17.92	\$0.00	\$71.74
	12/01/2021	\$46.23	\$8.60	\$17.92	\$0.00	\$72.75
For apprentice rates see "Apprentice- LABORER"						
TUNNEL WORK - FREE AIR (HAZ. WASTE) <i>LABORERS (FREE AIR TUNNEL)</i>	12/01/2020	\$46.20	\$8.60	\$17.92	\$0.00	\$72.72
	06/01/2021	\$47.22	\$8.60	\$17.92	\$0.00	\$73.74
	12/01/2021	\$48.23	\$8.60	\$17.92	\$0.00	\$74.75
For apprentice rates see "Apprentice- LABORER"						
VAC-HAUL <i>TEAMSTERS JOINT COUNCIL NO. 10 ZONE B</i>	12/01/2020	\$35.44	\$12.91	\$14.82	\$0.00	\$63.17
	06/01/2021	\$36.24	\$12.91	\$14.82	\$0.00	\$63.97
	08/01/2021	\$36.24	\$13.41	\$14.82	\$0.00	\$64.47
	12/01/2021	\$36.24	\$13.41	\$16.01	\$0.00	\$65.66
WAGON DRILL OPERATOR <i>LABORERS - ZONE 2</i>	12/01/2020	\$34.91	\$8.60	\$16.06	\$0.00	\$59.57
	06/01/2021	\$35.83	\$8.60	\$16.06	\$0.00	\$60.49
	12/01/2021	\$36.74	\$8.60	\$16.06	\$0.00	\$61.40
	06/01/2022	\$37.64	\$8.60	\$16.06	\$0.00	\$62.30
	12/01/2022	\$38.49	\$8.60	\$16.06	\$0.00	\$63.15
	06/01/2023	\$39.39	\$8.60	\$16.06	\$0.00	\$64.05
	12/01/2023	\$40.29	\$8.60	\$16.06	\$0.00	\$64.95
For apprentice rates see "Apprentice- LABORER"						
WASTE WATER PUMP OPERATOR <i>OPERATING ENGINEERS LOCAL 4</i>	12/01/2020	\$49.98	\$13.50	\$15.70	\$0.00	\$79.18
	06/01/2021	\$51.08	\$13.50	\$15.70	\$0.00	\$80.28
	12/01/2021	\$52.23	\$13.50	\$15.70	\$0.00	\$81.43
For apprentice rates see "Apprentice- OPERATING ENGINEERS"						
WATER METER INSTALLER <i>PLUMBERS &amp; PIPEFITTERS LOCAL 51</i>	08/31/2020	\$44.69	\$10.15	\$19.80	\$0.00	\$74.64
	08/30/2021	\$46.69	\$10.15	\$19.80	\$0.00	\$76.64
For apprentice rates see "Apprentice- PLUMBER/PIPEFITTER" or "PLUMBER/GASFITTER"						
<b>Outside Electrical - East</b>						
CABLE TECHNICIAN (Power Zone) <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$29.67	\$9.25	\$1.89	\$0.00	\$40.81
	For apprentice rates see "Apprentice- LINEMAN"					
CABLEMAN (Underground Ducts & Cables) <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$42.03	\$9.25	\$10.27	\$0.00	\$61.55
	For apprentice rates see "Apprentice- LINEMAN"					
DRIVER / GROUNDMAN CDL <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$34.62	\$9.25	\$10.07	\$0.00	\$53.94
	For apprentice rates see "Apprentice- LINEMAN"					
DRIVER / GROUNDMAN -Inexperienced (<2000 Hrs) <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$27.20	\$9.25	\$1.82	\$0.00	\$38.27
	For apprentice rates see "Apprentice- LINEMAN"					
EQUIPMENT OPERATOR (Class A CDL) <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$42.03	\$9.25	\$14.35	\$0.00	\$65.63
	For apprentice rates see "Apprentice- LINEMAN"					
EQUIPMENT OPERATOR (Class B CDL) <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$37.09	\$9.25	\$10.87	\$0.00	\$57.21

Classification	Effective Date	Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
For apprentice rates see "Apprentice- LINEMAN"						
GROUNDMAN <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$27.20	\$9.25	\$1.82	\$0.00	\$38.27
For apprentice rates see "Apprentice- LINEMAN"						
GROUNDMAN -Inexperienced (<2000 Hrs.) <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$22.25	\$9.25	\$1.82	\$0.00	\$33.32
For apprentice rates see "Apprentice- LINEMAN"						
JOURNEYMAN LINEMAN <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	08/30/2020	\$49.45	\$9.25	\$17.48	\$0.00	\$76.18

**Apprentice - LINEMAN (Outside Electrical) - East Local 104**

**Effective Date - 08/30/2020**

Step	percent	Apprentice Base Wage	Health	Pension	Supplemental Unemployment	Total Rate
1	60	\$29.67	\$9.25	\$3.39	\$0.00	\$42.31
2	65	\$32.14	\$9.25	\$3.46	\$0.00	\$44.85
3	70	\$34.62	\$9.25	\$3.54	\$0.00	\$47.41
4	75	\$37.09	\$9.25	\$5.11	\$0.00	\$51.45
5	80	\$39.56	\$9.25	\$5.19	\$0.00	\$54.00
6	85	\$42.03	\$9.25	\$5.26	\$0.00	\$56.54
7	90	\$44.51	\$9.25	\$7.34	\$0.00	\$61.10

**Notes:**

**Apprentice to Journeyworker Ratio:1:2**

TELEDATA CABLE SPLICER <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	02/04/2019	\$30.73	\$4.70	\$3.17	\$0.00	\$38.60
TELEDATA LINEMAN/EQUIPMENT OPERATOR <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	02/04/2019	\$28.93	\$4.70	\$3.14	\$0.00	\$36.77
TELEDATA WIREMAN/INSTALLER/TECHNICIAN <i>OUTSIDE ELECTRICAL WORKERS - EAST LOCAL 104</i>	02/04/2019	\$28.93	\$4.70	\$3.14	\$0.00	\$36.77

**Additional Apprentice Information:**

Minimum wage rates for apprentices employed on public works projects are listed above as a percentage of the pre-determined hourly wage rate established by the Commissioner under the provisions of the M.G.L. c. 149, ss. 26-27D. Apprentice ratios are established by the Division of Apprenticeship Training pursuant to M.G.L. c. 23, ss. 11E-11L.

All apprentices must be registered with the Division of Apprenticeship Training in accordance with M.G.L. c. 23, ss. 11E-11L.

All steps are six months (1000 hours.)

Ratios are expressed in allowable number of apprentices to journeymen or fraction thereof, unless otherwise specified.

\*\* Multiple ratios are listed in the comment field.

\*\*\* APP to JM; 1:1, 2:2, 2:3, 3:4, 4:4, 4:5, 4:6, 5:7, 6:7, 6:8, 6:9, 7:10, 8:10, 8:11, 8:12, 9:13, 10:13, 10:14, etc.

\*\*\*\* APP to JM; 1:1, 1:2, 2:3, 2:4, 3:5, 4:6, 4:7, 5:8, 6:9, 6:10, 7:11, 8:12, 8:13, 9:14, 10:15, 10:16, etc.

## WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE

In accordance with Massachusetts General Law c. 149, §27B, a true and accurate record must be kept of all persons employed on the public works project for which the enclosed rates have been provided. A Payroll Form is available from the Department of Labor Standards (DLS) at [www.mass.gov/dols/pw](http://www.mass.gov/dols/pw) and includes all the information required to be kept by law. Every contractor or subcontractor is required to keep these records and preserve them for a period of three years from the date of completion of the contract.

On a weekly basis, every contractor and subcontractor is required to submit a certified copy of their weekly payroll records to the awarding authority; this includes the payroll forms and the Statement of Compliance form. The certified payroll records must be submitted either by regular mail or by e-mail to the awarding authority. Once collected, the awarding authority is required to preserve those records for three years from the date of completion of the project.

Each such contractor and subcontractor shall furnish weekly **and** within 15 days after completion of its portion of the work, to the awarding authority directly by first-class mail or e-mail, a statement, executed by the contractor, subcontractor or by any authorized officer thereof who supervised the payment of wages, this form, accompanied by their payroll:

### STATEMENT OF COMPLIANCE

\_\_\_\_\_, 20\_\_\_\_\_

I, \_\_\_\_\_, \_\_\_\_\_  
(Name of signatory party) (Title)

do hereby state:

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

\_\_\_\_\_ on the \_\_\_\_\_  
(Contractor, subcontractor or public body) (Building or project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty nine of the General Laws.

Signature \_\_\_\_\_

Title \_\_\_\_\_

**MASSACHUSETTS WEEKLY CERTIFIED PAYROLL REPORT FORM**



Company's Name:	Address:	Phone No.:	Payroll No.:
Employer's Signature:	Title:	Contract No:	Tax Payer ID Number
Awarding Authority's Name:	Public Works Project Name:	Public Works Project Location:	Min. Wage Rate Sheet Number

General / Prime Contractor's Name:		Subcontractor's Name:		"Employer" Hourly Fringe Benefit Contributions															
Employee Name & Complete Address	Work Classification:	Employee is OSHA 10 certified (?)	Appr. Rate (%)	Hours Worked								Project Hours (A) All Other Hours	Hourly Base Wage (B)	Health & Welfare Insurance (C)	ERISA Pension Plan (D)	Supp. Unemp. (E)	Total Hourly Prev. Wage (F)	Project Gross Wages	Check No. (H)
				Su.	Mo.	Tu.	We.	Th.	Fr.	Sa.	(B+C+D+E) (A x F)								

Are all apprentice employees identified above currently registered with the MA DLS's Division of Apprentice Standards? YES  NO

For all apprentices performing work during the reporting period, attach a copy of the apprentice identification card issued by the Massachusetts Department of Labor Standards / Division of Apprentice Standards. No apprentices are identified above

**NOTE:** Pursuant to MGL c. 149, s. 27B, every contractor and subcontractor is required to submit a **true and accurate** copy of their certified weekly payroll records to the awarding authority by first-class mail or e-mail. In addition, each weekly payroll must be accompanied by a statement of compliance signed by the employer. Failure to comply may result in the commencement of a criminal action or the issuance of a civil citation.

Date Received by Awarding Authority
/ /