



INVITATION FOR BID

IFB # 185/024/24

MAINTENANCE OF STREET LIGHTS

October 3, 2023

PROPOSALS DUE:

November 9, 2023 11:00 AM

Late Proposals Will Be Rejected

DELIVER COMPLETED SUBMISSIONS TO:

Town of Andover, MA
Central Purchasing Department
Attn: Theresa Peznola
397 Lowell St. Andover, MA 01810
Phone: 978-623-8951
e-mail: theresa.peznola@andoverma.us

Table of Contents

| | |
|--------------------------------------------------------|-------|
| 1. Invitation for Bid..... | 3 |
| 2. Cover Sheet..... | 4 |
| 3. Introduction..... | 5 |
| 4. Submission Deadline and Instructions | 5 |
| 5. Questions, Addendum or Proposed Modifications | 6 |
| 6. Minimum Requirements..... | 7 |
| 7. Background..... | 8 |
| 8. Scope of Services..... | 8 |
| 9. Prevailing Wage Rates..... | 11 |
| 10. Payment Bond..... | 14 |
| 11. Bid Deposit..... | 11 |
| 12. Evaluation of Bids | 11 |
| 13. Term of Contract | 12 |
| Appendix A – Price Proposal | 13 |
| Town of Andover Forms | 16-20 |
| Checklist | 21 |
| Standard Town of Andover Contract | 22 |

**TOWN OF ANDOVER
MASSACHUSETTS**

INVITATION TO BID

Sealed bids for furnishing the following will be received at the Office of Central Purchasing, Water Treatment Plant, 397 Lowell St., Andover, Massachusetts 01810 until the time specified below at which time the bids will be publicly opened and read. The time received will be stamped on each bid and for a consistency of time, the time stamp clock in the Purchasing Office will be the determining time.

ITEM

IFB No. 185/024/24
Maintenance of Street Lights, Andover, MA

BID OPENING

November 9, 2023
11:00 AM

Bid Documents and bid forms may be obtained on the Central Purchasing Department webpage located at www.andoverma.gov/bids.

Each bid must be accompanied by a bid security of **CASH, CERTIFIED CHECK,** or **BID BOND** issued by a responsible bank or trust company licensed to do business in the State of Massachusetts in the amount of 5% of the total bid.

No bidder may withdraw his bid for a period of thirty (30) days, after the date set for the opening thereof.

Attention is directed to the minimum wage rates to be paid as determined by the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Sections 26 to 27D inclusive.

A Payment Bond of an amount equal to 50 per cent of the total amount of the bid with a surety company satisfactory to the Town, as surety, will be required for the payment for all labor and materials used in the work, if the contract is greater than \$25,000. Such bond shall be prepared on forms provided by the Owner and supplied by a surety company licensed to do business in the Commonwealth of Massachusetts

The bidding and award of this Contract will be under the provisions of M.G. L. Chapter 30, Section 39M and the provisions of M.G.L. Chapter 30, Section 39S.

Andover is an affirmative action/equal opportunity purchaser. The Town reserves the right to accept or reject, in whole or in part, any or all bids or take whatever other action may be deemed necessary to be in the best interest of the Town.

Theresa Peznola
Purchasing Agent

ADV: Andover Townsman – October 26, 2023
Central Register – October 25, 2023

IFB # 185/024/24

Town of Andover, Massachusetts
Purchasing Department

COVER SHEET

The Town of Andover reserves the right to reject any or all Bids, to omit any item or items called for, or to accept the Bid deemed in the best interest of the Town. One Original and Two (2) copies of the Bid must be submitted on or before 11:00 AM on Thursday, November 9, 2023 to:

Theresa Peznola, Purchasing Agent
Purchasing Department
Water Treatment Plant
397 Lowell Street
Andover, Massachusetts 01810

The envelope containing the Bid and required information must be sealed and marked with Proposer’s name, title of proposal, IFB number, and date of opening. The Proposer must sign all required signature pages in order for the bid to be considered.

The Proposer acknowledges receipt of the following **ADDENDA #** _____

BUSINESS NAME _____

BUSINESS ADDRESS _____

CITY, STATE, ZIP CODE _____

TELEPHONE _____

EMAIL _____

INDIVIDUAL/AUTHORIZED SIGNATURE _____

AUTHORIZED OFFICER NAME (print) _____

DATE _____

By signing above, the authorized officer is certifying that a complete examination of all bid/rfp documents has been made and that the goods/services will be delivered within the time specified and at the prices stated.

All bidders must sign and submit with their bid the attached Certificate of Good Faith and Tax Compliance Form. Failure to do so will result in the bid being unresponsive and rejected.

If bidder/proposer is a co-partnership, all partners must execute both copies of the bid/proposal, unless one partner has been authorized to sign for the co-partnership, in which case evidence of such authority shall be submitted.

If bidder/proposer is a corporation, the authorized agent shall execute both copies of the bid/proposal. Evidence of authority to sign must be submitted.

The Town of Andover reserves the right to reject any or all bids/proposals and waive any informalities deemed to be in the best interests of the Town

1. Introduction

In accordance with M.G.L. c30 §39M, the Town of Andover is soliciting bids from experienced contractors to furnish all labor, materials, and equipment necessary for the maintenance, repair, and/or replacement of streetlights owned by the Town for a 12 month period from January 1, 2024 through December 31, 2024 with two options to renew for additional 12 month periods, at the sole discretion of the Town, thereby terminating on December 31, 2026. Qualified contractors are requested to submit bids to the Purchasing Agent at the Water Treatment Plant, 397 Lowell Street, Andover, MA 01810, in accordance with the instructions contained within this Invitation for Bids.

Notice of this IFB is published in the Central Register, which is a weekly publication of the Office of the Secretary of the Commonwealth, the Andover Townsman (a newspaper of general circulation) and posted on the Town website (www.andoverma.gov) within the Purchasing Department webpage.

The Town will accept bids delivered in person or by mail. All bids must be received by 11:00 a.m. on Thursday, November 9, 2023 to be considered. Proposals submitted by fax or by electronic mail will not be considered. All proposals must be submitted to:

Theresa Peznola
Purchasing Agent
Water Treatment Plant
397 Lowell St.
Andover, MA 01810

The Town of Andover may cancel this IFB or reject in whole or in part any and all proposals, if they determine that cancellation or rejection serves the best interest of the Town of Andover.

2. Submission Deadline and Instructions

Qualified companies are requested to submit the pricing sheet (Appendix A) in a sealed envelope marked "Maintenance of Streetlights" with the applicant's name and address on the front. Applicants should provide one (1) signed original proposal and two (2) copies. Fax or electronic submissions will not be accepted. Applicants must also execute and include in the sealed submission the Certificate of Vote, Certificate of Non-Collusion, the Certificate of Tax Compliance and the Certification of Labor Harmony and OSHA Training Requirements. The Town of Andover, through the Town Manager, is the awarding authority and reserves the right to reject any and all proposals or parts of proposals; to waive any defects, information, and minor irregularities; to accept exceptions to these specifications; and to award contracts or to cancel this Invitation for Bids if it is in the Town of Andover's best interest to do so.

Bid submissions must be signed as follows: a) if the bidder is an individual, by her/him personally; b) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and c) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

All sealed proposals must be received and registered by the Purchasing office by Thursday, November 9, 2023 at 11:00 a.m. All outer envelopes must be labeled "Maintenance of Streetlights" and mailed or hand delivered to the following address:

Theresa Peznola
Purchasing Agent
Water Treatment Plant
397 Lowell Street
Andover, MA 01810

No bids will be accepted after the time and date noted. Late delivery of materials due to any type of delivery system shall be cause for rejection. If on the date and time of the submittal deadline the Andover Town Offices are closed due to an uncontrolled event such as fire, snow, ice, wind or building evacuation, the submittal deadline will be postponed until 3:00 p.m. on the next normal business day. For matters of uniformity with regard to the deadline time, the Time Stamp Clock in the Purchasing Office shall be the sole determinant of the time.

3. Questions, Addendum or Proposal Modification

Questions concerning this IFB must be submitted via email to: **Theresa Peznola, Purchasing Agent, at Theresa.peznola@andoverma.us. All questions/inquiries must be received by 4:30 p.m. on Monday, November 6, 2023 to be considered.** Questions/inquiries may be emailed. Written responses will be posted on the Town's website (www.andoverma.gov/bids) in the form of an Addendum and will also be emailed to all plan holders of record.

If any changes are made to this IFB, an addendum will be posted on the Town's website. It is the sole responsibility of the bidder to ascertain the existence of any addenda and/or modifications issued by the Town. As this IFB has been published on the Town's website (www.andoverma.gov/bids) all bidders are responsible for checking the website for any addenda and /or modifications that are subsequently made to this IFB.

The Town accepts no liability for and will provide no accommodations to bidders who fail to check for amendments and/or modifications to this IFB and subsequently submit inadequate or incorrect responses. Bidders may not alter (manually or electronically) the IFB language or any IFB component files. Modifications to the body of the IFB, Scope of Work, terms and conditions, or which change the intent of this IFB are prohibited and may disqualify a response.

All proposals submitted in response to this IFB shall remain firm for sixty (60) days following the submittal deadline. It is anticipated that the contract will be awarded within thirty (30) days after the submittal deadline.

Bidders are not to communicate directly with any employee of the Town of Andover, except as specified in this IFB, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this IFB.

Bidders may contact the Contact Person for this IFB in the event this IFB is incomplete or the bidder is having trouble obtaining any part of the IFB electronically through the Town website (www.andoverma.gov/bids), including, and without limitation the form and attachments.

Bidders with disabilities or hardships that seek reasonable accommodations, which may include the receipt of IFB information and/or addenda and/or modifications in an alternative format, must communicate such requests in writing to the contact person, and reasonable accommodation will be made by agreement with the contact person on behalf of the Town of Andover.

4. Minimum Requirements

Each bidder must demonstrate that it meets the following minimum requirements:

- A. Be a qualified contractor meeting all state and local licensing requirements for streetlight maintenance work. A Division of Capital Asset Management and Maintenance (DCAMM) Electrical Contractor Certification and/or Energy Management Certification shall be indicative of such qualification, but such certification is not mandatory.
- B. Contractor must demonstrate a minimum of five (5) years experience maintaining a municipal owned system of at least 1,000 streetlights.
- C. Contractor shall submit a complete list of all similar contracts performed in the past three (3) years with contact names and telephone numbers.
- D. The contractor shall furnish all labor, equipment, and vehicles as required for work in accordance with the scope of services. The Town of Andover will specify all materials. Substitutions may be considered but the Town and/or its consultant shall be the sole determinant as to what may be considered as a substitution.
- E. All work shall be performed by licensed electricians with International Municipal Signal Association (IMSA) roadway lighting Level I certification. Contractor shall provide a list of individuals so certified and copies of their IMSA certification prior to the commencement of any work.
- F. Contractor must respond to pole knockdowns within two (2) hours of notification by the Town, or sooner if determined to be an immediate need by the Andover Police Department. The purpose of the emergency response will be to make the area safe. The actual work or replacing the pole, etc may be scheduled routinely.
- G. Contractor must respond to other emergencies (other than pole knockdowns) within two (2) hours of notification by the Town.
- H. The Contractor shall provide a detail plan of services for this Contract. The plan of services shall include a narrative description of the plan for implementing each of the Scope of Services. This plan may also include additional optional services and/or suggestions or plan revisions that will translate into reduced cost to the Town. Also include a brief narrative that describes what means will be employed to minimize protection crew costs to the Town.
- I. A statement must be included that the Contractor shall maintain an adequate inventory of routinely required components in order to promptly complete the repairs as required in the Scope of Services.
- J. The contractor shall conform to all requirements of federal, state and local laws, including compliance with the prevailing wage laws.
- K. Unit prices shall remain firm for the period of the contract.
- L. Submission of required statements and forms.

5. Background

The Town of Andover took over responsibility from National Grid for maintenance of streetlights as of March 1, 2016. The selected contractor shall provide all material, labor, and equipment necessary to maintain, repair, and/or replace the streetlights covered by this contract as may be required to keep them in fully operational condition. Services to be performed shall include but not be limited to repair or replacement of failed lighting components (including luminaires, photocells, ballasts, starters, igniters, fuses, lenses, reflectors, connective wiring, and brackets); monthly reports of all work performed; proper disposal of all generated waste materials; scheduled preventative maintenance inspections; emergency repairs; and related work. Lighting covered by the 'Basic Routine Batch Maintenance' includes the approximately 1650 overhead fed streetlights purchased by the Town from National Grid (see Attachment I – Streetlight Inventory Report).

6. Scope of Services

A. All services under this Scope of Services shall be performed under the direction and subject to the approval of the Town of Andover Manager of Energy and Utilities (MEU) and/or their designee.

B. Basic Routine Batch Maintenance

- 1) The Contractor will be responsible for patrolling the streetlights in the community once per *year* to determine streetlights in need of repair. The Town will also require a formal report with the results of the patrolling each quarter.

The Town employees and community must be able to report streetlights in need of repair through the use of an online reporting mechanism or program. However, this community identification of streetlight repairs shall in no way reduce the Contractor's responsibility for timely patrols to identify streetlights in need of repair. Routine batch maintenance ("Batch Repair List") shall be performed on a regularly scheduled day each week, weather permitting. The successful bidder must identify in writing to the MEU the scheduled day of the week that regular maintenance will be performed.

For example, the Contractor may choose to perform this maintenance on a Wednesday, weather permitting. This routine maintenance would include all of the streetlight repairs that are identified on the "Batch Repair List" that is faxed or emailed to the MEU, by the successful bidder, forty eight (48) hours prior to the weekly scheduled routine maintenance day and any additional repairs added to the "Batch Repair List" by the MEU no later than twenty four (24) hours prior to the weekly scheduled routine maintenance day. As the Contractor identifies streetlights that need to be repaired through the Contractor's streetlight patrol, the Contractor shall add these repairs to the "Batch Repair List"

- 2) When the repair of an outage requires replacement of the entire luminaire, it shall be replaced with an identical or equivalent fixture or a Town-approved upgrade at the MEU's discretion. Any newly installed fixture must meet all applicable codes.
- 3) Any time a light is serviced it will also be cleaned as necessary, broken lenses and covers replaced, and the entire fixture assembly left in a clean, fully serviceable condition.
- 4) When required to perform service, the making and breaking of the electrical connection to the electrical distribution network (whether for routine or emergency service) must be performed by National Grid. The Contractor shall be responsible for all coordination with National Grid in the event that repair of a streetlight outage requires involvement by the utility. If the Contractor is unable to complete a repair as the result of action or inaction by National Grid, the Contractor shall so note on

its monthly report and include the date and time of all verbal and written communication with National Grid. The MEU shall be copied on all correspondence between the Contractor and National Grid relating to the performance of this contract.

- 5) In the event a light fixture which has an overhead drop from the National Grid power source is disconnected to perform service, the Contractor shall ensure that upon completion of service it has furnished and installed sufficient wire to allow National Grid to complete connection to the distribution network. This work shall conform to National Grid's requirements for the overhead feed. Cost for providing and installing sufficient wire to connect to the overhead feed shall be included in the routine monthly fee.

C. Emergency Response

- 1) The Contractor shall be capable of responding to emergency service requirements 24 hours/day, 7 days/week. Emergency service will in most cases relate to knockdowns of poles. However, the Town of Andover shall retain sole discretion to determine when the need for emergency repair service exists. When such determination is made, a representative of the Department of Facilities or the Andover Police Department will notify the Contractor via a Contractor-supplied 24 hour emergency telephone number. The Contractor must have workforce and equipment deployed to the emergency location three (3) hours following notification. A more rapid response shall be provided if so directed by the Andover Police Department in extreme cases. In such instances, the response time shall be within one (1) hour. Concurrent with notification to the Contractor, the Town will use best efforts to notify National Grid of the emergency. However, it shall be the Contractor responsibility to conduct such follow up and/or additional communication with National Grid to affect a complete response to the emergency service requirement.
- 2) In the event of a knockdown of a pole, the Contractor shall coordinate with National Grid regarding disconnection of power, remove and dispose of the pole and lighting fixture, retaining any salvageable components, and ensure the site is secured in a safe manner. The Contractor shall coordinate with National Grid and/or Verizon, as applicable, regarding the emergency cleanup and in particular the retrieval of Town-owned lighting components.
- 3) In the event of emergency service not involving a knockdown, the Contractor shall perform such work necessary to secure the location in a safe manner.
- 4) The Contractor shall notify a designated Town representative, at a 24-hour emergency number as soon as response to the emergency service request has been completed. If for any reason a site cannot be secured in a safe manner, the Contractor shall notify the Andover Police Department. The Contractor's personnel shall not depart the location until an officer has arrived at the scene to undertake necessary public safety measures.
- 5) The cost of emergency response shall be included in the routine monthly fee.
- 6) Within five (5) working days following the date of emergency response, the Contractor shall supply to the Town a detailed written quotation of the cost and time required to restore the affected light fixture to fully operable condition, including re-installation of the pole where applicable. The Contractor shall commence such repairs following notification to proceed from the Town.

- D. Throughout the term of this Contract, the Contractor shall submit monthly reports of its activity in a format agreed upon and acceptable to the MEU. Separate reports shall be submitted for routine maintenance and emergency work. For each work category the minimum information to be supplied monthly shall include:
- 1) Dates and descriptions of all work performed,
 - 2) Location (by address or pole number) of each light upon which work was performed,
 - 3) Type and quantity of all materials used,
 - 4) List of all reported outages returned to service,
 - 5) Status of all outages not returned to service including steps taken and time required to complete,
 - 6) All open service requests dependent upon National Grid, including date and time of related communication, and
 - 7) Update for the electronic database of the street light inventory.
- E. The Contractor shall provide dig safe markings upon notification through the dig safe process for any excavation work proposed in the vicinity of the Town's streetlight appurtenances at no additional cost to the Town. The cost of said mark-outs is understood to be incidental to the maintenance responsibilities identified in this Contract.
- F. When police details are required the Contractor shall make the necessary arrangements with Andover Police Department to schedule the details. The Contractor will be responsible for notifying the MEU of the use of police details. The cost of police details will be paid directly to the Police Department by the Department of Facilities.
- G. The Contractor shall conduct its operations so as to cause the least possible obstruction and inconvenience to public traffic. To the extent possible, all traffic shall be permitted to pass through the work area. The Contractor shall furnish, erect, and maintain sufficient warning and directional signs, barricades and lights and furnish adequate warning to the public at all times of any dangerous condition to be encountered. The Contractor's vehicles and equipment shall be clearly marked with the Contractor's name or logo and be easily identifiable and be equipped with suitable warning lights and reflective markings for working in daylight and dark. All safety signs and equipment shall comply with the millennium edition of the Manual on Uniform Traffic Control Devices (MUCTD).
- H. If, while servicing a fixture, the Contractor damages any co-located wire, cable or other facilities, the Contractor shall immediately notify the owner of such facilities and the MEU. The Contractor shall be responsible at its own expense for making all necessary repairs in accordance with the requirements of the owner of the damaged facilities.
- I. The Town may request the Contractor service other streetlights, pedestrian lights, or parking lot lights that are the property of the Town of Andover or shall become the property of the Town during the term of this contract. These services will be provided based on the quoted hourly labor rate.
- J. All work shall be performed in a neat and workmanlike manner. Any debris from a repair or maintenance shall become the property of the Contractor and shall be removed at the completion of the workday. The area surrounding the premises must be left clean.
- K. The Contractor shall dispose of all waste materials generated through the routine maintenance program, knockdowns and/or other emergency service in accordance with all applicable laws and regulations. All disposal costs shall be borne by the Contractor. The Contractor will provide the Town of Andover with a copy of disposal reports on a semi-annual basis.

L. The Town reserves the right to change the contact policy to also have residents contact the Contractor directly to report outages. If the Contractor receives any call from a citizen, the Contractor shall enter them into an online system that can be viewed by the MEU. The MEU shall have the ability to view all outage requests in an online system.

7. Prevailing Wage Rates

The successful bidder will at all times comply with the prevailing wage rates as determined by the Department of Labor Standards under the provisions of Massachusetts General Laws as shall be in force and as amended. The prevailing wage rates are attached.

8. Payment Bond

For a contract award greater than \$25,000, the successful bidder shall provide a payment bond in the amount of 50% of the total cost of the contract. The payment bond must be on the Town's form that is attached.

9. Bid Deposit

In accordance with M.G.L c30 §39M, all bidders are required to submit a 5% bid deposit/bond of the dollar bid total.

10. Evaluation of Bids

Bids will first be examined for their responsiveness to what is requested in this IFB. Responsibility of the bidder will then be ascertained. Finally, the aggregate price for the services delivered by each responsive and responsible bidder will be calculated for the entire period of the proposed contract. The Town is required to award the contract to the lowest responsive and responsible bidder.

- Responsiveness

Bidders must completely fill out and submit the bid form and all other required forms. All supplies and services that are the subject of the bid must meet the minimum standards and scope of services set forth in the purchase description including the standards by which the procurement officer will determine acceptability as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose.

- Responsibility

Bidders must demonstrate that they meet measures of responsibility. The Town will not award a contract to any bidder who cannot furnish satisfactory evidence of his ability and experience in this type of work and that he has sufficient plant and capital to enable him to prosecute and complete the work as outlined in the Scope of Services. The Town may make such investigations as it deems necessary to determine the above and a bidder shall furnish any information requested in this regard.

All costs not listed on the bid price sheet will not be considered part of the contract and therefore will not be paid. The Town of Andover will not be charged fuel surcharges or administrative fees as part of any contract entered into as a result of this IFB. Additionally the Town of Andover will not be charged late fees unless payment is not made within sixty (60) days of the receipt of invoice.

The Town of Andover is a tax exempt entity so no sales tax will be assessed to any purchases made under this proposed contract.

11. Term of Contract

The Town of Andover is seeking to award a contract for 12 month period from January 1, 2024 through December 31, 2024, with two options to renew for 1 twelve month period. The successful bidder will be required to execute the standard Town of Andover contract, as attached.

APPENDIX A - PRICE PROPOSAL

The Contract will be awarded to the responsible and responsive bidder offering the lowest aggregate price for the total period of the Contract. All prices are to remain firm for the duration of the Contract. Assumption is for 1,650 cobra head style overhead street lights. Please see attached listing of all Andover Street Lights with summary page listing all part numbers for current inventory.

Period 1 – January 1, 2024 through December 31, 2024

| <u>Item</u> | <u>Description</u> | <u>Quantity</u> | <u>Unit Price</u> | <u>Total Price</u> |
|----------------|-------------------------------------------------------------------------------------------------------|-----------------|-------------------|--------------------|
| #1 | Monthly lump sum maintenance Current Lamp Style-Attachment A | 12 months | \$/month | \$ |
| #2 | Labor rate to perform any other streetlight maintenance, including other fixtures owned by Town | 50 hours * | \$/hr | \$ |
| #3 | Transfer of streetlight equipment damaged or disabled pole to new installed pole | 2 poles * | \$/pole | \$ |
| PERIOD 1 TOTAL | | | | \$ |

All materials and supplies, not included in monthly maintenance, invoiced at contractor's cost plus _____%

* The quantities listed for each item are simply estimates for bid purposes only. The Town will not be obligated to commit to any specific number of hours or poles during the period of the contract.

Addenda _____ are acknowledged: _____
Signature

Business Name _____

Business Address _____

Business Phone _____ Fax _____

Name of Person Authorized to sign Price Proposal

Title of Person Authorized to sign Price Proposal

Signature of Above Person

PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, that we _____ with a place of business at _____, as Principal (the "Principal"), and _____, a corporation qualified to do business in the Commonwealth of Massachusetts, with a place of business at _____ as Surety (the "Surety"), are held and firmly bound unto the Town of Andover, Massachusetts as Obligee (the "Obligee"), in the sum of _____ lawful money of the United States of America, to be paid to the Obligee, for which payment, 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 Principal has assumed and made a contract with the Obligee, dated _____.

NOW, THE CONDITIONS of this obligation are such that if the Principal and all subcontractors under said contract 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, but not be limited to, any other purposes or items set out in, and to be subject to, the provisions of Massachusetts General Laws, Chapter 30, Section 39M, and Chapter 149, Section 29, as amended then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to the Surety is not required for such increased obligation.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____.

PRINCIPAL

SURETY

[Name and Seal]

[Attorney-in-fact] [Seal]

[Title]

[Address]

Attest: _____

[Phone]

Attest: _____

END OF PAYMENT BOND

AFFIDAVIT OF OSHA COMPLIANCE

The undersigned agrees that if he is selected as the contractor, he will comply with the provisions of M.G.L. Chapter 30, Section 39S.

The undersigned certifies, under penalties of perjury, 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; 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 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.

Date _____

(Name of General Bidder)

By _____
(Name of person Signing Bid and Title)
Signature is required

(Business Address)

(City and State)

(Telephone Number)

**STREET LIGHT MAINTENANCE
ANDOVER, MA**

IFB No. 185/024/24

REFERENCES FORM

Bidders Name: _____

Bidders Address: _____

Bidder must provide references for similar type projects performed within the past three years.
Attach additional pages if necessary.

Reference: _____ Contact: _____

Address: _____ Phone: _____

Fax: _____

Description and date of Project: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

Fax: _____

Description and date of Project: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

Fax: _____

Description and date of Project: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

Fax: _____

Description and date of Project: _____

USE ADDITIONAL PAGES IF NECESSARY

SIGNATURES

(IF AN INDIVIDUAL)

Date _____, 20____

Signature of Bidder _____(SEAL)
(Owner and Proprietor)

Business Name D/B/A _____

Business Address _____

(IF A CO-PARTNERSHIP)

Date _____, 20____

Firm Name _____(SEAL)

By _____(SEAL)

Business Address _____

Names and Addresses _____

of all _____

Members of Firm _____

(IF A CORPORATION)

Date _____, 20____

Corporate Name _____

By _____
President or Authorized Agent*

Business Address _____

*Statement of authorization, duly signed by proper authority, to be attached hereto.

CORPORATE VOTE

At a duly authorized meeting of the Board of Directors of _____ held on _____ at which all the _____ Directors were present or waived notice, it was voted that _____, _____ of this company, be and he/she hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or obligation in this company's name on its behalf by _____, shall be binding upon this company.

A TRUE COPY ATTEST:

Clerk,

Date of this Contract

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

Clerk Corporate Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____,

Notary Public

If a corporation, complete above or attach to each signed copy of the bid/written request/quotation, a notarized copy of vote of corporation authorizing the signatory to sign this bid/written request/quotation form. If attesting clerk is the same person as the individual executing this contract, have signature notarized above.

CERTIFICATION OF GOOD FAITH & NON-COLLUSION

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

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of authorized individual submitting bid/proposal

Printed Name

Name of Business (if applicable)

Social Security or Federal Tax Identification Number

BIDDER'S CHECKLIST

The following forms are to be completed and signed (where applicable) and submitted with the proposer's bid. Failure to include these completed forms may result in rejection of the bid.

- 1. Cover Sheet**
- 2. Bid Price Sheet (with signature page)**
- 3. Affidavit of OSHA Compliance**
- 4. Reference Form**
- 5. Signatures Page**
- 6. Corporate Vote**
- 7. Certification of Good Faith and State Tax Compliance**
- 8. 5% Bid Security**

**TOWN OF ANDOVER
CONSTRUCTION CONTRACT
(PROJECTS UNDER \$100,000.00)**

Date: _____

This contract is entered into on, or as of, this date by and between the Town of Andover (the “Town”) and

1. This is a contract for the work described as follows:

1.1 Description of Work:

1.1.1 Required Bonds

1.1.2 Required Insurance

1.1.3 Contract Amount :

1.2 Scope of Work: The Work comprises the completed project described in the Contract Documents and includes all labor, professional services, transportation, tools, materials, supplies, equipment, permits, approvals, documents, calculations, submittals, and certificates necessary to develop, perform, construct and complete the project in accordance with all applicable laws, ordinances, and regulations, and in accordance with the Contract Documents. Before commencing the Work, the Contractor shall carefully study the Contract Documents and carefully compare all Specifications, Plans, Drawings, figures, dimensions, lines, marks, scales, directions of the Designer, and any other information provided by the Town and shall at once report to the Designer any questions, errors, inconsistencies, or omissions. The Town expressly disclaims any express or implied warranties regarding the sufficiency of the Plans and Specifications, drawings, figures, dimension lines, marker scales and direction of the Designer.

1.3 Interpretation. The Plans and Specifications and other Contract Documents are to be considered together and are intended to be mutually complementary, so that any work shown on the Plans though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is part of the Work to be performed by the Contractor. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Owner-Contractor Agreement.

1.3.1 In the case of a closed Specification written for a specific item or items to be furnished under the Base Bid, such specifications shall, as applicable, be in compliance with Massachusetts General Laws, Chapter 30, Section 39M and Chapter 149, Sec. 44A et seq.

- 1.3.2 Where the name of an item, material or manufacturer is mentioned in the Specifications or on the Drawings, except as above noted, the intent is to establish a standard and in no way should be construed to exclude any item or manufacturer not mentioned by name, but whose product meets the Specifications as to design, utility, and quality. Final decision shall rest with the Town or its designated Representative as to its acceptability.
- 1.4 Contractor's General Duties. The Contractor shall perform the Work in a proper, thorough and workmanlike manner in accordance with the Contract Documents and all applicable laws. The Contractor shall be solely responsible for, and have control over, construction's means, methods, techniques, sequences, and procedures, and coordination of all portions of the Work under this Contract. The Contractor shall provide and perform for the Contract Price all of the duties and obligations set forth in the Contract Documents.
- 1.5 Sales Tax Exemption and Other Taxes. To the extent that materials and supplies are used or incorporated in the performance of this Contract, the Contractor is considered an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966. The Contractor shall pay all taxes and tariffs of any sort related to the Work, subject to the applicable exemptions.
- 1.6 Safety Requirements. The Contractor shall comply with all Federal, State, and local safety laws and regulations applicable to the Work.
- 1.6.1 The Contractor shall take any necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of Federal, State and local laws and codes to prevent accidents or injury to the persons on, about or adjacent to the premises where the work is being performed. The Contractor will erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public, shall post danger signs warning against the hazards created by such features of construction including but not limited to pits, protruding nails, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and shall designate a responsible member of its organization on the work, whose duty shall be the prevention of accidents.
- 1.6.2 The Contractor shall comply and shall cause all Subcontractors and persons employed on the Work to comply with all applicable safety requirements. By executing this Contract the Contractor hereby certifies 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 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. Any employee found on a worksite subject to this section without documentation of said course shall be subject to immediate removal.

- 1.7 Workforce Qualifications. The Contractor shall: (i) employ competent workers; (ii) enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work; (iii) not permit employment of unfit persons or persons not skilled in tasks assigned to them. Whenever the Town shall notify the Contractor in writing that any worker is, in the Town's opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee shall be discharged from the Work and shall not again be employed on the Work except with the consent of the Town.
- 1.8 Non-Discrimination in Hiring and Employment. By signing this Contract the Contractor hereby certifies that under the pains and penalties of perjury that the Contractor currently complies with and will continue to comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.
- 1.9 Veterans Preference. In accordance with M.G.L. c. 49, s.26 in the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the construction of public works in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined in M.G.L. c. 4, s.7(34), and who are qualified to perform the work to which the employment relates and, within such preference, preference shall be given to service-disabled veterans; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.
- 1.10 Employment Eligibility Requirements [8 U.S.C., §1324a, 1324b; M.G.L. c. 149 s. 19C; Executive Order No. 481]. The Contractor hereby certifies under pains and penalties of perjury as a condition of receiving this Contract, that I shall not knowingly use undocumented workers in connection with the performance of the Work and that, pursuant to the requirements of federal law, the Contractor shall verify the immigration status of all workers employed in connection with the Work without engaging in unlawful discrimination, and that the Contractor shall not knowingly or recklessly alter, falsify, or knowingly or recklessly accept altered or falsified documents of any worker. The Contractor shall cause all subcontractors to comply with this provision. The Contractor shall comply with Federal Department of Homeland Security Requirements in hiring any and all "employees" to be employed on the Work who are required to be listed in the certified payroll reports for the Work. Without limitation, such requirements shall include the good faith completion of the Federal Department of Homeland Security I-9 process by the Contractor for each of its employees. The Contractor shall execute a Certificate of Compliance with Employment Eligibility Verification Requirements (I-9 Certificate) simultaneously with the execution of this Contract. The Contractor shall require each of its

subcontractors to execute and provide the Contractor and I-9 Certificate with the execution of each subcontract, and the Contractor shall immediately provide a copy to the Town. The Contractor shall certify in each certified payroll report to the Town that the Form I-9 process was faithfully completed for all employees listed on the payroll report. Violation of this Section shall constitute a material breach of this Contract, subjecting the Contractor to sanctions including but not limited to monetary penalties, withholding of payments, contract supervision, or termination.

- 1.11 Weekly or Bi-weekly wage payments [M.G.L. c. 149 s. 148]. The Contractor shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 148 s. 148 which requires the weekly or bi-weekly payment of employees within 6 days of the end of the pay period during in which wages were earned if employees for five or six days of a calendar week, and within other periods of time under certain circumstances as set forth therein.
- 1.12 Labor Harmony [M.G.L. c. 30, s. 39S]. By executing this contract the Contractor certifies that the Contractor is liable to furnish labor than can work in harmony with all other elements of labor employed or to be employed in the work. The Contractor shall procure materials from such sources and shall manage its own forces and the forces of its Subcontractors and any sub-subcontractors in such a manner as will result in harmonious labor relations on the site. The Contractor shall cause persons to be employed in the Work who will work in harmony with others so employed. Should the Work be materially stopped or materially delayed in the Town's reasonable judgment due to a labor dispute, the Town shall have the right to require the Contractor to employ substitutes acceptable to the Town.

2. The Contract price to be paid to the Contractor by the Town of Andover is:

3. Payment will be made in accordance with the provisions of this Contract and in accordance with applicable law.

4. Definitions

4.1 Acceptance: All contracts require proper acceptance of the described goods or services by the Town. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to insure that the goods or services are complete and as specified in the Contract.

4.2 Contract Documents: All documents relative to the Contract including (where used) Invitation to Bid, Request for Proposals, Instructions to Bidders/Proposers, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding or proposal period. The Contract documents are complementary, and what is called for by any one shall be binding as if called for by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

4.3 The Contractor: The “other party” to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used. The Contractor’s relationship with the Town is that of an independent contractor and not that of an agent or employee of the Town.

4.4 Date of Substantial Performance: The date when work is sufficiently complete, the services are performed, or the goods delivered, in accordance with the Contract documents, as modified by approved Amendments and Change Orders.

4.5 Goods: Goods, Supplies, or Materials.

4.6 Subcontractor: Those having direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnished material not so worked.

5. Term of Contract and Time for Performance. This contract shall be fully performed by the Contractor with the provisions of the Contract Documents on or before _____, unless extended pursuant to a provision for extension contained in the Contract Documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability of funds as certified by the Town Accountant. The time limits stated in the Contract Documents are of the essence of the Contract.

5.1 Extension for Delays Caused by Town. The only circumstances under which the Contract Price shall be increased due to delays caused by the Town are those specified in M.G.L. c. 30, §390 appearing in Appendix A to this Contract. In all other cases the Contractor shall be entitled neither to increase the Contract Price nor to receive damages on account of any hindrances or delays, avoidable or unavoidable, but if the delay is caused by the Town, the Contractor shall be entitled to an extension of time to the extent provided in M.G.L. c. 30, §390. The Contractor must submit any claim under this paragraph to the Town in writing as soon as practicable after the end of the Town’s suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this Contract. Except for costs due to a suspension order, the Town shall not approve any costs in the claim incurred more than 20 days before the Contractor notified the Town in writing of the act or failure to act or the Town that gave rise to the claim.

6. Subject to Appropriation. Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. The Town may immediately terminate or suspend this Contract without liability on the part of the Town for damages, penalties or other charges in the event the appropriation(s) funding this Contract is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.

7. Permits and Approvals. Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor. The Contractor shall

comply with and give notices required by laws, ordinances, bylaws, rules, regulations, codes and lawful orders of public authorities bearing on the performance of the Work.

8. Bonds. The Contractor shall provide the Town with a Performance Bond and a Payment Bond in the form provided by the Town, executed by a surety company licensed by the Commonwealth of Massachusetts Division of Insurance and whose name appears on United States Treasury Department Circular 570. Both the performance bond and the payment bond shall be in an amount equal to the Contract sum unless, with respect to the Payment bond or a lesser amount of no less than one half the contract price is expressly specified in the Advertisement or Instructions to Bidders, or with respect to such bonds no such bond is required as expressly set forth in the Advertisement or Instructions to Bidders.

9. Termination and Default

9.1 Without Cause. The Town may terminate the Contract at its sole discretion on seven (7) calendar days' notice when in the best interest of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

9.2 For Cause. If the Contractor is determined to be in default on any term of this Contract, The Town may terminate this contract on seven (7) calendar days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. The Town may complete the Work or any part thereof, and charge its expense of so completing the Work or part thereof, to the Contractor. The Town may take possession of and use any materials, machinery, implements and tools found upon the site of said Work. The Town shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the Contractor shall be solely responsible for their removal from the Project site after the Town has no further use for them. In such cases, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid amount owed to the Contractor for work already completed shall exceed the expense of finishing the Work, including compensation for additional architectural, managerial, legal, and administrative services, such excess shall be paid to the Contractor. If such expenses shall exceed unpaid balances, the Contractor shall pay the difference to the Town. The Contractor shall not be relieved of liability to the Town by virtue of any termination of this contract, and any claim for damages against the Contractor relating to the Contractor's performance under this contract shall survive any termination hereunder. Notwithstanding any other provision of this Contract, the Town reserves the right at any time in its absolute discretion to suspend or terminate this Contract in whole or in part for its convenience upon seven days written notice to the Contractor. The Town shall incur no liability by reason of such termination except for the obligation to pay compensation for all work performed by the Contractor and accepted by the Town to the termination date.

9.3 Default. The following shall constitute default events of default under the Contract: If the Contractor should (1) be adjudged a bankrupt, (2) make a general assignment for the benefit of creditors, (3) have a receiver appointed on account of its insolvency, (4) persistently

or repeatedly refuse or fail to supply enough personnel and resources to perform the contract, (5) fail to make prompt payment to subcontractors or to providers of materials or labor, (6) persistently disregard laws and regulations or lawful directives of the Town, (7) make any material misrepresentation made by the Contractor to the Town, (8) fail to perform any of its obligations under this Contract, (9) fail to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (10) Fail to perform this Contract in a manner reasonably satisfactory to the Town, (11) fail to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (12) discontinue the services for reasons not beyond the Contractor's reasonable control, (13) fail to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (14) perform any other acts specifically or expressly stated in this Contract as constituting a basis for termination of this Contract, or (15) fail to comply with any and all requirements of federal or state law and/or regulations, then the Town may, without prejudice to any other right or remedy and after giving the Contractor (or any surety) seven days written notice, terminate the Contract and the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it deems appropriate.

10. The Contractor's Breach and the Town's Remedies. Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract and the Town shall have all the rights and remedies provided in the Contract Documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above. From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and damages, incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

11. Statutory Compliance

11.1 This contract will be construed and governed by the provisions of applicable federal, state or local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of Massachusetts General Law are incorporated by reference into this Contract, including, but not limited to, the following:

M.G.L. Chapter 30B- Procurement of Goods and Services

M.G.L. Chapter 30, Sec. 39, *et seq*: Public Works Contracts

M.G.L. Chapter 149, Section 44A, *et seq*: Public Buildings Contracts

11.3 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal Bylaws and Regulation and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work, or in any way affecting the conduct of the work. If

any discrepancy or inconsistency is discovered in the Drawings, Specifications, Scope of Work, or Contract for this work in violation of any such law, bylaw, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself give all notices and observe and comply with all such existing and future laws, bylaws, regulations, orders and decrees; and shall to the fullest extent permitted by law protect, defend and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on any violation whether by the Contractor or the Contractor's agents, employees, or subcontractors of any such law, bylaw, regulation or decree. If the Contractor performs Work knowing it to be contrary to legal requirements, the Contractor shall be liable for all damages caused thereby including the cost of correcting the Work.

12. Conflict of Interest. Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

13. Affirmative Action; Non-Discrimination. The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

14. Condition of Enforceability Against the Town. This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

15. Corporate Contractor. If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate or if a limited Liability Corporation, a Manager's Certificate or other documentation satisfactory to the Town certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed with the Contractor. This Contract shall not be enforceable against the town unless and until the Contractor complies with this section.

The Contractor, is a foreign corporation, shall comply with the provision of the General Laws, Chapter 181, Section 3 and Section 5 ad M.G.L. c. 30, §39L, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Secretary of the Commonwealth as its attorney, shall file with the Secretary of the Commonwealth a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

16. Liability of Public Officials. To the full extent permitted by law, no official, employee, agent or representative of the Town shall be individually or personally liable for any obligation of the Town under this Contract.

17. Documents, Materials, Etc. Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law.

Any materials produced in whole or in part under this Contact shall not be subject to copyright, except by the Town, in the United States or in any other country. The Town shall have unrestricted authority to, without

payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the Town before making any statement to the press bearing on the work performed or data collected under this Contract or issues any material for publication through any medium.

18. Confidentiality. The Contractor shall comply with M.G.L. c. 66A if the Contractor becomes a “holder” of “personal data”. The Contractor shall also protect the physical security and restrict any access to personal or other Town data in the Contractor’s possession, or used by the Contractor in the performance of this Contract, which shall include, but is not limited to the Town’s public records, documents, files, software, equipment or systems.

19. Record-Keeping and Retention, Inspection of Records. The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention periods of six (6) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. The Town shall have access during the Contractors regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

20. Assignment. The Contractor shall not assign or delegate, in whole or in part or otherwise transfer any liability, responsibility, obligation, duty or interest under this Contract without the written approval of the Town.

21. Subcontracting by Contractor. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing, authorized in advance by the Town and shall be consistent with and subject to the provisions of this Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Contract. The Town is entitled to copies of subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

22. Risk of Loss. The Contractor shall bear the risk of loss for any Contractor materials used for this Contract and for all deliveries, personal or other data of the Town which is in the possession of the Contractor or used by the Contractor in the performance of this Contract until possession, ownership and full legal title to the deliverables have been transferred to and accepted by the Town.

23. Minimum Wage/Prevailing Wage. The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, et seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with and shall cause its Subcontractors to comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 and 27H (Prevailing Wage Law), as shall be in force and as amended.

24. Audit, Inspection, and Recordkeeping. At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript al records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this agreement.

25. Waiver and Amendment. Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Contract, prior to the effective date of the Amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this contract may be waived only by written agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

26. Forum and Choice of Law. This Contract and any performance herein shall be governed by the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to the subject matter herein shall be brought and maintained in the courts of the Commonwealth of Massachusetts, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

27. Notices. Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

28. Binding on Successors. This Contract shall be binding upon the Contractor, its assignees, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

29. Complete Contract. This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreement other than those incorporated herein.

30. Contractor Certifications.

30.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Contractor has files all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 151A, sec. 19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

30.2 By signing this contract, the Contractor certifies under the penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As such in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, client or other organization, entity or group of individuals.

30.3 By signing this contract, the Contractor certifies that it is qualified and shall at all times remain qualified to perform this contract, that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State’s website as licensed to do business in Massachusetts, as required by law.

30.4 By signing this contract the Contractor certifies that performance under this contract, in addition to meeting the terms of the contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

30.5 By signing this contract, the Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. ch. 29, §29F, M.G.L. ch. 30, §39R, M.G.L. ch. 149, §27C, M.G.L. ch. 149, §44C, M.G.L. ch. 149, §148B and M.G.L. ch. 152, §25C.

31. Change Orders.

31.1 Change Orders. The Contractor shall comply with the provisions of Massachusetts General Law Chapter 30, Section 39I and the Town shall not be obligated to pay for any changes in the work not approved in writing in accordance with said section.

31.2 Changes within the Scope of Work. A change order may be issued by the Town for changes in the Work within the scope of the Contract, including but not limited to, changes in: (1) the Plans and Specifications; (2) the method or manner of performance of the Work; (3) the Town furnished facilities, equipment, materials, services, or Site; or (4) the schedule for performance of the Work. The Contractor shall immediately perform any change order work that is ordered in writing by the Town.

31.3 Request for Equitable Adjustment due to Change Order. Whenever a change order is issued by the Town that will cause a change in the Contractor's cost or time for performance, the Contractor or the Town may request an equitable adjustment in the Contract Price or the Contract time. A request for such an adjustment shall be in writing and shall be submitted by the party making such claim to the other party.

31.4 Latent Conditions. If, during the progress of the Work, the Contractor or Town discover that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those indicated in the Contract Documents, then either the Contractor or the Awarding Authority may request an equitable adjustment in the Contract Price in accordance with M.G.L. ch. 30, §39N appearing in Appendix A attached to this Contract. Likewise if the latent or subsurface condition causes a change in the time for performing the Work, either the Contractor or the Awarding Authority may request an equitable adjustment of the time for performance of the Work.

32. The Contractor's Insurance

32.1 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

32.2 Claims under Worker's Compensation, disability benefit or other similar employee benefits acts;

32.3 Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than its employees, and claims insured by usual personal liability coverage;

32.4 Claims for damage because of bodily injury, sickness or disease, or death of any person other than its employees, and claims insured by usual personal liability coverage;

32.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

32.6 The insurance required by the above shall be written for not less than the minimum limits of liability contained in Paragraphs 33 and 34.

33. Workers Compensation Insurance

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits as required by Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and the Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the Town evidence of such insurance prior to the execution of this Contract in a form satisfactory to the Town before the same shall be binding on the parties thereto, except if specifically waived by the Town.

31.1 The Contractor further understands and agrees that in rendering services to the Town under this Contract that the Contractor is an independent contractor and not an employee of the Town, that the Contractor is not covered by the Town's Workers Compensation or liability insurance.

34. Liability Insurance Requirements

Liability insurance shall include all major divisions and shall be on a comprehensive general basis including Premises and Operations, Owners and Contractor's Protective, Products and Completed Operations, and Owned, Non-owned and Hired Motor Vehicles. All such insurance shall be written for not less than any limits of liability required by law, unless otherwise provided in the contract documents, or the following limits, whichever are greater:

| | |
|--------------------------------------------------------------------------------------------|-------------------------------------|
| Comprehensive General Liability Insurance | (Broad Form) |
| Bodily Injury | \$1,000,000 per person |
| | \$ 2,000,000 per occurrence |
| Property Damage | \$ 1,000,000 per occurrence |
| | \$ 2,000,000 annual aggregate |
| Automobile Liability Insurance | \$ 1,000,000 per person |
| | \$ 1,000,000. Combined single limit |
| Excess Liability (Umbrella) | \$ 1,000,000 |
| <u>(See Exhibit A, attached – for any changes/updates for this particular bid.)</u> | |

34.1 The above insurance policies shall also be subject to the following requirements:

34.1.1 Insurance coverage for the Contractor’s Comprehensive General Liability, as hereinafter specified under Paragraph entitled “Protective Liability Insurance” shall be written by one and the same insurance company to avoid the expense of duplicate and/or overlapping coverage and to facilitate and expedite the settlement of claims.

34.1.2 Certificates of Insurance acceptable to the Town shall be addressed to and filed with the Town upon execution of the Contract. Renewal certificates shall be addressed to and filed with the Town at least ten (10) days prior to the expiration date of required policies.

34.1.3 No insurance coverage shall be subject to cancellation without at least thirty (30) days prior written notice forwarded by registered or certified mail to the Town. The Town shall also be notified of the attachment of any restrictive amendments to the policies.

34.1.4 All Certificates of Insurance shall be on “ACORD” Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the locations and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. Properly executed certificates signifying adequate coverage in effect for the duration of the Contract must be submitted to the Town prior to the execution of this Contract by the Town with renewal certificates issued not less than 30 days prior to the expiration of the policy period.

34.1.5 All premium costs shall be included in the Contractor’s bid.

34.1.6 All insurance shall be written on an occurrence basis. Coverages shall be maintained without interruption from the date of the Contract until the date of final payment and termination of any coverage required to be maintained after payment.

34.1.7 Contractual liability must be recognize the indemnities contained in the Contract.

34.1.8 Completed operators coverage is to be maintained for a period of three years after final payment.

34.1.9 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.

34.1.10 The Contractor is responsible for the payment of any and all deductibles under all the insurance required by this Contract. The Town shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.

34.1.11 The General Liability and Automobile Liability Policies shall contain a waiver of subrogation in favor of the Town.

34.2 Protective Liability Insurance

34.2.1 The Contractor shall purchase and maintain such insurance as described in paragraph 34.1 as well as protect the Town from claims which may arise from operations under the Contract, including operations performed for the named insureds by independent contractors and general inspection thereof by the named insureds.

34.2.2 The Contractor shall also purchase and maintain such insurance as will protect the Town against Automobile Non-Ownership Liability in connection with the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

34.2.3 The limits of liability coverage required under the preceding paragraphs shall be as specified under the provisions hereof governing the Contractor's General Liability Policy.

34.2.4 The Town shall be named as an additional insured on the above referenced liability policies, and the Contractor's insurance shall be the primary coverage. The cost of such insurance shall be the sole responsibility of the Contractor. The policies shall contain a waiver of subrogation in favor of the Town.

35. Performance of Work

35.1 The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the property of the Town and others, including adjacent property, from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly due to errors in the Contract Documents or caused by agents or employees of the Town, or due to causes beyond the Contractor's control and not the Contractor's fault or negligence.

35.2 The Town shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide suitable accommodations for such access.

35.3 The Contractor shall appoint a competent superintendent and foreman and any necessary assistants, all of whom shall be satisfactory to the Town. If the Town in its sole discretion determines that the construction superintendent, foreman, or assistants are unacceptable to the Town, then upon seven day notice from the Town, the Contractor shall replace such person or persons with people acceptable to the Town.

35.4 The Contractor shall give sufficient supervision to the work, using its best skill and attention. The Contractor shall carefully study and compare the drawings, specifications, and other instructions and shall at once report to the Town any error, inconsistency or omission which shall be discovered. Included in this responsibility shall be supervision of all work performed by Subcontractors on the work.

35.5 If the Contractor should neglect to prosecute the work properly, or fail to perform the contract or any of its provisions, the Town, upon three day written notice, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, and if such sum is insufficient, the Contractor shall be obligated to pay the balance thereof.

36. Inspection by the Town's Project Representative

36.1 The Town shall have the right to designate a Project Representative who may make periodic visits to the site to familiarize the Town generally with the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract Documents. The Project Representative will be not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work and will not be responsible for the Contractor's failure to carry out the construction work in accordance with the Contract Documents.

36.2 In connection with the work, the Project Representative shall not be responsible for construction methods, means, techniques, sequences or procedures employed by the Contractor or the Contractor's safety programs, requirements, regulations, or precautions.

37. Decisions of the Project Representative

37.1 The Project Representative shall, within a reasonable time, make decisions on all claims of the Town or the Contractor and on all other matters relating to the execution and progress of the structural work or the interpretation of the Contract Documents.

37.2 The Project Representative's decision, in matters relating to the project, shall be final, if within the terms of the Contract Documents.

37.3 If, however, the Project Representative fails to render a decision within ten days after the parties have presented their evidence, either party may then avail itself of the remedies provided in this contract or available to it by law.

38. Use of Premises by the Contractor

38.1 The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, by-laws, permits or directions of the Town and shall not unreasonably encumber the premises with its materials.

38.2 The Contractor shall not load or permit any part of the structure to be loaded with weight that will endanger its safety.

39. Maintenance of Premises

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of work it shall remove all its rubbish from and about the work site and all its tools, scaffolding and surplus materials and shall leave it work "broom-clean", or its equivalent, unless more exactly specified. In case of dispute, the Town may remove the rubbish and charge the cost to the several contractors, as the Town shall determine to be just.

40. Progress Payments

40.1 The Contractor shall submit to the Town an itemized Application for Payment, supported to the extent required by the Town by invoices or other vouchers, showing payments for materials and labor, payments to the Subcontractors and such other evidence of the Contractor's right to payment.

40.2 The Contractor shall, before the first application, submit to the Town a schedule of values of the various parts of the work, including quantities aggregating the total sum of the Contract, divided so as to facilitate payments to Subcontractors, made out in such form as the Town and the Contractor may agree upon, and, if required, supported by such evidence as to its correctness. This schedule, when approved by the Town, shall be used as a basis for payment, unless it is found to be in error. If applying for payments, the Contractor shall submit a statement based upon this schedule.

41. Final Payment

Final payment under this Contract shall be processed in accordance with the procedures set forth in M.G.L. c. 30, §39K. The acceptance by the Contractor of the last payment due under this Contract or the Contractor's execution of the Final Certificate of Completion, shall operate as to release the Town from all claims and liability related to this Contract.

42. Liens

Neither the Final Payment nor any part of the retained percentage shall become due until the Contractor, if required, delivers to the Town a complete release of all liens arising out of the Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. The Contractor shall comply with all the statutory provisions of the General Laws of the Commonwealth of Massachusetts with regard to liens, Chapter 254 and 149 as amended (as a minimum requirement).

43. Withholding of Payments

43.1 The Town may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may become necessary in its reasonable opinion to protect the Town of Andover from loss on account of:

42.1.1 Defective work not remedied.

42.1.2 Claims filed or reasonable evidence indicating probable filing of claims.

42.1.3 Failure of the Contractor to make payments properly to Subcontractors or for material or labor.

42.1.4 Reasonable doubt that the Contract can be completed for the balance then unpaid.

42.1.5 Damage to another contractor.

42.1.6 Delays resulting in liquidated damages.

43.2 Withholding of payments shall be in strict compliance with statutory requirements.

44. Claims by Contractor and Liability of Town

All claims by the Contractor against the Town shall, unless otherwise provided by law, be initiated by a written claim submitted to the Town no later than seven (7) calendar days after the event or the first appearance of the circumstances causing the claim. The claim shall set forth in detail all known facts and circumstances supporting the claim. The Contractor shall continue its performance under this Contract regardless of the submission or existence of any claims.

The limit of liability of the Town under this Agreement is limited to the compensation provided herein for the work actually performed, and shall in no event include liability for delays or for incidental, special or consequential damages or lost profits or for damages or loss from causes beyond the Town's reasonable control.

45. Liquidated Damages

Because both parties recognize (1) that the time for completion of this Contract is of the essence, (2) that the Town will suffer loss if the work is not completed within the contract time specified, plus any extension thereof allowed in accordance with the provisions of this contract, and (3) the delays, expense and difficulties involved in a legal proceeding to determine the actual loss suffered by the Town if the work is not completed on time, it is agreed that the Contractor will pay the Town as liquidated damages representing an estimate of delay damages, not as a penalty, the sum of _____N/A_____per day for each calendar day of delay until the work is completed, whether the work is completed by the Contractor or some other person. The Town's right to impose liquidated damages shall in no way prohibit or restrict the Town's right to bring legal action for damages in lieu of or in addition to its option to impose liquidated damages. The Town may deduct any liquidated damages from money due the Contractor, and if such payment is insufficient to cover the liquidated damages, then the Contractor shall pay the amount due.

46. The Contractors' Mutual Responsibility

Should the Contractor cause damage to any separate subcontractor on the work, the Contractor agrees, upon due notice, to settle with such contractor by agreement, or by recourse to remedies provided by law or by the provisions of the contract. If such separate contractor sues the Town on account of any damage alleged to have been sustained, the Town shall notify the Contractor, who shall defend such proceedings at the Contractor's expense and, if any judgment against the Town arises therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Town.

47. Separate Contracts

47.1 The Town reserves the right to let other Contracts in connection with this work under similar General Conditions. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

47.2 If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Town any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work except as to defects which may develop in the other contractor's work after the execution of its work.

47.3 To insure the proper execution of its subsequent work, the Contractor shall measure work already in place and shall at once report to the Town any discrepancy between the executed work and the Drawings.

48. Subcontracts

48.1 All subcontracts shall be awarded in conformity with the requirements of the General Laws of the Commonwealth of Massachusetts, Chapter 149, Sections 44A to 44L, inclusive.

48.2 The Contractor fully agrees that it is as fully responsible to the Town for acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

48.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Town.

49. Contractor-Subcontractor Relations

The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Agreement, the General Conditions of the Contract, the Supplementary General Conditions, the Drawings and Specifications, as far as applicable to its work, including the provisions of the General Laws, Commonwealth of Massachusetts, Chapter 149, Section 44A, et seq.

50. Indemnification

50.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and save harmless the Town, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, recoveries and judgments of every nature and description (including reasonable attorney's fees) brought or recovered against them that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the Town for damage to the Town's property caused by Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective, or unsuitable material or equipment. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this Contract. The duty to defend shall immediately accrue and be owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The duty to defend shall be absolute and shall not be defeated or in any way undermined by the utterance of claims not covered by this Contract.

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

50.3 The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.

51. Guarantees

51.1 The Contractor guarantees and warrants to the Town that all labor furnished under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract,

and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

51.2 If at any time during the period of one (1) year from the date of the substantial completion, as shown on an approval payment request, or such other period provided in the Specifications, the Work or any part of the Work shall in the reasonable determination of the Town require replacing or repairing due to the fact that it is broken, defective, or otherwise does not conform to the Contract Documents, the Town will notify the Contractor to make the required repairs or replacement. If the Contractor shall neglect to commence such repair or replacements to the satisfaction of the Town within ten (10) days from the date of giving or mailing such notice, then the Town may employ other persons to make said repairs or replacements. The Contractor agrees, upon demand, to pay the Town all amounts which the Town expends for such repairs or replacements. For items of work completed after substantial completion, the one-year guarantee will commence at the time the Town approves of the completion of such items. This one-year guarantee shall not limit or express guaranty or warrantee required to be assigned to the Town pursuant to the terms of the Plans and Specifications.

51.3 Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices. The Contractor shall inform itself as to, and shall comply with, the provisions of M.G.L. c. 7, s. 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Work, including the provisions of M.G.L. c. 7, s. 22, paragraph 17 which provides that there be "*a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and second, of supplies and materials manufactured and sold elsewhere within the United States.*"

51.4 All guarantees and warranties required in the various Sections of the Specifications which originate with a Subcontractor or Manufacturer must be delivered to the Town before final payment to the Contractor may be made for the amount of that subtrade or for the phase of work to which the guarantee or warranty relates. The failure to deliver a required guarantee or warranty shall be held to constitute a failure of the Subcontractor to fully complete his work in accordance with the Contract Documents. The Contractor's obligation to correct work is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications.

52. The statutory provisions appearing in Appendix A attached hereto are incorporated into this Contract by reference.

This contract is intended to take effect as a sealed instrument. Witness our hands and seals hereto:

Dated: _____

The Town of Andover by:

Purchasing Agent/Theresa Peznola

Town Manager/Andrew Flanagan

Department/Division Head

The Contractor by:

(authority or agency)

Town Counsel
Approved as to Form

Certified as to the Availability of Funds (M.G.L. c. 44, §31C)

Town Accountant

Amount

Fund

APPENDIX A

Statutory Provisions Incorporated by Reference

Chapter 30: Section 39N: Construction Contracts; equitable adjustment in contract price for differing subsurface or latent physical conditions.

Section 39N. Every contract subject to Section 44A of Chapter 149 or subject to Section 39M of Chapter 30 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 or the contract shall be modified in writing accordingly.

Chapter 30: Section 39O: Contracts for construction and materials; suspension, delay, or interruption due to order of awarding authority; adjustment in contract price; written claim.

Section 39O. Every contract subject to the provisions of Section 39M of this chapter or subject to Section 44A of Chapter 149 shall contain the following provisions (a) and (b) in their entirety and, in the event of a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, that contractor shall have the same right 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 contractor in writing to suspend, delay, or interrupt all or any part of the work for such a 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 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 or interruption or failure to act to the extent that such is due to any cause for which the contract provides for an equitable adjustment of the contract price under any other contract provisions.
- (b) The general contractor must submit the amount of the 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 final date of payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim uncured more than twenty days before the general contractor notified the awarding authority in writing of the failure to act involved in the claim.

Chapter 30: Section 39P: Contracts for construction and materials; awarding authority's decisions on interruption of specifications, etc.; time limit; notice.

Section 39P. Every contract subject to Section 39M of this chapter or Section 44A of Chapter 149 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 any decision; but is such decision requires extended investigation and study, the awarding authority, the official, the 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.

Chapter 30: Section 39Q: Contracts for capital facility construction; contents; annual claims report. Section 39Q.

(1) Every contract awarded by any state agency as defined by Section 39A of Chapter 7 for the construction, reconstruction, alteration, remodeling, repair or demolition of any capital facility as defined by the aforesaid Section 39A 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 of 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 why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a decision with 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 21 calendar days if 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 its 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 adjudicatory hearing, unless the decision is delayed by a request for an 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 be issued. 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.

Chapter 30: Section 39R: Keeping and maintaining of books, records and accounts; statement of management on internal accounting control; financial statements; enforcement.

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 38A1/2 to 38O, inclusive of Chapter 7 and any contract awarded or executed pursuant to Section 11C of Chapter 25A, Section 39M of Chapter 30, or Sections 44A to 44H inclusive, of Chapter 149, 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 38A1/2 to 38O, inclusive of Chapter 7 and any contract awarded or executed pursuant to Section 11C of Chapter 25A, Section 39M of Chapter 30, or Sections 44A through 44H, inclusive, of Chapter 149, which is for amount or estimated 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 Accountant" means a person duly registered and 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 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 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 38A1/2 to 38O, inclusive, of Chapter 7, or 11C of Chapter 25A, and pursuant to Section 39M of Chapter 30 or to Section 44A through H, inclusive, of Chapter 149, 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 the any statements filed with the awarding authority, including in his description of the date of the change and reasons therefor, and shall accompany said description with a letter from the contractor’s independent certified 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 9d) 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) The 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:
- i. 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
 - ii. whether such representation 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 of Massachusetts 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 the 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 30A 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 44C of Chapter 149.
- (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 7 of Chapter 4 and shall not be open to public inspection; provided, however, that such records and statements be made available pursuant to the provisions of clause (2) of paragraph (b).

EXHIBIT A to the Owner-Contractor Agreement

Additional Insurance Provisions

(Insert any additions or modifications to the Insurance Requirements contained in Section 34 of the General Conditions of the Contract here or indicate “None.”)