



**INVITATION FOR BID
IFB # 021/012-16/185**

**ON-CALL MASONRY SERVICES
FOR THE TOWN OF ANDOVER**

December 21, 2016

BIDS DUE:

January 6, 2017 11:00 am

Late Proposals Will Be Rejected

DELIVER COMPLETED SUBMISSIONS TO:

Town of Andover, MA
Central Purchasing Department
Attn: Tom Watkins
36 Bartlet St. Andover, MA 01810
Phone: 978-623-8951
e-mail: twatkins@andoverma.gov

IFB # 021/12-16/185

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 bids(s) deemed in the best interest of the Town. One Original and One (1) copy of the bids must be submitted on or before **11:00 AM on Friday, January 6, 2017** to:

Thomas Watkins, Purchasing Agent
Purchasing Department
Town Office Building
36 Bartlet 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 proposal to be considered.

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

BUSINESS/INDIVIDUAL NAME _____

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 Attestation 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.



INVITATION TO BID

Sealed bids for furnishing the following will be received at the Office of Central Purchasing, Andover Town Offices, 36 Bartlet 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 wall clock in the Purchasing Office will be the determining time.

ITEM

IFB No. 021/12-16/185
On-Call Masonry Services, Andover, MA

BID OPENING

January 6, 2017
11:00 AM

Bid Documents and bid forms may be obtained at the Office of Central Purchasing, Andover Town Offices, 36 Bartlet Street, Andover, MA, or on the Central Purchasing Department webpage located at www.andoverma.gov/bids.

There is no Security required on this bid.

No bidder may withdraw his bid for a period of thirty (30) work 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.

The bidding and award of this Contract will be under the provisions of M.G. L. Chapter 149, Section 44A, et seq. 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.

Thomas P. Watkins
Purchasing Agent

ADV: Andover Townsman - December 22, 2016
Central Register - December 21, 2016

Town of Andover, MA
IFB No. 021/12-16/185
On-Call Masonry Repair & Maintenance Services

Description of Procurement

The purpose of this procurement is for the Town of Andover to contract with qualified Masonry companies from which the Plant & Facilities Department may select a masonry contractor who is capable of performing various masonry maintenance and repair services at any time when the department does not have the available resources to do so. The types of services to be covered include, but are not limited to re-pointing of brick, CMU and granite walls, repairs to cracked or damaged brick or CMU walls, repairs or replacement of concrete sidewalks, installation of ADA concrete curb cuts, repair and installation of steel masonry lintels, enlarging or closing in of existing masonry openings, repairs to stone walls, dry laid or bonded, repairs to granite or concrete stairs, sealing of all types of masonry, brick, concrete and granite, and pressure washing of masonry wall veneers. When requested, a written estimate shall be provided prior to commencement of work. Projects estimated to cost greater than \$50,000 will be bid separately under the auspices of MGL Ch. 149. The service contract will only cover jobs with a total cost of less than \$50,000 per job inclusive of all parts, supplies, materials, labor, etc. Any job over this amount must follow the required competitive procurement procedures. In addition, any one job under this contract that is expected to cost between \$25,000 to \$50,000 will require a 50% Payment Bond on the Town's own Payment Bond Form prior to the start of any work.

Selection of a contractor for needed service(s) will be left to the sole discretion of the Plant & Facilities Department or, in some cases, the department requiring the services. The Town of Andover anticipates awarding this contract to up to three contractors, therefore, it will not be guaranteed all contracts for services will be solely awarded to one particular contractor throughout the duration of the contract.

All responses submitted by a bidder are binding on the bidder for 30 days following the opening date of the bid, and/or until such time as the bidder withdraws its response in writing prior to the bid opening date and time, addressed to the contact person for this bid.

2. Acquisition Method & Contract Value

The Town of Andover will make best efforts to contact all contractors on the contractor list to request an estimated cost quote and information on availability of the contractor. Specifications may be developed and either mailed, faxed or emailed to contractors with a written proposal required to be considered for a job. Contractors may be asked to provide a quote on an hourly basis with an additional amount for supplies and materials or a total cost for the job may be requested. Certain circumstances may require site visits. In all cases, the contractor **must** adhere to the Prevailing Wage laws, which are incorporated as part of this bid, and which are updated on a yearly basis by the Town. Any **one** job costing over \$50,000 will not be covered by this contract and will be bid separately by the Purchasing Department.

It is estimated that the services required during the one year term of this contract shall be around \$50,000 in total. The Contractor(s) who is/are awarded this bid shall note that this sum of money is only an estimate and not guaranteed, especially since the Town of Andover reserves the right to hire multiple contractors and utilize the services of multiple contractors throughout the duration of the contract.

3. Term of Contract and Options to Renew

The initial term of this contract will be for a period of one (1) year beginning on or around February 1, 2017 when the vendor is awarded a contract and ending on January 31, 2018. At the sole discretion of the Town of Andover, the contract may be renewed in one year increments for an additional two years.

Approximately 30 days prior to the end of each option, the Purchasing Department will send a letter to the contractors requesting to exercise the option to renew the contract. The contractors will sign a Contract Amendment Form and return this as requested. Contractors are responsible to adhere to all applicable prevailing wage rates throughout the course of the contract.

4. Contract and Performance Specifications

Where required by law, contractors must possess a valid license/registration to perform services in the Commonwealth of Massachusetts. A copy of any required license/registration must be submitted with the bidder's response.

Contractors must have at least three (3) years of relevant experience in the masonry trade prior to responding to this bid. Bidders with less than three (3) years experience must submit, with their response, a written request to be exempt from this requirement including a statement explaining why they should be exempt. This is to allow for the addition of a new business whose personnel have excellent qualifications and experience in providing the plumbing services proposed.

Any and all work performed throughout the duration of the contract must be guaranteed by the contractor to be completed in a workmanship-like manner and according to applicable codes and industry-accepted standards. Unless otherwise stated in specifications for a particular job, the contractor will supply all labor, equipment, materials, parts and supplies necessary to complete a service. The contractor will be responsible for securing any and all necessary permits required prior to commencing work on any job. The Town of Andover will waive all Permit Fees under its jurisdiction. Depending on individual Department needs, emergencies may require 24 hour, 7 day a week availability of a service. **Please respond in your bid if you are unable to abide by this.**

Contractors must respond to a department, by phone, in a timely manner within four (4) hours after receiving a service request call and must be prepared to have an employee on site within four (4) hours of the phone call. If service is an emergency, contractor must respond by phone within one (1) hour and work must be started within four (4) hours. A site visit to the department must be scheduled in a reasonable period, which must be agreed upon by the requesting department. This should normally occur within 48 hours, but as needs and circumstances will vary, it is expected that a contractor will accommodate the needs of a department. All appointments made between a contractor and a department must be kept unless the department agrees to a change. Failure on a contractor's part to keep appointments may result in termination of the contract. All quotes must be provided at no cost to the department. Business and Cellular phone numbers of the selected vendors must be provided to the Town.

Services solicited through this bid request are subject to the Massachusetts Prevailing Wage Laws. Applicable Prevailing Wage Rates are issued with this bid request. These will become a part of any contract resulting from this bid request. These wage rates will be valid for the duration of the initial term of the contract but must be updated on an annual basis in accordance with Massachusetts General Law. The Purchasing Department will issue a new wage rate schedule for years two and three, should the Town exercise its option to renew the contract with the awarded vendor(s). It is the responsibility of the contractor to adhere to the Prevailing Wage Laws and all requirements. The contractor must submit a Weekly Payroll Report Form, which is included with this bid request, to the Purchasing Department within 3 business days of the previous work week.

Work shall be performed under the direction of the Plant & Facilities Department. The Contractor shall specify all regular and overtime hourly rates. The submitted rates shall include complete manpower costs involved with accomplishing the required work.

The contract shall also include a materials markup percentage for all supplies utilized in performing the work.

It is intended that the Contractor shall accomplish the majority of work during normal business hours and on a straight time basis. Work shall not be accomplished on an overtime basis unless prior approval has been obtained from the Director of the requesting Department. Standard hours of work shall be Monday-Friday 7:00 am until 5:00 pm.

All work is to be quality work and shall be performed according to the standards of the industry and according to the plans, directions and instructions as presented by the authorized representatives of the Town of Andover and must meet all state and local Building Codes.

The hourly rates reflect the amount a contractor will charge per hour only - not per hour per person. Only one tradesman shall be assigned to work on a job. Prior permission must be received before the contractor can assign more than one worker per job, including apprentices/helpers. The Town reserves the right to question whether additional personnel are warranted on a particular job based upon each job quote/proposal and performance status. Special attention will be given to allow for assistance when needed, or an unexpected part(s) acquisition is needed during a job to contain costs. However, the contractor must arrive at any routine job that he has quoted prepared with the appropriate personnel, equipment and supplies to perform the project with minor off-site time and travel.

The Contractor shall only use trained and licensed personnel who are directly employed and supervised by the Contractor unless prior approval is obtained. The Contractor shall not subcontract or sublet any portion of the work without the written consent of the Purchasing Agent.

The Town of Andover reserves the right to inspect any and all work performed and in progress under these contracts. Any omission or failure on the part of the Town of Andover's representative to disapprove or reject inferior or defective work or materials shall not be construed to be an acceptance of such work or material. If any defective work or material is found during inspection, the contractor shall remove or repair, at his/her own expense, such defective work or material rejected and shall rebuild and/or replace it without extra charge.

All materials and equipment provided under the contract shall be listed and labeled for the purpose intended. All work provided under this contract shall have, as a minimum, a one (1) year warranty from the date of final acceptance thereof against any latent defects, design, materials, workmanship and installation.

Contractor shall provide a written one (1) year warranty for equipment installed during the contract period. Warranty Certificate shall be provided to the using agency that places the order. The Contractor warrants that, unless otherwise specified, all materials and equipment, incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The Contractor further warrants all workmanship shall be first class and in accordance with the Contract Documents and shall be performed by qualified personnel. Work not conforming to these warranties shall be deemed unacceptable and will not be paid.

5. Submission of Questions

Prospective Bidders may submit questions to the Purchasing Agent regarding this solicitation up until five (5) business days of the opening of the bid.

Central Purchasing Department
Town Office Building
36 Bartlet Street
Thomas P. Watkins, Purchasing Agent

978-623-8951
twatkins@andoverma.gov

6. Instructions for Submission of Responses

Bidder Response Package:

All Bids, including all the required forms (cover sheet and Attachments A through H) which are attached and which all must have an original signature, are due in the Office of Central Purchasing on or before 11:00 am Friday, January 6, 2017, if at the time of the bid opening the Town Office Building is closed due to some unforeseen emergency bids will be due and open the next business day at 11:00 am. The time stamp clock in the Purchasing Department office governs the time. All areas of this bid must be filled out. The Town reserves the right to reject any vendor that does not fill out the bid in its entirety or is late in submitting their bid.

7. Selection Criteria

The purpose of this bid is to establish contracts with pre-qualified masons from which Departments can readily obtain needed services in a cost-effective manner. Thus, the Purchasing Agent intends to make awards to various contractors who demonstrate their qualifications as identified, offers the lowest hourly rates in the BID, and responds by the due date given above.

All mandatory requirements in this BID **must** be met.

The Town of Andover reserves the right to reject any and all bids if it is in the public's best interest to do so.

Selection of contractors will be based upon the lowest total hourly rate which will be determined by adding the rate for normal business hours (Monday thru Friday 7AM – 5PM) plus the rate for Holidays, weekends and evening hours. In the event of a tie, the contractors will be invited back to the Purchasing Office for a random drawing of names which will determine who the contract is awarded to.

Award of this contract shall be made to the lowest responsible and eligible bidders, and in accordance with MGL CH. 149, within thirty (30) days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

8. References

Bidders must submit three (3) business references with whom the bidder has conducted masonry services within the last twelve (12) months. A contact name and telephone number must be provided for all references given.

The Purchasing Agent has the right to verify any references included in a bidder's response and to conduct any other reference or credit checks, as the Purchasing Agent deems appropriate. The Purchasing Agent also reserves the right to use historical information, whether gleaned from references provided, previous contract performance or outside sources in the evaluation of a bidder's response. Poor references or past history may result in a bidder not being awarded a contract.

9. Statement of Qualification

Bidders must submit a Statement of Qualification (Attachment C) which indicates at least three (3) years of relevant experience (prior to the release of the bid). The Statement of Qualification must include evidence that the bidder currently has the ability to perform the type, magnitude and quality of work within the scope of the bid. The Statement of Qualification must include a detailed description of information regarding any company bankruptcy proceedings and/or name changes within the last five (5) years. The Purchasing Agent reserves the right to confirm the bidder's Statement and ability to perform the services specified in the bidder's response.

A bidder who has been in business less than three (3) years may request that the Purchasing Agent waive this business requirement, but the Purchasing Agent has no obligation to grant such a request. This is to allow for the addition of a new business whose personnel have excellent qualifications and experience in providing the services proposed.

10. Certificate of Non-Collusion

All proposers must sign the attached form which incorporates both an attestation clause regarding Massachusetts State tax returns and a Certificate of Non-Collusion and submit it with their Proposal.

FAILURE TO SIGN AND OR SUBMIT THE FORM WILL MAKE THE SUBMITTED BID INVALID.

11. Insurance Requirements

All insurance coverages and requirements are listed in the attached SAMPLE CONTRACT SUPPLEMENT "C". Any Contractor submitting a bid proposal must make themselves aware of these requirements and coverages prior to submitting a bid.

12. Contractor's Contractual Liability

1. The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any and all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from or arising out of any act, omission, or neglect on the part of the Contractor or of any subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.
2. The Contractor further agrees to indemnify and hold harmless the Owner including the agents, employees, and representatives from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
3. In any and all claims against the Owner 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.
4. The intent of the specifications regarding insurance is to specify minimum coverages 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 him and the Owner from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, except for exclusions defined herein before.

13. Contractor Performance Criteria

Each contractor's performance will be evaluated on an ongoing basis and these evaluations will be utilized in determining whether to renew a contract. Contractors **must** notify the Purchasing Department within seven (7) days of any change in address, phone or fax numbers and or contact names.

User departments will be surveyed as to their satisfaction with the contractor's performance under the contracts. Such surveys may include, but not be limited to, satisfaction with the contractor's performance, timeliness of response and billing accuracy. Not maintaining a satisfactory rating may be grounds for early termination or non-renewal of that contractor's contract.

Contractor performance will also be measured based upon the number of complaints received from user departments. A high number of unresolved complaints will result in a warning to the contractor and may lead to early termination or non-renewal of that contractor's contract.

14. Prevailing Wage

Attached copies of Prevailing Wage Rates and the Statement of Compliance from Mass. Dept. of Labor and Industries shall apply to the labor required to perform all work. Those rates must be reviewed and complied with. Certified Weekly Payroll documents shall be sent to the Office of Plant & Facilities, 36 Bartlet Street, Andover, MA 01810. They shall be sent Three (3) business days after the close of the previous workweek.

15. The specifications, terms, conditions, and detailed requirements of this bid package will become part of any contract that results from this bid request.

16. The Bidder agrees by submitting a bid to indemnify, save harmless, and defend the Town, its elected and appointed officials, employees or agents from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulation, or orders caused, in whole or in part, by the Bidder's employees, or it's agents or servants, in the performance of this Contract.

17. Contractor Requirements

It is mandatory that the Contractor meet all of the following requirements.

- Be a licensed Mason and have been regularly involved and actively engaged in the Masonry contracting business while performing the type of work as described in this bid document, for a minimum of three (3) years.
- Maintain a twenty-four (24) hour, seven (7) day a week emergency response telephone number.
- Carry the required amount of insurance as shown in the insurance requirements enclosed within this contract.
- Rate per hour of the wages to be paid under this contract agreement shall be no less than the applicable rate of wages as determined by the Commissioner of Labor and Industries and announced in the "Minimum Wage Rates Schedule" that has been made part of this bid.

18. CORI

Upon award of contract, contractor must have all personnel fill out a CORI Form (Enclosed) and be approved by the Town of Andover before they begin any work.

19. OSHA Certification

All personnel providing services in support of this contract must have OSHA Training and be OSHA Certified.

20. Charges for Equipment Rental

Any equipment that is rented by the Contractor in the performance of this contract shall require prior approval of the Town of Andover and then if approved may be charged to the Town of Andover at the same rate as invoiced by the rental company.

ATTACHMENT A

**Bid _____: TRADESPERSONS REPAIR AND MAINTENANCE SERVICES
BIDDER RESPONSE FORM**

Company Name: _____ **Date:** _____

Contact Name: _____ **Small Business: Y or N**

Woman Owned: Y or N **Minority Owned: Y or N**

Phone: _____ **Fax:** _____ **Mobile:** _____

Email: _____ **Web Site:** _____

Mailing Address: _____

City: _____ **State:** _____ **Zip:** _____

ATTACHMENT B
Bid Price Sheet

TIME AND MATERIALS PRICING

HOURLY RATE (Hourly rate inclusive of MA Prevailing Wage Rate):

1. **Monday thru Friday, 7:00 a.m. to 5:00 p.m.**

\$ _____ / per hour x 200 hours = (A) \$ _____

2. **Saturday, Sunday & Legal Holiday's**

\$ _____ / per hour x 50 hours = (B) \$ _____

MATERIALS

Contractor's % off list, if applicable

_____ %

TOTAL BID PRICE \$ _____ (C)
(A+B)

Charges incurred by the Contractor for the time spent in transit (portal-to-portal) from the Contractor's place of business to the job site and back are not part of the Contract and will not be paid by the City. **Computation of the number of hours worked shall include only those hours spent at the job site excluding meal times.**

All awarded contractors must agree to comply with all applicable Prevailing Wage Rates. By signing this form, the bidder agrees to pay the applicable prevailing wage rate and agrees to obtain and abide by the Prevailing Wage Rates that are posted with this bid.

(Authorized Signature)

(Title or Position)

(Date)

ATTACHMENT C

**Statement of Qualification
Bid _____ - Tradespersons**

This statement is to certify that _____ has been in the business
(Company name)

of _____
(Service(s) provided)

for a period of _____ years. We, _____, have the ability to
(Company name)

perform the type, magnitude and quality of work within the scope of Andover Bid No. _____ for the services we offer (add any comments below). This company ____ has ____ has not been involved in any bankruptcy proceedings within the last five years. (If the company has been involved in bankruptcy proceedings, please give a detailed description below.) This company ____ has ____ has not undergone a name change within the last five years. (If the company name has changed, please provide a detailed description below.)

Contractor Ability/Description:

Bankruptcy proceedings:

Name change information:

I certify to the best of my knowledge that all information above is true and correct.

Authorized Signature

Position in Company

Date

ATTACHMENT D

CERTIFICATION OF GOOD FAITH

The undersigned certifies under pains and penalties of perjury that this contract has been obtained 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.

Signature required

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A,
_____, authorized signatory for
name of signatory

_____, whose
contractor
principal place of business is at _____,

_____ does hereby certify under the pains and penalties of perjury that
_____ has paid all
contractor

Massachusetts taxes and has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature required

Federal Identification No. of _____ : _____
contractor number

ATTACHMENT E

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.

ATTACHMENT F
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.

ATTACHMENT G

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

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

(Business Address)

(City and State)

(Telephone Number)

ATTACHMENT H

**ON-CALL MASONRY REPAIR & MAINTENANCE SERVICES
ANDOVER, MA**

Bid No. 021/12-16/185

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: _____

ATTACHMENT I
(Not to be submitted with bid)
Town of ANDOVER
CONTRACT

DATE: _____

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

[“Contractor”]

[Address of the Contractor]

[Telephone Number]

[FAX Number]

1. This is a Contract for the procurement of the following:
2. The Contract price to be paid to the Contractor by the Town of Andover is:
3. Payment will be made as follows:
4. Definitions:
 - 4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town of Andover. 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 are as specified in the Contract.
 - 4.2 Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding period. The Contract documents are complementary, and what is called for by any one shall be as 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.

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

4.5 Goods: Goods, Supplies or Materials.

4.6 SubContractor: Those having a 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 furnishes material not so worked.

4.7 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance 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 and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

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. In the absence of appropriation, this Contract shall be immediately terminated without liability for damages, penalties or other charges.

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.

8. Termination and Default:

8.1 Without Cause. The Town may terminate this Contract on seven (7) calendar days notice when in the best interests 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. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

8.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on seven (7) 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.

8.3 Default. The following shall constitute events of a default under the Contract:

- 1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure 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, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of state law and/or regulations, and Town bylaw and/or regulations.

9. 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 of Andover 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.

10. Statutory Compliance:

10.1 This Contract will be construed and governed by the provisions of applicable federal, state and 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 the General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

General Laws Chapter 30B – Procurement of Goods and Services.

General Laws Chapter 30, Sec. 39, *et seq*: - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq*: Public Buildings Contracts.

10.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

10.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

10.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations 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 or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Andover, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

11. 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.

12. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

13. 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.

14. Assignment:

Assignment of this Contract is prohibited, unless and only to the extent that assignment is provided for expressly in the Contract documents.

15. 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.

16. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate 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 by the Contractor. This Contract shall not be enforceable against the Town of Andover unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Sections 3 and 5, and any Acts and Amendments thereof, and in addition thereto, relating to the

appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations 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.

17. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of Andover shall be individually or personally liable on any obligation of the Town under this Contract.

18. Indemnification:

The Contractor shall indemnify, defend and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) 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, and 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 its property caused by the 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, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract.

19. Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under 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 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 before the same shall be binding on the parties thereto, except if specifically waived by the Town.

20. 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. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the Town, in the United States or 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 at the termination of this Contract. 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 bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium.

21. 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 all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

22. Payment

The Town agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from the Town of the work completed.

23. 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 Agreement, 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.

24. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

25. 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 of Andover by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

26. Binding on Successors:

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

27. 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 agreements other than those incorporated herein.

28. Supplemental Conditions:

The foregoing provisions apply to all contracts to which the Town of Andover shall be a party. One of the following "Supplements" *must* be "checked" as applicable to this Contract, shall be attached hereto, and shall in any event apply as the nature of the Contract requires. The Supplement contains additional terms governing the Contract:

GOODS

SUPPLEMENT "G" - Applicable to Contracts for the procurement of Goods
(governed by the provisions of General Laws Chapter 30B)

SERVICES

SUPPLEMENT "S" - Applicable to Contracts for the procurement of Services
(governed by the provisions of General Laws Chapter 30B)

CONSTRUCTION

SUPPLEMENT "C" - Applicable to Contracts for Construction

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE TOWN

THE CONTRACTOR

Division/Department Head
Contract Manager

Company Name

Town Manager Date
Andrew P. Flanagan

Signature Date

Print Name & Title

APPROVED AS TO FORM:

Town Counsel Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

Town Accountant Date

SUPPLEMENT “C”

[] CONSTRUCTION

SUPPLEMENT “C” - Applicable to Contracts for the construction of:

(1) Public Buildings and Public Works

(governed by the provisions of General Laws Chapter 30B);

(2) Public Buildings

(governed by the provisions of General Laws Chapter 149, § 44A, et seq.); and

(3) Public Works

(governed by the provisions of General Laws Chapter 30, §39M, et seq)

1. This form supplements the Town of Andover “Contract and General Conditions” and applies only to contracts for the construction, reconstruction, alteration, remodeling or repair of public works or public buildings.
2. Wherever the law requires one contracting with a city or town to be bonded, such obligation shall be understood to be a term and condition of this Contract. The Contractor agrees to secure such bond (where required) in the form required by the Town and provide an original thereof to the Town prior to the commencement of performance.
3. Equality:
 - 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 the Massachusetts General Laws, Chapter 30, Section 39M and Chapter 149, Sec. 44A et seq.
 - 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 Project Representative as to its acceptability.
4. Change orders to contracts governed by General Laws Chapter 30B may not increase the quantity of goods or services provided by more than twenty-five (25%) per cent, in compliance with Sec. 13 of Chapter 30B.
5. 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, Sec. 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 the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, Sections 26 and 27D (Prevailing Wage), as shall be in force and as amended.

6. 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.
7. The Contractor shall take all 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 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 such as pits, protruding nails, hosts, 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.
8. 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.
9. 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 days notice from the Town, the Contractor shall replace such person or persons with people acceptable to the Town.
10. The Contractor shall give efficient 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.
11. 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 days 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.
12. Inspection by the Town's Project Representative
 - 12.1. 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 not be 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. During such visits and on the basis of these observations while at the site, the Project Representative will keep the Town informed on the progress of the work, will endeavor to guard the Town against defects and deficiencies in the work of contractors, and may condemn structural work as failing to conform to the Contract Documents. The Project Representative shall have authority to act on behalf of the Town only to the extent expressly delegated by the Town, which shall be shown to the Contractor, and shall have authority to stop the work whenever such stoppage may reasonably be necessary to insure the proper execution of the Contract.

12.2. 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.

13. Decisions of the Project Representative

13.1. 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.

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

13.3. 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. If the Project Representative renders a decision after such remedies have commenced, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties concerned.

14.1 Use of Premises by the Contractor:

14.1. 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.

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

15. 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 the work it shall remove all its rubbish from and about the work site and all its tools, scaffolding and surplus materials and shall leave its 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.

16. Right to Terminate

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, or (7) be guilty of a substantial violation of any provision of the Contract, 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.

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 such 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 Agreement, the Town reserves the right at any time in its absolute discretion to suspend or terminate this Agreement 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.

17. Progress Payments:

17.1. 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 Subcontractors and such other evidence of the Contractor's right to payment.

17.2. 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.

18. Withholding of Payments

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

18.1.1. Defective work not remedied.

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

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

18.1.4. A reasonable doubt that the Contract can be completed for the balance then unpaid.

18.1.5. Damage to another contractor.

18.1.6. Delays resulting in liquidated damages.

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

19. 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 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.

20. 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 in 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 ZERO 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 a 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.

21. 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 Town'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.

22. Separate Contracts:

- 22.1. 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.
- 22.2. 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.
- 22.3. 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.

23. Subcontracts:

- 23.1. All Subcontracts shall be awarded in conformity with the requirements of the General Laws, Commonwealth of Massachusetts, Chapter 149, Sections 44A to 44L, inclusive.
- 23.2. The Contractor agrees that it is as fully responsible to the Town for the 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.

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

24. 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.

25. Indemnification:

25.1. 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 attorneys' 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, and 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 its 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, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this Contract.

25.2. 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.

25.3. 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.

26. The Contractor's Insurance:

26.1. 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 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.

26.1.1. Claims under Worker's Compensation, disability benefit and other similar employee benefit acts;

26.1.2. Claims for damages because of bodily injury, occupational sickness or

disease, or death of its employees, and claims insured by usual personal injury liability coverage;

26.1.3. 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;

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

26.2. The insurance required by the above shall be written for not less than the following minimum limits of liability:

26.2.1. Worker's Compensation Insurance Requirements

Workers' Compensation coverage as required by the laws of the Commonwealth of Massachusetts.

26.2.2.1. 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/per occurrence \$2,000,000 General Aggregate per project Or a Combined Single Limit of \$2,000,000
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Property Damage	\$1,000,000 per occurrence \$2,000,000 General Aggregate per project Or a Combined Single Limit of \$2,000,000
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Automobile Liability Insurance

Bodily Injury	\$1,000,000 per person/per occurrence Or a Combined Single Limit of \$1,000,000
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Property Damage	\$1,000,000 per occurrence Or a Combined Single Limit of \$1,000,000
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26.3. The above insurance policies shall also be subject to the following requirements:

26.3.1. 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.

26.3.2. Certificates of Insurance acceptable to the Town shall be addressed to and filed with the Town prior to commencement of the work. Renewal certificates shall be

addressed to and filed with the Town at least ten (10) days prior to the expiration date of required policies.

26.3.3. 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.

26.3.4. All Certificates of Insurance shall be on the "MIIA" or "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 location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses.

26.3.5. All premium costs shall be included in the Contractor's bid.

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

26.3.7. The Town shall be named as Additional Insured on the Contractor's Liability Insurance Policies.

26.3.8. The General Liability and Automobile Liability shall include a Waiver of Subrogation in favor of the Town.

27. Protective Liability Insurance:

27.1. The Contractor shall purchase and maintain such insurance as described in the preceding paragraph as will 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.

27.2. 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.

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

27.4. 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, including required endorsements and amendments, shall be the sole responsibility of the Contractor.

28. Liens:

Neither the Final Payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver 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 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).

29. Guarantees:

- 29.1 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.
- 29.2 If at any time any part of the work constructed under the terms of this contract shall in the opinion of the Town Manager require repairing due to defective work or materials furnished by the Contractor, he may notify the Contractor in writing to make the required repairs. If the Contractor shall neglect to start such repairs within ten days of the date of giving it notice thereof and to complete the same to the satisfaction of the Town Manager with reasonable dispatch, then the latter may employ other persons to make such repairs. The Town shall charge the expense thereof to the Contractor and may use any moneys still retained to pay for the same, and if such sum is insufficient, the Contractor shall be obligated to pay the balance thereof.
- 29.3 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.

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

Dated: _____

The Town of Andover by:

Town Manager
Andrew P. Flanagan

Department/Division Head

Town Accountant
Certified as to Appropriation

Town Counsel
Certified as to Form

The Contractor by:

(authority or agency)