

TOWN OF LUNENBURG, MASSACHUSETTS

**BIDDING DOCUMENTS
FOR
TURKEY HILL ELEMENTARY SCHOOL -LED LIGHTING UPGRADE**

DATE

JANUARY 30, 2019

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SECTION 00020
INVITATION FOR BIDS

Sealed bids for furnishing the following item will be received at the Board of Selectmen at the Lunenburg Town Hall, 17 Main Street, Lunenburg, MA 01462 until the time specified below at which time the proposals will be publicly opened and read:

ITEM

BID OPENING

TURKEY HILL ELEMENTRAY SCHOOL - LED LIGHTING UPGRADE FEB 21, 2019 at 2:00 PM, EDT

Specifications and bid forms may be obtained at the Passios Elementary School, Room 12, Monday through Friday between 9:00 A.M. and 4:00 P.M.

Bids will be opened in the Selectmen's Office on February 21, 2019, at 2:00 PM, EDT. Bid security consisting of a **BID BOND, CASH,** or, **CERTIFIED CHECK** issued by a responsible bank or trust company in the amount of 5% of the bid price is not required.

The owner intend to file an application with Unitil, the owners electrical distributor, under MassSave 2016 Lighting –System & Sensor Retrofit Program for this project. The bidder must be willing to receive a partial payment for the project directly from Unitil, Responsibility for the application will remain with the owner.

A payment bond with a surety company qualified to do business in the Commonwealth of Massachusetts will be required a labor and materials bond in an amount equal to 50 percent of the successful bid amount for bids over \$25,000.00. For successful bids of less than 25,000.00 no payment bond of is required.

All bids for this project are subject to applicable public bidding laws of Massachusetts, including G.L. c.149, §44A through 44H, as amended.

Attention is directed to the minimum wage rates to be paid as determined by the Commissioner of Labor and Industries and the weekly payroll record submittal requirements under the provisions of Massachusetts General Laws, Chapter 149, Section 26 through 27D inclusive.

Attention is further directed to the requirements of G.L. c.149, §44D requiring submission of a Division of Capital Planning and Operations approved Certificate of Eligibility and Update Statement with all bids over \$100,000.00.

Selection of the contractor will be based upon bidder qualifications, including evidence of past performance in similar projects, and bid price. The contract will be awarded to the bidder deemed by the awarding authority to be the lowest responsible and eligible bidder.

The Town of Lunenburg is an affirmative action/equal opportunity owner/purchaser.

The bidder agrees that its bid shall be good and may not be withdrawn for a period of 90 days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

The Town reserves the right to waive any informalities, to accept or reject, in whole or in part any or all bids, or take whatever other action may be deemed to be in the best interest of the Town.

END OF SECTION 00020

SECTION 00100

INSTRUCTIONS TO BIDDERS

1. Receipt and Opening of Bids

The Town of Lunenburg, Massachusetts, herein called the Owner, acting by and through its Town Manager, will receive sealed Bids for Turkey Hill Elementary School - LED Lighting Upgrade. Such bids addressed to the Office of the Selectmen, 17 Main Street, Lunenburg, MA 01462 and endorsed "Bid for Turkey Hill Elementary School LED Lighting Upgrade" will be received by 2:00 PM, prevailing time, on February 21, 2019, at which time and place said bids will be publicly opened and read aloud.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. The bidder agrees that this bid shall be good and may not be withdrawn for a period of 90 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

The contract will be awarded within 10 days after the bid opening unless the time for award is extended by mutual consent of the parties.

If any changes are to be made to this IFB, an addendum will be issued. Addenda will be mailed or faxed to all bidders on record as having picked up the IFB.

Questions concerning this IFB must be submitted in writing to: Board of Selectmen, 17 Main Street, Lunenburg, MA 01462 before 10:00 AM on Thursday, February 14, 2019. Questions may be delivered, mailed, or faxed. Written responses will be mailed or faxed to all bidders on record as having picked up the IFB.

A bidder may correct, modify, or withdraw a bid by written notice received by the Town Manager's Office prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No. ____" Each modification must be numbered in sequence, and must reference the original IFB.

The Town of Lunenburg may cancel this IFB, or reject in whole or in part any and all bids, if the Board of Selectmen determines that cancellation or rejection serves the best interest of the Town.

If, at the time of the bid opening, the Selectmen's Office is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until 2:00 PM on the next normal business day. Bids will be accepted until that date and time.

2. Location and Work to be Done

The Work consists of installing owner provided LED Fixtures and LED Tubes in Turkey Hill Elementary School as more specifically described in the attached contract specifications.

The Contractor shall furnish all labor, services, materials except as noted in the specifications, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of each item of the Work and as herein specified.

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

3. Preparation of Bid

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must filled in, in ink or typewritten, in both words and figures.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above.

If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

4. Bid Opening Procedure

The following list of requirements shall apply to each filed bid. Bids not meeting all the requirements for timeliness and security will be rejected without opening; bids not meeting signature and addenda requirements will be rejected prior to checking of bid amounts.

Bids shall be filed at the place and before the time specified in Receipt and Opening of Bids, above.

No bid security is required.

Bid signatures will be checked.

All addenda will be sent certified mail, with return receipt requested, to all prospective bidders and the last of which will be mailed not later than five days prior to the date established for submission of bids. All bidders shall include with their bids the written acknowledgment form provided in Section 00300, FORM OF GENERAL BID.

The total dollar amount of each bid will be read, and the three apparent lowest bids will be selected for further consideration. These three apparent low bids will be read aloud for the benefit of the other bidders and the bid opening procedure will be closed. All those present at the bid opening may examine all bids after the bid opening and after the reading of the three apparent low bids.

5. Telegraphic Modification

Any bidder may modify his bid by telegraphic communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic communication is received by the Owner prior to the closing time, and, provided further, the Owner is satisfied that a written confirmation of the telegraphic modification over the signature of the bidder was mailed prior to the closing time.

The telegraphic communication shall not reveal the bid price but shall provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed bid is opened. If written confirmation is not received within two days from the closing time, no consideration will be given to the telegraphic communication.

6. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the Owner that he has sufficient ability and experience in this class of work and sufficient capital and plant to enable him to prosecute and complete the work successfully within the time named. The Owner's decision or judgment on these matters will be final, conclusive, and binding.

The Owner may make such investigations as he deems necessary, and the bidder shall furnish to the Owner, under oath if so required, all such information and data for this purpose as the Owner may request.

7. Conditions of Work

Each bidder must familiarize himself fully with the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all

material except as noted in the specification and labor necessary to carry out the provisions of his contract. Insofar as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

Work hours must be done between 6:00 AM and 10:00PM Monday-Friday. Work can not be done in occupied areas. Classroom work can be done before 8:30 AM or after school, 3:30 PM while school is in session. School is not in session over the April break, April 15-April 19, 2019. Contractor is expected to closely coordinate the work schedule with the Director of Facilities so as not to impede school operations.

OSHA Requirement: This project has a requirement that labor performing work on the project to have completed a ten-hour course in construction safety and health approved by the United States Occupational Safety and Health Administration (OSHA).

The owner intend to file an application with Unitil, the owners electrical distributor, under Mass-Save 2016 Lighting – System & Sensor Retrofit Program for this project. The bidder must be willing to receive a partial payment for the project directly from Unitil,. Responsibility for the application will remain with the owner.

8. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other prebid documents will be made to any bidder orally. All information given to bidders other than by means of the plans, specifications, or by addenda, as described below, is given informally and shall not be used as the basis of a claim against the Owner.

Every request for such interpretation should be in writing addressed to John Londa, Director of Facilities Lunenburg Public Schools, 17 Main Street, P.O. Box 135, Lunenburg, MA 01462-0135 and to be given consideration must be received at least seven days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, when issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective address furnished by them for such purposes), not later than five days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

9. Security for Faithful Performance

Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor and materials under this contract as specified in Section 00700, GENERAL CONDITIONS included herein. The surety on such bond or bonds shall be a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Owner. The bonds shall remain in force for one year after final acceptance of the work by the Owner, unless the Owner, in writing, releases the Contractor from the obligation sooner.

10. Power of Attorney

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

11. Laws and Regulations

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances or Bylaws, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full. Attention is directed to Section 00850 and to other applicable sections of this specification.

12. Liquidated Damages for Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within 10 days after he/she has received notice of the acceptance of his/her bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, a portion of security deposited with his/her bid, but the amount forfeited shall not exceed the difference between his/her bid price and the bid price of the next lowest responsible and eligible bidder. In case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the bidder, his/her bid deposit will be returned.

13. Obligation of Bidder

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his bid.

14. Information Not Guaranteed

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of bidders and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

If is further agreed and understood that no bidder or Contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner or the Engineer, arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

15. Bid Security

Each bid must be accompanied by a certified check, a bid bond, cash, a treasurer's or cashier's check, payable to the Owner, in the amount stated in Section 00020, INVITATION TO BID. Such checks will be returned to all except the three lowest responsible and eligible bidders within five days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids, and the remaining checks will be returned promptly after the Owner and the accepted bidder have executed the Contract, or if no notice of intent to award has been presented to the selected contractor within 30 days, Saturdays, Sundays and holidays excluded, after the date of the opening of bids, upon demand of the bidder at any time thereafter.

16. Right to Reject Bid

The Owner reserves the right to waive any informalities or reject any and all bids, should the Owner deem it to be in the public interest to do so.

The Owner may also reject bids which in its sole judgment are either incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities, or the Owner may waive such omissions, conditions or irregularities.

17. Time for Completion

The bidder must agree to commence work within ten (10) days of the date of the Notice to Proceed and to fully complete the project within the time limit stated in Section 00300, FORM OF GENERAL BID.

18. Comparison of Bids

Bids will be compared on the basis of the quantities and unit and lump sum prices set forth in the bid forms.

In the event that there is a discrepancy in Section 00300, FORM OF GENERAL BID between the lump sum or unit prices written in words and figures, the prices written in words will govern.

The Owner agrees to examine and consider each FORM OF GENERAL BID submitted in consideration of the qualifications of the bidder and the bidder's agreements, as hereinabove set forth and as set forth in Section 00300, FORM OF GENERAL BID.

19. Award of Contract

The Contract will be awarded to "the lowest responsible and eligible bidder" pursuant to General Laws Chapter 30, Section 39M, as amended. Such a bidder shall possess the skill, ability and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law.

20. Statutes Regulating Competitive Bidding

Any bid which does not comply with the provisions of Massachusetts General Laws Chapter 149, Sections 44A through 44H, as amended, need not be accepted and the Owner may reject every such bid.

21. Certificate of Eligibility and Update Statement

In accordance with G.L. c.149, §44D, every bid over \$100,00 must be accompanied by a copy of a certificate of eligibility issued by the Division of Capital Planning and Operations showing that the bidder has the classification and capacity rating to perform the work required. An appropriate update statement must also be provided with each bid. Any bid submitted without an appropriate certificate of eligibility or update statement shall be invalid.

22. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of Department of Labor and Industries under the provision of the Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the contractor, before bid opening, to request if necessary, any additional information on Prevailing Wage Rates for those tradespeople who may be employed for the proposed work under this contract.

State schedules of Prevailing wage rates are included in the Supplemental General Conditions section of the contract documents.

23. Contractor Records

The Contractor shall comply with the provisions of Massachusetts General Laws, Chapter 149, Section 39R and Chapter 149, Section 27B concerning Contractor records.

24. INSURANCE

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified in the Supplemental General Conditions and in such form as shall protect him performing work covered by this Contract, or the Town of Lunenburg and its employees, agents and officials, from all claims an liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract.

The Contractor covenants and agrees to hold the Town and its employees, agents and officials harmless from loss or damage due to claims for personal injury and/or property damage arising from, or in connection with operations under this Contract.

*25. Affirmative Action/Equal Employment
Opportunity Laws and Regulations

Lunenburg is an affirmative action/equal opportunity owner/purchaser. The bidder's attention is directed to all applicable State Laws, Town Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of a bidder to comply with any such law, bylaw, rule or regulation shall constitute grounds for the Town to reject a bid or to otherwise reject or terminate the award of the contract pursuant to these contract documents.

END OF SECTION 00100

SECTION 00300

FORM OF GENERAL BID

Bid of _____ (hereinafter called "Bidder")*

() a corporation, organized and existing under the laws of the state of _____

() a partnership

() a joint venture

() an individual
doing business as _____

To the Town of Lunenburg, Massachusetts (hereinafter called "Owner").

Gentlemen:

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

The Bidder hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the Owner, and to fully complete the project no later than April 30, 2019 unless mutually agreed upon by the contractor and the owner. The Bidder further agrees to pay as liquidated damages the sum of One Hundred (\$100.00) Dollars for each consecutive calendar day thereafter as hereinafter provided in Section 00700 GENERAL CONDITIONS.

*Insert corporation, partnership or individual as applicable.

B) Bidder acknowledges receipt of the following addenda:

No. _____ Dated: _____

No. _____ Dated: _____

C) Bid Amounts

a. The Bidder agrees to perform the bid work described as Turkey Hill Elementary School LED Lighting Upgrade:
Base Bid in the specifications and shown on the plans for the following contract price:
\$ _____

D) Unit Price

Item: Replace Broken Lamp Holders beyond the initial 25 in the base bid, Description: Replace broken lamp holder with a new replacement shunted lamp holder, Unit Price per each holder: \$ _____

E) The undersigned agrees that, if he/she is selected, he/she will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

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

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to Chapter 149 Section forty-four A.

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

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

Respectfully submitted:

Date: _____ By: _____
(Signature)

_____ SSN _____
(Name of Bidder)

(SEAL - if bid is by
a corporation) _____
(Title)

(Business Address)

(City and State)

(Telephone Number)

SECTION 00500

AGREEMENT

THIS AGREEMENT, made this Feb 22, 2019, by and between the party of the first part, the Town of Lunenburg, hereinafter called "OWNER," acting herein through its Board of Selectmen, and the party of the second part, _____ doing business as *(an individual) (a partnership) (a joint venture) (a corporation) located in the * (Town) of _____, County of _____, and State of _____, hereinafter called "CONTRACTOR."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the OWNER, the CONTRACTOR hereby agrees with the OWNER to commence and complete the project described as follows: Turkey Hill Elementary School -LED Lighting Upgrade hereinafter called the project, for the sum of _____ (\$ _____) and all extra work in connection therewith, under the terms as stated in the Contract Documents; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in Section 00300 FORM OF GENERAL BID, Section 00700 GENERAL CONDITIONS, and Section 00800 SUPPLEMENTAL GENERAL CONDITIONS, the plans, which include all maps, plates, blue prints, and the specifications and Contract Documents as prepared by the Owner.

**Strike out inapplicable term.*

The CONTRACTOR hereby agrees to commence work under this Contract on or before a date to be specified in written "Notice to Proceed" of the OWNER.

The CONTRACTOR further agrees to fully complete the project no later than April 30, 2019 unless mutually agreed upon by the contractor and the owner. .

The CONTRACTOR further agrees to pay as liquidated damages the sum of \$100.00 for each consecutive calendar day thereafter as provided in the Liquidated Damages Paragraph of Section 00700 GENERAL CONDITIONS.

The CONTRACTOR agrees not to discriminate against or exclude any person from participation herein on grounds of race, religion, color, sex, age or national origin; and that it shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, sex, age, handicapped status, or national origin.

The CONTRACTOR agrees not to participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the contract, subject to additions and deductions, as provided in Section 00700 GENERAL CONDITIONS, and to make payments on account thereof as provided in the Estimates and Payments Paragraph of Section 00700 GENERAL CONDITIONS.

The OWNER intend to file an application with Unitil, the owners electrical distributor, under MassSave 2019 Lighting – System & Sensor Retrofit Program for this project. .

IN WITNESS WHEREOF, the parties to these presents have executed this contract in two (2) counterparts, each of which shall be deemed an original, in the year and day first above mentioned.

AGREED:

Town of Lunenburg, Massachusetts
(Owner)

By _____

(Name)

(Title)

(Contractor)

By _____

(Name)

(Title)

(Address)

Approved as to Form:

(City and State)

By _____
(Owner's Counsel)

(Name)

In accordance with M.G.L. C.44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefor and that the _____ has been authorized to execute the contract and approve all requisitions and change orders.

By _____
(Owner's Accountant)

(Name)

CERTIFICATE OF VOTE
(to be filed if Contractor is a Corporation)

I, _____, hereby certify that I am the duly qualified and acting
(Secretary of the Corporation)

Secretary of _____ and I further certify that a meeting of the Directors
(Name of Corporation)

meeting of the Directors of said Company, duly called and held on _____, at
(Date of Meeting)

which all Directors were present and voting, the following vote was unanimously passed:

VOTED: To authorize and empower

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: _____
(Secretary of Corporation)

A True Copy:

Attest: _____
(Notary Public)

My Commission Expires: _____
(Date)

SECTION 00610
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That we _____

a

(Name of Contractor) (Corporation, Partnership, Joint Venture or Individual)
hereinafter called "Principal" and _____

(Surety)

of _____ State of _____ hereinafter
(City and State)

called the "Surety" and licensed by the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of Lunenburg, Massachusetts, hereinafter called "Owner", in the penal sum of _____ dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

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

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

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

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

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

ATTEST:

(Principal)

(Principal Secretary) By _____

(Address-Zip Code)

Witness as to Principal (SEAL)

(Address-Zip Code)

ATTEST:

Surety

(Attorney-in-Fact) By _____

(Address-Zip Code)

Witness as to Surety (SEAL)

(Address-Zip Code)

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

END OF SECTION 00610

SECTION 00620
PAYMENT BOND

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

a _____
(Corporation, Partnership, Joint Venture or Individual)
hereinafter called "Principal" and _____
(Surety)

of _____, State of _____ hereinafter called the "Surety" and licensed by
(City and State)
the State Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of Lunenburg, Massachusetts, hereinafter called "Owner", in the penal sum of _____ Dollars (\$ _____) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

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

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

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

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

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

ATTEST:

Principal

(Principal Secretary) By _____

(Address-Zip Code)

Witness as to Principal (SEAL)

(Address-Zip Code)

ATTEST:

Surety

(Attorney-in-Fact) By _____

(Address-Zip Code)

Witness as to Surety (SEAL)

(Address-Zip Code)

NOTE: If Contractor is a Partnership, all partners should execute Bond.

END OF SECTION 00620

SECTION 00650
CERTIFICATE OF INSURANCE

This is to certify that the _____(Company) has issued the policies listed below, that these policies are written in accordance with the Company's standard policies and endorsements, except as indicated below or as noted in the attachments hereto, which policies and endorsements will be made available to OWNER upon request, that they provide coverage and limits of liability shown with respect to the insurance indicated, that they are in force on this date, that all deductible amounts are indicated below, and that this Certificate is furnished in accordance with and for the purpose of satisfying the requirements of OWNER in connection with the award and performance of a contract or agreement between the Town of Lunenburg (OWNER) and

1. Name of Insured

2. Address of Insured

3. Location and Description of Work

Project Contract No. _____

Coverage and Limits of Liability
(at least as shown below)

(A) Comprehensive General Liability including Operations/Premises, Contractor's Protective, Products/Completed Operations, and Personal Injury Liabilities:

Bodily Injury	\$1,000,000	Each Occurrence
	\$1,000,000	Annual Aggregate

Property Damage, including Explosion	\$1,000,000	Each Occurrence
	\$1,000,000	Annual Aggregate

Property Damage Liability insurance shall provide coverage for property in the Care, Custody and Control of the insured.

Personal Injury, with employment exclusion deleted.	\$1,000,000	Annual Aggregate
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(B) Comprehensive Automobile Liability including owned, hired and non-owned vehicles.

Bodily Injury	\$1,000,000	Each Person
Property Damage	\$1,000,000	Each Accident

(C) The Contractual Liability required shall name both the OWNER and CONTRACTOR as additional insureds and provide coverage for not less than the following amounts:

Bodily Injury	\$1,000,000	Each Occurrence
Property Damage including Explosion Collapse and Under- ground coverage.	\$1,000,000 \$1,000,000	Each Occurrence Annual Aggregate

(D) CONTRACTOR shall purchase and maintain a separate Owner's Protective Liability policy, issued to OWNER at the expense of the CONTRACTOR, including OWNER and CONTRACTOR as named insured. This insurance shall provide coverage for not less than the following amounts:

Bodily Injury	\$1,000,000	Each Occurrence
Property Damage including Explosion Collapse and Under- ground coverage.	\$1,000,000 \$1,000,000	Each Occurrence Annual Aggregate

CONTRACTUAL LIABILITY

To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify, and hold harmless OWNER and its consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from performance of the Work, provided that any such claim, damage, loss or expense(s) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work 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 or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

In any and all claims against OWNER or any of its consultants, agents or employees by any employee of CONTRACTOR, and subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under the above 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 CONTRACTOR or any such subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts.

Policies B, C, D, and E shall remain in effect during the one year correction period.

Such insurance as is herein certified applies to all operations of the insured in connection with, and necessary and incidental to, the work herein described at the locations stated.

It is hereby understood and agreed that the above policies will not be restrictively amended, materially changed nor canceled without 30 days advance notice by registered mail to OWNER.....

Authorized Representative Signature (Include Evidence of
Authorization) _____
(Address)

END OF SECTION 00650

SECTION 00700
GENERAL CONDITIONS

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GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1 CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplemental and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all applicable laws, ordinances and regulations. A Modification is (1) a written amendment to the contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Owner or (4) a written order for a minor change in the Work issued by the Owner pursuant to Paragraph 12.3. The Contract Documents include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, specifically enumerated in the Owner-Contractor Agreement.

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1.

1.1.3 THE WORK

The Work comprises the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

1.1.4 THE PROJECT

The project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

1.1.5 "OR EQUAL"

The use of the words "Or Equal" following the name of any manufacturer, vendor or proprietary product shall be understood to mean that articles or materials may be substituted which, in the opinion of the Owner, are equal in quality, durability, appearance, strength, design and performance to the articles or materials named or described and will perform adequately in providing a first-class facility. When submitting shop drawing information on articles or materials which are being proposed as substitutes for specified items, the Contractor shall clearly identify them as such. If the articles or materials are accepted as equal to those on which dimensions on the drawings are based, any dimensional variance from those shown and/or specified shall be shown on the shop drawings prepared by the Contractor, illustrating the manner in which conformity to dimensions and design is to be obtained. All such drawings shall be subject to the approval of the Owner and the installation of the article shall not proceed without first obtaining said approval.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed in not less than quadruplicate by the Owner and Contractor.

1.2.2 By executing the Contract, the Contractor represents that he has visited the site, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Owner are and shall remain the Owner's property. They are to be used only with respect to this Project and are not to be used on any other project without the prior written consent of the Owner. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Owner at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any reserved rights.

ARTICLE 2

2.1 ADMINISTRATION OF THE CONTRACT

2.1.1 The designated representative of the Owner will visit the site at intervals appropriate to the stage of construction to familiarize himself 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. However, the Owner's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

2.1.2 The Owner shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the Owner may perform its functions under the Contract Documents.

2.1.3 Based on the Owner's observations and an evaluation of the Contractor's Applications for Payment, the Owner will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Paragraph 9.4.

2.1.4 The Owner will render information necessary for the proper execution or progress of the Work within twenty (20) days of any request by the contractor or in accordance with any time limit agreed upon.

2.1.5 The Owner will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. Any such rejection of work shall not relieve the Contractor of the responsibility for maintaining protection of the Work and the Owner's property.

2.1.6 The Owner will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.1.7 The Owner will prepare Change Orders in accordance with G.L. c.7, §§42E-42I and Article 12 herein, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.1.8 The Owner will conduct inspections to determine the date of Substantial Completion and Final Completion, will review written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

ARTICLE 3

OWNER

3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or his authorized representative, which for this Project shall be the Highway Superintendent.

3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

3.2.1 The Owner shall, at the time of execution of the Agreement and any subsequent Change Orders, certify for the Contractor that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

3.2.2 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.3 Except as provided in Subparagraph 4.7.1. Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.5 The Owner will furnish the Contractor with (____) copies of all Drawings and Specifications and revisions issued during the progress of the Work; all additional copies will be furnished upon request at the cost of reproduction.

3.2.6 The Owner, through its designated agent, shall forward all instructions directly to the Contractor.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11 respectively.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2 or fails to carry out the Work in accordance with the Contract Documents or if the Owner shall for any other reason so require, the Owner, by a written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated or until further written notice from the Owner; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3. The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the Owner. If such stoppage is required through no fault of the Contractor, the Contract Time (and the dates for achieving Substantial Completion and Final Completion) shall be extended by a period equal to the period of the stoppage, and the Contractor shall be compensated for its reasonable and justifiable costs incurred as a result of such stoppage.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedy he may have perform such work or cause such work to be performed and/or make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover the amount, the Contractor shall pay the difference to the Owner.

ARTICLE 4
CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner for any damage resulting from errors, inconsistencies or omissions in the Contract Documents which he discovers but shall be liable for damage to the extent he reasonably should have but failed to discover such errors, inconsistencies or omissions. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using his best skill and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the Premises during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.

4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Contract, or by inspection, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

4.4 LABOR AND MATERIALS

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and service necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him including all persons on the Site controlled directly or indirectly by the Contractor.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner that all materials and equipment furnished under this Contract will be new and of recent manufacture unless otherwise permitted in writing by the Owner and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and, promptly after written notification of non-conformance, shall be repaired or replaced by the Contractor with Work conforming to such requirements. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

4.6 TAXES

4.6.1 The Contractor shall pay all applicable sales, consumer, use and other similar taxes for the Work or portion thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise expressly provided in the Supplemental General Conditions, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.

4.7.2 The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Contract.

4.7.3 If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate Modification.

4.7.4 If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

4.8 SUPERINTENDENT

4.8.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

4.9 PROGRESS SCHEDULE

4.9.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

4.10 DOCUMENTS AND SAMPLES AT THE SITE

4.10.1 The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Owner upon completion of the Work.

4.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.11.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

4.11.4 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

4.11.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.11.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

4.11.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner or its Engineer on previous submittals.

4.11.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner or Engineer. All such portions of the Work shall be in accordance with approved submittals.

4.12 USE OF SITE

4.12.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with any materials or equipment.

4.13 CUTTING AND PATCHING OF WORK

4.13.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.13.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

4.14 CLEANING UP

4.14.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project in full compliance with all applicable laws and regulations as well as all his tools, construction equipment,

machinery and surplus materials and the Project shall be thoroughly cleaned and ready for immediate occupancy by the Owner.

4.14.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

4.15 COMMUNICATIONS

4.15.1 The Contractor shall forward all communications to the Owner through Lunenburg Public Schools and its Director of Facilities.

4.16 ROYALTIES AND PATENTS

4.16.1 The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.

4.17 INDEMNIFICATION

4.17.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to 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 therefrom, 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. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.17.

4.17.2 In any and all claims against the Owner, its 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 4.17 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 workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.17.3 The obligations of the Contractor under this paragraph 4.17 shall not extend to the liability of the Owner, its agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) written directions or instructions given by the Owner, its agents or employees, provided they are the sole cause of the injury or damage.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representatives. The term Subcontractor does not include any separate contractor or his subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise required by the General Laws, Contract Documents or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Owner in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner will reply to the Contractor in writing within twenty (20) days stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner has made reasonable objection under the provisions of Subparagraph.

5.2.1. The Contractor shall not be required to contract with anyone to whom he has a reasonable and legally permissible objection.

5.2.3 If the Owner has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner has no reasonable objection.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner. Said agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractors. The Contractor shall make availability to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractors. The Contractor shall be fully responsible to the Owner for the acts and omissions of all Subcontractors and other entities or persons directly or indirectly employed by him to perform the Work. If requested by the Owner, the form and substance of any Subcontract with the Contractor shall be subject to the prior written consent of the Owner, which consent shall not be unreasonably withheld or delayed.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE TRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner will provide for the coordination of the work of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractors' work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor cause damage to the work or property of the Owner, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Owner's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitrations costs which the Owner has incurred.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.15, the Owner may clean up and charge the cost thereof to the contractors responsible therefor.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the Commonwealth of Massachusetts. All applicable provisions of Federal, state, or local laws, by-laws, rules, or regulations are incorporated into the Contract as if fully set forth herein, and shall prevail over any conflicting provisions of the General or Supplemental General Conditions.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor each bind himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as

a whole without the written consent of the Owner, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner.

7.3 WRITTEN NOTICE

7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice. Written Notice to the Owner shall be delivered to the Selectmen's Office, 17 Main Street, P.O. Box 135, Town Hall, Lunenburg, MA 01462.

7.4 CLAIMS FOR DAMAGES

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. The reasonable time shall not exceed fourteen days.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 On contracts over \$25,000.00, the Contractor shall furnish a Performance Bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a Payment Bond in an amount not less than one hundred percent (100%) of the Contract price as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law, and in a form acceptable to the Owner, and shall remain in effect through the one-year warranty period. For contracts under \$25,000.00 or less only a payment bond of fifty percent (50%) is required.

7.6 RIGHTS AND REMEDIES

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, except as otherwise set forth therein.

7.6.2 No action or failure to act by the Owner, the Engineer or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.7 TESTS

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities which are normal and customary for the type of work required by the Contract. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals. All testing methods, organizations, and personnel shall be approved by the Owner before the start of testing Work, without regard to what party will ultimately pay for such Work.

7.7.2 If the Owner determines that any Work requires special inspection, testing, or approval which Subparagraph 7.7.1 does not include, it will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Owner's additional services made necessary by such failure; therewith the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the Owner.

7.7.4 If the Owner is to observe the inspections, tests or approvals, he will do so promptly and, where practicable, at the source of supply.



ARTICLE 8
TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial and Final Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto. Time is of the essence with regard to completion of the Work required by the Contract.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Owner when construction is substantially complete, in accordance with the Contract Documents, other than only custom punch list items, the lack of or completion of which will not interfere with the Owner's use, so the Owner can lawfully occupy and utilize the Work or designated portion thereof for the use for which it is intended. The Date of Final Completion of the Work is the date on which the Owner issues its final Certificate for Payment in accordance with Paragraph 9.9.1 hereof.

8.1.4 The term day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, and Final Completion thereafter in accordance with the provisions of the Contract Documents.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or by any employee of the Owner, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any causes beyond the Contractor's or its Subcontractor's control, or by delay authorized by the Owner, then, provided such delay in no way results from the act or neglect of the Contractor or any of its subcontractor, the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Owner not more than seven (7) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretation until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner on account of any delay in the commencement of the Work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the Owner, or otherwise, except as and to the extent expressly provided under M.G.L. c.30, §390 in the case of written orders by the Owner. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time as provided in this Article.

8.4 LIQUIDATED DAMAGES

8.4.1 If the Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the Owner the amount specified in the Contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contract shall be in default after the time stipulated in the Contract for completing the work. The said amount is fixed and agreed upon by and between the Contractor and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount is agreed to be the amount of damages which the Owner would sustain and said amount shall be retained from time to time by the Owner from current periodical estimates.

8.4.2 It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications wherein as definite and certain length of times if fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract.

8.4.3 Provided, that the contractor shall not be charged with liquidated damages or any excess cost when the Owner determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the Owner; Provided, further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

1. to any preference, priority or allocation order duly issued by the Government;
2. to unforeseeable cause beyond the control and without the fault of negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather; and
3. to any delays of subcontractors or suppliers occasioned by any of the causes specified in subsection (1.) and (2.) of this article:

8.4.4 Provided, further, that the Contractor shall, within ten (10) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the date of final settlement of the Contract, notify the Owner, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used only as a basis for the Contractor's Application for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 The Contractor shall submit to the Owner an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as provided elsewhere in the Contract Documents for the period ending the 25th day of each month within the Contract period.

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site. The Contractor shall assume responsibility to protect all such materials from loss or damage at no cost to the Owner, until they are finally incorporated into the Work, whether or not they have been paid for by the Owner.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.4 CERTIFICATES OF PAYMENT

9.4.1 The Owner will, within ten days after the receipt of the Contractor's Application for Payment, issue a Certificate for Payment to the Contractor for such amount as the Owner determines is properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Subparagraph 9.6.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner, based on its observations at the site as provided in Subparagraph 3.2.7 and the data comprising the application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Document upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the Contractor is entitled to payment in the amount certified. However, by issuing a Certificate for Payment, the Owner shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents. The Owner reserves the right to a 5% general retainage from each progress payment, which retainage shall be released to the Contractor upon substantial completion.

9.5.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

9.5.3 The Owner may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

9.5.4 The Owner shall not have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

9.5.5 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The Owner shall decline to certify payment and withhold its Certificate in whole or in part, to the extent necessary reasonably to protect itself. If the Owner is unable to certify payment in the amount of the Application, he will notify the Contractor as provided in Subparagraph 9.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which it determines is properly due. The Owner may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in its opinion to protect itself from loss because of:

- .1 defective work not remedied,
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims,
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the Owner or another Contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or
- .7 material failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the above grounds in Subparagraph 9.6.1 are removed, payment shall be made for amounts withheld because of them.

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner does not issue a Certificate for Payment, through no fault of the Contractor, within ten days after receipt of the Contractor's Application for Payment, then the Contractor may, upon ten additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable and justifiable costs of shut-down, delay and start-up, which shall be effected by appropriate Change order in accordance with Paragraph 12.3.

9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for submission to the Owner a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare for a Certificate of Substantial Completion which shall establish the Date of Substantial

Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibility assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and Certification by the Owner, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract fully performed, it will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The Owner's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

9.9.2 Neither the final payment nor the remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been fully paid or otherwise satisfied, (2) consent of surety, if any, to final payment and (3), if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as the written document described in Paragraph 13.2.2, receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is delayed for more than ninety (90) days through no fault of the Contractor or by the issuance of Change Orders affecting final completion, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted, provided that the remaining balance for Work not fully completed or corrected shall not be less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.4 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens,
- .2 faulty or defective Work appearing after Substantial Completion,
- .3 failure of the Work to comply with the requirements of the Contract Documents, or
- .4 terms of any special warranties required by the Contract Documents.
- .5 obligations under the Performance and Payment Bonds.

9.9.5 The acceptance of final payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled prior to the time of the final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- .1 all employees on the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3., except damage or loss solely attributable to the acts or omissions of the Owner, the Engineer or anyone directly or indirectly employed by the Owner or Engineer, or by anyone for whose acts the Owner or Engineer may be liable, and not attributable to the acts or omissions of the Owner, the Engineer or anyone directly

or indirectly employed by them, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligation under Paragraph 4.13.

10.2.6 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11 INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase and maintain such insurance as will protect him and the Owner 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 himself 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:

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employees benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 4.18.

11.1.4 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty days prior written notice has been given to the Owner. Certificates of renewal shall be delivered to the Owner at least fifteen (15) days prior to the expiration date of any insurance policy. The Contractor shall not commence the Work until all insurance required hereunder shall have been obtained and approved by the Owner, and the Contractor shall not permit any

Subcontractor or Sub-subcontractor to commence work until all insurance required of them shall have been similarly obtained and approved.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 The Owner may, at its option, purchase and/or maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If the Owner does not intend to purchase or maintain such insurance for the full insurable value of the entire Work, he shall inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of himself, his Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If not covered under the all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment under Subparagraph 9.3.2. This insurance does not cover any tools owned by mechanics, any tools, equipment, scaffolding, staging towers, and other property owned or rented by the Contractor, the capital value of which is not included in the cost of the Work.

11.3.2 The Owner and Contractor waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees each of the other, and (2) separate contractors, if any, and their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.3 or any other property insurance held by the Owner as trustee. The Owner or the Contractor, as appropriate, shall require of separate contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Subparagraph 11.3.2.

11.3.3 The Owner as trustee shall have power to adjust and settle any loss with the insurers.

11.3.4 The construction site may be occupied by the Owner during the Work. Insurance shall not lapse or be canceled on account of this occupancy. The insurance certificates required under this contract shall include this requirement.

11.4 LOSS OF USE INSURANCE

11.4.1 The Owner, at his option, may purchase and maintain such insurance as will insure him against loss of use of his property due to fire or other hazards, however caused.

ARTICLE 12 CHANGES IN THE WORK

12.1 CHANGE ORDER

12.1.1 A Change Order is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted

accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents and applicable General Laws.

12.1.3 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2 or 12.1.3.3 is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: actual cost of materials, including sales tax and cost of delivery; labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums, rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the Owner's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

12.1.5 Unit prices are stated in the Bid Form and the Contract shall include all costs of the Contractor to the Owner as listed in Paragraph 12.1.4. No additional charges shall be allowed for these items under any circumstances.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in his Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within twenty days after the first observance of the conditions.

12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation by the Owner, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was

not at fault, (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7, the Contractor shall make such claim as provided in Subparagraph 12.3.1.

12.4 MINOR CHANGES IN THE WORK

12.4.1 The Owner will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13 UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the work should be covered contrary to the request of the Owner or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for his observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Owner's additional services made necessary thereby.

13.2.2 The Contractor shall provide a document to the Owner certifying that if within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or requiring excessive service or maintenance or not in accordance with the Contract Documents, the Contractor shall correct it within seven (7) days after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such approval, which written acceptance shall specifically refer to such defect. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. The provisions of this paragraph are in addition to, and not in limitation of, the Owner's other rights and remedies hereunder and in law and equity.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraph 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the Owner in writing.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 4.3.1, 12.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Owner's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligation other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

13.3.1 If the Owner prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14 TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of ninety (90) days under an order of any court or other public authority having jurisdiction, or as a result of an act of government, such as a decision of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty days by the Contractor because the Owner has not issued a Certificate for Payment as provided in Paragraph 9.7 or because the Owner unjustifiably has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven additional days written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

14.2.1 To the extent permitted by law, if the Contractor is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he refuses or fails, repeatedly except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he fails to make prompt proper payment to Subcontractors for materials or labor, or disregards laws, ordinances, rules, regulations or order of any public authority having jurisdiction, or otherwise fails to comply with any provision of the Contract Documents, then the Owner may, without prejudice to any right or remedy and after giving the Contractor and his surety, if any, seven days' written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method he may deem expedient.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Owner's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The obligation to pay said amount to the Contractor or to the Owner, as the case may be, shall survive the termination of the Contract.

END OF SECTION 00700

SECTION 00800
SUPPLEMENTAL GENERAL CONDITIONS

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Attachment A - Wage Rates and Certificate
of Compliance

1. INTRODUCTION

The following supplements modify, change, delete from or add to Section 00700 GENERAL CONDITIONS. Where any Subsection of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these Supplemental General Conditions, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

2. In accordance with General Laws Chapter 149, Section 26 through 27D, the Contractor is obligated to comply with the prevailing wage rates established by the Commissioner of the Department of Labor and Industries for mechanics, apprentices, chauffeurs, teamsters and laborers employed on the Project. The schedule of applicable prevailing wage rates for the Project, together with a Certificate of Compliance therewith, are set forth in Attachment A herein.
3. The Insurance provisions of Article II of The General Conditions are amended by adding the following requirements:

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified below and in such form as shall protect him performing work covered by this Contract, or the Town of Lunenburg and its employees, agents and officials, from all claims an liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The Contractor covenants and agrees to hold the Town and its employees, agents and officials harmless from loss or damage due to claims for personal injury and/or property damage arising from, or in connection with operations under this Contract.

Except as otherwise stated, the amounts of such insurance shall be for each policy, not less than:

- (A) For liability for bodily injury, including accidental death, \$1,000,000 for any one person and \$1,000,000 on account of one occurrence and \$1,000,000 Aggregate Limit.
 - (B) For liability for property damage \$1,000,000 on account of any one occurrence and \$1,000,000 Aggregate Limit. Extra-territorial clause shall be included.
- 1) Workmen's Compensation insurance as required by the General Laws of the Commonwealth of Massachusetts.
 - 2) Bodily Injury Premise-Operations, Contractor's Protective and Completed Operations Public Liability Insurance in the amounts required in (A) above.
 - 3) Property Damage Premises-Operations, Contractor's Protective and Completed Operations Public Liability Insurance in the amounts required in (B) above.

- 4) Bodily Injury Liability Insurance covering the operation of all motor vehicles owned by the Contractor and vehicles not owned by the Contractor, while such vehicles are being operated in connection with the prosecution of the work under this Contract, in the amounts required in (A) above.
- 5) Property Damage Liability Insurance covering the operation of all motor vehicles owned by the Contractor and vehicles not owned by the Contractor while such vehicles are being operated in connection with prosecution of the work under this Contract, in the amounts required in (B) above.
- 6) Contractual Liability Insurance covering the liability assumed by the Contractor in the amounts required under (A) and (B) above.
- 7) Owner's Protective Insurance secured by the Contractor in behalf of the Town of Lunenburg which will directly protect the Town and/or its employees, agents and officers from liability for bodily injuries, including accident death, in the amounts required in (A) above, and for property damage in the amounts required in (B) above.

All policies shall be so written that the Owner will be notified of cancellation or restrictive amendment at least fifteen (15) days prior to the effective date of such cancellation or amendment. A certificate from the Contractor's Insurance Carrier showing at least the coverage and limits of liability specified above and expiration date shall be filed with the Owner before operations are begun.

Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Contract and shall state that such insurance is required by this Contract. The Contractor shall make no claims against the Town of Lunenburg or its officers for any injury to any of his officers or employees or for damage to his trucks or equipment arising out of work contemplated by this Contract.

END OF SECTION 00800

SECTION 00850

Excerpts from Chapter 149 and Chapter 30 of the Massachusetts General Laws

Certain provisions of the Massachusetts General Laws are applicable to Construction contracts. Attention is directed to the following Sections of Chapter 149 as amended:

Section 25. "Every employee in public work shall lodge, board, and trade where and with whom he elects; and no person or his agents or employees under contract with the commonwealth, a county, city or town, or with a department, board, commission or officer acting therefor, for the doing of public work shall directly or indirectly require, as a condition of employment therein, that the employee shall lodge, board or trade at a particular place or with a particular person. This section shall be made a part of the contract for such employment."

Section 26. "In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works by the commonwealth, or by a county, town or district, or by persons contracting or subcontracting for such works, 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 who are male veterans as defined in clause Forty-third of section seven of chapter four, and who are qualified to perform the work to which the employment relates; 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, and every contract for such work shall contain a provisions to this effect..."

Section 27B. Records and Reports to be Kept and Furnished by Public Works Contractors.

Every contractor, subcontractor or public body engaged in said public works to which sections twenty-seven and twenty-seven A apply shall keep a true and accurate record of all mechanics and apprentices, teamsters, chauffeurs and laborers employed thereon, showing the name, address and occupational classification of each such employee on said works, and the hours worked by, and the wages paid to, each such employee, and shall furnish to the commissioner, upon his request, a copy of said record, signed by the employer or his authorized agent under the penalties of perjury. Such records shall be open to inspection by any authorized representative of the department at any reasonable time, and as often as may be necessary. Every contractor and subcontractor required to keep such a record shall submit a copy of said record to the awarding authority on a weekly basis.

Each such contractor, subcontractor or public body shall preserve its payroll records for a period of three years from the date of completion of the contract.

Each such contractor, subcontractor or public body shall furnish to the commissioner of labor and industries within fifteen days after completion of its portion of the work a statement, executed by the contractor, subcontractor or public body who supervises the payment of wages, in the following form:

STATEMENT OF COMPLIANCE

_____, 19__

I, _____(Name of signatory party), _____(Title) do hereby state:

That I pay or supervise the payment of the persons employed by _____(Contractor, subcontractor or public body) on the _____(Building or project) and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty-nine of the General Laws.

Signature_____

Title_____

The above-mentioned copies of payroll records and statements of compliance shall be available for inspection by any interested party filing a written request to the commissioner for such inspection.

Section 34. "Every contract, except for the purchase of material or supplies, involving the employment of laborers workmen, mechanics, foremen or inspectors, to which the commonwealth or any county or any town, subject to section thirty, is a party, shall contain a stipulation that no laborer, workman, mechanic, foreman or inspector working within the commonwealth, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, shall be required or permitted to work more than eight hours in any one-day or more than forty-eight hours in any one week, or more than six-days in any one week, except in cases of emergency, or in case any town subject to section thirty-one is a party to such a contract, more than eight hours in any one-day except as aforesaid..."

Section 34A. "Every contract for the construction, alteration, maintenance, repair or demolition of or addition to, any public building or other public works for the commonwealth or any political subdivision thereof shall contain stipulations requiring that the contractor shall, before commencing performance of such contract, provide by insurance for the payment of compensation and the furnishing of other benefits under chapter one hundred and fifty-two to all persons to be employed under the contract, and that the contractor shall continue such insurance in full force and effect during the term of the contract. No officer or agent contracting in behalf of the commonwealth or any political subdivision thereof shall award such a contract until he has been furnished with sufficient proof of compliance with the aforesaid stipulations. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the contract and shall operate as an immediate termination thereof. No cancellation of such insurance, whether by the insurer or by the insured, shall be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the officer or agent who awarded the contract at least fifteen-days prior to the intended effective date thereof, which date shall be expressed in said notice. Notice of cancellation sent by the party proposing cancellation by registered mail, postage prepaid, with a return receipt of the addressee requested, shall be a sufficient notice..."

Section 34B. "Every contract for the construction, alteration, maintenance, repair of demolition of, or addition to, any public works for the commonwealth or any political subdivision thereof shall contain stipulations requiring that the contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wage paid to regular police officers employed by him in such city or town."

Section 44D.(1) (a) Every bid or offer submitted for a contract subject to section forty-four A shall be accompanied by a copy of a certificate of eligibility issued by the commissioner showing that the bidder or offeror has the classification and capacity rating to perform the work required. The bid or offer shall also be accompanied by an update statement in such form as the commissioner shall prescribe. A blank copy of such form shall be furnished by the awarding authority to every person or business entity requesting a copy. The update form shall provide space for information regarding all projects completed by the bidder or offeror since the date of certification of eligibility, all projects which the bidder or offeror currently has under contract including the percentage of work on such projects not completed, the names and qualifications of the personnel who will have supervisory responsibility for the performance of the contract, any significant changes in the bidder's or offeror's, financial position or business organization since the date of certification of eligibility, and such other relevant information as the commissioner shall prescribe. Any bid or offer submitted without the appropriate certificate and update statement shall be invalid.

(b) The applicant shall certify under penalties of perjury at the conclusion of the application to bid that there have been no substantial changes in his/her financial position or business organization other than those changes noted within the application since the applicant's most recent prequalification statement and that the bid to be made will be in all respects bona fide, fair and made without collusion or fraud with any other person. "Person" here means any natural person, joint venture, partnership, corporation or other business or legal entity which sells materials, equipment or supplies used in or for, or engages in the performance of, the same or similar construction, reconstruction, installation, demolition, maintenance or repair work or any part thereof.

Attention is directed to the following sections of Chapter 30 of the General Laws of Massachusetts as amended to date:

Section 39F. "(1) Every contract awarded pursuant to sections forty-four A to L inclusive, of chapter one hundred and forty-nine shall contain the following subparagraphs (a) through (i) and every contract awarded pursuant to section thirty-nine M of chapter thirty shall contain the following subparagraphs (a) through (h) and in each case those subparagraphs shall be binding between the general contractor and each subcontractor."

- (a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.
- (b) Not later than the sixty-fifth-day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.
- (c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.
- (d) If, within seventy-days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered or sent by certified mail to the general contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth-day after the subcontractor has substantially completed the subcontract work. Within ten-days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.
- (e) Within fifteen-days after receipt of the demand by the awarding authority, but in no event prior to the seventieth-day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed

breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.

- (f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.
- (g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the general contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.
- (h) The awarding authority shall deduct from payments to a general contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.
- (i) If the subcontractor does not receive payment as provided in subparagraph (a) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the general contractor may file a sworn replay as provided in that same subparagraph. A demand made after the first-day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g), and (h)."

Section 39K. "Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building by the commonwealth, or by any county, city, town, district, board, commission or other public body, when the amount is more than five thousand dollars in the case of the commonwealth and more than two thousand dollars in the case of any county, city, town, district, board, commission or public body, shall contain the following paragraph: Within fifteen-days (twenty-four-days in the case of the commonwealth) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five percent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five-days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one percent of the original contract price, or (b) the

contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the contract less, (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work less (2) a retention for direct payments to subcontractors based on demand for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston commencing on the first-day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen-days (twenty-four-days in the case of the commonwealth) after receipt of such a periodic estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

"The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven-days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically corrected and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.

"All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each subtrade listed in sub-bid form as required by specifications and a column listing the amount paid to each filed subcontractor and Sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the awarding authority shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate. "A certificate of the architect to the effect that the contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section."

Section 39L. "Public Construction work by foreign corporations; restrictions and reports." The Commonwealth and every county, city, town, district, board, commission or other public body which, as the awarding authority, request proposals, bids or sub-bids for any work in the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or other public works (1) shall not enter into a contract for such work with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such work, a foreign corporation which has not filed with such awarding authority a certificate of the state secretary stating that such corporation has complied with sections three and five of chapter one hundred and eighty-one and the date of such compliance, and (2) shall report to the state secretary and to the department of corporations and taxation any foreign corporation performing work under such contract or subcontract, and any person, other than a corporation, performing work under such contract or subcontract, and residing or having a principal place of business outside the commonwealth.

Section 39M(b). "Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request

therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for or the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications.

"For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said named or described materials."

Section 39N. "Every contract subject to section forty-four A of Chapter one hundred and forty-nine or subject to section thirty-nine M of chapter thirty shall contain the following paragraph in its entirety and an awarding authority may adopt reasonable rules or regulations in conformity with that paragraph concerning the filing, investigation and settlement of such claims:

"If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly."

Section 39O. "Every contract subject to the provisions of section thirty-nine M of this chapter or subject to section forty-four A of chapter one hundred forty-nine shall contain the following provisions (a) and (b) in their entirety....

- (a) The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen-days or more due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.
- (b) The general contractor must submit the amount of a claim under provision (a) to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty-days before the general contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

Section 39P. "Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the awarding authority, or any official, its architect or engineer to made 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 even, no later than thirty-days after the written

submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty-days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made."

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 section thirty-nine M of chapter thirty, sections forty-four A through H, inclusive, of chapter one hundred and forty-nine and sections thirty B through thirty P, inclusive, of chapter seven.
- (2) "Contract" means any contract awarded or executed pursuant to sections thirty B through thirty P, inclusive, of chapter seven and any contract awarded or executed pursuant to section thirty-nine M of chapter thirty, or sections forty-four A through H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars
- (3) "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
- (4) "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
- (5) "Audit," when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.
- (6) "Accountant's Report," when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he/she has made and sets forth his/her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.
- (7) "Management," when used herein, means the chief executive officer, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.
- (8) Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.
 - (b) Subsection (a) (2) hereof notwithstanding, every agreement or contract awarded or executed pursuant to sections thirty B through thirty P, inclusive, of chapter seven, and pursuant to section thirty-nine M of chapter thirty or to section forty-five A through H, inclusive, of chapter one hundred and forty-nine, shall provide that:

- (1) The contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor, and
- (2) Until the expiration of six years after final payment, the awarding authority, office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the contractor or of his/her subcontractors that directly pertain to, and involve transactions relating to, the contractor or his/her subcontractors, and
- (3) If the agreement is a contract as defined herein, the contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his/her description the date of the change and reasons therefor, and shall accompany said descriptions with a letter from the contractor's independent certified public accountant approving or otherwise commenting on the changes, and
- (4) If the agreement is a contract as defined herein, the contractor has filed a statement of management on internal accounting controls as set forth in paragraph (c) below prior to the execution of the contract, and
- (5) If the agreement is a contract as defined herein, the contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph (d) below.

(C) Every contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the contractor and subsidiaries reasonably assures that:

- (1) Transactions are executed in accordance with management's general and specific authorization;
- (2) Transactions are recorded as necessary:
 - i. To permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - ii. To maintain accountability for assets;
- (3) Access to assets is permitted only in accordance with management's general or specific authorization; and
- (4) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

Every contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he/she has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- (1) Whether the representations of management in response to this paragraph, and paragraph (b) above are consistent with the result of management's evaluation of the system of internal accounting controls; and
 - (2) Whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.
- (d) Every contractor awarded a contract by the commonwealth or by any political subdivision thereof shall annually file with the awarding authority and the deputy commissioner of capital planning and operations 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 account-ant's report. Such statements shall be made available to the awarding authority upon request.

- (e) The office of inspector general, the deputy commissioner for capital planning and operations and any other awarding authority shall enforce the provisions of this section. The deputy commissioner of capital planning and operations may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of chapter thirty A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations and guidelines may be applicable to all awarding authorities. A contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to section forty-four C of chapter one hundred and forty-nine."
- (f) Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in section seven of chapter four and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of clause (2) of paragraph (b).

Section 40. "Bonds given to the commonwealth, any county, city, town or political subdivision to secure the performance of contracts for the construction or repair of public buildings or other public works may be discharged or released by the awarding authority, upon such terms as it deems expedient, after the expiration of one year from the time of completion, subject to section thirty-nine K, of the work contracted to be done; provided that no claim filed under said bond is pending, and provided further, that no such bonds shall be discharged or released prior to the expiration of all special guarantees provided for in the contract unless new bonds in substitution therefor specifically relating to the unexpired guarantees shall be taken.

END OF SECTION 00850

"ATTACHMENT A" PREVAILING WAGE RATES

LED LIGHTING UPGRADE

SECTION 02050

TURKEY HILL ELEMENTARY SCHOOL

SELECTIVE DEMOLITION

PART I GENERAL

Demolition of the existing Lighting Fixtures in Turkey Hill Elementary School. Selective demolition shall be removal and disposition of designated items of existing work within the designated work area. Work includes, but is not limited to, removal of existing materials, disposal of unused materials away from the site and salvaging materials to be relocated or reused. Disposal of construction debris and of debris generated by the project is part of the work of SECTION 02050 SELECTIVE DEMOLITION.

1.01 RELATED WORK SPECIFIED ELSEWHERE:

A. SECTION 02050 SELECTIVE DEMOLITION outlines the parameters under which selective demolition shall proceed. The actual demolition shall be done under the direction of mechanics familiar with the trade with which the demolition is involved to avoid unnecessary damage and to maintain safety. Therefore, although not specifically stated in each specification section, demolition of materials shall be part of the work of the specific trades, at least to the extent of direction of the demolition work.

1.02 JOB CONDITIONS:

- A. The building may be occupied during construction.
- B. The location of hidden utilities cannot be verified by field observations. Proceed with demolition extreme care to avoid disturbing utilities concealed within the existing building elements or underground.
- C. Proceed with demolition during construction to avoid structural failure. Do not overstress existing structural elements with shoring and bracing.

1.03 PERMITS AND FEES

A. The contractor shall obtain permits and pay fees and charges related to demolition, removal, and disposal of construction related debris; particularly required by the Department of Environmental Protection (DEP).

1.04 DAMAGE

A. Particular care shall be required during demolition procedures to protect the existing conditions. Damaged caused by demolition or new work shall be the responsibility of the contractor and repairs to as new condition shall be made without change in the Contract Amount. Damage or deficiencies in existing structural shall be promptly brought to the attention of the owner's representative.

PART 2 MATERIALS

2.01 SALVAGE:

A. Materials to be removed shall be the property of the contractor unless noted to be salvaged, relocated, to be incorporated into the work or to remain in place. Proper disposal of all florescent lamps and all

ballasts is required. All ballasts not marked as "No PCBs" will be treated as if PCBs are present and disposed of properly. Existing wiring where practical will be reused.

PART 3 EXECUTION

A. Materials in particular light covers are to be removed with care, using proper tools so as not to damage work that is to remain.

B. Construction debris shall be loaded in vehicles suited for the purpose and deposited in a dumpsite which is legal and for which the required permits have been obtained.

C. Debris shall be promptly removed from the premises. No accumulation of debris will be permitted. Areas within the building site and streets and roads shall be kept free of debris.

END OF SECTION 02050

LED LIGHTING UPGRADE

SECTION 16510

TURKEY HILL ELEMENTARY SCHOOL

BUILDING LIGHTING

Part 1 - GENERAL

1.01.1 DESCRIPTION

A. This section includes the furnishing, installation and connection of the interior lighting changes as outlined on the attached spreadsheet.

1.01.2 RELATED WORK

A. Section 02050 SELECTIVE DEMOLITION

1.02 SUBMITTAL

A. Transmit to the owner two copies of all submittals for all lighting fixtures, replacement LED tubes and retrofit kits for approval. Work that requires approval of submittal will not commence until owner has approved submittal. Any work installed prior to being reviewed and approved shall be removed at the Contractors expense.

Part 2- PRODUCTS

2.01 LED TUBES (OWNER PROVIDED)

- A. LED Tubes for 4' T8 replacement: MAXLIT LED T8 Linear Replacement Lamp model L17T8DE440-G, double ended power glass series UL Type B, DLC qualified.
- B. The intent of this project is to replace florescent lamps and ballast with LED tubes that will not require the ballast. The old ballast shall be removed and any broken lamp holders will be replaced before installing the LED tube.

2.02 LIGHTING FIXTURES (OWNER PROVIDED)

- A. REPLACEMENT FIXTURES FOR RESTROOMS: Philips FluxStream EZ Non-Dimmable 32W 4" LED Linear Strip 4000K, Model: FSSEZ440L840-UNV, DLC Standard Quantity of 35
- B. REPLACEMENT HIGH BAYS FOR GYM: Global Lux 150 Watt Dimmable Round UFO LED High Bay Fixture DLC Premium, Quantity of 16.
- C. REPLACEMENT HIGH BAYS FOR MINI-GYM: Global Lux 100 Watt Dimmable Round UFO LED High Bay Fixture DLC Premium, Quantity of 6.

Part 3- EXECUTION

3.1 General

- A. The intent of this project is to replace florescent lamps and ballast with LED tubes that will not require the ballast. The old ballast shall be removed **and any broken lamp holders will be replaced** before installing the LED tube. The contractor will provide and install the first 25 shunted lamp holders to replace broken lamp holders as part of the base bid. A replacement cost for additional shunted lamp holders will be provided in the bid.

- B. The contractor will be responsible for changing out non shunted sockets if broken or will wire externally non broken sockets so that they will act as a shunted socket.
- C. The disposal of old lamps and old ballast will be the responsibility of the successful bidder.
- D. For spaces that call for replacement fixtures, old fixtures are to be removed and replaced according to lighting survey. New fixtures will be provided by the owner. Where a reduction in the number of fixtures occurs, consult with owner before installation on placement of the new fixtures which should be in accordance with best practice.
- E. Verify that electrical installation be in complete accordance with all pertinent codes and regulations and the original design. All fixtures are to be grounded per NEC.
- F. In the event of a discrepancy, immediately notify the owner. Do not proceed with installation in area of discrepancy until all such discrepancies have been fully resolved.
- G. Where a fixture type designation may have been omitted from the lighting control survey, it shall be the responsibility of the electrical contract to contact the owner and determine which fixture type is intended at the location in question.
- H. Cord connected fixtures shall not be less than 1/2" from combustible materials and shall be grounded. The cord must be visible over its entire length and terminate at the outer end of the cord in a grounding type attachment plug.
- I. Remove all exposed labels from new fixtures.
- J. Where lighting fixtures and other electrical items are shown in conflict with locations of structural members and mechanical or other equipment, furnish and install required supports and wiring to clear the encroachment.
- K. Where shown on lighting control surveys, mount pendant or surface fixtures in individual or continuous rows with proper connecting links and end plates. Surface fixtures shall be ceiling/wall mounted and attached to structure. Support from toggle bolts through gyp-board or plaster will not be acceptable.
- L. All fixtures shall be supported from structural members of building not by ceiling grid system where suspended or from wires suspending the ceiling grid system.
- M. All fixtures installed on stems over 12" shall have swivels.
- N. It shall be the responsibility of the electrical contractor to supply and install the necessary equipment for the hanging of light fixtures (support at each corner of the fixture) independent of the ceiling, regardless of the type of ceiling or requirements. When laid in or hung in a suspended ceiling, they may negotiate with the ceiling contractor to add additional wires at each end of the fixture to hang them independent of the ceiling; this must be followed regardless of the type of ceiling or requirements. Each point provided for light fixture support shall be capable of holding 200 lb. and shall not be attached to the ceiling or wall material. All surface mounted fixtures shall be supported from a structural channel.
- O. All new fixtures must be installed by or under the direct supervision of a licensed electrician.
- P. Occupancy Sensors that are currently installed will remain operational.
- Q. Warranty will be one year from final inspection on all labor.
- R. Disposal of all used lamps are the responsibility of the contractor. Do not use Lunenburg School District dumpsters.
- S. Disposal of ballast containing no PCB are the responsibility of the contractor. All old lighting fixtures that are removed are the responsibility of the contractor to be disposed of.

3.2 Testing:

- A. Upon completion of this portion of the work, furnish all personnel operating instruction and conduct all tests required to secure approval of the installation from all agencies having jurisdiction.
- B. Inspections of all fixture installation and retrofits are required. Inspections are to be scheduled 24 hours in advance.

3.3 Cleaning:

- A. Upon completion of all installation, lamping, and testing, thoroughly inspect all exposed portions of the electrical installation and completely remove all exposed labels, soils markings and foreign materials on new fixtures.

END OF SECTION 16510