

TOWN OF DUNSTABLE



Invitation for Bids

Construction of Tennis Courts at Larter Field

80 Groton Street, Dunstable, MA 01827

March 12, 2024

This document is issued electronically only. It is the responsibility of every bidder who receives this bid and all associated documents to check the Town of Dunstable Bid & RFP materials at www.dunstable-ma.gov for any addenda or modification to this solicitation, if they intend to respond.

**INVITATION FOR BIDS
LEGAL ADVERTISEMENT
TOWN OF DUNSTABLE**

The Town of Dunstable is soliciting bids for the following services in accordance with Chapter 30, §39M, Massachusetts General Law.

"CONSTRUCTION OF TENNIS COURTS AT LARTER FIELD"

All contracts must be strictly awarded in accordance with the requirements of this Invitation for Bids. The Town of Dunstable has no discretion under the law to consider bids that fail to comply with those requirements, except for minor informalities as permitted by MGL. If it becomes necessary to revise any part of this IFB or otherwise provide additional information, an addendum will be issued to all prospective bidders who received copies of the original request.

Specifications and bid materials will be available on the Town of Dunstable website www.dunstable-ma.gov. Contact: Jason Silva, Town Administrator, Town Hall, 511 Main Street, Dunstable, MA 01827, telephone number (978) 649-4514, beginning immediately, between the hours of 8:00 am and 4:00 pm, Monday through Friday, excluding holidays.

Qualified bidders shall submit sealed bids to Town of Dunstable, Attn: Jason Silva, Town Administrator, Dunstable Town Hall, 511 Main Street, Dunstable, MA 01827. Sealed bids should be in sealed envelopes and clearly marked "Construction of Tennis Courts at Larter Field Bid" with the firm's business name clearly printed on the envelope.

Bids are due no later than Monday, April 15 at 4 PM. Bids must be received by this date and time to be considered. A 5% bid deposit is required.

Prevailing wages as determined by the Department of Labor and Industries under the provisions of Massachusetts General Law c. 149, s.26 apply to this contract. A 50% payment bond is required and must be submitted with the signed contract.

OSHA 10 certification to be submitted with bid and is required for any worker performing work on Town property. The Town of Dunstable reserves the right to reject any or all bids when it deems to be in the best interest of the Town. A contract award will be made within 30 days after the bid opening.

BID SUBMISSION REQUIREMENTS

1. Attention of all bidders is directed to Chapter 30, §39M of the General Laws of the Commonwealth of Massachusetts and to all other applicable sections of the General Laws as most recently amended which govern the award of this contract.
2. Qualified bidders shall submit sealed bids to Town of Dunstable, Attn: Jason Silva, Town Administrator, Dunstable Town Hall, 511 Main Street, Dunstable, MA 01827. Sealed bids should be in sealed envelopes and clearly marked "Construction of Tennis Courts at Larter Field Bid" with the firm's business name clearly printed on the envelope.
3. Bids are due no later than Monday, April 15 at 4 PM. Bids must be received by this date and time to be considered.
4. Bids which are incomplete, conditional or obscure, or which contain additions not called for, will be rejected.
5. Bidders may correct, modify or withdraw the original bids on or before Monday, April 15 at 4 PM.
6. Any bid received after Monday, April 15 at 4 PM shall not be considered.
7. No award will be made to any bidder who cannot satisfy the Town of Dunstable that they have sufficient ability and experience in this class of work and sufficient capital and plant to enable them to complete the work successfully within the time named.
8. At the time of reviewing the bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the areas and contract documents. The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect to their bid.
9. The contract will be awarded within thirty days after the actual bid deadline, subject to the availability of funds, to the responsible and eligible bidder offering the lowest total price for all required work as set forth in this IFB, provided the bid, in the opinion of the awarding authority, is reasonable and it is in the best interest of the Town of Dunstable to accept it.
10. Payment for services will be processed as noted in the Scope of Work under Invoicing.
11. The bidder's attention is directed to the fact that all applicable State laws, Town Bylaws, and the rules and regulations of all authorities having

jurisdiction over bid/purchase 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.

12. Each bidder must sign and submit a "Certificate of Non-Collusion" form and a "State Tax Certification" form with the bid sheet. (These forms are included in the bid documents).
13. If services of the bidder are subsequently deemed to be unsatisfactory to the Town and are in violation of these specifications, the Town of Dunstable shall notify the said bidder in writing. If mutually agreeable arrangements cannot be achieved between the Town and the contractor, the contract will be terminated. Notice of termination shall be in writing and notification will be sent by registered or certified mail. Termination will become effective three days after mailing said notification.

Term of Contract

The term of this contract will begin no later than June 1, 2024 and will end October 31, 2024. The contractor is expected to complete the scope of work described below on or before September 30, 2024.

The Town will provide a form of contract subject to modification prior to execution as deemed necessary by the Town.

Contract and Performance Specifications

SCOPE OF WORK

Larter Field hosts sporting events and activities, and residents use the field for walking, riding bikes, roller blading, running their dogs, and other recreational activities. It's one of the busiest and most popular gathering places in town.

- Overview
 - To construct SINGLE AREA (3) tennis/ (6) pickle ball courts at Larter Family Memorial field measuring 120x180' on the northeast corner of the fields
- Preliminary
 - Contract with land surveyor/civil engineer to design and locate tennis court dimensions/ orientation on the property; include topographic map and grading plan
 - Address any drainage, conservation, logistics concerns at this time
- Construction Phase
 - Isolate irrigation to be deleted and capped off from existing system

- Excavation of proposed area to 1' below finish face of proposed asphalt surface excess material to be exported from the site
- Install 9-11" 1.5" graded base material for court foundation
- Install 1.5" binder course asphalt and 1.5" finish course asphalt for playing surface
- Install 12' tall black chain link fence around perimeter of tennis courts with 3 entry gates
- Install 2' x 2' deep ¾" washed crushed stone around two long sides of court to provide drainage
- Install 3 sets of tennis post sleeves, 3 nets and center straps
- Surfacing of courts with two coats Acrytech Sports coatings or equivalent and two coats of each color (not yet specified) painting of lines for (3) tennis as well as (6) pickle ball courts

- Finish Phase
 - Repair irrigation damaged by construction. Re configure heads around perimeter for full coverage around the new court area
 - Repair all damaged lawn areas due to construction activities
 - Final clean sweep of all asphalt surfaces
 - Provide Parks Commission with as built plans upon completion

Work is expected to be performed between the hours of 7:00 AM and 5:30 PM, Monday thru Friday, unless otherwise approved by the Town of Dunstable.

The contractor must work with the Parks Commission to ensure their work interferes with field use to the minimum extent possible. Use of the field and its facilities will occur while work is taking place.

If the contractor finds upon examination of or after starting the work on the tennis courts at Larter Field, that the work will be more extensive than the scope of work as described in this IFB, they should contact the Town within 24 hours for authorization to proceed.

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

Contractors must have at least three (3) year of relevant experience in their particular trade(s) prior to responding to this bid.

Any and all work performed throughout the duration of the contract must be guaranteed by the contractor to be completed in a workmanship-like manner and according to applicable codes and industry-accepted standards. The contractor will supply all labor, equipment, materials, parts and supplies necessary to complete the project. The contractor will be responsible for securing any and all necessary permits required prior to commencing work on any job.

The work solicited through this IFB is subject to the Massachusetts Prevailing Wage Laws. Applicable Prevailing Wage Rates are issued with this IFB. These will become a part of any contract resulting from this IFB. These wage rates will be valid for the duration of the contract. It is the responsibility of the contractor to adhere to the Prevailing Wage Laws and all requirements. The contractor must submit a copy of the certified payroll at the conclusion of the project.

Standard hours of work shall be Monday-Friday 7:00 am until 5:30 pm.

All work is to be quality work and shall be performed according to the standards of the industry and according to the plans, directions and instructions as presented by the authorized representative of the Town of Dunstable.

The Contractor shall only use trained and licensed personnel who are directly employed and supervised by the Contractor.

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

The Contractor warrants that, unless otherwise specified, all materials and equipment, incorporated in the work under the Contract shall be new, first class, and in accordance with the Contract Documents. The Contractor further warrants all workmanship shall be first class and in accordance with the Contract Documents and shall be performed by persons qualified in their respective trades. Work not conforming to these warranties shall be deemed unacceptable and will not be paid.

It is the Contractor's responsibility to clean up the work area after each work day, and remove from the premises any rubbish, which may have come about as a result of the project.

A 50% payment bond is required and must be submitted with the signed contract. The cost of the bond is considered a reimbursable expense at cost.

A 5% bid deposit is also required.

Invoicing

Contractor must pay prevailing wage rates which are attached.

Payment will be made on a mutually agreed upon schedule between the Town of Dunstable and contractor upon submission of an invoice by the contractor accompanied by the certified payroll.

Questions

All inquiries regarding this invitation shall be directed to the Town Administrator's Office in writing: Jason Silva, Email – jsilva@dunstable-ma.gov.

Prospective bidders are invited to attend a pre-proposal site visit on Monday, March 25, 2024 at 10:00 AM at the Larter Field, 80 Groton Street, Dunstable, MA 01827. The site visit will provide an opportunity for prospective bidders to inspect the site first hand and become familiar with all the conditions that may affect the performance and cost of the contract.

Rule for Award

- (a) The contract will be awarded to the responsible and eligible bidder (as defined in M.G.L. c. 30 §39M) offering the lowest total price for all required work as set forth in this IFB, provided the bid, in the opinion of the awarding authority, is reasonable and it is in the best interest of the Town of Dunstable to accept it.
- (b) The term "lowest responsible and eligible bidder" shall mean the bidder: (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; (4) who, where the provisions of section 8B of chapter 29 apply, shall have been determined to be qualified thereunder; and (5) who obtains within 10 days of the notification of contract award the security by bond required under section 29 of chapter 149; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority; and provided further, that if there is more than 1 surety company, the surety companies shall be jointly and severally liable. [M.G.L. c.30, §39M(c)].
- (c) The Town reserves the right to conduct its own investigation to verify whether a bidder is responsible and eligible.

REFERENCES

All bidders must supply 3 references with whom the bidder has done business within the last twelve (24) months.

Name: _____

Phone #: _____

Address: _____

Name: _____

Phone #: _____

Address: _____

Name: _____

Phone #: _____

Address: _____

COMPANY NAME: _____

SIGNATURE: _____

OSHA Training Certification of contractors

As of July 1, 2006, the Town of Dunstable will comply with the amended MGL chapter 30 section 39s "**Contracts for Construction: Requirements**" as follows.

The Town of Dunstable in all bids and contracts that fall under the application of this law, as amended, will require bidders and/or contractors to comply with the requirements of certifying that they and their employees have complied with MGL chapter 30 section 39s. This law requires successful completion of a 10-hour OSHA safety training course prior to working on the Town's worksite or in the work subject to the bid or contract.

The Town will require proper certification due upon contract signing. It is expected that the contractor, by signing the certification form provided with the bid is fully meeting the language of the law, as amended, and that they are accepting the responsibilities to comply with the law for the full term of the work.

The Town of Dunstable will pay certified payrolls that are deemed complete. The statute indicates that with the first certified payroll submitted to the Town, documentation must be provided that each employee on the payroll documents submitted to the Town has successfully completed the OSHA training.

Any employee who's name does not appear on the first certified payroll must submit certification with the first payroll they do appear on. Failure to provide full documentation may result in a delay in payment to the vendor as the packet submitted for payment would be determined to be incomplete.

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

This certification requirement will go into effect for any bids received or contracts awarded after July 1, 2006 in accordance with MGL 30 39s as amended by Chapter 306 of the Acts of 2004.

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

In accordance with Massachusetts General Law 30: Section 39S, as amended by Chapter 306 of the Acts of 2004, effective 7/1/06, for all contracts for the construction, reconstruction, alteration, remodeling or repair of any public work or the construction, reconstruction, installation, demolition, maintenance or repair of any public building estimated to cost more than \$10,000, the Contractor hereby certifies to the following:

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

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

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

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

Company: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

Telephone: _____

Certificate of Non-Collusion

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

Signature of person signing bid or proposal

Printed Name of person and title

Company name

Date

Revenue Enforcement and Protection Certification (REAP)

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

ENTITY NAME: _____

By: _____

Authorized signature

Date

Name of person signing above (type/print)

Business address

Telephone Number

SOMWBA Certification

Date of Certification by State Office of Minority and Women Business Assistance
(SOMWBA)

Authorized Signature

Date

Printed Name

PAYMENT BOND

[Required for Building and Public Works Projects over \$25,000]

PROJECT:

PROJECT LOCATION:

TOWN:

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____

as Principal, and _____

Surety, are held and firmly bound unto the Town, as Obligee, in the sum of

_____ Dollars,

(words)

\$ _____

(figures)

to be paid to the Obligee, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the said Principal has made a Contract with the Obligee, bearing the date of _____, 20____, for the completion of the Project.

The conditions of this obligation are such that, if the Principal and all Subcontractors under said Contract shall pay for all labor performed or furnished and for all materials used or employed in said Contract and in all duly authorized modifications, alterations, extensions of time, changes, or additions to said Contract that may be made, notice to the Surety of such modifications, alterations, extensions of time, changes, or additions

being hereby waived, the foregoing to include any other purposes or items set out in, and to be subject to, provisions of M.G.L. c.30, §39A, and M.G.L. c.149, §29, as amended, then this obligation shall become void; otherwise, it shall remain in full force and virtue.

In witness whereof, the Principal and Surety have set their hands and seals this

_____ day of _____, 20____.

PRINCIPAL

SURETY

(Name and Seal)

(Attorney-in-Fact – Seal)

(Title)

Attest: _____

Attest: _____

The rate for this Bond is _____% for the first \$_____ and
_____ % for the next \$_____. The total Premium for this
Bond is \$_____.

(contract terms contained below)

TOWN OF DUNSTABLE

CONTRACT FOR PUBLIC WORKS IMPROVEMENTS

This contract ("Contract") is entered this _____ day of _____, 20____, by and between the **Town of Dunstable**, a duly organized Massachusetts municipal corporation with a business address of 511 Main Street, Dunstable MA 01827 (the "Town"), and _____ with a business address of _____ (the "Contractor"). The Town and the Contractor are together the "Parties" and individually a "Party."

WHEREAS, in accordance with MGL c. 30, §39M, the Town publicly solicited for bids for the completion of " _____ " (the "Project");

WHEREAS, the Contractor submitted a bid to complete the Project that was acceptable to the Town; and

WHEREAS, by entering this Contract, the Contractor represents to the Town that it has the skill, experience, equipment and manpower necessary to complete the Project in accordance with the terms and requirements set forth herein.

NOW THEREFORE, in consideration of the mutual exchange of promises set forth below and for other good and valuable consideration, the Town and the Contractor hereby agree as follows:

Scope of Work: The Contractor shall provide all labor, materials and equipment and perform all work required by the plans and specifications entitled: " _____," dated _____, 20____ and attached hereto as Exhibit A.

Commencement and Completion of the Project: The Contractor shall commence work under this Contract within five days from the date of execution of this Contract (the date of Commencement). **The Contractor shall obtain Substantial Completion of the Project within _____ () days from the date of Commencement. Time is of the essence for the completion of the Project.**

Contract Sum: The Town shall pay the Contractor, in current funds, for the performance of the work, subject to Additions and Deductions by approved Change Order(s) (if any), the Contract Sum of:

_____ Dollars

(words)

(\$ _____).

Appropriation: This Contract is subject to an appropriation being available therefore.

Payments and Retainage (MGL c. 30, §39F and §39G). The Contractor shall submit written invoices on a [*weekly/monthly*] basis and every invoice shall indicate the work completed and the percentage of work outstanding. The Contractor shall supply any additional information as may reasonably be required by the Owner to clarify, substantiate or otherwise explain the work completed or the amount payable. The Town shall make periodic payments to the Contractor in accordance with the provisions of MGL c. 30, §39G. **Periodic payments shall be subject to retainage of 5% of the approved amount of any periodic payment and any other deductions permitted or required by law.**

Insurance:

- a. Prior to commencing any work, the Contractor shall deliver to the Town/Town evidence of insurance coverage in the amounts set forth in the Bidding Documents or, if not so specified, as follows:
 - i. General Liability with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate written on an occurrence basis.
 - ii. Auto Liability (including owned, hired and non-owned autos): \$1,000,000 combined single limit (each accident).
 - iii. Excess Liability: \$2,000,000 minimum limits in excess of underlying limits. The umbrella shall be no more restrictive than underlying coverage.
 - iv. Worker's Compensation and Employer's Liability per Commonwealth of Massachusetts statutory limits.
- b. The Contractor shall provide the Town with suitable evidence of the required insurance coverage prior to commencement of any work. This insurance shall be written by a company licensed to do business in the state of Massachusetts with a minimum A.M. Best rating of A- VII. Each policy shall provide for written notification to the Town at least thirty (30) days prior to termination, material change or restrictive amendments. The coverage's and limits are to be considered minimum requirements under this contract and in no way limit the liability of the Contractor.

Standard of Performance: The work performed under this Contract shall be rendered in conformity with the standards of the trade and shall be professional and of the highest fabrication and installation quality in all respects. Substandard fabrication and installation quality shall be deemed a breach of this Contract.

Safety Standards: The Contractor acknowledges that the Project involves public property. The Contractor shall provide protection to members of the public at all times while performing work on the Project in accordance with OSHA regulations, and shall contact the Town's Police Department if any public safety details protection may be necessary.

Guarantees:

- a. The Contractor guarantees the work under this Contract and the materials furnished by it for use in connection therewith to be free from defects or flaws for one year after the completion of the Contract. It is expressly understood, however, that this guarantee provision shall not absolve the Contractor from any liability to the Town arising out of a failure to substantially comply with the terms of the Contract.
- b. If at any time within said guaranty period, any part of the work constructed under the terms of this Contract shall in the opinion of the Town require repair due to defective work or materials furnished by the Contractor, the Town may notify the Contractor in writing to make the required repairs. If the Contractor shall neglect to start such repairs within ten days of the date of receipt of notice thereof and to complete the same to the satisfaction of the Town with reasonable dispatch, then the Town may employ other persons to make such repairs. The Town shall charge the expense thereof to the Contractor and may use any moneys still retained to pay for the same, and if such sum is insufficient, the Contractor shall be obligated to pay the balance thereof.

Indemnification: Notwithstanding the availability and policy limits of any insurance, the Contractor hereby agrees to defend, indemnify and hold harmless, including attorneys fees, the Town, its officers and employees ("Indemnified Parties") against any claims made or legal actions brought against an Indemnified Party(ies) by any person or entity as a result of or arising from injuries, damages, expenses and losses actually or allegedly incurred by such a person or entity ("Liabilities") arising out of or relating to the Contractor's performance or failure to perform pursuant to this Contract, except where the Liabilities are the result of the Indemnified Party's own direct and sole negligence. This obligation shall survive the termination, completion or expiration of this Contract. The Contractor shall promptly notify the Town of any claim or action brought in connection with this Contract and thereupon shall promptly take over and defend any such claim or action.

Payment Bond: The Contractor shall obtain and deposit with the Town a Payment Bond equal to fifty percent (50%) of the total contract amount on a form prescribed by the Town.

Remedies of the Town:

- a. If the Contractor shall provide services in a manner which are not to the satisfaction of the Town, the Town may request that the Contractor redo the work at no additional cost to the Town until approved by the Town. If the Contractor shall fail to provide such services or shall provide services which are not satisfactory to the Town, in the alternative, may make any reasonable purchase or contract to purchase services in substitution of those due from the Contractor. The Town may deduct the cost of any substitute contract or nonperformance of services together with incidental and consequential damages from the contract price and shall withhold such damages from sums due to become due. If after reasonable effort, the Town is unable to make any reasonable purchase or contract in substitution thereof, the Town may require the Contractor to deliver all completed work to date.

- b. If the damages sustained by the Town as determined by the Town exceed sums due or to become due, the Contractor shall pay the difference to the Town upon demand.

Post-Completion: Upon the completion of the Project, the Contractor shall at his own expense remove all equipment, temporary Contractor's buildings and sheds, fencing, rubbish and waste material in and about the area that has been worked and he shall leave the premises and the work performed all in a neat and proper condition.

Schedule: Before commencing the Project, the Contractor shall, if required, submit a schedule of operations for approval by the Town. The schedule shall show the methods and order of operations that the Contractor proposes to use. The approval of the schedule by the Town shall not be construed as relieving the Contractor from any responsibility.

Unanticipated Delay: Should the Contractor be obstructed or delayed in the prosecution of the work by any act or neglect on the part of the Town, or as a result of damage which may be caused by lightning, earthquake, rain, storm, or cyclone, then the time fixed for completion may be extended for a period equivalent to the time lost by reason of any of the foregoing causes. No such extension shall be made unless a claim therefor is presented in writing to the Town within forty-eight hours of the occurrence of such delay. The Contractor shall have no claim against the Town for damages on account of such delay. The duration of the extension itself must be certified in writing by the Town.

The Contract Documents: The following, together with this Contract, form the Contract and all are as fully a part of the Contract as if attached to this Contract or herein repeated: the Advertisement of the Invitation for Bids, the Bidding Documents, including the Contractor's completed Bid Form, the Contract Forms, the Statutory Provisions for Public Construction in Massachusetts (attached as Exhibit B) and the plans and specifications attached as Exhibit A.

Termination:

- a. If the Contractor shall be adjudged a bankrupt, or if he shall make a general assignment for the benefit of his creditors, or if a receiver of his property shall be appointed, or if the work to be done under the Contract shall be abandoned, or if the Contract or any part thereof shall be sublet without the previous written consent of the Town, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the Town's Town Administrator shall be of the opinion that the work, or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract, the Town's Town Administrator, for and in behalf of the Town, may notify the Contractor to discontinue all work, or any part thereof; and thereupon the Contractor shall discontinue such work or such part thereof as the Town's Town Administrator may designate, remove his equipment, tools, supplies and materials as the Town's Town Administrator directs, and the Town may thereupon, by contract or otherwise, as it may determine, complete the work, or such part thereof, and charge the entire expense of so completing the work or any part thereof to the Contractor.

- b. If the Town's Town Administrator shall certify by written notice to the Contractor that the rate of progress is not satisfactory, the Town may, instead of notifying the Contractor to discontinue all of the work or any part thereof, notify him from time to time to increase the force, equipment and plant, or any of them, employed on the whole or any part of the work, stating the amount of increase required. Unless the Contractor shall, within five days after such notice, increase his force, equipment and plant to the extent required therein, and maintain and employ the same from day to day until the completion of the work or such part thereof, or until the conditions of the work or such part thereof, or until the conditions as to the rate of progress shall, in the opinion of the Town's Town Administrator, be fulfilled, the Town may employ and direct the labors of such additional force, equipment and plant as may, in the opinion of the Town's Town Administrator, be necessary to insure the completion of the work or such part thereof within the time specified or at the earliest possible date thereafter, and charge the expense thereof to the Contractor. Neither the notice from the Town's Town Administrator to the Contractor to increase his force, equipment or plant nor the employment of additional force, equipment or plant by the Town shall be held to prevent a subsequent notice to the Contractor from the Town to discontinue the work under the provisions of the preceding portion of this section.
- c. All expenses charged under this section shall be deducted by the Town out of moneys then due or to become due the Contractor under this Contract, or any part thereof. In such accounting the Town shall not be obligated to obtain the lowest figures for the work of completed the Contract or any part thereof, or for insuring its proper completion, and all sums actually paid by the Town shall be charged to the Contractor. If the expense so charged is greater than the sum which would have been payable under the Contract, if the same had been completed by the Contractor, then the Contractor shall pay the amount of the excess to the Town upon completion of the work and without further demand being made therefor.
- d. This contract may be terminated at any time for the convenience of the Town at the option of the Town by delivering or mailing to the Contractor at the Contractor's business address a written notice of termination setting forth the date, not less than seven (7) days after the date of such delivery or mailing; when such termination for convenience occurs, the Contractor shall be compensated for all services rendered to the effective date of said termination in accordance with the rates of compensation specified in this contract.
- e. The Contractor shall not be relieved of liability to the Town by virtue of any termination of this Contract and any claim for damages against the Contractor relating to the Contractor's performance under this Contract shall survive any termination hereunder.

Authority to Authorize Change Orders and Adjustments: The Contractor shall perform all the work required in conformity with the plans and specifications provided by the Town. This Contract may be amended only by a written Change Order, mutually agreed upon and duly executed by the parties hereto. No modifications, waiver or alternation of the Contract or any term herein shall be enforceable unless it is in writing, as a Change Order, and duly executed

by both the Town and the Contractor. An executed Change Order shall constitute a final settlement of all matters relating to the change in the work that is the subject of the Change Order.

Assignment: The Contractor shall not assign, subcontract, or in any way transfer any interest in this Contract without the prior written consent of the Town.

Massachusetts Law: This Contract shall be construed in accordance with and shall be governed by the laws of the Commonwealth of Massachusetts. Wherever applicable law mandates the inclusion of any term into a contract for the Project, this Contract shall be deemed to include such term or. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities, towns and/or Towns, such law or regulation shall control.

Prevailing Wages: This Contract is subject to the Massachusetts Prevailing Wage Statute, M.G.L. c. 149, § 27 and the Contractor shall pay applicable wages as set forth in the schedule of wages included in the Bidding Documents.

REAP Certification: Pursuant to M.G.L. c. 62C, § 49A, the individual signing this Contract on behalf of the Contractor certifies, under the penalties of perjury, that, to the best of his/her knowledge and belief, the Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Conflict of Interest: The Contractor's attention is called to M.G.L. c. 268A. The Contractor shall not act in collusion with any Town officer, agent, employee, or any party regarding this Contract, nor shall the Contractor make gifts regarding this Contract or any other matter in which the Town has a direct or substantial interest.

Independent Contractor: The Town and the Contractor intend that the relationship established between them pursuant to this Contract shall be that of client and independent contractor. No agent, employee, or servant of the Contractor shall be or shall be deemed to be an employee, agent or servant of the Town. For the limited purposes of M.G.L. c. 268A, the Contractor shall be considered a "municipal employee."

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

Notices: All notices under this Contract shall be in writing and shall be deemed received (i) upon delivery in hand, (ii) one business day after being sent by reputable overnight delivery or courier service providing for receipted delivery, or (iii) two business days after being sent by certified or registered mail, return receipt requested, postage prepaid, or (iv) the same business day after being sent by facsimile with confirmation of receipt; and addressed as follows:

To the Town:

Town Administrator
511 Main Street
Dunstable, MA 01827

To the Contractor:

Entire Contract: This Contract constitutes the entire Contract between the parties with respect to the matters addressed herein.

[Signatures on Next Page]

EXECUTED by the parties and effective as of the date first written above.

TOWN OF DUNSTABLE

By: _____,
Town Administrator, Duly Authorized by
Vote of the Dunstable Board of Selectmen on

By: _____
Name:
Title:

[Attach evidence of Authority]

Certification Pursuant to M.G.L. c. 44, § 31C:

Funds for this Contract are available

in Account No. _____

By: _____

EXHIBIT A

PROJECT DESCRIPTION

EXHIBIT B

Statutory Provisions for Public Construction Contracts in Massachusetts

The following provisions are required by or are intended to be consistent with requirements of Massachusetts statutes governing public construction contracts in the Commonwealth of Massachusetts (hereinafter referred to as the "Commonwealth"). Any other provisions required by statute to be included herein shall be deemed to be so included. In addition, the parties recognize that other rights, duties, and obligations with respect to public construction contracts are provided for by statute, notwithstanding the fact that they are not provided for in the Contract.

In case of conflict between the provisions of these Statutory Provisions and other provisions in the Contract, the provisions of these Statutory Provisions shall govern. In case of conflict between the provisions of these Statutory Provisions and the provisions of any applicable statute, the statutory provisions shall govern.

Where the terms "Awarding Authority" or "Contracting Authority" appear in the following paragraphs, it shall be taken as meaning the Town. Where the term "General Contractor" appears in the following paragraphs, it shall be taken as meaning the Contractor.

ARTICLE I - PAYMENT, CONTRACT ADMINISTRATION, etc.

- 1.1 Specifications – "or equal" (Statutory reference: c. 30, §39M). Where products or materials are prescribed by manufacturer name, trade name, or catalog reference, the word "or approved equal" shall be understood to follow. An item shall be considered equal to the item so named or described if, in the opinion of the Architect:
- a. it is at least equal in quality, durability, appearance, strength and design;
 - b. it performs at least equally the function imposed in the general design for the Work; and
 - c. it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the specifications.

Any structural or mechanical changes made necessary to accommodate substituted equipment under this paragraph shall be at the expense of the Contractor or Subcontractor responsible for the Work item. See other paragraphs of General and Supplement to General Conditions for procedures to be used in determining compliance with the standards of this paragraph.

- 1.2 Delays. (Statutory reference: c.30, §39O). This Paragraph 1.2 applies to every contract subject to M.G.L. c.30, §39M and to every contract subject to c.149, §§44A through 44H.

Except as otherwise provided by law and by this Paragraph 1.2, the Contractor shall not be entitled to damages on account of any hindrances or delays, avoidable or unavoidable; but if such delay be occasioned by the Awarding Authority, the Contractor may be entitled to an extension of time only, in which to complete the Work, to be determined by the Architect. In the event a suspension, delay, interruption or failure to act of the Awarding Authority increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the

Contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the Contractor against the Awarding Authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the Contractor or the Subcontractor may have against each other.

- (a) The Awarding Authority may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Awarding Authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the Awarding Authority to act within the time specified in this Contract, the Awarding Authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the 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 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 Contractor notified the Awarding Authority in writing of the actor failure to act involved in the claim.

1.3 Deviations. (Statutory reference: M.G.L. c.30, §39I). This Paragraph 1.3 applies to every contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public building or public works for the Commonwealth or any political subdivision thereof.

The Contractor shall perform all the Work required by this contract in conformity with the plans and specifications contained herein. No willful and substantial deviation from said plans and specifications shall be made unless authorized in writing by the Awarding Authority or by the engineer or architect in charge of the Work who is duly authorized by the Awarding Authority to approve such deviations. In order to avoid delays in the prosecution of the Work required by such contract such deviation from the plans or specifications may be authorized by a written order of the Awarding Authority or such engineer or architect so authorized to approve such deviation. Within thirty days thereafter, such written order shall be confirmed by a certificate of the Awarding Authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination, and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that either the Work substituted for the Work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the Awarding Authority and the Contractor and the amount in dollars of said adjustment; and (4) that the deviation is in the best interest of the Awarding Authority. Such certificate shall be signed under the penalties of perjury and shall be a permanent part of the file record of the Work contracted for.

- 1.4 Finality of Decisions by Awarding Authority or Architect (Statutory reference: M.G.L. c.30, §39J). This Paragraph 1.4 applies to every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public works by the Commonwealth or by any county, city, district, board, commission, or other public body, when the amount of the contract exceeds the amount stated in M.G.L. c.30, §39J.

Notwithstanding any contrary provision of this contract, no decision by the Awarding Authority or by the Architect on a dispute, whether of fact or of law, arising under said contract shall be final or conclusive if such decision is made in bad faith, fraudulently, capriciously, or arbitrarily, is unsupported by substantial evidence, or is based upon error of law.

- 1.5 Differing Site Conditions (Statutory reference: M.G.L. c.30, §39N). This Paragraph 1.5 applies to every contract subject to M.G.L. c.30, §39M and to every contract subject to M.G.L. c.149, §§44A through 44H.

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 Awarding 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 Awarding 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 Awarding Authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

- 1.6 Timely Decision by Awarding Authority (Statutory reference: M.G.L. c.30, §39P). This Paragraph 1.6 applies to every contract subject to M.G.L. c.30, §39M and to every contract subject to M. G. L. c.149, §§44A through 44H.

In every case in which this contract requires the Awarding Authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the Work, the decision shall be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the Awarding Authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty-day period and the date by which the decision will be made.

- 1.7 Certificate of Appropriation (Statutory reference: M.G.L. c.44, §31C). This Paragraph 1.7 applies to contracts for construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public work by any city or town costing more than the amount set forth in M.G.L. c.44, §31C.

This contract shall not be deemed to have been made until the auditor or accountant or other official of the city or town having similar duties has certified thereon that an appropriation in the amount of this contract is available therefor. No order to the Contractor for a change in or addition to the Work, whether in the form of a drawing, plan, detail or any other written instruction, unless it is an order which the Contractor is willing to perform without any increase in the contract price, shall be deemed to be given until the auditor or accountant, or other officer of the Awarding Authority having similar duties, has certified thereon that an appropriation in the amount of such order is available therefor, but such certificate shall not be taken as an admission by the Awarding Authority of its liability to pay for such Work. The certificate of the auditor or accountant or other officer of the Awarding Authority having similar duties, that an appropriation in the amount of such order is available shall bar any defense by the Awarding Authority on the ground of insufficient appropriation.

1.8 Method of Payment – Building Projects (Statutory reference: M.G.L. c.30, §39K).

Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building by the commonwealth, or by any county, city, town, district, board, commission or other public body, when the amount is more than five thousand dollars in the case of the commonwealth and more than two thousand dollars in the case of any county, city, town, district, board, commission or other public body, shall contain the following paragraph:

Within fifteen days (30 days in the case of the commonwealth, including local housing authorities) after receipt from the Contractor, at the place designated by the Awarding Authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the Awarding Authority will make a periodic payment to the Contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title or to which a subcontractor has title and has authorized the Contractor to transfer title to the Awarding Authority, upon certification by the Contractor that he is the lawful owner and that the materials are free from all encumbrances, but less (1) a retention based on its estimate of the fair value of its claims against the Contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment.

After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the Contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the Awarding Authority, less than one per cent of the original contract price, or (b) the Contractor substantially completes the work and the Awarding Authority takes possession for occupancy, whichever occurs first, the Awarding Authority shall pay the Contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the Contractor to the subcontractors under this contract if such record of payment indicates that the Contractor has not paid subcontractors as provided in section thirty-nine F of MGL c. 30. If the Awarding Authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the Contractor; provided, that no interest shall be due, in any event, on the

amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such a periodic estimate from the Contractor, at the place designated by the Awarding Authority if such a place is so designated. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

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

All periodic estimates shall be submitted to the Awarding Authority, or to its designee as set forth in writing to the Contractor, and the date of receipt by the Awarding Authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and a column listing the amount paid to each subcontractor and sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the Awarding Authority shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.

A certificate of the architect to the effect that the Contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.

Notwithstanding the provisions of this section, at any time after the value of the work remaining to be done is, in the estimation of the Awarding Authority, less than 1 per cent of the adjusted contract price, or the Awarding Authority has determined that the Contractor has substantially completed the work and the Awarding Authority has taken possession for occupancy, the Awarding Authority may send to the general Contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The general Contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the general Contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the Awarding Authority or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the general Contractor by certified mail, return receipt requested, the Awarding Authority may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the general Contractor and such termination shall be without prejudice to any other rights or remedies the Awarding Authority may have under the contract. The Awarding Authority shall note any such termination in the evaluation form to be filed by the Awarding Authority pursuant to the provisions of section 44D of chapter 149.

- 1.9 Direct Payment (Statutory reference: M.G.L. c.30, §39F). This Paragraph 1.9 applies to every contract awarded pursuant to M.G.L. c.149, §§44A through 44H, and (with the exception of Subparagraph 1.9.9) to every contract awarded pursuant to M.G.L. c.30, §39M.
- 1.9.1 Forthwith after the Contractor receives payment on account of a periodic estimate, the Contractor shall pay to each Subcontractor the amount paid for the labor performed and the materials furnished by that Subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Subcontractor by the Contractor.
- 1.9.2 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 Contractor. The 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 Contractor.
- 1.9.3 Each payment made by the Awarding Authority to the Contractor pursuant to Subparagraphs 1.9.1 and 1.9.2 of this Paragraph 1.9 for the labor performed and the materials furnished by a Subcontractor shall be made to the Contractor for the account of that Subcontractor; and the Awarding Authority shall take reasonable steps to compel the 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 Contractor or which is to be included in a payment to the Contractor for payment to the Subcontractor as provided in subparagraphs 1.9.1 and 1.9.2, the Awarding Authority shall act upon the demand as provided in this Paragraph 1.9.
- 1.9.4 If, within seventy days after the Subcontractor has substantially completed the subcontract Work, the Subcontractor has not received from the Contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Awarding Authority as the estimated cost of completing the incomplete and unsatisfactory items of Work, the Subcontractor may demand direct payment of that balance from the Awarding Authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the Awarding Authority, and a copy shall be delivered to or sent by certified mail to the 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 Contractor, the Contractor may reply to the demand. The reply shall be 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 Contractor and of the amount due for each claim made by the Contractor against the Subcontractor.
- 1.9.5 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 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 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 1.9.4. The Awarding Authority shall make further direct payments to the Subcontractor forthwith after the removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this subparagraph.

- 1.9.6 The Awarding Authority shall forthwith deposit the amounts deducted from a direct payment as provided in part (iii) of Subparagraph 1.9.5 in an interest-bearing joint account in the names of the Contractor and the Subcontractor in bank in Massachusetts selected by the Awarding Authority or agreed upon by the Contractor and the Subcontractor and shall notify the Contractor and the Subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the Subcontractor or as determined by decree of a court of competent jurisdiction.
- 1.9.7 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 1.9.6 shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a Subcontractor and out of amounts which later become payable to the Contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the Awarding Authority to the Contractor to the extent of such payment.
- 1.9.8 The Awarding Authority shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph 1.9.6, 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 Contractor.
- 1.9.9. If the Subcontractor does not receive payment as provided in Subparagraph 1.9.1 or if the Contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the Subcontractor and the Subcontractor does not receive payment for same when due less the deductions provided for in Subparagraph 1.9.1, the Subcontractor may demand direct payment by following the procedure in subparagraph 1.9.4 and the Contractor may file a sworn reply as provided in that same Subparagraph. A demand made after the first day of the month following that for which the Subcontractor performed or furnished the labor and materials for which the Subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the Contractor. Thereafter the Awarding Authority shall proceed as provided in Subparagraphs 1.9.5, 1.9.6, 1.9.7 and 1.9.8.
- 1.9.10 Any assignment by a Subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of M.G.L. c.149, §29 shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the Awarding Authority or which are on deposit pursuant to Subparagraph 1.9.6 shall be subordinate to the rights of all Subcontractors who are entitled to be paid under this section and who have not been paid in full.

- 1.9.11 "Subcontractor" as used in this Paragraph 1.9, (i) for contracts awarded as provided in M.G.L. C.149, §§44A-44H, inclusive, shall mean a person who files a sub-bid and receives a subcontract as a result of that filed sub-bid or who is approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor, (ii) for contracts awarded as provided in M.G.L. c.30, §39M, paragraph (a) shall mean a person approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor, and (iii) for contracts with the Commonwealth not awarded as provided in M.G.L. c.149, §§44A-44H, inclusive, shall also mean a person contracting with the Contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars (\$5,000.00).
- 1.9.12 A Contractor or a Subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposited as provided in subparagraph 1.9.6 by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A Subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in subparagraph 1.9.6 by a petition in equity in the superior court against the awarding authority and the Contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. M.G.L. c.231, §§59 and 59B shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to §§59 and 59B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any Subcontractor with the petition of one or more Subcontractors or the same general contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a Subcontractor filing a demand for direct payment for which no funds due the Contractor are available for direct payment shall have a right to file a petition in a court of equity against the awarding authority claiming a demand for direct payment is premature, and such Subcontractor must file the petition before the awarding authority has made a direct payment to the Subcontractor and has made a deposit of the disputed portion as provided in part (iii) of Subparagraph 1.9.5 and in Subparagraph 1.9.6.
- 1.9.13 In any petition to collect any claim for which a Subcontractor has filed a demand for direct payment the court shall, upon motion of the Contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority as provided in part (iii) of Subparagraph 1.9.5 and in Subparagraph 1.9.6 any amount held under a trustee writ or pursuant to a restraining order or injunction.

Payments – Public Works Projects (Statutory Reference: MGL Section 39G).

- 1.9.14 Upon substantial completion of the work required by a contract with the commonwealth, or any agency or political subdivision thereof, for the construction, reconstruction, alteration, remodeling, repair or improvement of public ways, including bridges and other highway structures, sewers and, water mains, airports and other public works, the contractor shall present in writing to the awarding authority its certification that the work has been substantially completed. Within twenty-one days thereafter, the awarding authority shall present to the

contractor either a written declaration that the work has been substantially completed or an itemized list of incomplete or unsatisfactory work items required by the contract sufficient to demonstrate that the work has not been substantially completed. The awarding authority may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the contract completion date, within which the contractor must achieve substantial completion of the work. In the event that the awarding authority fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the contractor's certification within the twenty-one day period, the contractor's certification shall take effect as the awarding authority's declaration that the work has been substantially completed.

- 1.9.15 Within sixty-five days after the effective date of a declaration of a substantial completion, the awarding authority shall prepare and forthwith send to the contractor for acceptance a substantial completion estimate for the quantity and price of the work done and all but one per cent retainage on that work, including the quantity, price and all but one per cent retainage for the undisputed part of each work item and extra work item in dispute but excluding the disputed part thereof, less the estimated cost of completing all incomplete and unsatisfactory work items and less the total periodic payments made to date for the work. The awarding authority also shall deduct from the substantial completion estimate an amount equal to the sum of all demands for direct payment filed by subcontractors and not yet paid to subcontractors or deposited in joint accounts pursuant to section thirty-nine F, but no contract subject to said section thirty-nine F shall contain any other provision authorizing the awarding authority to deduct any amount by virtue of claims asserted against the contract by subcontractors, material suppliers or others.
- 1.9.16 If the awarding authority fails to prepare and send to the contractor any substantial completion estimate required by this section on or before the date herein above set forth, the awarding authority shall pay to the contractor interest on the amount which would have been due to the contractor pursuant to such substantial completion estimate at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston from such date to the date on which the awarding authority sends that substantial completion estimate to the contractor for acceptance or to the date of payment therefor, whichever occurs first. The awarding authority shall include the amount of such interest in the substantial completion estimate.
- 1.9.17 Within fifteen days after the effective date of the declaration of substantial completion, the awarding authority shall send to the contractor by certified mail, return receipt requested, a complete list of all incomplete or unsatisfactory work items, and, unless delayed by causes beyond his control, the contractor shall complete all such work items within forty-five days after the receipt of such list or before the then contract completion date, whichever is later. If the contractor fails to complete such work within such time, the awarding authority may, subsequent to seven days' written notice to the contractor by certified mail, return receipt requested, terminate the contract and complete the incomplete or unsatisfactory work items and charge the cost of same to the contractor.
- 1.9.18 Within thirty days after receipt by the awarding authority of a notice from the contractor stating that all of the work required by the contract has been completed, the awarding authority shall prepare and forthwith send to the contractor for acceptance a final estimate for the quantity and price of the work done and all retainage on that work less all payments made to date, unless the awarding authority's inspection shows that work items required by the contract remain incomplete or unsatisfactory, or that documentation required by the contract has not been completed. If the awarding authority fails to prepare and send to the contractor the final estimate within thirty days after receipt of notice of completion, the awarding authority shall pay to the

contractor interest on the amount which would have been due to the contractor pursuant to such final estimate at the rate hereinabove provided from the thirtieth day after such completion until the date on which the awarding authority sends the final estimate to the contractor for acceptance or the date of payment therefor, whichever occurs first, provided that the awarding authority's inspection shows that no work items required by the contract remain incomplete or unsatisfactory. Interest shall not be paid hereunder on amounts for which interest is required to be paid in connection with the substantial completion estimate as hereinabove provided. The awarding authority shall include the amount of the interest required to be paid hereunder in the final estimate.

- 1.9.19 The awarding authority shall pay the amount due pursuant to any substantial completion or final estimate within thirty-five days after receipt of written acceptance for such estimate from the contractor and shall pay interest on the amount due pursuant to such estimate at the rate hereinabove provided from that thirty-fifth day to the date of payment. Within 15 days, 30 days in the case of the commonwealth, after receipt from the contractor, at the place designated by the awarding authority, if such place is so designated, of a periodic estimate requesting payment of the amount due for the preceding periodic estimate period, the awarding authority shall make a periodic payment to the contractor for the work performed during the preceding periodic estimate period and for the materials not incorporated in the work but delivered and suitably stored at the site, or at some location agreed upon in writing, to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances. The awarding authority shall include with each such payment interest on the amount due pursuant to such periodic estimate at the rate herein above provided from the due date. In the case of periodic payments, the contracting authority may deduct from its payment a retention based on its estimate of the fair value of its claims against the contractor, a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and a retention to secure satisfactory performance of the contractual work not exceeding five per cent of the approved amount of any periodic payment, and the same right to retention shall apply to bonded subcontractors entitled to direct payment under section thirty-nine F of chapter thirty; provided, that a five per cent value of all items that are planted in the ground shall be deducted from the periodic payments until final acceptance.
- 1.9.20 No periodic, substantial completion or final estimate or acceptance or payment thereof shall bar a contractor from reserving all rights to dispute the quantity and amount of, or the failure of the awarding authority to approve a quantity and amount of, all or part of any work item or extra work item.
- 1.9.21 Substantial completion, for the purposes of this section, shall mean either that the work required by the contract has been completed except for work having a contract price of less than one per cent of the then adjusted total contract price, or substantially all of the work has been completed and opened to public use except for minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the work required by the contract.

ARTICLE 2 - WAGES AND EMPLOYMENT PRACTICES

- 2.1 Preference To Veterans and Citizens In Public Works; Rate of Wages. (Statutory reference: M.G.L. c.149, §26). This Paragraph applies to every contract or subcontract for the construction of public works by the Commonwealth or by a county, town or district, or by persons contracting or subcontracting for such works.

- 2.1.1 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, authority or district, or by persons contracting or subcontracting such work, 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 M.G.L. c.4, §7, clause 43, 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 provision to this effect. Each county, town, authority or district in the construction of public works, or persons contracting or subcontracting for such works, shall give preference to veterans and citizens who are residents of such county, town or district.
- 2.1.2 The rate per hour of the wages paid to said mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works shall not be less than the rate or rates of wages to be determined by the Commissioner of Labor and Industries as hereinafter provided; provided, that the wages paid to laborers employed on said works shall not be less than those paid to laborers in the municipal service of the town or towns where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more towns, the wages paid to laborers shall not be less than those paid to laborers in the municipal service of the town paying the highest rate; provided further, that if, in any of the towns where the works are to be constructed, a wage rate or wage rates have been established in certain trades and occupations by collective agreements or understandings between organized labor and employers, the rate or rates to be paid on said works shall not be less than the rates so established; provided, further, that in towns where no such rate or rates have been so established, the wages paid to mechanics, teamsters, chauffeurs and laborers on public works, shall not be less than the wages paid to the employees in the same trades and occupations by private employers engaged in the construction industry. This section shall also apply to regular employees of the Commonwealth or of a county, town, authority or district, when such employees are employed in the construction, addition to or alteration of public buildings for which special appropriations of more than one thousand dollars are provided. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.
- 2.2 List of Jobs; Classifications; Determination of Rate of Wages; Schedule. (Statutory reference: M.G.L. c.149, §27). This Paragraph applies to every contract or subcontract for the construction of public works by the Commonwealth, or by a county, town or district.

The Commissioner of Labor and Industries shall prepare, for the use of such public officials or public bodies whose duty it shall be to cause public works to be constructed, a list of the several jobs usually performed on various types of public works upon which mechanics and apprentices, teamsters, chauffeurs and laborers are employed, including the transportation of gravel or fill to the site of said public works, or the removal of surplus gravel or fill from such site. The Commissioner shall classify said jobs, and he may revise such classifications from time to time, as he may deem advisable. Prior to awarding a contract for the construction of public works, said public official or public body shall submit to the Commissioner a list of the jobs upon which mechanics and apprentices, teamsters, chauffeurs, and laborers are to be employed, and shall request the Commissioner to determine the rate of wages to be paid on each job. Said rates shall apply to all persons engaged in transporting gravel or fill to the site of said public works or

removing gravel or fill from such site, regardless of whether such persons are employed by a contractor or subcontractor, or are independent contractors or owner-operators. The Commissioner, subject to the provisions of Paragraph 2.1 of these Statutory Conditions, shall proceed forthwith to determine the same, and shall furnish said official or public body with a schedule of such rate or rates of wages as soon as said determination shall have been made. In advertising or calling for bids for said works, the awarding official or public body shall incorporate said schedule in the advertisement or call for bids by an appropriate reference thereto, and shall furnish a copy of said schedule without cost, to any person requesting the same. Said schedule shall be made a part of the contract for said works and shall continue to the minimum rate or rates of wages for said employees during the life of the contract. Any person engaged in the construction of said works shall cause a legible copy of said schedule to be kept posted in a conspicuous place at the site of said works during the life of the contract. The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in the previous section, and such payments shall be considered as payments to persons under this section performing Work as herein provided. Any employer engaged in the construction of such works who does not make payments to a health and welfare plan, a pension plan and a supplementary unemployment benefit plan, where such payments are included in said rates of wages, shall pay the amount of said payments directly to each employee engaged in said construction. Whoever shall pay less than said rates of wages, including payments to health and welfare funds and pension funds, or the equivalent payment in wages, on said works, to any person performing the Work within classifications as determined by the Commissioner of Labor and Industries, and whoever, for himself, or as representative, agent or officer of another, shall take or receive for his own use or the use of another person, as a refund, rebate or gratuity, or in any other guise, any part or portion of the wages, including payments to health and welfare funds and pension funds, or the equivalent payment in wages, paid to any such person for Work done or service rendered on said public works, shall be punished or shall be subject to a civil citation or order as provided in M.G.L. c. 149, §27C. The president or treasurer of a corporation and any officers or agents having the management of such corporation shall also be deemed to be employers of the employees of any corporation within the meanings of M.G.L. c. 149, §27B, inclusive.

When an investigation by the attorney general's office reveals that a Contractor or Subcontractor has violated this section by failing to pay said rates of wages, including payments to health and welfare funds and pensions funds, or the equivalent payment in wages, on said works to any person performing work within classifications as determined by the Commissioner of Labor and Industries, or that a Contractor or Subcontractor has, for himself, or as a representative, agent or officer of another, taken or received for his own use or the use of any other person, as a rebate, refund or gratuity, or in any other guise, any portion of the wages, including payments to health and welfare funds and pension funds, or the equivalent payment in wages, paid to any such person for work done or service rendered on said public works, the attorney general may, upon written notice to the Contractor or Subcontractor, and after a hearing thereon, order work halted on the part of the contract on which such wage violations occurred, until the defaulting Contractor or Subcontractor has filed with the attorney general's office a bond in the amount of such penal sum as the attorney general shall determine, conditioned upon payment of said rate or rates of wages, including payments to health and welfare funds and pension funds, or the equivalent in wages, on said works to any person performing work within classifications as determined by the Commissioner of Labor and Industries.

Any employee claiming to be aggrieved by a violation of this section may, at the expiration of ninety days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within three years of such violation, institute and prosecute in his

own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief and any damages incurred, including treble damages for any loss of wages and other benefits. Any employee so aggrieved and who prevails in such an action shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees.

2.3 Employment Records To Be Kept By Contractor, Subcontractors; Statement Of Compliance. (Statutory reference: M.G.L. c.149, §27B). This Paragraph applies to every contract or subcontract for the construction of public works by the Commonwealth, or by a county, town or district.

Every contractor, subcontractor or public body engaged in said public works to which Paragraph 2.2 of these Statutory Conditions applies 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 of Labor and Industries, 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 of Labor and Industries 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 or by any authorized officer or employee of the Contractor, Subcontractor or public body who supervises the payment of wages, in the following form:

_____, 20__

(Date)

STATEMENT OF COMPLIANCE

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 Contractor for such inspections.

2.4 Wages of Operators of Rented Equipment; Agreements; Penalty. (Statutory reference: M.G.L. c.149, §27F). This Paragraph applies to every contract for the construction of public works by the Commonwealth, or by a county, city, town or district.

No agreement of lease, rental or other arrangement, and no order or requisition under which a truck or any automotive or other vehicle or equipment is to be engaged in public works by the commonwealth or by a county, city, town or district, shall be entered into or given by any public official or public body unless said agreement, order, or requisition contains a stipulation requiring rates of wages, as determined by the commissioner, to be paid to the operator of said trucks, vehicles, or equipment. Any such agreement, order, or requisition which does not contain said stipulation shall be invalid, and no payment shall be made thereunder. Said rates of wages shall be requested of said commissioner by said public official or public body, and shall be furnished by the commissioner in a schedule containing classifications of jobs, and the rate of wages to be paid for each job. Said rates of wages shall include payments to health and welfare plans, or, if no such plan is in effect between employers and employees, the amount of such payments shall be paid directly to said operators.

Whoever shall pay less than said rates of wages, including payments to health and welfare funds, or the equivalent payment in wages, on said works, and whoever accepts for his own use, or for

the use of any other person, as a rebate, gratuity, or in any other guise, any part or portion of said wages or health and welfare funds, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in M.G.L. c. 149, §27C.

- 2.5 Reserve Police Officers. (Statutory reference: M.G.L. c.149, §34B). This Paragraph 2.5 applies to every contract for the construction, alteration, maintenance, repair or demolition of, or addition to, any public works for the Commonwealth or any political subdivision thereof.

The Contractor shall pay to any reserve police officer employed by him in any city or town the prevailing rate of wages paid to regular police officers in such city or town.

- 2.6 Eight-Hour Day, etc. (Statutory reference: M.G.L. c.149, §§30, 34, and 34A). This Paragraph 2.6 applies only to contracts which are subject to the provisions of the aforesaid Sections of the Massachusetts General Laws.

No laborer, worker, mechanic, foreman or inspector working within this Commonwealth in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or 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 extraordinary emergency.

- 2.7 Lodging, etc. (Statutory reference: M.G.L. c.149, §25) This Paragraph applies to every contract for the doing of public Work with the Commonwealth, a county, city, or town, or with a department, board, commission, or officer acting therefor.

Every employee under this contract shall lodge, board and trade where and with whom he elects, and neither the Contractor nor his agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.

- 2.8 Access to Contractor's Records. (Executive Order No. 195). This paragraph applies to every contract for the purchase of services or materials by any agency, bureau, board, commission, institution, or department of the Commonwealth.

The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the Contractor which pertain to the performance and requirements of this contract.

- 2.9 Worker's Compensation Insurance. (Statutory reference: M.G.L. c.149, §34A). This Paragraph 2.9 applies to 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.

The Contractor shall, before commencing performance of the contract, provide by insurance for the payment of compensation and the furnishing of other benefits under M.G.L. c.152 to all persons to be employed under the contract, and the Contractor shall continue such insurance in full force and effect during the term of the contract. Sufficient proof of compliance with this Paragraph 2.9 must be furnished at the time of execution of this contract. 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 Awarding Authority at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.

3.0 OSHA Training. (Statutory reference: MGL c. 30, §39S).

(a) As used in this section the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. Any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, alteration, remodeling or repair of any public work by the commonwealth, or political subdivision thereof, or by any county, city, town, district, or housing authority, and estimated by the awarding authority to cost more than \$10,000, and any person submitting a bid for, or signing a contract to work on, the construction, reconstruction, installation, demolition, maintenance or repair of any building by a public agency, estimated to cost more than \$10,000, shall certify on the bid, or contract, under penalties of perjury, as follows:

(1) that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;

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

(3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

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

ARTICLE 3 - EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

(Statutory reference: M.G.L. c.151 B; Executive Orders No. 74, No. 116, and No. 246)

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

3.2 Non-Discrimination and Affirmative Action Requirements. During the performance of his contract, the Contractor and all of (his) Subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:

3.2.1 In connection with the performance of Work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious

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

- 3.2.2 In connection with the performance of Work under this contract, the Contractor shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.
- 3.3. Non-Discrimination. The Contractor, in the performance of all Work after award, and prior to completion of the contract Work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of Subcontractors, or in the procurement of materials and rentals of equipment.
- 4.0 Records. The Contractor shall maintain records for the Project in accordance with the requirements of MGL c. 30 § 39R.

[If the Contract Sum is more than \$25,000, the attached form of Payment Bond must completed and in an amount no less than 50% of the total Contract Sum, or a greater amount if required by Bid Specifications/Requirements]

CONTRACTOR'S PAYMENT BOND

PROJECT: _____

PROJECT LOCATION: _____, MASSACHUSETTS

AWARDING AUTHORITY: TOWN OF DUNSTABLE, MASSACHUSETTS

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____

as Principal, and _____

Surety, are held and firmly bound unto the Awarding Authority,

as Obligee, in the sum of

_____ Dollars,

(words)

\$ _____

(figures)

to be paid to the Obligee, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the said Principal has made a Contract with the Obligee, bearing the date of _____, 20____, for the completion of the Project.

The conditions of this obligation are such that, if the Principal and all Subcontractors under said Contract shall pay for all labor performed or furnished and for all materials used or employed in said Contract and in all duly authorized modifications, alterations, extensions of time, changes, or additions to said Contract that may be made, notice to the Surety of such modifications, alterations, extensions of time, changes, or additions being hereby waived, the foregoing to include any other purposes or items set out in, and to be subject to, provisions of M.G.L. c.30, §39A, and M.G.L. c.149, §29, as amended, then this obligation shall become void; otherwise, it shall remain in full force and virtue.

In witness whereof, the Principal and Surety have set their hands and seals this

_____ day of _____, 20__.

PRINCIPAL

SURETY

(Name and Seal)

(Attorney-in-Fact – Seal)

(Title)

Attest: _____

Attest: _____

END OF DOCUMENT