

**CITY OF EVERETT
MASSACHUSETTS**

CONTRACT DOCUMENTS
FOR

**2023 Roadway Rehabilitation and Related Work
FULL DEPTH RECONSTRUCTION**



Purchasing Department
Allison Jenkins
Chief Procurement Officer
Everett City Hall
484 Broadway, Room 14
Everett, MA 02149

Important Notice to Bidders: All bidders must be pre-qualified by the Massachusetts Department of Transportation (MassDOT) as follows: The MassDOT Prequalification Office will provide the city with an official prequalified bidders list and a waiver list for all contractors prequalified in the specified class of work within the parameters of this project. Only those bidders listed in the official prequalified bidders list or waiver lists issued by the MassDOT Prequalification Office will be allowed to submit a bid.

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SECTION 00020

INVITATION TO BID

Sealed bids for furnishing the following ITEMS will be received at the Office of the Purchasing Department, Room 14, City Hall, 484 Broadway, Everett, MA 02149, until the time specified below at which time the bids will be publicly opened and read:

ITEM

BID OPENING

Bid: 2023 Roadway Rehabilitation and Related Work- FULL DEPTH RECONSTRUCTION **July 10, 2023 at 1 p.m.**

In general, this contract consists of: full depth roadway reclamation; hot mix asphalt paving; removal and resetting of existing granite curbing; installation of new granite curbing; construction of new cement concrete sidewalks, and ADA/AAB compliant pedestrian ramps; installation of miscellaneous subsurface structures and associated piping; installation of new rims/grates and frames; removal and resetting of existing rims/grates and frames; tree planting pits; traffic signage; and related work at various locations within the City of Everett.

Work to be done under this contract shall be completed within the 2023 construction season. Work to be done under this contract shall be completed concurrently, and in coordination with, existing and ongoing City roadway and infrastructure improvement contracts. Any bidder currently engaged in a contract with the City of Everett shall not neglect work in one contract in favor of another. The successful Bidder shall be fully able to staff both this contract and any ongoing contracts with the City of Everett with the appropriate amount of superintendence and working staff needed to complete all work expeditiously and within the stipulated contract periods. Contract extensions of time beyond December 31, 2023 shall be granted at the sole discretion of the City of Everett.

Specifications and bid forms may be obtained at the Office of the Purchasing Agent Room 14, City Hall, Monday and Thursday between 8:00 a.m.–7:30 p.m., Tuesday and Wednesday between 8:00 a.m. – 5:00 p.m. or by emailing a request to Allison.jenkins@ci.everett.ma.us starting: **June 21, 2023 after 11 am.**

Bids will be opened in the Office of the Purchasing Agent, City Hall, 484 Broadway, Everett, MA 02149 on **July 10, 2023 @ 1 p.m.** local time.

Each Bid must be accompanied by a bid security consisting of a BID BOND, CASH, or, CERTIFIED CHECK issued by a responsible bank or trust company in the amount of 5% of the bid price.

All bidders must be pre-qualified by the Massachusetts Department of Transportation as follows: The MassDOT Prequalification Office will provide the city with an official prequalified bidder list and a waiver list for all contractors in the specified class of work within the parameters

of this project. Only those bidders listed in the official prequalified bidder list, or the waiver list issued by the MassDOT Prequalification Office will be allowed to obtain an official proposal book.

All bids for this project are subject to applicable public bidding laws of Massachusetts, including G.L. c.30, § 39M, as amended.

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

There will be no pre-bid meeting for this project.

The successful bidder must furnish a 100% Performance Bond and a 100% Payment Bond in the contract sum with a corporate surety approved by the City.

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

The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays, and legal holidays excluded, after the opening of the bids.

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

SECTION 00100

INSTRUCTIONS TO BIDDERS

1. Receipt and Opening of Bids

The City of Everett, Massachusetts, herein called the City, acting by and through its Executive Director of Public Works and Engineering, will receive sealed Bids for the project known as **2023 Roadway Rehabilitation and Related Work-FULL DEPTH RECONSTRUCTION**.

General bids shall be enclosed in a sealed envelope and addressed to: City Hall, 484 Broadway, Room 14, Everett, MA, 02149 and on the outside of the envelope, "**2023 Roadway Rehabilitation and Related Work-FULL DEPTH RECONSTRUCTION**". If the bid envelope will be mailed, the envelope must be enclosed within a second sealed envelope for delivery. Bids will be received at the Purchasing Department until **1:00 p.m. Eastern Standard Time, on July 10, 2023** at which time and place said bids will be publicly opened and read aloud.

Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays, and legal holidays excluded, after the bid opening.

2. Location and Work to be Done

SCOPE OF WORK AND LOCATION OF PROJECT

The street locations to be considered for rehabilitation will be determined by the City after award of the contract. The City of Everett has the right to add to or remove any streets without cause, or change the method of rehabilitation as may be required. The general characteristics and details of the work to be performed under this contract are specified in the contract specifications provided herein.

Drawings, specifications, or other requirements, or responses to written questions of bidders submitted during the bidding period may be furnished by written addendum to the bid and contract documents from time to time during the bidding period by the City or its Engineer and shall then become a part of the Contract Documents.

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

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item. The Contractor shall be fully acquainted with the methods of measurement and basis for payment for all items in the contract.

All quantities are approximate and do not expressly or by implication agree that the actual quantities will correspond therewith, but the City reserves the right to increase or decrease the quantity at any location.

3. Preparation of Bid

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

Failure to complete the bid document adequately including the “Non-Collusion Affidavit”, the “Certificate of Compliance with State Tax Laws and with Unemployment Compensation Contribution Requirements”, and the “Certificate of Vote” may result in the disqualification of the bidder.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his/her address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

All bids shall be accompanied by a bid deposit in the form of a Bid Bond, duly executed and acknowledged by the bidder, as Principal, and by a surety company qualified to do business in the Commonwealth of Massachusetts, or cash, or a certified check, treasurer’s or cashier’s check issued by a responsible bank or trust company to the City of Everett. The amount of such bid deposit shall be 5% of the value of the bid total.

Each such Bid Bond, cash or check may be held by the City as security for the fulfillment of the bidder’s agreements as herein above set forth and as set forth in the bid. Should the bidder fail to fulfill such agreements in his bid, the check or cash shall become the property of the City, or if a Bid Bond was furnished, the Bid Bond shall become payable to the City as liquidated damages, otherwise, the bid security shall be returned to the Bidder.

Where applicable, all bid prices shall include the cost of mobilization of equipment. No extra payment will be made for mobilization to the project locus or movement of equipment from street to street.

4. Bid Opening Procedure

The following list of requirements shall apply to each filed bid. Bids not meeting all the requirements for timeliness and security will be rejected; bids not meeting signature and addenda requirements will be rejected prior to checking of bid amounts. The foregoing notwithstanding, the City reserves the right, to the extent permitted by law, to waive any informality.

All addenda will be posted to the City of Everett’s webpage [Bid Opportunities - Everett, MA - Official Website \(cityofeverett.com\)](http://cityofeverett.com).

5. Modification

Any bidder may modify his/her bid by written communication at any time prior to the scheduled closing time for receipt of bids. Any written or electronic communication must be received by the city prior to the closing time.

6. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the City that he has sufficient ability and experience in this class of work.

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

7. Conditions of Work

Each bidder must familiarize him/her self fully with the conditions relating to the project. Failure to do so will not relieve a successful bidder of his/her obligation to furnish all material and labor necessary to carry out the provisions of this contract.

8. Addenda and Interpretations

All bidders are cautioned to verify the number of Addenda that have been issued and to secure any needed copies from the City before submitting a bid. It is solely each bidder's responsibility to contact the city prior to submitting a bid to ensure that it has received all addenda.

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally.

Every request for such interpretation should be emailed to Allison Jenkins at Allison.jenkins@ci.everett.ma.us at least seven days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda shall become part of the Contract Documents.

9. Security for Faithful Performance

Simultaneously with the delivery of the executed Contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor and materials under this contract as specified in Section 00700, GENERAL CONDITIONS included herein in the amount equal to 100 percent of the bid price. The surety on such bond or bonds shall be a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the City. The bonds shall remain in force for one year after final acceptance of the work by the City, unless the City, in writing, releases the Contractor from the obligation sooner.

10. RESERVED

11. Laws and Regulations

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

12. Goals for Construction:

Minority-owned Business Enterprise (MBE), Women-owned Business Enterprise (WBE) and Equal Opportunity policies of the Massachusetts EEOC are applicable to this Contract. The CONTRACTOR shall comply with all applicable laws and regulations pertaining to nondiscrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

13. Project Inspection:

The Contractor shall make the project site and all project records available to City Department of Public Works (DPW) Director, City Engineer, or the DPW representative for review during the course of the project. The city will periodically monitor the progress of work for its own benefit, and not for the benefit of the Contractor, to ensure that the project is proceeding substantially as defined in the Scope of Work and Project Schedule. This monitoring is not intended to relieve, and under no circumstances shall it relieve, the contractor of his/her responsibility to perform its work in accordance with the Contract Documents and applicable federal, state, and local law and regulations. Refusal by the contractor to allow the City, or its designee, access to the project site and work completed shall result in termination of this contract.

14. Project Audit Provisions:

The City of Everett, the City Engineer or his representative, and the contractor shall maintain books, records, documents, and other evidence directly related to the performance on all work. The City of Everett, the City Engineer or his representative, and the Contractor shall also maintain the financial information and data used by the City Engineer or his representative, and the Contractor in the preparation or support of project invoices and associated progress reports. The City of Everett has the right to request copies of all journals and diaries as well as any financial information, weigh slips, invoices from suppliers, and any other included cost related to this contract.

15. RESERVED

16. Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within 10 days after presentation thereof by the City, shall forfeit to the City, as liquidated damages for such failure or refusal, the security deposited with his/her bid.

17. Contracts with the City that are Underway

Work to be done under this contract shall be completed within the 2023 construction season. Work to be done under this contract shall be completed concurrently and in coordination with existing and ongoing City roadway and infrastructure improvement contracts. Any bidder currently engaged in a contract with the City of Everett shall not neglect work in one contract in favor of another and work on Streets that are started as part of either contract shall not be neglected in either of the contracts. The successful Bidder shall be fully able to staff both this contract and any ongoing contracts with the City of Everett with the appropriate amount of superintendence and working staff needed to complete all work expeditiously and within the stipulated contract periods. At the signing of the Agreement the Contractor shall provide the City with a roster of the superintendents and the working staff that will be assigned to this contract.

18. Obligation of Bidder

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

19. Information Not Guaranteed

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

It is further agreed and understood that no bidder or Contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the City arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents or G.L. c. 30, § 39N.

20. Bid Security

Each bid and sub-bid must be accompanied by bid security in the form of a certified check, a bid bond, cash, or a treasurer's or cashier's check, payable to the City of Everett, in the amount of five (5) percent of the value of the bid. Such check of general bidders will be returned to all except the three lowest responsible and eligible bidders within five days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids, and the remaining securities will be returned promptly after the City and the accepted bidder have executed the Contract, or if no notice of intent to award has been presented to the selected contractor within 30 days, Saturdays, Sundays and holidays excluded, after the date of the opening of bids, upon demand of the bidder at any time thereafter.

21. Right to Reject Bid

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

The city may also reject bids which in its sole judgment are incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities.

22. Time for Completion

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

23. Comparison of Bids

Bids will be compared on the basis of prices set forth in the bid forms.

In the event that there is a discrepancy between the lump sum or unit prices written in words and figures, the unit prices written in words will govern.

24. Award of Contract

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

A Performance and Payment Bond in the amount of One Hundred (100%) percent of the annual contract price will be required for the faithful performance of the Contract. The Contractor shall obtain and submit the bonds within ten (10) days after notification of the bid award. The successful bidder's Bid Bond shall not be released until such time the Performance and Payment Bonds have been posted. Within seven (7) working days of receipt of acceptable Payment Bond and Agreement signed by the party to whom the Agreement was awarded, the City shall sign the Agreement and return to such party an executed duplicate of the Agreement.

25. Statutes Regulating Competitive Bidding

Any bid which does not comply with the provisions of Massachusetts General Laws Chapter 30 Section 39M, as amended, need not be accepted and the City may reject every such bid.

26. Wage Rates

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

27. Contractor Records

The Contractor shall, in addition to any other requirements in the Contract Documents concerning the keeping of records, comply with the provisions of Massachusetts General Laws, Chapter 30, Section 39R concerning Contractor records. (Refer to paragraph 14 of this section).

28. Insurance

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified in the General Conditions and in such form as shall protect him performing work covered by this Contract, and the City of Everett and its employees, agents, officials, and engineering consultant, from all claims of liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. **The City of Everett shall be named as an additional insured on all insurance policies required.** The Contractor covenants and agrees to hold the City and its employees, agents and officials harmless from loss or damage due to claims for bodily injury or death and/or property damage arising from, or in connection with, the contractors' operations under this Contract.

29. Project Manager

A contact person must be designated by the Contractor upon award of the Contract who will be accessible to the City on a twenty-four hour per day basis for the duration of the construction period. The Contractor shall also prepare a contact list of all superintendents and personnel, including sub-contractors, who shall be working on the project and submit to The City a copy of their appropriate licenses along with a phone number where they can be reached in case of emergency.

30. Payroll

Payroll Records, Labor, Maximum Hours of Employment:

No laborer, workman, mechanic, foreman or inspector working within this Commonwealth, in the employ of the Contractor, Sub-contractor or other persons doing or contracting to do the whole or a part of the work contemplated by this Contract, shall be required or permitted to work no more than eight (8) hours in any one day or no more than 48 hours in any one week, or no more than six (6) days in any one week, except in cases of emergency, or in case any City subject to Section 149 of the General Laws is a party to such a Contract, more than eight (8) hours in any one day, except as aforesaid. The City or the Contractor or any Subcontractor may employ laborers, workmen, mechanics, foreman and inspectors for more than eight (8) hours in any one day in the work to be done or under Contract when in the opinion of the Commissioner of Labor and Industries, public necessity so require. (Chapter 149, Section 34 of the General Laws, as amended).

Attention of Bidders is called to Section 148 of Chapter 149 of the General Laws and amendments thereof requiring the weekly payment of employees.

Contractor shall furnish certified copies of any or all payrolls for the Contract, showing the name, address, and occupational classification of each employee on said works, and the hours worked by, and the wages paid each such employee in accordance with the Massachusetts Department of Labor and Industries. Such payroll shall also include the rates paid for rented trucks or rental equipment of any kind used on the work. Such records shall be kept in such manner as the Commissioner of Labor and Industries shall prescribe and shall be open to inspection by the City Engineer or any authorized representative of the Department of Labor and Industries at any reasonable time and as often as may be necessary.

31. Buy American

The Contractor agrees that preference will be given to domestic construction material by the Contractor, Subcontractor, material, and suppliers in the performance of this Contract.

32. Compliance with Laws

The Contractor shall keep himself fully informed of all existing and future Federal, State and Local Laws, ordinances, rules and regulations affecting those engaged or employed on the Work, the materials and equipment used in the Work or the conduct of the Work, and of all orders, decrees and other requirements of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or other Contract Documents in relation to any such law, ordinance, rule, regulation, order, decree or other requirement, the Contractor shall forthwith report to the City in writing before it submits its bid to the City, failing which the consequences of any such discrepancy or inconsistency shall be borne solely by the bidder if it is selected as the successful bidder. The Contractor shall at all times observe and comply with, and cause all his agents, servants and employees to observe and comply with all such existing and future laws, ordinances, rules, regulations, orders, decrees and other requirements and he shall protect, indemnify and save harmless the City, its officers, agents, servants, employees and the Department of Public Works from and against any and all claims, demands, suits, liabilities, judgments, penalties, losses, damages, costs and expenses, including attorney's fee, arising from or based upon any violation or claimed violation of any such law, ordinance, rule regulation, order, decree or other requirements, whether committed by the Contractor or any of his agents, servants or employees.

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

This project is subject to the Safety and Health Regulations of the U.S. Department of Labor set forth in Title 29 CFR, Part 1926 and to all subsequent amendments, and to the Massachusetts Department of Labor and Industries, Division of Industrial Safety "Rules and Regulations for the Prevention of Accidents in Construction Operations" (Chapter 454 CMR 10.00 et seq.). Contractors shall be familiar with the requirements of these regulations.

33. Massachusetts Sales and Use Tax

Materials and supplies to be used in the work of this contract are exempt from the Sales Tax of the Commonwealth of Massachusetts.

34. Method of Payment to Contractor

The City, so long as the Contractor continues to carry on the Work, shall make **monthly payments** therefore as follows: Each month prior to the completion of the work done to date of the estimate and thereupon the City shall deduct such estimate five percent (5%) thereof, and shall pay the balance of such estimate to the Contractor. Thirty (30) days after the satisfactory completion of the Work as determined by the City Engineer or his designee, the City shall pay the Contractor the final amount due and remaining to be paid under this Contract, deducting from said amount and keeping for its own, any expense incurred by the City on account of defects, omissions, or mistakes of the Contractor in his Work. Provided, however, that no final payment shall be made until all liens and claims against the City and its officers, due to the work, are satisfied.

35. Patented Devices, Materials and Processes

It is mutually understood and agreed that, without exception, contract prices are to include all royalties and costs arising from patents, trademarks and copyrights in any way involved in the work. It is the intent that whenever the Contractor is required or desires to use any design, device, material, or process covered by letters patent or copyright, the rights for such use shall be provided for by suitable legal agreement with the patentee or City's.

36. Utility Company Coordination

Written notice shall be given by the Contractor to all public service corporations or officials owning or having charge of publicly or privately owned utilities of his/her intention to commence operations affecting such utilities at least one (1) month in advance of the commencement of such operations that may affect their utilities and the Contractor shall at the same time file a copy of such notice with the City Engineer, or his designee.

37. Contractor Parking

The Project Areas are predominantly residential with minimal parking available. Therefore, the Contractor and his employees, subcontractors, and their employees, shall not park personal vehicles within the Project Areas.

38. Dig Safe

The Contractor shall notify "Mass. Dig Safe" and procure a DIG SAFE number for each location at least 72 hours in advance of starting any construction.

"DIG SAFE" Call Center: Telephone (811) or 1-888-344-7233.

FORM OF GENERAL BID
CONTRACT NO. 24-07

To - The City of Everett, acting by the mayor, as Awarding Authority.

- A. The undersigned proposes to furnish all labor, materials and equipment to do all necessary work under this contract for the City of Everett, Massachusetts acting by its mayor and in accordance with the accompanying specifications provided by the **Department of Public Works**, Everett, Massachusetts for the sum specified below, subject to additions and deductions according to the contract document and in all respects according to the terms thereof.

- B. The undersigned declares that no person in the employ of said City has any pecuniary interest in this proposal or in the contract for the work he proposes to do and that he understands and agrees that the City, its agents and employees, are not to be in any manner held responsible for the accuracy of, or bound by, any estimates or plans relating to the work and that if any have been given or made they are to be considered solely as a base for filling out and comparing the several proposals.

- C. The undersigned agrees that he will within seven (7) days, Sundays and holidays excluded, after receipt of a notice of award by the Department of Public Works, execute the contract in triplicate, and furnish the required insurance certificates and performance bond, plus a labor and materials bond, as required by the contract documents, the premiums for which are to be paid by the contractor and are included in the contract price.

- D. The undersigned agrees that the time for completion for all work required by this contract shall December 31, 2023, weather permitting, commencing within seven (7) days after executed contract is delivered to the Contractor.

This Bid Includes Addenda Through No. _____ :

ESTIMATED QUANTITIES FOR BID BY ITEM NUMBER

Item No.	QTY	Description	Unit Price	Total Price
102.511	50	Tree Protection Anchoring and Pruning At _____ Written Dollar Amount per each	\$	\$
103	10	Tree removed – Diameter under 24 inches At _____ per each		
104	10	Tree removed – Diameter over 24 inches At _____ per each		
105	10	Stump Removed At _____ per each		
119	1	Rodent Control At _____ lump sum		
120.1	3400	Unclassified Excavation At _____ per cubic yard		
129	400	Pavement Milling At _____ per square yard		
141.1	150	Test pit for exploration At _____ per cubic yard		
142	20	Class B trench excavation At _____ per cubic yard		
144	20	Class B rock excavation At _____ per cubic yard		
151	550	Gravel borrow At _____ per cubic yard		
156	250	Crushed stone At _____ per ton		

ESTIMATED QUANTITIES FOR BID BY ITEM NUMBER

Item No.	QTY	Description	Unit Price	Total Price
170	19,750	Fine grading and compacting At _____ Written Dollar Amount per square yard	\$	\$
187.3	10	Removal and disposal of drainage structure sediments At _____ per cubic yard		
201	20	Catch basin At _____ per each		
202	10	Manhole At _____ per each		
204	10	Gutter inlet At _____ per each		
220	16	Drainage structure adjusted At _____ per each		
220.2	26	Drainage structure rebuilt At _____ per foot		
220.5	12	Drainage structure remodeled At _____ per each		
220.6	12	Sanitary structure rebuilt At _____ per foot		
220.7	6	Sanitary structure adjusted At _____ per each		
220.8	6	Sanitary structure remodeled At _____ per each		
222.3	25	Frame & grate (or cover) municipal standard At _____ per each		

ESTIMATED QUANTITIES FOR BID BY ITEM NUMBER

Item No.	QTY	Description	Unit Price	Total Price
224	16	Eliminator hood for catch basin At _____ Written Dollar Amount _____ per each	\$	\$
234.12	800	12 inch Polyvinyl-chloride-SDR 35 drain pipe At _____ _____ per foot		
238.1	200	10-inch Ductile iron pipe At _____ _____ per foot		
309	75	Ductile iron fittings for water pipe At _____ _____ per pound		
354.12	20	12 inch & under gate box removed and reset At _____ _____ per each		
357	10	Gate box At _____ _____ per each		
358	10	Gate box adjusted At _____ _____ per each		
381	50	Service box At _____ _____ per each		
381.3	50	Service box adjusted At _____ _____ per square yard		
403	7,350	Reclaimed pavement for base and/or sub-base At _____ _____ per each		
420	900	Hot mix asphalt binder At _____ _____ per ton		
440	9,600	Calcium chloride for road dust control At _____ _____ per pound		

ESTIMATED QUANTITIES FOR BID BY ITEM NUMBER

Item No.	QTY	Description	Unit Price	Total Price
460	865	Hot mix asphalt At _____ Written Dollar Amount per ton	\$	\$
464	250	Bitumen for tack coat At _____ per gallon		
464.5	2,650	Hot poured rubberized asphalt sealer At _____ per foot		
472	300	Hot mix asphalt for miscellaneous work At _____ per ton		
482.5	3,150	Sawing asphalt pavement & sidewalk joints At _____ per foot		
504	1,730	Granite curb type VA4- straight At _____ per foot		
504.1	235	Granite curb type VA4 - curved At _____ per foot		
516	30	Granite curb corner type A At _____ per each		
520.12	20	Concrete curb stop remove & reset At _____ per each		
580	4,300	Curb removed and reset At _____ per foot		
582	280	Curb corner removed and reset At _____ per each		
670	50	Fence removed & reset At _____ per foot		

ESTIMATED QUANTITIES FOR BID BY ITEM NUMBER

Item No.	QTY	Description	Unit Price	Total Price
697.1	50	Silt sack At _____ Written Dollar Amount _____ per each	\$	\$
701	2,625	Cement concrete sidewalk At _____ _____ per square yard		
701.1	735	Cement concrete sidewalk at driveways At _____ _____ per square yard		
701.2	150	Cement concrete wheelchair ramp At _____ _____ per square yard		
702	25	Hot mix asphalt walk surface At _____ _____ per ton		
703	50	Hot mix asphalt walk surface At _____ _____ per ton		
706.1	50	Brick walk removed and re-laid At _____ _____ per square yard		
707.8	10	Steel bollard At _____ _____ per each		
751	100	Loam borrow At _____ _____ per cubic yard		
756	1	NDPES stormwater pollutions prevention plan At _____ _____ per lump sum		
765	100	Seeding At _____ _____ per square yard		
767.6	75	Aged pine bark mulch At _____ _____ per cubic yard		

ESTIMATED QUANTITIES FOR BID BY ITEM NUMBER

Item No.	QTY	Description	Unit Price	Total Price
832	100	Warning-regulatory and route marker – alum. Panel (Type A) At _____ Written Dollar Amount _____ per square foot	\$	\$
847.1	20	Sign SUP (n/guide) + TRE MKR w/1 Brkway post assembly - steel At _____ _____ per each		
852	300	Safety signing for traffic management At _____ _____ per square foot		
859	5,000	Reflectorized Drum At _____ _____ per drum day		
874	12	Street name sign At _____ _____ per each		
874.2	12	Street sign remove and reset At _____ _____ per each		
904	50	4000 PSI ¾", 610 cement concrete At _____ _____ per cubic yard		

TOTAL OF ALL ITEMS:

The Bidder agrees to perform the bid work described in the specifications and shown on the plans for the following contract Bid price:

In Figures: \$ _____

In Words: _____

This Form of General Bid must be signed by an authorized person. A bid must be signed as follows: 1) if the bidder is an individual, by her/him personally; 2) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed and a Certificates as To Corporate Bidder.

The undersigned Bidder hereby certifies under penalties of perjury, as follows: (1) that he/she 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.

Name of Firm: _____

By: _____
(Signed Name) (Date)

(Printed Name) (Title)

Business Address: _____

City, State, Zip Code: _____

Tel. No.: _____; Fed. ID No.: _____

Email Address: _____

REFERENCES AND QUALIFICATIONS

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

- 1. Have been in business under present name for _____ years.
- 2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as principals are as follows:

(Attach supplementary list if necessary)

- 3. The bidder is requested to state below what work of a similar character to that included in the proposed contract he has done and give references that will enable the City to judge his experience, skill and business standing (add supplementary page if necessary).

<u>Completion</u> <u>Date</u>	<u>Project</u> <u>Name</u>	<u>Contract</u> <u>Amount</u>	<u>Design</u> <u>Engineer</u>	<u>Reference</u> <u>Name</u>	<u>Telephone</u> <u>No.</u>
----------------------------------	-------------------------------	----------------------------------	----------------------------------	---------------------------------	--------------------------------

a. _____

b. _____

c. _____

Date: _____

By: _____
(Signature)

(Type Name of Bidder)

(Title)

(Business Address)

(City and State)

(Telephone Number)

SECTION 00500

**CITY OF EVERETT
CONTRACT No. 24-07 Roadway Rehabilitation and Related Work- Full Depth Reconstruction
AND RELATED WORK**

CONTRACT AGREEMENT BETWEEN CITY AND CONTRACTOR

This Contract Agreement made this _____ day of July 2023 by and between the City Of Everett, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting by its Mayor (hereinafter referred to as the “City”, the “Owner”, or the “Awarding Authority”), without personal liability for the members thereof, and _____, **a** _____, with a usual place of business at _____ (hereinafter called "the Contractor").

Terms used in this Contract Agreement that are defined in the General Conditions of the Contract shall have the meanings designated therein.

The city and the Contractor agree as follows:

ARTICLE I – INCORPORATION OF STATUORY REQUIREMENTS

In all respects, this Contract Agreement shall be governed by and performed consistently with all laws of the Commonwealth of Massachusetts including, but not limited to, all Massachusetts General Laws and regulations regarding public construction and procurement and all Municipal Ordinances and by-laws pertaining to the Project and/or the award of this Contract, each as most recently amended (collectively “Laws”). Such Laws shall be deemed to be included in this Contract Agreement the same as though written out in full and the Contractor warrants that he is familiar with and agrees to abide by all such Laws.

ARTICLE II - DEFINITION

The term "CITY" shall also mean the City of Everett Director of Public Works (Director), or his designated representative, when used in the context of administering or directing this contract and/or the work specified.

ARTICLE III - SCOPE OF WORK

A. The Contractor shall furnish all labor, tools, materials and equipment and shall perform all work necessary for the complete and satisfactory performance of the **24-07 Roadway Rehabilitation and Related Work- Full Depth Reconstruction** within the City of Everett, Massachusetts, as called for in the Specifications (Section VI), and shall do everything required by this Contract Agreement. The following constitute the Contract Documents:

- a. This Contract Agreement;
- b. Form of General Bid, signed by Contractor;
- c. Specification (Section VI);
- d. Wage Rates (Section VIII);

- e. Invitation to Bid, with General Instructions for Bidders
- f. General Conditions (Section V); and
- g. Required Forms

These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment to this agreement must be in writing and signed by an official with authority to bind the City.

ARTICLE IV – TIME FOR COMPLETION

A. The time for completion for all work required by this contract shall be **XXX (contract duration) XXX** consecutive days, commencing within seven (7) days after executed contract is delivered to the Contractor.

B. It is hereby understood and mutually agreed by and between the Contractor and the City that the Contractor shall receive no less than one (1) calendar week's advance notice to begin the construction project, and that once accepted by the Contractor, the agreed upon starting date(s) for such work become ESSENTIAL CONDITIONS of this contract.

C. The Contractor agrees that said work shall be executed regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time agreed to by the Contractor and the Owner. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of the work described therein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality. The Contractor hereby agrees that is has taken these factors into account and the Contractor shall have no entitlement to an increase in the Contract Sum or any other additional costs, expenses or damages of whatsoever nature as they may relate to or otherwise arise from any delay, impact, or acceleration, except as and to the extent expressly provided under M.G.L. c. 30, § 39O. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time provided the Contractor complies with notice requirements contained in the Contract Documents.

ARTICLE V - QUANTITY

The work under this contract shall be performed "As Required" by the City, within the limits of this Article V, and Article VIII below. **THE QUANTITIES SPECIFIED IN THE FORM OF GENERAL BID ARE ESTIMATES OF REQUIREMENTS FOR USE IN COMPARING BIDS: THE CITY OF EVERETT DOES NOT GUARANTEE THESE QUANTITIES WILL ULTIMATELY BE REQUIRED.**

ARTICLE VI - HOURS OF WORK

A. It is intended that the Contractor will accomplish the work of this contract between the hours of 7:00 A.M. and 4:30 P.M. Upon mutual agreement between the City, and the Contractor, night work may also be considered.

B. No laborer, worker, mechanic, foremen or inspector working within the Commonwealth of Massachusetts in the employ of the Contractor, subcontractors or other persons doing or contracting to do the whole or part of the work contemplated by this contract, shall be required or permitted to work more than 8 hours in any one calendar day; or more than 48 hours in one week, or more than 6 days in any one week in full compliance with the provisions of M.G.L. c. 149, § 34, except in cases of emergencies.

ARTICLE VII - PAYMENTS TO CONTRACTOR.

A. Payment to the Contractor shall be made by the City in accordance with Massachusetts General Laws Chapter 30, Section 39G, which is incorporated by reference herein. The payment shall be in full less 5% retainage for furnishing all materials, supplies, labor, services, supervision, tools and equipment and use thereof. Acceptance of periodic payments by the Contractor shall constitute a waiver of claims known or knowable at the time by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of periodic payment. All payments shall be submitted on the standard AIA Document G702.

B. Payments to Subcontractors. The Contractor shall make payment to subcontractors in accordance with M.G.L. c. 30, § 39F, which is quoted in this section below. For purposes of this Contract Agreement, the word “forthwith” appearing in paragraph (1)(a) of the quoted provision shall be deemed to mean “within five (5) business days.” The Contractor shall, at the City’s request, furnish satisfactory evidence that all such obligations have been paid, discharged, or waived. M.G.L. c. 30, § 39F provides:

“(1) (a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the Plans and Specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in

subparagraphs (1) and (2) the awarding authority shall act upon the demand as provided in this section.

(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (5) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demand for direct payments deposited in an interest-bearing account or accounts in a bank pursuant to subparagraph (6) shall be made

out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the General contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a General contractor amounts which, together with the deposits in interest bearing accounts pursuant to subparagraph (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 general contractor.

(i) If the subcontractor does not receive payment as provided in subparagraph (1) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (1), the subcontractor may demand direct payment by following the procedure in subparagraph (4) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g) and (h).

(2) Any assignment by a subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of section twenty-nine of chapter one hundred forty-nine shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the awarding authority or which are on deposit pursuant to subparagraph (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.

(3) "subcontractor" as used in this section (I) for contracts awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall mean a person who files a sub-bid and received a subcontract as a result of that filed sub-bid or who is approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, (ii) for contracts awarded as provided in paragraph (1) of section thirty-nine M of chapter thirty shall mean a person approved by the awarding authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the commonwealth not awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall also mean a person contracting with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.

(4) A general contractor or a subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposit as provided in subparagraph (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 (6) by a petition in equity in the superior court against the awarding authority and the general contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. Sections fifty-nine and fifty-nine B of chapter two hundred thirty-one shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to sections fifty-nine and fifty-nine B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any subcontractor with the petition of one or more subcontractors or the same general Contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a subcontractor filing a demand for direct payment for which no funds due the general contractor are available for direct payment shall have a right to file a petition in court of equity against the awarding authority claiming a demand for direct payment is premature and such subcontractor must file the petition before the awarding authority has made a direct payment to the subcontractor and has made a deposit of the disputed portion as provided in part (iii) of subparagraph (5) and in subparagraph (6).

(5) In any petition to collect any claim for which a subcontractor has filed a demand for direct payment the court shall, upon motion of the general contractor, reduce by the amount of any deposit of a disputed amount by the awarding authority as provided in part (iii) of subparagraph (5) and in subparagraph (6) any amount held under a trustee writ or pursuant to a restraining order or injunction.”

ARTICLE VIII - CONTRACT SUM

The total amount billed under this contract shall not exceed \$_____. The Contractor shall keep and maintain all records necessary to ensure this total billing limit is not exceeded.

ARTICLE IX - BONDS

The Contractor shall furnish a performance bond for the full amount of the Contract, and also a labor and materials payment bond for the full amount of the Contract, the form of which bonds are set forth in the Contract Documents, each of a surety company qualified to do business under state laws and satisfactory to the Owner, the premiums for which are to be included in the Contract Price and paid by the Contractor. These bonds shall (a) guarantee the faithful performance by the Contractor of all its obligations under this contract and (b) constitute the security required by Massachusetts General Laws Chapter 149, Section 29 and Chapter 30, Section 39A, as amended, for payment by the Contractor or its subcontractors used or employed in connection with the contract. Each bond shall incorporate by reference the terms of this contract. These bonds shall remain in effect for the entire guarantee period for each phase of the work, which shall commence on the date of Substantial Completion, as defined in the General Conditions. The Surety Company

providing the bonds shall have a rating of A or better within the Best Key Rating Guide and be licensed by the Massachusetts Division of Insurance. The Contractor shall pay the premiums for such Bonds.

ARTICLE X - INSPECTION AND CORRECTION OF WORK

The Contractor shall keep the City informed of the progress of his work. No work shall be closed or covered until it has been duly inspected and approved. Should uninspected work be covered, the Contractor shall, at his own expense, uncover all such work so that it can be properly inspected and after such inspection, he shall properly repair and replace all work interfered with. All work, all materials (whether incorporated in the work or not) and all processes for performing the work shall be at all times and places subject to the inspection, examination and testing by the City, which shall be the final judge of the quality and suitability of the work, materials and processes for the purpose for which they are used. The City shall have the right to reject defective material and workmanship or require its correction. Rejected material shall immediately be removed from the site. If, in the opinion of the City, it is undesirable to replace any defective or damaged materials or to correct any portion of the work not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the Director shall be equitable. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship, the City may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed, the Contractor and Surety being liable for any damage to the same extent as provided.

ARTICLE XI - GENERAL GUARANTY

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any work is found to be defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions: (i) correct such defective work, or, if it has been rejected by Owner, remove it from the site and replace it with work that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other work or the work of others therefrom. If Contractor does not begin the repairs within five (5) days of receipt of written notification and promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk, loss or damage, the City may have the defective work corrected or the rejected work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

ARTICLE XII - INSURANCE AND WORKMEN'S COMPENSATION

A. The Contractor shall purchase and maintain insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires. All policies shall be written on an occurrence basis and be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth with a financial strength rating of A- or better as assigned by AM Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner, or otherwise acceptable to the City. The Contractor shall file a certificate

of insurance one certified complete copy of all policies and endorsements with the City prior to execution of this Agreement. If the City is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall be responsible for all costs and damages to the Owner attributable thereto. Termination, cancellation, or material modification of any insurance required by this Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the City at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice. The Contractor is responsible for the payment of any and all deductibles under all of the insurance required below. The City shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof. The Contractor shall obtain and maintain the following types of insurance in the amounts provided below:

- a. **Broad Form Commercial General Liability** written on a “per occurrence basis” in the amount of at least \$1,000,000 for Each Occurrence, Personal & Adv Injury, Products-Comp/OP AGG and a General Aggregate Limit of a minimum \$3,000,000. **Products and Completed Operations** should be maintained for up to 3 years after the completion of the project, and the Contractor shall continue to provide evidence of such coverage to City on an annual basis during the aforementioned period. Property Damage Liability shall include coverage for X-C-U hazard of explosion, collapse, and damage to underground property. The City shall be named as an "Additional Insured".
- b. **Automobile Liability** covering owned, non-owned, and hired or borrowed vehicles in an amount of at least \$1,000,000 for Combined Single Limit. The city should be named as an "Additional Insured". The City shall be named as an “Additional Insured.”
- c. **Umbrella Liability** coverage following form of underlying General, Automobile and Employers’ Liability Coverage: Minimum of \$5,000,000 C.S.L. over primary insurance. No more than \$10,000 Retention. The City shall be named as an “Additional Insured.”
- d. **Workers' Compensation Insurance** and employer’s liability as required by Massachusetts law under Chapter 152 of the General Laws, as amended, and Section 34A of Chapter 149 of the General Laws.

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

- a. Whenever applicable, including, but not limited to Contractor’s Broad Form General Liability Insurance, all insurance coverage shall be on an “occurrence basis” and not a “claims-made basis”.
- b. The CITY (including its officials, employees, agents and representatives) shall be named as additional insured on Contractor’s General Liability, Automobile Liability and Umbrella or Excess Liability Insurance Policies.
- c. Neither the City’s authority to review certificates and policies of insurance, nor its decision to raise or not to raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the City to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor, or Supplier, or any other party.

- d. The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in the Contract Documents, and at all times after that when the Contractor may be correcting, removing or replacing defective Work. The Completed Operations insurance shall be maintained for three (3) years after Final Payment.
- e. Insufficient insurance shall not release the Contractor from any liability for breach of its obligations under this Contract.
- f. The Contractor shall be responsible for procuring at its sole cost property insurance covering portions of the Work stored off the site or in transit.

ARTICLE XIII - PERSONAL LIABILITY OF PUBLIC OFFICIALS

No official of the City of Everett or its agents or employees shall be held personally responsible for any liability arising under the contract.

ARTICLE XIV - INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and any of its officers, directors, employees, agents, affiliates, subsidiaries and partners from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall apply to any such claims, damages, losses and expenses which arise and/or are incurred by any person or entity either during the performance of the Work and/or after completion of construction. Nothing in this paragraph shall be construed to negate, abridge, or reduce other rights or obligations of indemnity or contribution which would otherwise exist as to a party or person indemnified hereunder. Contractor hereby assumes the responsibility and liability for injury to or death of any and all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from, or arising out of any act, omission or neglect on the part of the Contractor, or of any Subcontractor or of anyone directly or indirectly employed by any of them or of anyone for whose acts, any of them may be liable. The Contractor hereby acknowledges its obligation under the foregoing paragraph to indemnify the City against judgments suffered because of the contractor's work and to assume the cost of defending the City against claims as described in the foregoing paragraph.

ARTICLE XV - ASSIGNMENT

The Contractor shall not assign this contract wholly or in part, or sublet (subcontract) it or any part thereof, nor shall the Contractor assign any moneys due or to become due to him under this contract, without previous written consent of the City.

ARTICLE XVI - REPORTS, RECORDS, AND DATA

The Contractor shall submit to the City such schedule of payrolls, records, and other data as the City may require concerning work performed or to be performed under this contract.

ARTICLE XVII - PREVAILING WAGE

Attention is called to the fact that minimum wage rates are established by the Commonwealth of Massachusetts Commissioner of Labor and Industry for the work under this contractual agreement. These wage rates are set forth in Attachment B to this Contract Agreement.

ARTICLE XIII - NON-DISCRIMINATION

The Contractor agrees that in the performance of this contract, discrimination shall not be permitted by or against any person because of race, color, religious creed, age, sex, marital status, national origin, ancestry or physical disability, in any manner prohibited by the laws of the United States, the Commonwealth of Massachusetts or the By-laws of the City of Everett.

ARTICLE XIX - TERMINATION

A. Lack of Appropriation. The obligations of the City hereunder shall be subject to appropriation on a fiscal year basis. In the absence of appropriation, this agreement shall be terminated immediately without liability of the City for damages, lost profits, penalties, or other charges arising from early termination.

B. Termination for Convenience. The City may terminate this contract at any time without cause upon thirty (30) days prior notice.

C. Termination for Cause. If the Contractor shall be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency or if he should persistently or repeatedly refuse, or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials or equipment, or if he should fail to make prompt payments to subcontractors, or for material or labor or persistently disregard laws, ordinances or the instructions of the Director or otherwise be guilty of substantial violation of any provision of the contract, then the City without prejudice to any other right or remedy and after giving the Contractor seven (7) days' notice may terminate the employment of the Contractor to continue work and may take possession of the premises, and all the materials, tools, equipment and appliances thereon, and finish the work by whatever method the City deems expedient. The City shall be entitled to collect from the Contractor all direct, indirect, consequential damages suffered by the City of behalf of the Contractor's defaults, including without limitations additional services and expenses of the Architect and Project Manager and the Architect's consultants made necessary thereby. The City shall be entitled to hold all amounts due to Contractor at the date of termination until all of the City's damages have been established, and to apply such amounts to such damages.

D. In the event of termination, the Contractor shall promptly deliver to the City all materials, including all documents, work papers, studies, calculations, computer programs, data, drawings, plans, specifications and other tangible work product or materials pertaining to the Work performed under this Agreement to the time of termination, and thereupon the City shall pay to

the Contractor any unpaid and undisputed balance owing for Work performed prior to the date of termination. Any termination of this Contract shall not affect or impair the right of the City to recover damages occasioned by any default of the Contractor or to set off such damages against amounts otherwise owed to the Contractor.

ARTICLE XXI - TAX STATUS

The City of Everett is an exempt purchaser under Massachusetts Laws. Exemption Certificate Number is 04-600-1277. The Contractor shall not pay, and the City shall not reimburse or pay the Contractor or any other party either directly or indirectly for any tax for which an exemption is provided under law.

In WITNESS WHEREOF the parties have hereunto set their hands and seals, the City of Everett by its Mayor, who however incur no personal liability by reason of the execution thereof or of anything herein contained, and the contractor both in triplicate, as of the day and year above stated.

VENDOR:

Signature

Date Signed

Printed Name

Title

CITY OF EVERETT:

Allison Jenkins
Chief Procurement Officer

Date Signed

Eric Demas
Chief Financial Officer/City Auditor

Date Signed

Account Number: _____

Colleen Mejia, Esq.
City Solicitor

Date Signed

Carlo DeMaria
Mayor

Date Signed

VOTE REQUIRED IF CONTRACTOR IS A CORPORATION

At a meeting of the Board of Directors of

_____ duly called and held

on _____ at which a quorum was present and acting throughout, the following vote was duly adopted:

VOTED: That the action of _____,

the _____ of the Corporation, in affixing the Corporate Seal,

signing and delivering in the name and behalf of the Corporation a contract with the City of

Everett for _____

_____ and also, in sealing and executing as above

surety company bonds to secure the performance of said contract be and hereby are ratified,

confirmed and adopted.

A true copy:

Attest:

(Corporate Seal)

Clerk of the Corporation

STATEMENT OF WAGE COMPLIANCE

DATE: _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

That I pay or supervise the payment of the persons employed by _____
_____ on the _____

_____(Contractor, sub-contractor of public body) Building 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 Section Twenty-seven (27) and Twenty-seven A (27A) of Chapter One Hundred and Forty-Nine (149) of the Massachusetts General Laws.

Signature: _____

Title: _____
(Signed under penalties of perjury as provided for under Section 27B of Chapter 149, General Laws.)

**CERTIFICATIONS REQUIRED BY LAW
FOR PUBLIC CONSTRUCTION CONTRACTS**

You must **COMPLETE** and **SIGN** the following certifications.

TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said 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.

NON-COLLUSION

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

PUBLIC CONTRACTOR DEBARMENT

The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

COMPLETE AND SIGN BELOW:

Authorized Person's Signature

Date

Print Name & Title of Signatory

Company Name

SECTION 00680

NOTICE TO PROCEED

To: _____ Date: _____

Project: **2023 Roadway Rehabilitation and Related Work-FULL DEPTH RECONSTRUCTION, Everett, MA.**

You are hereby notified to commence Work in accordance with the Agreement dated _____, 2023 on or before _____, 2023 and you have fully completed the Work within the 2023 construction season ending December 31, 2023 but a contract extension shall be at the discretion of the City.

City of Everett, Massachusetts

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

By: _____

this the _____ day of _____, 2023

By: _____

Title: _____

SECTION 00700

GENERAL CONDITIONS

- ARTICLE 1 – GENERAL PROVISIONS
- ARTICLE 2 – ADMINISTRATION OF THE CONTRACT
- ARTICLE 3 - CITY
- ARTICLE 4 - CONTRACTOR
- ARTICLE 5 - SUBCONTRACTORS
- ARTICLE 6 – CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS
- ARTICLE 7 – CHANGES IN THE WORK / CLAIMS FOR ADDITIONAL COSTS
- ARTICLE 8 - TIME
- ARTICLE 9 – PAYMENTS AND COMPLETION
- ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY
- ARTICLE 11 – INSURANCE AND BONDS
- ARTICLE 12 – UNCOVERING AND CORRECTION OF WORK
- ARTICLE 13 – MISCELLANEOUS PROVISIONS
- ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT

ARTICLE 1 – GENERAL PROVISIONS

§ 1.1 DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the City-Contractor Agreement, the Conditions of the Contract (General, Supplemental and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Contract, and all applicable laws, ordinances and regulations. A Modification is (1) a written amendment to the contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the City or (4) a written order for a minor change in the Work issued pursuant to Paragraph 7.4. The Contract Documents include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents, specifically enumerated in the City-Contractor Agreement. In the event of a conflict among the Contract Documents, they shall be construed according to the following priorities: first – Modifications; second – Agreement; third – Addenda; fourth – General Conditions; fifth – specifications; sixth – Drawings.

§ 1.1.2 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of Work unless otherwise directed by written addendum to the Contract.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 OR EQUAL

The use of the words "Or Equal" following the name of any manufacturer, vendor or proprietary product shall be understood to mean that articles or materials may be substituted which, in the opinion of the City, are equal in quality, durability, appearance, strength, design and performance to the articles or materials named or described and will perform adequately in providing a first-class facility.

When submitting shop drawing information on articles or materials which are being proposed as substitutes for specified items, the Contractor shall clearly identify them as such. If the articles or materials are accepted as equal to those on which dimensions on the drawings are based, any dimensional variance from those shown and/or specified shall be shown on the shop drawings prepared by the Contractor, illustrating the manner in which conformity to dimensions and design is to be obtained. All such drawings shall be subject to the approval of the City and the installation of the article shall not proceed without first obtaining said approval.

§ 1.2 EXECUTION, CORRELATION AND INTENT

§ 1.2.1 The Contract Documents shall be signed in DocuSign.

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

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

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

§ 1.2.5 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.7 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.2.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.10 Any test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor would have been obtained by the City for use by the Architect/Engineers in the design of the Project or Work. The City does not hold out such information to the Contractor as a completely accurate indication of subsurface conditions, and no claim for extra cost or extension of time resulting from a reliance by the Contractor on such information shall be allowed except as provided by Chapter 30, Section 39N of the General Laws of the Commonwealth of Massachusetts.

§ 1.2.11 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified.

§1.3 CITY OWNERSHIP AND USE OF DOCUMENTS

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

ARTICLE 2 - ADMINISTRATION OF THE CONTRACT

§ 2.1 GENERAL

§ 2.1.1 The City, or its designee, will administer the Contract and visit the project site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The City may also retain a separate Project Manager, and/or Architect/Engineer who shall assist the City with the administration of the Contract.

§2.1.2 The City, or its designee, shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the City may perform its functions under the Contract Documents. Refusal by the contractor to allow the City, or its designee, access to the project site and work completed shall result in termination of this contract.

§2.1.3 Based on observations and an evaluation of the Contractor's Applications for Payment, the City, or its designee, will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Article 9.

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

§2.1.5 The City, or its designee, will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work be then fabricated, installed or completed. Any such rejection of work shall not relieve the Contractor of the responsibility for maintaining protection of the Work and the City's property.

§2.1.6 The City, or its designee, will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. The approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.1.7 The City, or its designee, will prepare Change Orders in accordance with Section 7.1 herein, and will have authority to order minor changes in the Work as provided in Section 7.3.

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

ARTICLE 3 - CITY

§ 3.1 DEFINITION

§ 3.1.1 The City is the person or entity identified as such in the City-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number. The term City means the City or, as applicable, the City's authorized representative. The City may also retain a separate Project Manager, and/or an Architect/Engineer to assist the City in the administration of the Contract. The form of agreement between the City and the Architect/Engineer and/or the Project Manager shall be made available to the Contractor upon request.

§ 3.2 INFORMATION AND SERVICES REQUIRED OF THE CITY

§ 3.2.1 The City shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the City's obligations under the Contract.

§ 3.2.2 The City shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Except as otherwise stated in the Contract Documents, the Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the City except to the extent that the Contractor's review thereof reveals, or in the exercise of reasonable diligence should have revealed, any inaccuracy or incompleteness therein. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

§ 3.2.3 Information or services required of the City by the Contract Documents shall be furnished by the City with reasonable promptness.

§ 3.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, 0 copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work, all additional copies will be furnished upon request at the cost of reproduction.

§ 3.3 CITY'S RIGHT TO STOP THE WORK

§ 3.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the City may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity. The Contractor shall resume the Work after such stoppage promptly upon written notice to do so from the City.

§ 3.4 CITY'S RIGHT TO CARRY OUT THE WORK

§ 3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the City may, without prejudice to other remedies the City may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including City's expenses and compensation for the Architect/Engineer's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City.

ARTICLE 4 – CONTRACTOR

§ 4.1 GENERAL

§ 4.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 4.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 4.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the City in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 4.2 REVIEW OF CONTRACT DOCUMENTS BY CONTRACTOR

§ 4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the City any error, inconsistency or omission he may discover. If the Contractor performs any construction activity it knows or reasonably should know involves a recognized error,

inconsistency or omission in the Contract Documents without such notice to the City, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for such correction.

§ 4.2.2 Any claim by the Contractor or Subcontractors that, in submitting their respective bids, they did not include all items as shown in the Contract Documents, will be given no consideration for an adjustment of any kind. If any item is specified in a Section which would not normally furnish this item it shall be the responsibility of the Contractor to coordinate the situation with the Subcontractor, and if the item under consideration is not to be provided by the Subcontractor it shall be the responsibility of the Contractor to provide the work in question, without any additional cost to the City.

§ 4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the City and Architect/Engineer and shall not proceed with that portion of the Work without further written instructions from the Architect/Engineer.

§ 4.3.2 The Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors this obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the Work.

§ 4.3.3 The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the City in its administration of the Contract, or by inspection, tests or approvals required or performed under Section 13.5 by persons other than the Contractor.

§ 4.3.4 The Contractor shall retain a registered professional engineer or registered land surveyor, acceptable to the City, to establish lines and elevations for associated roads, utilities and grading. The engineer or surveyor shall certify the actual location of constructed elements of the Work and submit to the city in digital and hard copy "As-Built" drawings prior to Final Payment. Said drawings to include all ties, elevations, inverts, composition and pitch of all surface and subsurface elements of the project.

§ 4.4 LABOR AND MATERIALS

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

§ 4.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 4.5 WARRANTY

§ 4.5.1 The Contractor warrants to the City that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents and, promptly after written notification of non-conformance, shall be repaired or replaced by the Contractor with Work conforming to such requirements. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 4.5.2 The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The City may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the City, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense.

§ 4.5.3 If the Contractor proposes to use a material which, while suitable for the intended use, deviates in any way from the detailed requirements of the Contract Documents, the Contractor shall inform the City in writing of the nature of such deviations at the time the material is submitted for approval.

§ 4.5.4 In informing the City of deviations or substitutions, the Contractor shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will provide a quality of result at least equal to that otherwise attainable. If, in the opinion of the City, the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty, the City may reject such substitution or deviation without further investigation.

§ 4.5.5 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the City, unless such substitution was made at the written request or direction of the City.

§ 4.5.6 The warranty provided in this Section 4.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 4.5.7 The Contractor shall procure and deliver to the City, no later than the date claimed by the Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by the Contractor shall constitute the Contractor's guarantee to the City that the warranty will be performed in accordance with its terms and conditions.

§ 4.5.8 The Contractor shall guarantee all Work for a period of one year after Date of Substantial Completion, or by the terms of any special guarantee required by the Contract Documents. The Contractor shall, upon written notice from the City, promptly correct defective Work or Work not in accordance with the Contract Documents.

§ 4.6 TAXES

§ 4.6.1 The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The project is exempt from the Massachusetts Sales Tax to the extent permitted by G.L. c.64H, §6(f). The exemption number can be obtained from the City upon request by the successful bidder.

§ 4.7 PERMITS, FEES AND NOTICES

§ 4.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

§ 4.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

§ 4.7.3 If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the City in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 4.7.4 If the Contractor performs work it knows or should know to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect/Engineer and City, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 4.8 SUPERINTENDENT

§ 4.8.1 The Contractor shall provide, at his own expense, during the entire course of the work, a competent full-time job superintendent who shall devote his entire time to the supervision of his employees and the work of his various subcontractors and the general coordination and management of the job, and shall not work part-time as a tradesman, except with the written permission of the Engineer. He shall not be removed from the job without the City's approval as long as he is employed by the Contractor. The superintendent shall be experienced in roadway and utility construction, and the City shall have the right, by written notice sent to the Contractor

at any time to disapprove such superintendent. The Contractor shall then appoint a new and approved superintendent within two days of receipt of notice. The Contractor shall submit the resume and relevant experience from a minimum of three projects for the superintendent assigned to the project at least 10 days prior to the commencement of construction. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. The Contractor shall remove the superintendent if requested to do so by the City and shall replace him with a competent person acceptable to the City. The Contractor agrees to furnish a labor force which will work in harmony and accord with all other labor groups taking part in, or concerned with this project. The Contractor further agrees to promptly remove from work on this project any superintendent, assistant or workman who, in the opinion of the Engineer or his authorized representative, is incompetent, unskillful, disruptive or disorderly, and no person so removed from the work shall be re-employed on this project without the Engineer's written consent. The Contractor shall submit in writing a list of employees and subcontractors with a copy of their appropriate license.

§ 4.8.2 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the City, every reasonable opportunity for the installation of Work and the storage of materials.

§ 4.8.3 The Contractor shall arrange for and attend job meetings with the City and such other persons as the City may from time-to-time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Architect/Engineer. Such representatives shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives.

§ 4.9 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 4.9.1 The Contractor, within twenty (20) calendar days after being awarded the Contract, shall prepare and submit for the City's information and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised, subject to the City's approval, at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule shall be in such form and contain such information as the City requires. The construction schedule shall be resource loaded for the Contractor and all subcontractors, with each resource identified by name, description, unit of measure, and calendar assignment. For each class of work included in the Contractor's schedule of values, the construction schedule shall show the percentage of completion to be obtained and the total dollar value of the work to be completed as of the first of each month until Substantial Completion. All calculations shall be on the basis of work in place, but not including the value of materials delivered but not in place.

§ 4.10 DOCUMENTS AT THE SITE

§ 4.10.1 The Contractor shall maintain at the site for the City one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be made available to the City upon completion of the Work.

§ 4.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 4.11.4 The Contractor shall review for compliance with the Contract Documents, approve and submit to the City: Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the City or of separate contractors.

§ 4.11.5 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals the Contractor thereby represents that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples, or similar submittals and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor.

§ 4.11.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the City in writing of such deviation at the time of submittal and (1) the City has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the City's approval thereof.

§ 4.12 USE OF SITE

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

§ 4.13 CUTTING AND PATCHING

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

§ 4.13.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the City or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the City or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 4.14 CLEANING UP

§ 4.14.1 During the course of the work, the Contractor shall keep the site of his operations in as clean and neat a condition as is possible. He shall dispose of all residue resulting from the construction work and, at the conclusion of the work, he shall remove and haul away any surplus excavation, broken pavement, lumber, equipment, temporary structures, and any other refuse remaining from the construction operations, and shall leave the entire site of the work in a neat and orderly condition. Clean up shall be performed daily and not left until the end of the job. It shall be the Contractor's responsibility to legally dispose of all excess material and residue resulting from construction operations.

§ 4.14.2 If the Contractor fails to clean up as provided in the Contract Documents, the City may do so and the cost thereof shall be charged to the Contractor.

§ 4.15 ACCESS TO WORK

§ 4.15.1 The Contractor shall at all times provide the City access to the Work in preparation and progress wherever located.

§ 4.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ 4.16.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the City. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the City.

§ 4.17 INDEMNIFICATION

§ 4.17.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work by the Contractor or Subcontractor(s). Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.17.

§ 4.17.2 In claims against any person or entity indemnified under this Section 4.17 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 5 – SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the City the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the City or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the City has made reasonable and legally permissible and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the City has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the City has no reasonable objection

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the City makes reasonable objection to such substitute.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the City and Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the City and Architect/Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the City. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

ARTICLE 6 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

§ 6.1 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The City reserves the right to perform construction or operations related to the Project with the City's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these.

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

§ 6.1.3 The City shall provide for coordination of the activities of the City's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the City in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the City until subsequently revised.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the City and separate contractors' reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the City or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the City's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The City shall be reimbursed by the Contractor for costs incurred by the City which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the City or separate contractors as provided in Section 10.2.5.

ARTICLE 7 - CHANGES IN THE WORK / CLAIMS FOR ADDITIONAL COSTS

§ 7.1 CHANGE ORDER

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

§ 7.1.2 The City, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents and applicable General Laws.

§ 7.1.3 Upon request of the City, the Contractor shall without cost, submit to the City, in such form as the City may require, an accurate written estimate of the cost of any proposed extra Work or change. The estimate shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for each class of labor, as well as the description and amounts of all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be shown if required by the City. The Contractor shall promptly revise and resubmit each estimate if the City determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors. If required by the Architect/Engineer, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the City bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at the

Contractor's expense. The Contractor shall state in the estimate any extension of time required for the completion of the Work if the change or extra work is ordered.

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

1. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. by unit prices stated in the Contract Documents or subsequently agreed upon;
3. by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. by the method provided in Section 7.1.5.

§ 7.1.5 If none of the methods set forth in Section 7.1.4 is agreed upon, the Contractor, provided he receives a written order signed by the City, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the City on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.1.4 above, the Contractor shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: actual cost of materials, including sales tax and cost of delivery; labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums, and rental value of equipment and machinery. Pending final determination of cost to the City, payments on account shall be made on the City's Certificate for Payment. The amount of credit to be allowed by the Contractor to the City for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

§ 7.1.6 Unit prices shall be as stated in the Bid Form and the Contract shall include all costs of the Contractor to the City as listed in Section 7.1.5. No additional charges shall be allowed for these items under any circumstances.

§ 7.2 CONCEALED CONDITIONS

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

§ 7.3 MINOR CHANGES IN THE WORK

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

§ 7.4 CLAIMS FOR ADDITIONAL COSTS

§ 7.4.1 Definition. The word “Claim” shall mean a written demand by the Contractor for an increase in the Contract Time or the Contract Sum. The Contractor is responsible for substantiating its Claims. The word “Claim” shall not include claims by the City. The City may withhold from the Contractor the value of any claims against the Contractor in accordance with Massachusetts General Laws, including, but not limited to, Sections 39G and 39K of Chapter 30.

§ 7.4.2 Time Limits on Claims. Contractor must initiate Claims within fourteen (14) calendar days after occurrence of the event giving rise to such Claim by written notice to the Architect/Engineer and the City. Such written notice must (1) be signed by the Contractor; (2) conspicuously identify on its face that the notice serves as a notice of claim; (3) explain in sufficient detail the basis of the Claim; (4) identify the date of the event giving rise to such Claim; and (5) state the exact dollar amount of the increase in the Contract Sum being requested, if any, and the number of days extension to the Contract Time sought, if any. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made.

§ 7.4.3 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation by the City, (2) any order by the City to stop the Work where the Contractor was not at fault, (3) any written order for a minor change in the Work issued or (4) failure of payment by the City, the Contractor shall make such claim as provided in this Section.

ARTICLE 8 – TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

§ 8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the City when construction is substantially complete, in accordance with the Contract Documents, other than only customary punch list items, the lack of or completion of which will not interfere with the City's use, so the City can lawfully occupy and utilize the Work or designated portion thereof for the use for which it is intended. The Date of Final Completion of the Work is

the date on which the City issues its final Certificate for Payment in accordance with Section 9.9 hereof.

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Section 8.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, and Final Completion thereafter in accordance with the provisions of the Contract Documents. If the Contractor fails to keep pace with the construction schedule prepared pursuant to Section 4.9, as measured by the certificates for payment issued by the Architect/Engineer, the City may require the Contractor, at the Contractor's sole cost, to accelerate the progress of the work by adding personnel or increasing the hours of work or by other means acceptable to the City.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor claims that he is delayed at any time in the progress of the Work by any act or neglect of the City or by any employee of the City, or by any separate contractor employed by the City, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, or any causes beyond the Contractor's or its Subcontractor's control, or by delay authorized by the City, then, provided such delay in no way results from the act or neglect of the Contractor or any of its Subcontractors, the Contract Time may be extended by Change Order for such reasonable time as the City may determine.

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

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

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

§ 8.4 LIQUIDATED DAMAGES

§ 8.4.1 It is expressly understood and agreed, by and between the Contractor and City, that the time for the completion of the Work described herein is a reasonable time for the completion of same, taking into consideration the average climatic range and usual industrial and/or residential conditions prevailing in this locality. If the said Contractor shall neglect, fail or refuse to substantially complete the Work within the times herein specified, or any proper extension thereof granted by the City, then the Contractor does hereby agree, as a part consideration for the awarding of this Contract, to pay to the City the amount specified in the Agreement not as a penalty but as liquidated damages for such breach of contract, for each and every calendar day that the Contractor shall be in default after the time stipulated for completing the Work. The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be deducted by the City from periodic payments.

ARTICLE 9 - PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the City a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, unless objected to by the City, in which case it shall be revised until acceptable to the City shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the City an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as provided elsewhere in the Contract Documents for the period ending the last day of each month within the Contract period. The Application shall contain a separate line item or section for each subtrade category and a listing of the amount paid to each subcontractor as of the date of the Application

§ 9.3.1.1 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments may be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the City, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of

bills of sale or such other procedures satisfactory to the City to establish the City's title to such materials or equipment or otherwise protect the City's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site. The Contractor shall assume responsibility to protect all such materials from loss or damage at no cost to the City, until they are finally incorporated into the Work, whether or not they have been paid for by the City.

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

§ 9.4 CERTIFICATES FOR PAYMENT

This section left intentionally blank.

§ 9.5 DECISIONS TO WITHHOLD PAYMENT

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

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

§ 9.5.2 When the above grounds in Section 9.5.1 are removed, payment shall be made for amounts withheld because of them.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The City shall make payment in the manner and within the time provided in General Laws Chapter 30, Section 39, and the Contract Documents. The City reserves the right to a 5% general retainage from each progress payment, which retainage shall be released to the Contractor upon

substantial completion, less amounts properly allocated to punch list work and potential claims of the City.

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the City, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work.

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

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

§ 9.6.5 Notwithstanding the provisions of Section 9.6 all progress payments shall be made in accordance with Chapter 30, Sections 39F, 39G and 39K (as appropriate) of the General Laws of the Commonwealth of Massachusetts, as amended.

§ 9.7 SUBSTANTIAL COMPLETION

§ 9.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the City, is substantially complete as defined in Section 8.1.3, the Contractor shall prepare for submission to the City a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the City on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the City and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibility assigned to them in such Certificate.

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

§ 9.7.3 The Contractor shall complete and correct any incomplete or defective work within forty-five (45) calendar days from the date of Substantial Completion.

§ 9.8 PARTIAL OCCUPANCY OR USE

§ 9.8.1 The Contractor agrees to the use and occupancy of the Project or any portion thereof before Substantial Completion of the Work. The city will cooperate with the Contractor with respect to the completion of the Work by taking such reasonable steps as may be possible to avoid interference with the Contractor's Work provided that they do not interfere with the proper

functioning of the facility. The Contractor shall not be responsible for wear and tear or damage resulting solely from temporary occupancy. Use and occupancy of any part of the Work prior to Substantial Completion shall not relieve the Contractor from maintaining the required payment and performance bonds and insurance required by this Contract.

§ 9.9 FINAL COMPLETION AND FINAL PAYMENT

§ 9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the City will make such inspection and, when it finds the Work acceptable under the Contract Documents and the Contract fully performed, it will issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable.

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

§ 9.9.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.9.4 Notwithstanding anything in the Contract Documents to the contrary, final payment shall be made in accordance with the requirements of G.L.c.30, §39K (building projects) or §39G (public works projects), as amended.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

1. all employees on the Work and other persons who may be affected thereby;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying City and users of adjacent sites and utilities. Such safeguards shall be ADA compliant unless expressed differently by the City or it's designee.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Such work shall be conducted by a properly trained and licensed individual and shall be vetted by the City or it's designee before such work is performed.

§ 10.2.5 The Contractor shall promptly remedy all damage or loss to any property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3., except damage or loss solely attributable to the acts or omissions of the City, the Engineer or anyone directly or indirectly employed by the City, or by anyone for whose acts the City may be liable, and not attributable to the acts or omissions of the City, or anyone directly or indirectly employed by them, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligation under Section 4.13.

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

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

§10.2.8 The Contractor shall at all times protect excavations, trenches, buildings and materials from rain water, groundwater, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

§ 10.2.9 The Contractor shall remove snow and ice which might result in damage or delay.

§ 10.2.10 During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the City, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure, adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored on the premises.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 If the Contractor encounters or recognizes on the site any material known or reasonably believed to be hazardous, including but not limited to asbestos, Polycyclic Aromatic Hydrocarbons (PAH) or polychlorinated biphenyl (PCB), the Contractor shall immediately stop Work in the area affected and report the condition to the City in writing. The Contractor and the City shall cooperate in implementing measures to remove or contain said material and the Contractor shall comply with all directions of the City in the implementation of such removal or containment.

§ 10.4 EMERGENCIES

§ 10.4.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 7 for Changes in the Work.

ARTICLE 11 - INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and

§ 11.1.2 The insurance required by Section 11.1.1 shall include all major divisions of coverage, and shall be on a comprehensive general basis including Premises and Operations (including X-C-U), Cities and Contractor's Protective, Products and Completed Operations, and Owned, Non-

owned, and Hired Motor Vehicles. Such insurance shall be written for not less than any limits of liability required by law or those set forth in the Contract Documents, whichever is greater.

All insurance shall be written on an occurrence basis, unless the City approves in writing coverage on a claims-made basis. Coverage's, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. **The City of Everett shall be added as an "Additional Insured" on all policies.**

Coverage for such liability insurance shall be provided by a company or companies reasonably acceptable to the City and authorized to do business in Massachusetts. Contractor shall furnish to City written confirmation as to the insurance carrier's most current financial ratings when it submits certificates of insurance.

§ 11.1.3 Certificates of insurance acceptable to the City shall be filed with the City prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the City. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. These certificates shall set forth evidence of all coverage required by Section 11.1.1 and 11.1.2. The Contractor shall furnish to the City copies of any endorsements that are subsequently issued amending limits of coverage.

§ 11.2 CITY'S LIABILITY INSURANCE

§ 11.2.1 The Contractor shall procure and pay for a City's policy of City's protective liability insurance insuring the City and its officers, employees and agents against claims which may arise from operations under the Contract or relating thereto.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. Coverage for such liability insurance shall be provided by a company or companies reasonably acceptable to the City and which have, and shall maintain throughout the pendency of this contract, a minimum financial rating of not less than A+ according to A.M. Best or AAA according to Moody's. Contractor shall furnish to City written confirmation as to the insurance carrier's most current financial ratings when it submits the Certificate of Insurance. Such insurance shall include the interests of the City, the Contractor, Subcontractors and Sub-subcontractors in the work and shall insure against the perils of fire and extended coverage and shall include "all risks" insurance for physical loss or damage including without duplication, theft, vandalism and malicious mischief. This insurance shall also cover portions of the Work stored off the site or in transit. If this insurance is written with stipulated amounts deductible, the City shall not be responsible for any difference between the payments made by the insurance carrier and the claim. The policy shall contain a provision that coverages afforded under policies

will not be canceled or allowed to expire until at least 30 days' written notice has been given to the City. The City shall be named insured within the policy.

§ 11.3.2 The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.3 The City shall have the power to adjust and settle with its insurers any loss for which it has obtained insurance.

§ 11.3.4 Upon the occurrence of an insured loss, the City and the Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information and the distribution of any insurance proceeds. If after such a loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate change order.

§ 11.4 MINIMUM AMOUNT OF INSURANCE

§ 11.4.1 In no case shall the limits of liability for the insurance required by this section be less than specified in Section 00800 SUPPLEMENTAL GENERAL CONDITIONS.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Contractor shall furnish a Performance Bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a Payment Bond in an amount not less than one hundred percent (100%) of the Contract price as security for the payment of all persons performing labor on the project under this Contract and furnishing materials in connection with this Contract. The Performance Bond and the Payment Bond may be in one or in separate instruments in accordance with local law, and in a form acceptable to the City, and shall remain in effect through the one-year warranty period.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If any portion of the work should be covered without inspection by City or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the City, be uncovered for his observation and shall be replaced at the Contractor's expense.

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

§ 12.2 CORRECTION OF WORK

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

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

§ 12.2.3 The Contractor shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Sections 4.5.1, 12.2.1 and 12.2.2, unless removal is waived by the City in writing.

§ 12.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Sections 4.5.1, 12.2.1 and 12.2.2 the City may correct it in accordance with Section 3.4.

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

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

§ 12.2.7 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Section 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which

his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligation other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

§ 12.3.1 If the City prefers to accept defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable.

ARTICLE 13 - MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the Commonwealth of Massachusetts. All applicable provisions of Federal, state, or local laws, by-laws, rules, or regulations are incorporated into the Contract as if fully set forth herein.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The City and the Contractor each bind himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the City, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the City.

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the City shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the City determines that any Work requires special inspection, testing, or approval which Section 13.5.1 does not include, it will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Section 13.5.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the City's additional services made necessary by such failure; otherwise, the City shall bear such costs, and an appropriate Change Order shall be issued.

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

§ 13.5.4 The Contractor shall obtain and deliver promptly to the City any occupancy permit and any certificates of final inspection of any part of the Contractor's work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the City. Receipt of such permits or certificates by the City shall be a condition precedent to Substantial Completion of the Work.

§ 13.5.5 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 LIMITATION OF LIABILITY

§ 13.6.1 The City shall be liable, if ever, only to the extent of its interest in the Project; and no officer, director, partner, agent or employee of the City shall ever be personally or individually liable with respect to this Contract or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the City ever succeeds to the Contractor's rights and obligations under a Subcontract.

§ 13.7 DEFENSE OF SUITS

§ 13.7.1 The Contractor shall be responsible for, and shall defend and pay all costs, attorneys' fees and liabilities, both direct and indirect, as a result of litigation arising out of this Contract.

§ 13.7.2 Neither final acceptance nor occupation of the premises by the City shall relieve the Contractor of responsibility for all claims for labor, materials, and equipment arising out of this Contract.

§ 13.7.3 The Contractor shall indemnify and hold harmless the City and their agents and employees from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting from the performance of the work.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CITY FOR CAUSE

§ 14.1.1 The City may without prejudice to any other right or remedy deem this Contract terminated for cause if any of the following defaults shall occur and not be cured within ten (10) days after the giving of notice thereof by the City to the Contractor and any surety that has given bonds in connection with this Contract:

1. The Contractor has filed a petition, or a petition has been filed against the Contractor with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the Contractor without its consent and is not dismissed within sixty (60) days; or if the Contractor is generally not paying its debts as they become due; or if the Contractor becomes insolvent; or if the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the Contractor or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Contractor makes an assignment for the benefit of creditors;
2. The Contractor refuses or fails, except in cases for which extension of time is provided under this Contract's express terms, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or the Architect/Engineer has determined that the rate of progress required for the timely completion of the Work is not being met;
3. The Contractor fails to make prompt payment to Subcontractors or for materials, equipment, or labor;
4. All or a part of the Work has been abandoned;
5. The Contractor has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the City, except as expressly permitted in this Contract;
6. The Contractor has failed to comply with any applicable Laws, regulations or government orders;
7. The Contractor fails to maintain, or provide to the City evidence of the insurance or bonds required by this Contract, or
8. The Contractor has failed to prosecute the Work or any portion thereof to the standards required under this Contract or has otherwise breached any material provision of this Contract.

§ 14.1.2 The City shall give the Contractor and any surety notice of such termination for cause, but the giving of notice of such termination shall not be a condition precedent or subsequent to the termination's effectiveness. In the event of such termination, and without limiting any other available remedies, the city may, at its option:

1. hold the Contractor and its sureties liable in damages for a breach of Contract;
2. notify the Contractor to discontinue all work, or any part thereof, and the Contractor shall discontinue all work, or any part thereof, as the City may designate;

3. complete the Work, or any part thereof, and charge the expense of completing the Work or part thereof, to the Contractor;
4. require the surety or sureties to complete the Work and perform all of the Contractor's obligations under this Contract.

§ 14.1.3 If the City elects to complete all or any portion of the Work as specified in Section 14.2.2.3 above, it may take possession of all materials, equipment, tools, machinery, implements at or near the Site owned by the Contractor and finish the Work at the Contractor's expense by whatever means the City may deem expedient; and the Contractor shall cooperate at its expense in the orderly transfer of the same to a new contractor or to the City as directed by the City. In such case the City shall not make any further payments to the Contractor until the Work is completely finished. The City shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the Contractor shall be solely responsible for their removal from the site of the Work after the City has no further use for them. Unless so removed within fifteen days after notice to the Contractor to do so, they may be sold at public auction, and the proceeds credited to the Contractor's account; or they may, at the option of the city, be stored at the Contractor's expense subject to a lien for the storage charges.

§ 14.1.4 Damages and expenses incurred under Section 14.2.2 above shall include, but not be limited to, costs for the design or extra engineering services and Project Manager services required, in the opinion of the City, to successfully inspect and administer the construction contract through final completion of the Work

§ 14.1.5 Expenses charged under Section 14.2.2 above may be deducted and paid by the City out of any moneys then due or to become due the Contractor under this Contract.

§ 14.1.6 All sums' damages, and expenses incurred by the City to complete the Work shall be charged to the Contractor. In case the damages and expenses charged are less than the sum that would have been payable under this Contract if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference. In case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the City.

§ 14.2 TERMINATION BY THE CITY FOR CONVENIENCE

§ 14.2.1 The City may terminate this Contract for convenience even though the Contractor is not in default by giving notice to the Contractor specifying in said notice the date of termination.

§ 14.2.1 In the event that the Contract is terminated pursuant to Section 14.1, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for materials or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to the City to establish the City's title to such material or equipment or otherwise protect the City's interest. The payment provided in this section shall be considered to fully compensate the Contractor for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination, including any claims for lost profits.

§ 14.2.2 Upon termination of this Contract for convenience as provided in Section 14.3.1 of this Article, the Contractor shall: (1) stop the Work; (2) stop placing orders and Subcontracts in connection with this Contract; (3) cancel all existing orders and Subcontracts; (4) surrender the site to the City in a safe condition; (5) transfer to the City all materials, supplies, work in process, appliances, facilities, equipment and machinery of this Contract, and all plans, Drawings, specifications and other information and documents used in connection with this Contract.

SECTION 00800

SUPPLEMENTAL GENERAL CONDITIONS

§ SUPPLEMENTAL CONDITIONS INTRODUCTION

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

The General Conditions, Supplementary General Conditions and Special Conditions are complementary and shall be read together. Insofar as these Sections cannot be reconciled, the Special Conditions take precedence over all other conditions, and the Supplementary General Conditions take precedence over the General Conditions.

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 1

§ SC 1.1.6 CITY - The City of Everett and all Departments responsible for the execution of this contract.

§ SC 1.1.7 AWARDING AUTHORITY - same definition as CITY.

§ SC 1.1.8 BIDDER - Any person, firm or corporation submitting a BID for the work.

§ SC 1.1.9 FINAL COMPLETION - The work has been fully completed and ready for its intended use as required by Contract Documents and to the satisfaction of CITY, and CONTRACTOR's other obligations under the Contract Documents have been fulfilled. If a tentative list of items to be completed or corrected was issued with a certificate by Substantial Completion or issued subsequent thereto, such items shall be completed or corrected before work is considered fully completed."

§ SC 1.1.10 STANDARD SPECIFICATION - Massachusetts Department of Transportation Standard Specifications for Highways and Bridges, latest edition and all addendums, supplemental specifications and errata.

§ SC 1.1.11 STANDARD DETAILS - Massachusetts Department of Transportation Standard Construction Details latest edition, Standard Drawings for Traffic Signals and Highway Lighting latest edition and all addendums, supplemental specifications and errata.

§ SC 1.1.12 MUTCD - Manual on Uniform Traffic Control Devices latest addition with all revisions incorporated.

§ SC 1.1.13 ENGINEER - City of Everett, City Engineer, Executive Director of Public Works and Engineering or his/her authorized agent, or representative.

§ SC 1.1.14 WORK WEEK - The CONTRACTOR shall work during a normal eight (8) hour day, five (5) day week (Monday through Friday) excluding holidays as defined in the wage rate decision. Work at other times, including nights and weekends, shall be at the option of, and only with written approval of, the CITY.

§ SC 1.1.15 SUBSTANTIAL COMPLETION - The CONTRACTOR shall not be given phased or staged substantial completion as equipment is started up and operated. All new equipment which is installed under this Contract, whether operating or not, shall remain in the full control and responsibility of the CONTRACTOR until the entire project reaches substantial completion.

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 4

Add the following paragraph to Section 4.5.4:

Wherever it may be written that an equipment manufacturer must have a specified period of experience with his product, equipment which does not meet the specified experience period can be considered if the equipment supplier or manufacturer is willing to provide a bond or cash deposit for the duration of the specified time period which will guarantee replacement of that equipment in the event of failure.

Add the following paragraph to Section 4.3.1:

This Project is subject to the Contract Work Hours and Safety Standards Act. The Contract Work Hours and Safety Standards Act (40 USC 327 et seq) and the regulations of the Department of Labor under 29 CFR Part 5 require contractors and subcontractors to pay wages to laborers and mechanics on the basis of an eight-hour work day and 40-hour work week and to pay at least time and a half for work performed in excess of these time limitations. Also, the Act prohibits contractors and subcontractors from requiring laborers and mechanics to work in hazardous, unsanitary or dangerous conditions (see 29 CFR Part 1926).

Add the following paragraph to paragraph 4.11.5:

It is the CONTRACTOR'S responsibility to prepare, coordinate and review all submittals prior to delivery to the ENGINEER. The ENGINEER will review each submittal and the first resubmittal without cost to the CONTRACTOR. The CONTRACTOR, however, shall reimburse the CITY for all reasonable costs associated with the ENGINEER'S and his consultant's review of each subsequent resubmittal. For the purpose of this paragraph only, submittals include, Product Data Catalog Cuts and Samples.

Change the first sentence of section 4.9.1 to the following sentence:

The Contractor shall within 10 days after receipt of Notice to Proceed, submit to the City Engineer for approval a submittals schedule for all materials and equipment required for this Project.

Add the following sub-paragraph to Section 4.8:

§ 4.8.4 The Contractor shall provide the City with the name and telephone number of the project superintendent and an emergency telephone number where he can be reached 24 hours per day for the duration of the construction period.

Add the following Sections to Article 4:

§ 4.18 TRAFFIC MANAGEMENT

The Contractor shall follow approved traffic management procedures. All proposed work zones shall be delineated with temporary traffic signs and channelization devices provided and installed in accordance with the Massachusetts Department of Transportation Standards for Work Zone Safety Guidelines for Municipalities and Contractors. If specific traffic management plans are provided the contract set and the Contractor proposes deviates from any traffic management plan contained herein, the Contractor shall submit his revised traffic management plans to the Engineer for approval.

The Contractor shall give notice to the City Engineer and Everett Police Department (EPD) at least 48 hours in advance of beginning any work affecting the maintenance of traffic. Any traffic detours proposed by the Contractor shall be subject to approval by the Engineer and EPD. All proposed traffic detours shall be submitted a minimum of 2 weeks before the intended implementation date. The Contractor must receive explicit approval of any traffic detour from the City Engineer and EPD prior to implementation. If the Contractor implements a traffic detour without explicit approval, the City reserves the right to stop work operations until such approvals and safety measures are in place. If there is more than one instance of traffic detours being implemented without approval, the City reserves the right to cancel this contract.

The Contractor shall provide a detour map indicated the proposed route of the detoured traffic, all proposed signs, the proposed hours of operation, the proposed location of detail officers and barricades.

§ 4.19 DRAINAGE/WATERWORK

Any work needed to resolve a conflict of existing City owned drainage or water systems shall not be performed without approval of the City. All proposed drainage or water work shall be performed only as noted on the plans or approved by the Engineer during construction. The Contractor will be held fully responsible for replacement or correction of any work undertaken to resolve such conflicts without prior approval of the City.

No separate payment will be made for the maintenance of the existing drainage system by diversion or pumping or for plugging of pipes, but all costs in connection therewith shall be included in the unit prices bid for the various Contract items.

§ 4.20 WATER FOR CONSTRUCTION PURPOSES

Temporary water connections for construction purposes shall be done in accordance with the rules and regulations of the Massachusetts Department of Environmental Protection and the City of Everett City Department of Public Works. The Contractor is required to provide a backflow preventer meeting the City of Everett standards and obtain a permit from the City Department of Public Works Water Department before tapping into any hydrant within the city.

The City will provide water for construction purposes when water restrictions are not in effect. If water restrictions are in effect, the Contractor, at his/her own expense, shall supply his/her own source of water for construction purposes.

The approval of the City Water Department shall be obtained before water from the City's water distribution system is used. Waste of water by the Contractor shall be sufficient cause for withdrawing the privilege of use.

The City will suspend the work for any violation of this provision. It shall be the Contractor's responsibility to ensure that all subcontractors likewise understand and comply with this provision.

§ 4.21 ENVIRONMENTAL PROTECTION

It shall be the Contractor's responsibility to comply with all local, state, and federal environmental policies. The Contractor shall be responsible for obtaining any necessary permits in relation thereto. The Contractor shall operate only in those areas approved by the City Engineer and shall provide protective measures called for in various contract items or at the direction of the City Engineer. All protective measures shall be maintained by the Contractor until removal is approved by the City Engineer or at the end of the Project.

The Contractor shall maintain all construction and storage areas free of debris and trash.

The Contractor shall be responsible for restoration of disturbed areas as provided for in the various Items. Any damage to areas beyond the limits of work approved by the City Engineer shall be restored at the Contractor's expense. Should the Contractor fail to make the necessary repairs the city may make such repairs and back-charge them against the Contractor.

Daily maintenance and fueling of equipment shall be conducted away from all wetlands resource areas. The Contractor shall have sufficient materials on hand to control and clean up any spillage. In the event of an accidental spillage within any wetland area, the Contractor shall take immediate action to prevent contamination of wetland areas; he shall cease operations and notify the City Engineer and Conservation Agent. The cost of cleanup of any contamination shall be the responsibility of the Contractor. Maintenance and repair other than daily requirement shall be done off-site at the Contractor's own facility or service yard.

From time to time the site may be visited or inspected by Local, State or Federal agencies responsible for protection of the environment. The Contractor shall cooperate with the representatives and shall not hinder or impede their work. Refusal by the Contractor to allow access to the work site shall result in termination of this contract.

All protective measures shall be paid for in the costs of the various items.

The Contractor shall provide for removal of dirt spilled from his/her equipment on existing pavement over which it is hauled or otherwise deposited whenever in the judgment of the City Engineer the accumulation is sufficient to cause the formation of mud or dust or interfere with drainage.

The Contractor shall provide positive methods and apply dust control materials to minimize raising dust from construction operations. The Contractor shall provide positive means to prevent air-borne dust from dispersing into the atmosphere. No separate payment will be made for this work, but all costs in connection therewith shall be included in the prices bid for various contract items.

The Contractor shall provide weekly sweeping of streets and gutters and daily sweeping of sidewalks within Limits of Work. No separate payment will be made for this work, but all costs in connection therewith shall be included in the prices bid for various contract items.

The Contractor shall provide sanitary facilities for the use of workers at the site and shall insure that they are maintained in a clean condition. The contents shall be removed and disposed of in a satisfactory manner as the occasion requires. The sanitary conveniences shall be the obligation and responsibility of the Contractor.

§ 4.22 MAINTAINING DRAINAGE SYSTEMS

The Contractor shall maintain the drainage system in the project areas to provide continual drainage of the traveled ways and construction area. All pipes and structures installed as part of this Contract shall be left in a clean and operable condition at the completion of the work.

No separate payment will be made for the maintenance of the existing drainage system for diverting or pumping or for plugging of pipes, but all costs in connection therewith shall be included in the unit prices bid for the various Contract items.

§ 4.23 SITE INVESTIGATION

The Contractor shall familiarize him/herself as to the conditions existing within the project area, the type of equipment required to perform the work, the character, quality and quantity of the subsurface materials to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, as well as from information presented by the Drawings and/or Specifications. Any failure of the Contractor to acquaint himself with the available information will not relieve him/her from the responsibility for estimating properly the difficulty or cost of successfully performing the work. The city assumes no responsibility for any conclusions or interpretation made by the Contractor on the basis of the information made available by the city.

§ 4.24 SURVEY, LINES, GRADES AND MEASUREMENTS

The Contractor shall employ a competent surveyor or civil engineer, registered within the Commonwealth of Massachusetts to establish all lines, elevations, reference marks, batter boards, etc., needed by the Contractor during the progress of the Work and from time to time to verify such marks by instrument or other appropriate means.

The City Engineer shall be permitted at all times to check the lines, elevations, reference marks, batter boards, etc., set by the Contractor, who shall correct any errors in lines, elevations, reference marks, batter boards, etc., disclosed by such check. Such a check shall not be construed to be an approval of the Contractor's work and shall not relieve or diminish in any way the responsibility of the Contractor for the accurate and satisfactory construction and completion of the entire Work.

The Contractor shall make, check, and be responsible for all measurements and dimensions necessary for the proper construction of and the prevention of miss-fittings in the Work.

§ 4.25 PROPERTY BOUNDS

The Contractor shall exercise due care when working around all property bounds which are to remain. Should any damage to a bound result from the actions of the Contractor, the bound shall be replaced and certified as to the correct location by a Massachusetts registered professional land surveyor as directed by the City Engineer and at no cost to the City.

§ 4.26 CONSTRUCTION IN STREETS

The Contractor shall note that no construction in streets is permitted after the asphalt plants have closed for the season. The Contractor's work shall be scheduled accordingly.

§ 4.27 INTERFERENCE WITH AND PROTECTION OF STREETS

The Contractor shall not close or obstruct any portion of a street, road, or private way without obtaining permits therefore from the proper authorities. If any street, road or private way shall be rendered unsafe by the Contractor's operations, he shall make such repairs or provide such temporary ways or guards without delay that are acceptable to the City Engineer.

Streets, roads, private ways, and walks under construction and not closed shall be maintained passable and safe at all times by the Contractor, who shall assume and have full responsibility for the adequacy and safety of provisions made therefore.

The Contractor shall, at least 48 hours in advance, notify the City Engineer and the Police and Fire Departments in writing if the closure of a street or road is necessary. The Contractor shall cooperate with the City Engineer in the establishment of alternate routes and shall provide adequate detour signs, plainly marked and well lighted, in order to minimize confusion.

At the end of each work day the Contractor shall fill in or cover with steel plates of adequate strength to carry traffic all open trenches, test pits or other excavations determined by the City Engineer to be unsafe. The roadway shall be free of construction debris and excavated material and shall be relatively smooth to provide safe passage.

The Contractor shall erect substantial barriers at the ends of open ditches; stockpiled construction materials or other obstructions and shall erect warning signs and provide adequate lights or flares to guard the barriers, trenches, and excavation. It is the contractor's responsibility to maintain safety measures for the duration of the work.

§ 4.28 TEMPORARY ACCESS

Access to businesses and residences must be maintained at all times. The Contractor shall provide safe and ready means of ingress and egress to all stores and shops, public and private and professional offices and any other businesses or residences in the project area, both day and night, for the duration of the project.

§ 4.29 COORDINATION WITH CITY AGENCIES

The Contractor shall supply the Police Department, Fire Department and City Services Department with the following information:

1. A list of streets and intersections where work will be in progress to be supplied at intervals as required by the City Engineer.
2. Construction schedule, with bi-weekly updates
3. Immediate notification of any utility breaks.

§ 4.30 TREE REMOVAL AND CUTTING OF BRANCHES

In the event that tree removal or branch cutting is required for the prosecution of the work, any tree removals and all cutting of tree branches shall be approved in advance by the City Engineer and the City Department of Public Works. Cutting / removals shall be conducted under the supervision of a Certified Arborist. Costs associated with services rendered by the Arborist shall be considered incidental to this Contract.

§ 4.31 TREE PROTECTION

The Contractor shall exercise special care when excavating near trees. The provisions outlined in the specifications for protection on property shall apply to the protection of trees that are not to be removed or cut down. The contractor shall carefully excavate around trees and shall trim branches of trees before entering an area with heavy equipment so as not to damage tree branches and root systems. The provisions are outlined in the Special Provisions for Items 102.511 & 102.512 based on caliper size.

Trees close to the work shall be boxed or otherwise protected against injury as directed by the Engineer. The Contractor shall trim all branches that are liable to damage because of his operations, but in no case shall any tree be cut or removed without prior notification of the City. All injuries to bark, trunk, limbs, and roots of trees shall be repaired by dressing, cutting, painting according to approved methods, using only approved tools and material.

The tree protection along the line of work shall be a part of the work under the Contract, and all costs in connection therewith shall be incidental to the work under this contract.

§ 4.32 CONSTRUCTION IN STREETS RESTRICTION

The Contractor should be aware of and become familiar with any construction in streets restrictions mandated by the City, which may prohibit construction in the streets between certain periods. The Contractor shall not have any claim for the extension of the time for the completion of the work under this contract as a result of this restriction.

While working in any of the conditions noted herein the contractor shall be required to provide access to local abutters and emergency vehicles at all times.

HOURS OF OPERATION

Daily restricted hours of operation shall be between 7:00 am and 4:00 pm Work restrictions shall

be as follows:

ONE LANE OPERATION

Along each roadway, one lane shall remain open for vehicle traffic and one sidewalk shall remain open at all times during operations that can be performed with one lane open, such as pipe installations, manhole and utility work, sidewalk and curbing installation, etc.

DETOURS

All Detours shall be approved by the City of Everett City Department of Public Works and coordinated with the Everett Police and Everett Fire Department at least one week prior to implementation.

Approved Detours are allowed between 9:00 am and 3:30 pm ONLY.

Detours shall be allowed for construction activities that, in the opinion of the City Engineer, will require the closure of both lanes of traffic. Operations such as existing pavement reconstruction or full width paving are examples of operations that may require a road closure.

The contractor is required to provide the proper amount of equipment and manpower to perform these operations in an efficient manner.

§ 4.33 USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor expressly undertakes at his own expense:

- (1) Take every precaution against injuries to persons or damage to property;
- (2) Store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not duly interfere with the progress of his work or the work of any other contractors;
- (3) Place upon the work or any part thereof only such loads as are consistent with the safety of the portion of the work;
- (4) Clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that all times the site of the work shall present a neat, orderly and workmanlike appearance.
- (5) Before final payment, remove all surplus material, falsework, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations, and to put the site in a neat, orderly condition;
- (6) Effect all cutting, fitting or patching of his work required to make the same to conform to the plans and specifications and, except with the consent of the City Engineer, not to cut or otherwise alter the work of any other Contractor.

§ 4.34 NOTICE TO OWNERS OF UTILITIES

Written notice shall be given by the Contractor to all public service corporations or officials, owning or having charge of publicly or privately owned utilities, of his intention to commence operations affecting such utilities, at least one month in advance of the commencement of such operations, and the Contractor shall at the same time file a copy of such notice with the City Engineer.

Before the Contractor begins any work or operations which might damage any subsurface structures, he shall carefully locate all such structures and conduct his operations so as to avoid any damage to them.

The contractor shall prepare a list of the names and addresses of the utilities City's that have utility services in the City and within the project limits. The list shall include all relevant contact information including the name of the utility City, the contact person, the address, and emergency phone numbers and cell phone numbers. The list shall include the contact information for the Everett Fire Department, Police Department, City Department of Public Works and Conservation Commission. The contractor shall provide a copy of the list to the City Engineer and maintain the list, making needed updates as required.

The contractor shall mark out limits and request a dig safe of the project areas as needed and in advance of his/her operations. The contractor shall review the project area after the dig safe is complete to review the information marked for potential conflicts with the proposed work.

Dig Safe Center at (811) or 1-888-DIG-SAFE (1-888-344-7233)

Full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all the work involved in protecting or repairing property as specified in this section shall be considered as included in the prices paid for the various contract items of work and no additional compensation will be allowed, therefore.

The Contractor shall be required to furnish all labor, materials, and equipment necessary to protect underground structures and electrical vaults within the project site from construction debris and water penetration. When underground structures or electrical vault roofs are excavated, the Contractor shall be responsible for maintaining security of these structures or electrical vaults against unauthorized access. The Contractor shall be responsible for leaving the structures and vaults in a state of water tightness equal to that existing at the commencement of the contract.

§ 4.35 COMPLIANCE WITH NOISE ORDINANCE

The Contractor shall adhere to the City of Everett Noise Ordinance, as amended.

§ 4.36 OPEN EXCAVATIONS

All open excavations shall be adequately safe guarded by providing temporary barricades, caution signs, lights and other means to prevent accidents to persons, and damage to property. The length of open trench will be controlled by the particular surrounding conditions, but shall always be confined to the limits prescribed by the City. If the excavation becomes a hazard, or if it excessively restricts traffic at any point, special construction procedures shall be taken, such as limiting the length of open trench or requiring that the trench shall not remain open overnight. It is the Contractor's responsibility to maintain safety measures for all open trenches in accordance with applicable local, state, and federal regulations.

§ 4.37 OCCUPYING PRIVATE PROPERTY

The Contractor shall not enter upon or occupy with employees, tools, equipment or materials any

property outside the rights-of-way or other property of the City, except after the consent of the City's or their agents.

§ 4.38 PUBLIC SAFETY AND CONVENIENCE

The Contractor shall, without additional compensation, take every measure necessary for the protection of personnel and property, including the employment of necessary warning devices, barricades, signs, special apparel, etc., in the performance of the work. The Contractor, shall, without additional compensation, be required to provide safe and convenient access that is ADA compliant to all abutters at all times, except as may be authorized in writing by the City Engineer.

The Contractor shall provide necessary access for fire apparatus and other emergency vehicles through the work zones to all streets and all abutting properties at all times. Unless otherwise approved by the City Engineer, one lane shall be open to through traffic at all times during the execution of the work. The Contractor shall at all times provide access to public and private lots and alleys in the work area or arrange 48 hours in advance for disruption in access.

Sweeping and cleaning of surfaces beyond the limits of the project to clean up material caused by spillage or vehicular tracking during the various phases of the work shall be considered as incidental to the work being performed under the Contract and there will be no additional compensation.

Before the start of work, the Contractor shall post all locations in compliance with the Manual of Uniform Traffic Control Devices (MUTCD) and all revisions incorporated.

The Contractor shall familiarize himself with the provisions of the MUTCD Part VI Construction and Maintenance. During construction, the Contractor shall provide traffic warning devices that conform to the MUTCD and City of Everett Traffic Regulations in order to properly protect traffic and pedestrians from the Work. The Contractor shall be responsible for providing, positioning, repositioning, maintaining and removing signs through the course of the project as deemed necessary by the City Engineer.

When it is deemed necessary by the City Engineer or the Chief of Police that detail Police Officers are needed, they will be provided when ordered by the Contractor. The City shall pay for the detail officers under a separate account. However, it is the Contractor's responsibility to cancel a Police Detail at a minimum of four hours in advance of the start of the shift if conditions so warrant. The Contractor shall be responsible for Police Details costs if the Contractor fails to work on the given day that he/she ordered the details or if the Contractor fails to cancel the detail with adequate advance notice.

This provision of Police Details shall not relieve the Contractor of the responsibility of providing proper traffic control devices when operating adjacent to the roadway while it is open to the public. Any costs associated with these devices, outside of traffic control signage and reflectorized drums, are the responsibility of the Contractor and shall be accounted for in the Unit Costs unless otherwise provided for.

The Contractor shall provide sufficient fencing, barricades, barriers, and otherwise provide for security around all excavations and stockpiles. Cost for these items shall be included in the Unit Costs for the Items of Work.

The above provisions represent minimal requirements for maintenance of traffic and safety and may be modified at the discretion of the City Engineer.

§ 4.39 PROTECTION OF UTILITIES AND PROPERTY

The Contractor, in constructing or installing facilities alongside or near sanitary sewers, storm drains, water or gas pipes, electric or telephone conduits, poles, sidewalks, walls, vaults or other structures, trees, shrubs, grass and landscaping shall, at his expense, sustain them securely in place, cooperating with the officers and agents of the various utility companies and municipal departments which control them, so that the services of these structures shall be maintained. The Contractor shall also be responsible for the repair or replacement, at his own expense, of any damage to such structures caused by his/her acts or neglect, and shall leave them in the same condition as they existed prior to commencement of the work. In case of damage to utilities, the Contractor shall promptly notify the utility City and shall, if requested by the City Engineer, furnish labor and equipment to work temporarily under the utility City's direction in providing access to the utility. Pipes or other structures damaged by the operation of the Contractor may be repaired by the city or by the utility City that suffers the loss. The cost of such repairs shall be borne by the Contractor, without compensation therefore.

The Contractor's attention is directed to the necessity of making his own investigation in order to assure that no damage to existing structures, drainage lines, traffic signal conduits, etc. will occur.

The contract drawings indicate the approximate location in plan of known subsurface and overhead utilities. The Contractor shall satisfy himself to the exact location of subsurface and overhead utilities through his own research.

If, as the work progresses, it is found that any of the utility structures are so placed as to render it impracticable, in the judgment of the City Engineer, to do the work called for under this Contract, the Contractor shall protect and maintain the services in such utilities and structures and the City Engineer will, as soon thereafter as reasonable, cause the position of the utilities to be changed or take such other actions deemed suitable and proper.

If live service connections are to be interrupted by excavations of any kind, the Contractor shall not break the service until new services are provided.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals for doing all the work involved in protecting or repairing property as specified in this section, shall be considered included in the prices paid for the various Contract items of work and no additional compensation will be allowed therefore.

In case of damage to utilities, the Contractor shall promptly notify the City and shall, if requested, furnish manpower under the City's direction in getting access to the utility. Pipes or other structures damaged by the operation of the Contractor may be repaired by the utility company. The cost of such repairs shall be borne by the Contractor without compensation therefore.

The work to be done under this contract may necessitate changes in properties of utility companies listed elsewhere in this document. Immediately after executing the contract the Contractor shall confer with the Cities of all utilities in order that relocations may be made at times consistent with operation of this contract.

The Contractor shall notify utility companies in writing at least 72 hours (excluding Saturdays, Sundays and legal holidays) before excavating in any public way and shall notify Dig Safe at Telephone Number (811) or 1-888-344-7233.

§ 4.40 SAFETY AND HEALTH REGULATIONS

This project is subject to all of the Safety and Health Regulations (CFR 29 Part 1926 as amended) as promulgated by the U.S. Department of Labor on June 24, 1974. Contractors are urged to make themselves familiar with the requirements of these regulations.

§ 4.41 OCCUPYING PRIVATE PROPERTY

This section left intentionally blank.

§ 4.42 CARE AND PROTECTION OF PROPERTY

The Contractor shall be responsible for the preservation of all public and private property, and shall use every precaution necessary to prevent damage thereto. If any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work on the part of the Contractor, such property shall be restored by the Contractor, at his expense, to a condition similar or equal to that existing before the damage was done, or he shall make good the damage in other manner acceptable to the City.

All sidewalks not part of the work which are disturbed by the Contractor's operations shall be restored to their original condition by the use of similar or comparable materials. All curbing not part of the work shall be restored in a condition equal to the original construction and in accordance with the best modern practice.

Along the location of this work all fences, walks, bushes, trees, shrubbery, mailboxes, and other physical features shall be protected and restored in a thoroughly workmanlike manner unless otherwise noted in these specifications. Fences and other features removed by the Contractor shall be replaced in the location indicated by the Engineer as soon as conditions permit. All grass areas beyond the limits of construction which have been damaged by the Contractor shall be regraded and seeded or replaced with sod as directed by the Engineer.

The protection, removal, and replacement of existing physical features along the line of work shall be a part of the work under the Contract, and all costs in connection therewith shall be included in the unit and/or lump sum prices bid under the items in the Bid Form.

§ 4.43 PRECAUTIONS UNDER ELECTRIC LINES

The Contractor's attention is directed to the AASHTO Guide on Occupational Safety on Highway Construction Projects, Subpart N, 1926.550, relating to construction equipment clearances at overhead electric lines, which states in part "...the minimum clearance between the lines and any part of the crane or load must be at least 10 feet from lines rated 50 KV or below, and greater distances for higher voltage...". Consult with the electric company City/supplier for safe distance requirements for higher voltage higher than 50 KV.

For the protection of personnel and equipment, the Contractor should be aware of this regulation especially during paving operations using large semi-trailer vehicles.

§ 4.44 WORK DONE BY OTHERS

Relocation of all private utilities made necessary by the construction of this project, will be accomplished by the respective utility companies, at their expense.

§ 4.45 DRAINAGE

The Contractor shall perform all drainage work pursuant to the Stormwater Management Standards under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L.c. 21, §§ 26-53. These revised Stormwater Management Standards have been incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

§ 4.46 CONSTRUCTION IN STREETS

The Contractor should note that no construction in streets is permitted after the asphalt plants have closed for the season unless emergency work authorized in writing by the city. The Contractor's work should be scheduled accordingly.

§ 4.47 WORK DURING INCLEMENT WEATHER

No work shall be done under these Specifications except by permission of the City Engineer when the weather is unfit for good and careful work to be performed. Should the severity of the weather continue, the Contractor upon the direction of the City, shall suspend all work until instructed to resume operations by the City and the Contractor Time shall be extended to cover the duration of the order. Work damaged during periods of suspension due to inclement weather shall be repaired and/or replaced by the Contractor. No earth fill or embankment shall be placed upon frozen material. If there is a delay in the Work due to the weather conditions, the necessary precautions must be taken to bond new Work to old.

§ 4.48 INTOXICATING CHEMICALS

The Contractor shall not sell and shall neither permit nor suffer the introduction or use of intoxicating chemicals upon or about the work.

§ 4.49 GUARANTEE

The Contractor guarantees that the work and services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of the same, shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Drawings, Specifications and other Contract Documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the Contract shall be fulfilled. This guarantee shall be for a period of one year from and after the date of completion and acceptance of the work as stated in the final estimate.

If at any time within the said period of guarantee, any part of the work requires repairing, correction or replacement, the City may notify the Contractor in writing to make the required repairs, correction or replacements. If the Contractor neglects to commence making such repairs, corrections or replacements to the satisfaction of the City within 10 days from the date of receipt of such notice, or having commenced fails to prosecute such work with diligence, the City may employ other persons to make said repairs, correction or replacements, including compensation for additional professional services, shall be paid by the Contractor.

Nothing contained in the Section shall be construed as a limitation as to any and all rights the City may have against the Contractor for any neglect or for any breach of this Provision.

§ 4.50 INSUFFICIENCY OF SAFETY PRECAUTIONS

If, at any time, in the judgment of the City Engineer, the Work is not properly made safe in regard to public travel, persons on or about the Work, or public or private property, the City Engineer shall have the right to order such safeguards to be erected and such precautions to be taken as he deems advisable, and the Contractor shall comply promptly with such orders. If, under such circumstances, the Contractor does not or cannot immediately put the work and the safeguard into proper and approved condition or if the Contractor or his representative is not upon the site so that he can be notified immediately of the insufficiency of safety precautions, the City Engineer may put the work into such condition that it shall be in his opinion, in all respects safe. The Contractor shall pay all costs and expenses incurred by the City Engineer or City in so doing. Such action of the City Engineer or failure to take such action, shall in no way relieve or diminish the responsibility of the Contractor for any and all costs, expenses, losses, liability, claims, suits, proceedings, judgments, awards, or damages resulting from by reason of, or in connection with the failure to take precautions or the insufficiency of the safety precautions taken by him or by the City Engineer acting under authority of this section.

§ 4.51 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

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

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

The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the City in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.

§ 4.52 SITE INFORMATION NOT GUARANTEED

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

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

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the City, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 5

Add the following paragraph to Section 5.1.2:

The CONTRACTOR shall submit one copy of each of his subcontracts to the CITY and demonstrate the subcontractor's ability to complete the portion of the work he/she is charged with. This shall include compliance with contract requirements.

§ SUPPLEMENTAL CONDITION TO ARTICLE 7

Add the following to paragraph 7.2.1:

There have been no reports of explorations and tests of subsurface conditions utilized by the CITY in preparation of the Contract Documents. All existing structures and subsurface structures identified by the CITY were based on the best information available.

Revise paragraph 7.2.4:

Paragraph 7.1.4 is changed by deleting the phrase "mutually acceptable fixed or percentage fee" and replacing with "fifteen percent fee for overhead and profit."

Add the following Paragraph to §7.3 MINOR CHANGES IN THE WORK:

The City reserves the right to increase or decrease quantities as directed by the City Engineer. The City also reserves the right to change locations of the work as directed by the City Engineer.

Change Paragraph 7.4.2:

Paragraph 7.4.2 is changed by deleting the phrase "Contractor must initiate claims within fourteen (14) calendar days after occurrence" and replacing with "Contractor must initiate claims within seven (7) calendar days after occurrence".

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 8

Add the following Sub-Sections to Section 8.3

§ 8.3.5 The CITY shall evaluate CONTRACTOR's request for extension of Contract Time as follows:

- a. The CITY will determine whether the amount of labor (man-hours) reasonably correlates to the magnitude of the addition or reduction of the work.
- b. If the labor requested is determined reasonable, the CITY shall evaluate the impact the additional labor has on the rate of the entire crew. This evaluation will consider whether the addition in work is critical to the CONTRACTOR's schedule and, if critical, to what extent the progress of the CONTRACTOR's overall crew is affected.
- c. The CONTRACTOR shall provide the ENGINEER with all information necessary for ENGINEER to make this analysis.

§ 8.3.6 The CONTRACTOR is not entitled to any time extension until the CONTRACTOR's scheduled completion date exceeds the contract completion date.”

§ 8.3.7 No Damages for Delay: The CONTRACTOR shall not be entitled to damages for any delay regardless of the cause of the same. The CONTRACTOR's only remedy in the event of a delay shall be an extension of the Contract Time and only to the extent allowed in the Contract documents.

Add the following to Sub-Section to Section 8.4:

§ 8.4.2 The Bid and the Agreement contain a paragraph specifying the Contract Time stated as a number of consecutive calendar days following execution of the Contract, and the dollar amount of liquidated damages to be paid to the CITY for each calendar day beyond the specified completion period that the work remains uncompleted.

§ 8.4.3 The date of beginning and the Contract Time for the work are essential conditions of the Contract Documents and the work embraced shall be commenced on a date specified in the Notice to Proceed.

§ 8.4.4 The CONTRACTOR will proceed with the work at such rate of progress to insure Final Completion within the Contract Time. It is expressly understood and agreed, by and between the CONTRACTOR and the CITY, that the Contract Time for the completion of the work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

§ 8.4.5 If the CONTRACTOR shall fail to fully complete the work within the Contract Time, or extension of time granted by the CITY, then the CONTRACTOR will pay to the CITY the amount for liquidated damages as specified in the Bid and Agreement for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the BID and Agreement.

§ 8.4.6 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due to the following, and the CONTRACTOR has promptly given written notice of such delay to the CITY or designee.:

To any preference, priority or allocation order duly issued by the CITY.

To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the CITY, acts of another CONTRACTOR in the performance of a Contract with the CITY, fires, floods, abnormal and unforeseeable weather; and to any delays of Subcontractors occasioned by any of the causes specified herein.

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 9

Substitute the second sentence of section 9.6.1 with the following paragraph:

The City shall withhold a retainage equal to five (5) percent of each partial payment. This will be reduced to the amount determined by the City and City Engineer to be necessary to assure completion of the work, or cover claims against the Contractor, after the date of Substantial completion.

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 11

Add the following Sub-Section:

§ SC 11.4.2 CONTRACTOR'S LIABILITY INSURANCE AMOUNTS REQUIRED

In no case shall the limits of liability be less than the following:

1. Contractor's Liability Insurance
 - a. Workers Compensation, etc. under the General Conditions:

State:	Statutory
Applicable Federal	Statutory
Employer's Liability:	<u>\$1,000,000.</u>
 - b. Comprehensive General Liability (including Premises-Operations; Independent Contractor's Protection; Products Liability and Completed Operations; Broad Form Property Damage); Bodily Injury (including completed operations and products liability for up to 3 years after the completion of the project):

<u>\$ 1,000,000</u>	Each Occurrence
<u>\$3,000,000</u>	Annual Aggregate

Property Damage:

\$ 1,000,000 . Each Occurrence

\$3,000,000 . Annual Aggregate

or a combined single limit of \$2,000,000.

Property Damage Liability Insurance will provide Explosion, Collapse and Underground coverages.

Personal Injury, with employment exclusion deleted

\$ 3,000,000 . Annual Aggregate

c. Comprehensive Automobile Liability:

Bodily Injury:

\$1,000,000 . Each Person

\$1,000,000 . Each Occurrence

Property Damage:

\$1,000,000 . Each Occurrence

or a combined single limit of \$ 2,000,000

d. Contractual Liability:

Bodily Injury:

\$1,000,000 . Each Occurrence

Property Damage:

\$1,000,000 . Each Occurrence

\$2,000,000 . Annual Aggregate

e. Umbrella Liability, Body Injury + Property Damage combined including completed operations

\$5,000,000 .

Add the following at the end of Paragraph 11.1.3:

Certificates from the insurance carrier shall be filed in triplicate with the CITY and shall state the type of coverage, limits of liability and the expiration date on each certificate.

With respect to insurance identified in paragraphs: 11.1.3, 11.1.4, 11.1.5, and 11.1.7 (Comprehensive General Liability), such insurance shall name the **CITY OF EVERETT** as additional named insured.

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 12

Add the following Sections to Article 12:

§ 12.4 DIMENSIONS AND LOCATIONS

Where the dimensions and locations of existing structures are of importance in the installation or connection of any part of the Work, the Contractor shall verify such dimensions and locations in the field before the fabrication of any material or equipment which is dependent on the correctness of such information.

§ SUPPLEMENTAL CONDITIONS TO ARTICLE 13

Add the following Sections to Article 13:

§ 13.8 MATERIALS REMOVED AND STACKED

The Contractor shall carefully remove and store these materials at a site designated on the project by the City Engineer for their subsequent removal by the City, or transported to a location within the City specified by the City Engineer, or legally disposed of as directed by the City Engineer. The Contractor furnishes any necessary equipment and labor for loading the material on the City's trucks. Payment for this work shall be included in respective bid items.

§ 13.9 STORAGE OF MATERIALS AND EQUIPMENT

All excavated materials and equipment to be incorporated in the Work shall be placed so as not to injure any part of the Work or existing facilities and so that free access can be had at all times to all parts of the Work and to all public utility installation in the vicinity of the Work. Materials and equipment shall be kept neatly piled and compactly stored in such locations as will cause a minimum of inconvenience to public travel and adjoining City's, tenants and occupants.

§ 13.10 DISPOSAL OF SURPLUS MATERIALS

All existing and other materials not required or needed for use on the project, and not required to be removed and stacked by the City Engineer, shall become the property of the Contractor and shall be removed from the site during the construction period and disposed of legally. No separate payment will be made for this work, but all costs in connection therewith shall be included in the prices bid for various contract items.

§ 13.11 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein, the Contract shall be read and enforced as though they were included herein and such provision shall prevail over any inconsistent language herein. If through mistake

or otherwise any such provision is not inserted then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

§13.12 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

Discriminatory employment practices by contractors, subcontractors and suppliers of goods and services based on race, color, religion, national origin, ancestry, age or sex are prohibited. Contractors and suppliers of goods and services shall give written notice of their commitment to non-discrimination to any labor union, association or brotherhood with which they have a collective bargaining or other agreement.

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

§ 13.13 LIENS

If at any time any notices of lien are filed for labor performed or materials or equipment manufactured, furnished or delivered to or for the work, the Contractor shall, at its own cost and expense, promptly discharge, remove or otherwise dispose of the same, and until such discharge, removal or disposition, the City shall have the right to retain from any monies payable hereunder an amount which, in its sole judgment, it deems necessary to satisfy such liens and pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce the same, or incurred in connection therewith or by reason thereof.

§ 13.14 NOTICES, COMPLIANCE WITH LAWS

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

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

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

In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the City immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.

§ 13.15 PRICE ADJUSTMENT

Notwithstanding any general or special law to the contrary, this contract shall be subject to the provisions stated in Chapter 303 Section 60 and Chapter 86 of the Acts of 2008 relative to energy escalation. A price adjustment for liquid asphalt and Portland Cement shall be made on a monthly basis when the monthly change exceeds +/- 5 percent. Base prices for this contract shall be the New Method period prices posted on the MassDOT website, <https://www.mass.gov/service-details/2020-massdot-contract-price-adjustments> for the month of the Contract bid opening.

§ 13.16 PREVAILING WAGE

In accordance with General Laws Chapter 149, Section 26 through 27D, the Contractor is obligated to comply with the prevailing wage rates established by the Commissioner of the Department of Labor and Workforce Development for mechanics, apprentices, chauffeurs, teamsters and laborers employed on the Project. The schedule of applicable prevailing wage rates for the Project, together with a Certificate of Compliance therewith, are set forth in Attachment A herein.

SECTION 00820a

CHANGE ORDER FORM

Page 1 of 2

Project Number _____

Change Order Number _____

Contract Amount (As Bid).....\$ _____

Net Change in Contract Price (this Change Order).....\$ _____

Net Change in Contract Price (all other Change Orders).....\$ _____

Total Adjusted Contract Price.....\$ _____

This Change Order extends the time to complete the Work by _____ calendar days.

The extended completion date is _____.

This Change Order checked by: _____

The Resident Project Representative _____

This Change Order is requested by: _____

This Change Order is recommended by _____

City Engineer

Date

The undersigned agree to the terms of the Change Order and certifies that such Change Order is in conformance with M. G. L. C.30, Section 39I.

Contractor

Date

Certification of Appropriation under M. G. L. C.44, Section 31C: Adequate funding in an amount sufficient to cover the total cost of this Change Order is available.

By: _____
Chief Financial Officer

Date

CHANGE ORDER FORM

Public Entity _____

Project Number _____ Contract Number _____ Change Order Number _____

Contract Title _____

City's Name _____

City's Address _____

Contractor's Name: _____

Contractor's Address: _____

Description of Change

Reason for Change

SECTION 00820b

CERTIFICATE OF FINAL COMPLETION OF WORK

CONTRACT NO. _____ AGREEMENT DATE _____

CONTRACT DESCRIPTION: _____

COMPLETION DATE PER AGREEMENT AND CHANGE ORDERS _____

FINAL CERTIFICATION OF CONTRACTOR

I hereby certify that the Work as identified in the Final Payment Request for construction Contract Work dated _____, represents full compensation for the actual value of Work completed. All Work completed conforms to the terms of the Agreement and authorized changes.

Date

CONTRACTOR

Signature

Title

FINAL ACCEPTANCE OF CITY

I, as representative of the CITY, accept the above Final Certifications and authorize Final Payment in the amount of \$_____ and direct the Contractor's attention to the General Conditions - Article 14. The guaranty for all Work completed subsequent to the date of Substantial Completion, expires one (1) year from the date of this Final Acceptance.

EVERETT, MASSACHUSETTS

Date

Authorized Representative

Signature

END OF SECTION

SECTION 00850

INCORPORATION OF APPLICABLE PROVISIONS OF THE MASSACHUSETTS
GENERAL LAWS

Certain provisions of the Massachusetts General Laws are applicable to Construction contracts including, but not limited to, those contained in Chapter 30 and Chapter 149. All applicable provisions of the Massachusetts General Laws are incorporated into the Contract as if fully set forth herein, and shall prevail over any conflicting provisions of the General or Supplemental General Conditions.

SECTION 00860

CITY OF EVERETT NOISE ORDINANCE

Section 13-7 Disturbing the peace.

- (a) Notwithstanding any other provision of these Revised Ordinances or city ordinances to the contrary, it shall be unlawful for any person in the city to disturb the peace by causing or allowing to be made any unreasonable loud or excessive noise, including but not limited to such noise resulting from the operation of any radio, phonograph or sound reproducing device to amplify such noise, or from the making of loud outcries, exclamations or loud singing or any other loud or excessive noise by any person or group of persons. Unreasonable, loud, or excessive noise shall be defined as noise measured in excess of 50dBA between the hours of 6:00 p.m. and 7:00 a.m. when measured not closer than the lot line. The term dBA shall mean the A-weighted sound level in decibels, as measured by a general-purpose sound level meter complying with the provisions of the American National Standards Institute, Specifications for Sound Level Meters (ANSI sl 4 1971), properly calibrated, and operated on the "A" weighing network.
- (b) Any person aggrieved by such disturbance of the peace may complain to the police about such unreasonable loud or excessive noise. The police, in response to each complaint, shall verify by use of the sound level meter described in the preceding paragraph, that the noise complained of exceeds the 50dBA limit prescribed herein and if so, may thereupon arrest and/or make application in the appropriate court for issuance of a criminal complaint for violation of chapter 272, section 53, of the General Laws, which sets forth the penalties for disturbing the peace. (Ord. of 12-22-86)