

TOWN OF SHUTESBURY
SHUTESBURY MUNICIPAL LIGHT PLANT

1 COOLEYVILLE ROAD
SHUTESBURY, MA 01072

**CONTRACT TERMS AND GENERAL CONDITIONS BETWEEN THE
OWNER AND THE CONTRACTOR**

Bid # 19-01

Shutesbury MLP Service Drops Installation in Shutesbury, MA

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ARTICLE 1: ACKNOWLEDGMENT OF CONTRACT TERMS AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR

By Signing below, the Contractor Acknowledges, they have read and accept the Contract Terms and General Conditions prior to submittal of Bid and/or Proposal for Specified Work

on the _____ of _____ in the year of _____.

by and between the OWNER _____

TOWN OF SHUTESBURY, MASSACHUSETTS
ACTING THROUGH THE SHUTESBURY MUNICIPAL LIGHT PLANT (hereinafter called "MLP")
1 COOLEYVILLE ROAD
SHUTESBURY, MA 01072

and the

CONTRACTOR _____ (NAME OF COMPANY)

SIGNATURE _____

LOCATED AT _____ (STREET, CITY, STATE, ZIP)

for services in connection with:

Bid 19-01 - Shutesbury MLP Telecommunication Cable Installation Note:

All rates based with consideration to current 2019 State of Massachusetts Prevailing Wage Schedule.

ARTICLE 2: GENERAL PROVISIONS

2.1 RELATIONSHIP OF PARTIES

2.1.1 The Owner and the Contractor agree to proceed with the Project on the basis of mutual trust, good faith, and fair dealing.

2.1.2 The Contractor represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither Contractor nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement or unless authorized in writing by Owner's Representative.

2.1.4 The Contractor represents that it is a sole proprietor, partnership, limited liability company, or corporation that validly exists with full legal right and authority to enter into this Contract and do business in the Commonwealth of Massachusetts.

2.2 EXTENT OF AGREEMENT

2.2.1 This Agreement, together with all other Contract Documents, is solely for the benefit of the parties, and represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.

2.3 DEFINITIONS

2.3.1 *Agreement* means this Agreement and Exhibits and Attachments made part of this Agreement upon its execution. Except where otherwise expressly stated, reference to the Agreement shall be reference to the Contract Documents.

2.3.2 *Allowance* means a Contractor estimated amount included, for budgetary purposes, in the Contract Documents to value certain items, or subcontractors. **Allowance compensation sums for each drop shall be a maximum as described in section 3.3.**

2.3.3 *Amendment* means a written amendment to this Agreement signed by Owner and Contractor and which amends, modifies, supplements or otherwise changes the Agreement or Contract Documents.

2.3.4 A *Change Order* is a written amendment to this Agreement signed by the Owner and the Contractor after execution of this Agreement, indicating changes in the scope of the Work, the

Contract Price and/or Contract Time, including substitutions proposed by the Contractor and accepted by the Owner.

2.3.5 The *Contract Documents* consist of this Agreement, any and all bidding documents, the drawings, specifications, addenda issued prior to execution of this Agreement, Allowances, other documents attached to or incorporated by reference into this Agreement and any Change Orders and other amendments signed after execution.

2.3.6 The *Contract Price* is the amount indicated in Paragraph 7.1 of this Agreement.

2.3.7 The *Contract Time* is the period between the Date of Commencement and Final Completion.

2.3.8 The *Contractor* is the person or entity identified in Article 1 and includes the Contractor's Representative.

2.3.9 The term *Day* shall mean calendar day unless otherwise specifically defined.

2.3.10 *Fee* means salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices; general and administrative expenses of the Contractor's principal and branch offices other than the field office; and the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work; and profit.

2.3.11 *Final Completion* occurs on the date when all the Contractor's obligations under this Agreement are complete and accepted by the Owner and a Certificate of Final Completion has been signed by the Owner.

2.3.12 An *Interim Directed Change* is a written order signed by the Owner directing a change in the Work pending negotiations between the Owner and Contractor of a Change Order relating to such change.

2.3.13 A *Material Supplier* is a person or entity retained by the Contractor to provide material and/or equipment for the Work.

2.3.14 *Others* means other contractors, material suppliers, and persons at the Worksite not employed by or otherwise affiliated with the Contractor or Subcontractors.

2.3.15 *Owner* is the person or entity identified in Article 1, and includes the Owner's Representative(s).

2.3.16 *Owner's Representative* is the MLP's authorized representative, Holyoke Gas and Electric/ Whip City Fiber, acting in its capacity as the MLP's Project Manager

2.3.17 The *Project* is the construction and installation of a Fiber-to-the-Premises Distribution Network capable of providing high-speed Internet and telephone services to all premises situated in the Town of Shutesbury, Massachusetts, and includes the Work as specified in this Agreement. It may also include construction by the Owner or Others.

2.3.18 The *Schedule of the Work* is the document prepared by the Contractor that specifies the dates on which the Contractor plans to begin and complete various parts of the Work, including dates on which information and submittals will be provided to the Owner.

2.3.19 A *Subcontractor* is a person or entity retained by the Contractor as an independent contractor to provide the labor, materials, equipment and/or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Owner's Representative or Others.

2.3.20 *Substantial Completion* of the Work, or of a designated portion, occurs on the date when (i) the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended, as determined by the Owner, (ii) Owner has signed a Certificate of Substantial Completion, and (iii) where required, a certificate of occupancy has been issued. A Certificate of Substantial Completion signed by the Owner shall confirm this date.

2.3.21 A *Sub subcontractor* is a person or entity that has an agreement with a Subcontractor to perform anyportion of the Subcontractor's Work identified in bid documents as a Subcontractor.

2.3.22 *Work* means all the labor, materials, equipment, and construction work and services necessary, appropriate or incidental to perform and complete all the work indicated in and reasonably inferable from the Contract Documents to achieve the results intended by the Owner, and to fulfill all the Contractor's obligations for the Project in conformance therewith. The Work refers to the whole Project, to include any materials provided by the Owner the Owner's representative or Others. .

2.3.22.1 *Changed Work* means work that is different from the original scope of Work; or work that changes the Contract Price or Contract Time.

2.3.22.2 *Defective Work* is any portion of the Work that is not in conformance with the Contract Documents, as more fully described in Paragraphs 3.5 and 3.8.

2.3.23 *Worksite* means the geographical area at the location of the Project as identified in Article 1 where Work is to be performed.

ARTICLE 3: CONTRACTOR'S RESPONSIBILITIES

3.1 GENERAL RESPONSIBILITIES

3.1.1 The Contractor shall provide all labor, materials, equipment and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents as being necessary to produce the indicated results. In addition, the Contractor shall perform all Work using its best efforts, in an expeditious manner, in accordance with prudent construction industry practices, and in compliance with all applicable manufacturers' warranties, and all applicable federal, state, and local laws, regulations, codes, orders, permits, consents, and approvals.

3.1.2 The **Contractor shall be responsible for the supervision and coordination of the Work**, including all construction means, methods, and procedures utilized by Contractor. **The Contractor shall be responsible for the cost of any police or safety details** required to perform the work.

3.1.3 The Contractor shall perform Work only within locations allowed by the Contract Documents, applicable permits, and applicable local law.

3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

3.2.1 The Owner may perform work at the Worksite directly or by Others.

3.2.2 In the event that the Owner elects to perform work at the Worksite directly or by Others, the Contractor and the Owner shall cooperate to coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities.

3.2.3 With regard to the work of the Owner and Others, the Contractor shall (a) proceed with the Work in a manner which does not hinder, delay or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Contractor's construction and operations with the work of the Owner and Others.

3.2.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Contractor shall give the Owner prompt written notification of any defects the Contractor discovers in their work, including, but not limited to, defects which will prevent the proper execution of the Work. The Contractor's obligations in this Paragraph do not create a responsibility for the work of the Owner or Others, but are for facilitating the Work. If the Contractor does not notify the Owner of patent defects interfering with the performance of the Work, however, the Contractor shall be deemed to have agreed that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work, and Contractor shall not be entitled to make any claim to the contrary. Following receipt of written notice from the Contractor of defects, the Owner shall inform the Contractor what action, if any, the Contractor shall take with regard to the defects. Should changes be required in the Work as a result of Owner's response the Contractor shall submit a written notice of claim to the Owner in accordance with Paragraph 8.4

3.3 RESPONSIBILITY FOR PERFORMANCE

3.3.1 In order to facilitate fulfillment of its responsibilities for completion of the Work, prior to commencing the Work the Contractor shall examine and compare the drawings and specifications with information furnished by the Owner pursuant to Paragraph 4.3, relevant field measurements made by the Contractor, and any visible conditions at the Worksite affecting the Work. By proceeding with each portion of the Work, Contractor shall be deemed to have undertaken the efforts set forth in this paragraph.

3.3.2 If in the course of the performance of the obligations in Subparagraph 3.3.1 the Contractor discovers any errors, omissions, incompleteness, inaccuracies, or inconsistencies in the Contract Documents or information furnished by the Owner, the Contractor shall promptly report them to the Owner in writing. Following receipt of written notice from the Contractor of defects, the Owner shall promptly inform the Contractor what action, if any, the Contractor shall take with regard to the defects.

3.3.3 Site Information Not Guaranteed: All information given in the Contract Documents relating to subsurface and other conditions, distances, natural phenomena, existing pipes, materials required, underground conduits and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

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

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

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 Owner, 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.

The bid price shall include any and all labor, materials, equipment, services and work to be performed in order to fully complete the scope of work or Project which is the construction and installation of a Fiber-to-the-Premises Distribution Network capable of providing high-speed internet and telephone

services to all premises situated in the Town of Shutesbury, Massachusetts, and includes the Work as specified in this Agreement.

3.3.4 The unit price for each drop shall not exceed the maximum unit cost as specified in the Contractor bid except for the allowances below.

For Outside Installations

- *Aerial Installations: Allowance compensation for each drop shall be a maximum of the aerial foot or premises installation unit cost as specified in the Contractor bid. This amount may not be exceeded without written permission from the Owner. If the compensation invoice exceeds this amount for the drop without the written permission of the Owner, it shall not be compensated.*
- *Underground Installations (new dig, microtrenching): Allowance compensation for each drop shall be a maximum of the per- foot installation unit cost as specified in the Contractor bid plus no more than 10%. This amount may not be exceeded without written permission from the Owner. If the compensation invoice exceeds this amount for the drop without the written permission of the Owner, it shall not be compensated.*
- *Underground Installations (rod and pull through): Allowance compensation for each drop shall be a maximum of the per- foot installation unit cost as specified in the Contractor bid plus no more than 5%. This amount may not be exceeded without written permission from the Owner. If the compensation invoice exceeds this amount for the drop without the written permission of the Owner, it shall not be compensated.*
- *Underground Installations (spare empty conduit): Allowance compensation for each drop shall be a maximum of the per- foot installation unit cost as specified in the Contractor bid. This amount may not be exceeded without written permission from the Owner. If the compensation invoice exceeds this amount for the drop without the written permission of the Owner, it shall not be compensated.*

For Inside Installations

- *Allowance compensation for each drop shall be a maximum of the per-premise unit cost as specified in the Contractor bid. This amount may not be exceeded without written permission from the Owner. If the compensation invoice amount exceeds this amount without the written permission of the Owner, it shall not be compensated by the Owner. (Note the Contractor can exceed the “Standard” Inside Installation cost with a prior written work order signed by the subscriber/homeowner. Any amount exceeding the Standard Inside Installation cost shall be compensated by the subscriber).*

3.3.5 The Contractor shall be responsible for all applicable site restorations within 3 Business Days of site disturbance and is expected to return any site to the same condition it was prior to site

work. Failure to comply shall result in a \$50 (fifty dollar) per day inconvenience payment to the Owner, reflecting a reasonable estimate of the damages that would likely be suffered by the homeowner as a result of Contractor's delay in performing the restoration work. In addition, if, after written notice from the Owner, the Contractor fails within three days thereof to commence to perform the necessary site restoration, the Owner may have the site restored by its own forces, or by Others, and charge the Contractor for the full cost of the restoration plus the foregoing inconvenience payment for delay,

3.3.6 Delivery of Material and Debris Disposal must be accompanied by Certified weight scale slips, a loading invoice, or a delivery ticket. Hand written weight slips are not acceptable.

3.4 CONSTRUCTION PERSONNEL AND SUPERVISION

3.4.1 The Contractor shall provide competent supervision for the performance of the Work. Before commencing the Work, Contractor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so Owner may review the

individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, Contractor shall name a different superintendent or project manager for Owner's review at no additional cost to the Owner, and with no adjustments to the Contract Price and Contract Time. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite. Notwithstanding the foregoing, the Owner's approval, disapproval, or lack or withdrawal of the same shall neither relieve Contractor of its obligations under the Contract Documents, nor result in a waiver of any rights, remedies or defenses of the Owner.

3.4.2 The Contractor shall be responsible to the Owner for all of the acts or omissions of parties or entities performing portions of the Work for or on behalf of the Contractor, including, but not limited to, Subcontractors.

3.4.3 The Contractor shall permit only skilled persons to perform the Work. The Contractor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Contractor shall immediately reassign the person on receipt of the Owner's written notice to do so. Notwithstanding the foregoing, the Owner's determination or lack thereof shall neither relieve Contractor of its obligations under the Contract Documents, nor result in a waiver of any rights, remedies or defenses of the Owner.

3.4.4 CONTRACTOR'S REPRESENTATIVE

The Contractor's authorized representative is _____. The Contractor's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Contractor shall notify the Owner in writing of a change in the designation of the Contractor's Representative.

3.5 WORKMANSHIP

The Work shall be executed in accordance with the Contract Documents and in a competent, workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work.

3.6 MATERIALS FURNISHED BY THE OWNER OR OTHERS

In the event the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Contractor to examine the items so provided and thereupon handle, store and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Contractor shall be the responsibility of the Contractor and may be deducted from any amounts due or that may become due the Contractor. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Contractor of defects, the Owner shall inform the Contractor what action, if any, the Contractor shall take with regard to the defects. If the Contractor fails to provide any such notice to the Owner for defects that were or should have been ascertained by Contractor upon such examination, the Contractor shall be deemed to have agreed that the items were defect-free and suitable for the use intended. **The Contractor shall not include in the Contract Price any overhead or profit for materials furnished by the Owner or Owner's Representative.**

3.6.1 All material to be furnished by the Owner or Others is listed in Attachment D.

3.7 TESTS AND INSPECTIONS

3.7.1 After the installation is complete the Contractor will ensure service to each premise through testing and documentation (Section 2.7 of bid).

3.7.2 The Contractor shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Contractor shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. The Contractor shall bear all expenses associated with tests, inspections and approvals expressly required by the Contract Documents, including as provided in Subparagraph 3.7.3, and which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval or inspection shall be secured by the Contractor and promptly delivered to the Owner.

3.7.3 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the Contractor shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Contractor's expense as provided in Subparagraph 3.7.3.

3.7.4 If the procedures described in Subparagraphs 3.7.1 and 3.7.2 indicate that portions of the Work fail to comply with the Contract Documents, the Contractor shall be responsible for costs of correction of the noncompliance and of retesting the applicable portions of the Work.

3.8 WARRANTY

3.8.1 The Contractor represents and warrants that all materials and equipment incorporated into the Work shall be new unless otherwise expressly specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Contractor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished, provided that the furnishing of such evidence shall not relieve Contractor of its obligations hereunder, nor operate to negate or limit the extent of the foregoing materials warranty. The Contractor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others without Contractor's knowledge or assent, or abuse. The contractor's warranty pursuant to this Paragraph 3.8 shall commence on the Date of Substantial Completion for a period of three years, provided, however, that the temporal extent of such warranty shall not waive or abridge any applicable statutory limitations period for causes of action relating to the Work.

3.8.2 With respect to any portion of Work first performed after Substantial Completion, the Contractor's warranty obligation applicable to such portion of the Work shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.8.3 The Contractor shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties shall be listed in an

attached Exhibit to this Agreement. After expiration of the three-year warranty period set forth in Subparagraph 3.8.1, Contractor shall assign any such extended warranties to the Owner and provide reasonable assistance and cooperation to the Owner in enforcing the obligations of Subcontractors or Material Suppliers.

3.9 CORRECTION OF DEFECTIVE WORK

3.9.1 If, prior to Substantial Completion and within three years after the date of Substantial Completion of the Work, any Defective Work is found, the Owner shall promptly notify the Contractor in writing. Unless the Owner provides express and unequivocal written acceptance of the condition, the Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. Nothing herein shall waive any statutory limitations period applicable to causes of action relating to Defective Work.

3.9.2 If the Contractor fails to correct Defective Work within seven days after receipt of written notice from the Owner prior to final payment, the Owner may, but is not obligated to, correct it in accordance with the Owner's right to carry out the Work in Paragraph 11.2. In such case, the Owner may deduct the cost of correcting such deficiencies from payments then or thereafter due the Contractor. If payments then or there after due Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Should Contractor not pay the Owner, Owner may file against the Contractor's outstanding Performance Bond.

3.9.3 If after the three-year warranty correction period the Owner discovers any Defective Work, the Owner may promptly notify the Contractor and request that the Contractor correct the same, or the Owner may pursue such other remedies available to the Owner regarding the Defective Work. If the Owner provides notification to the Contractor of the Defective Work and Contractor elects to correct the Defective Work, it shall provide written notice of such intent within fourteen (14) days of its receipt of notice from the Owner. The Contractor shall complete the correction of Work within a mutually agreed time frame, or if no such agreement can be made, within 14 days. If the Contractor does not elect to correct the Defective Work following notice from the Owner regarding the same, the Owner may have the Work corrected by its own forces or by Others, and shall charge the Contractor for the reasonable cost of the correction.

3.9.4 If the Contractor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, the Contractor shall promptly correct such construction and shall be solely responsible for the cost of correcting the destroyed or damaged construction.

3.9.5 The three-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of any of the Contractor's obligations under the Contract Documents.

3.9.6 Prior to final payment, at the Owner's option, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case, the Contract Price shall be equitably decreased to reflect a credit to the Owner for the reduced value of the Work.

3.10 CORRECTION OF COVERED WORK

3.10.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Contractor shall pay the costs of uncovering and replacement of the Work.

3.10.2 If, contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Contractor to uncover the Work for the Owner's observation. In this circumstance, the Work shall be uncovered and replaced/restored at the Contractor's expense and with no adjustment to the Contract Time.

3.11 SAFETY OF PERSONS AND PROPERTY

3.11.1 The Contractor shall, as between it and the Owner, have sole and overall responsibility for **safety precautions and programs** in the performance of the Work, including the Work of Subcontractors.

3.11.2 The Contractor shall take all precautions to avoid injury, loss, or damage to persons or property, including:

3.11.2.1 Its employees and other persons at the Worksite;

3.11.2.2 materials and equipment stored at on-site or off-site locations for use in the Work; and properties located at the site and adjacent to Work areas, whether or not the property is part of the Work.

3.11.3 CONTRACTOR'S SAFETY REPRESENTATIVE

The Contractor's Worksite Safety Representative is _____ who shall act as the Contractor authorized safety representative with a duty to prevent accidents in accordance with Subparagraph 3.11.2. If no individual is identified in this Paragraph 3.11, the authorized safety representative shall be the Contractor's Representative. The Contractor shall report immediately in writing to the Owner all recordable accidents and injuries occurring at the Worksite. When the Contractor is required to file an accident report with a public authority, the Contractor shall furnish a copy of the report to the Owner.

3.11.4 The Contractor shall provide the Owner with copies of all safety notices required of the Contractor by law or regulation. The Contractor's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.11.5 Contractor shall promptly remedy any damage or loss caused, directly or indirectly, by the Contractor, its employees, Subcontractors, agents, and anyone for whose acts the Contractor may be responsible.

3.11.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Contractor's safety program, may require the Contractor to stop performance of the Work and/or take corrective measures satisfactory to the Owner. If the Contractor does not adopt corrective measures, the Owner may perform them and deduct their cost

from the Contract Price. The Contractor shall not be entitled to, and agrees to make no claim for, damages, for an increase in the Contract Price, or for a change in the Contract Time based on the Contractor's compliance with the Owner's reasonable request.

3.12 EMERGENCIES

In an emergency, the Contractor shall act in a reasonable manner to prevent personal injury or property damage. Any change in the Contract Price and/or Contract Time resulting from the actions of the Contractor in an emergency situation shall be determined as provided in Article 8.

3.13 HAZARDOUS MATERIALS

3.13.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, and/or cleanup. The Contractor shall not be obligated to commence or continue such portion of the Work directly affected by pre-existing Hazardous Material discovered at the Worksite until such material has been removed, rendered or determined to be harmless by the Owner and, if required by law, as certified by an independent testing laboratory and approved by the appropriate government agency.

3.13.2 If after the commencement of the Work Hazardous Material is discovered at the Worksite, the Contractor shall exercise all reasonable care with respect to such material, and shall be entitled to immediately stop Work in the affected area. The Contractor shall immediately report the condition in writing to the Owner, the Owner's Representative, and, if required, the government agency with jurisdiction.

3.13.3 Except as otherwise provided in Subparagraph 3.13.5 below, and assuming applicable law or regulation requires the Owner to do so, the Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the pre-existing Hazardous Material encountered and whether the material requires corrective measures and/or remedial action, such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effects upon the Work. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.13.4 If, through no fault of its own, the Contractor incurs additional costs and/or is delayed directly due to the presence or remediation of Hazardous Material, the Contractor shall be entitled to an equitable adjustment in the Contract Price and/or the Contract Time subject to the change order process in Article 8 .

3.13.5 Notwithstanding the foregoing, the Contractor shall not introduce or release any Hazardous Materials on, under, over, in or about the Worksite; shall notify the Owner in writing immediately upon the discovery of Hazardous Materials; and shall be solely responsible for any and all damages, losses, liabilities, civil or criminal penalties, clean-up and remedial costs, charges and fees arising from any introduction or release of Hazardous Materials by the Contractor, its employees, Subcontractors, agents and persons for whom Contractor is responsible.

3.14 MATERIALS BROUGHT TO THE WORKSITE

3.14.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Contractor, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Contractor and made available to the Owner, Subcontractors and Others.

3.14.2 The Contractor shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.14.3 To the extent not caused by the negligent acts or omissions of the Owner, its agents, officers, directors and employees, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, officers, directors and employees, from and against any and all direct claims, damages, losses, liabilities, penalties, clean-up and remedial costs, costs and expenses, including but not limited to attorney's fees, costs and expenses arising out of or relating to the delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Contractor. The foregoing shall be in addition to any other rights and remedies available to the Owner, and shall survive the expiration or earlier termination of this Agreement.

3.14.4 The terms of this Paragraph 3.13 shall survive the completion of the Work and/or any termination of this Agreement.

3.15 SUBMITTALS

3.15.1 The Contractor shall submit to the Owner, and Owner's Representative, for review and approval, all shop drawings, samples, product data, and similar submittals (collectively, "submittals") required by the Contract Documents. The Contractor shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Contractor shall prepare and deliver its submittals to the Owner in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. Such submittals to the Owner shall be submitted using the Owner's Representative's FTP web site. When the Contractor delivers its submittals to the Owner, the Contractor shall identify in writing for each submittal all changes, deviations or substitutions from the requirements of the Contract Documents. The review and approval of any Contractor submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express and unequivocal written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. Further, the Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Contractor. In the event that the Contract Documents do not contain submittal requirements pertaining to the Work, the Contractor hereby agrees that, upon request, it will submit in a timely fashion to the Owner for review and approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Owner. Owner's review of submittals shall not relieve contractor of any obligations hereunder.

3.15.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness and, in any event, no later than 30 days after the written submission for decision; but if such decision requires extended investigation and study, the Owner or Owner's Representative shall, within 30 days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the 30-day period and the date by which the decision will be made.

3.15.3 The Contractor shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not authorization to Contractor to perform Changed Work, unless the procedures of Article 8 are followed. Approval does not relieve the Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved Shop Drawings.

3.15.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda, Change Order and other modifications, and required submittals including product data, samples and shop drawings.

3.15.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Contractor obtains approvals required under the Contract Documents for substitutions and a Change Order is signed by the Owner and Contractor.

3.15.6 The Contractor shall prepare and submit to the Owner within seven (7) days of Substantial Completion of each portion of the project final marked up as-built drawings, in general documenting how the various elements of the Work were actually constructed or installed.

3.16 PROFESSIONAL SERVICES

The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless the Contractor needs to provide such services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures, or unless such services are specifically called for by the Contract Documents. If any other professional design/engineering services are required of the Contractor, the Owner shall indicate all performance and design criteria to be satisfied. The Contractor shall not be responsible for the adequacy of such performance and design criteria prepared by others. The Contractor shall obtain professional services and any design certifications required from licensed design professionals. All drawings, specifications, calculations, certifications, and submittals prepared by such design professionals shall bear the signature and seal of such design professionals; and the Owner and the Owner's Representative shall be entitled to rely upon the adequacy, accuracy, and completeness of such design services. The Contractor shall not be required to provide such services in violation of existing laws and regulations in the jurisdiction where the Project is located.

3.17 WORKSITE CONDITIONS

3.17.1 WORKSITE VISIT The Contractor acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions, which could affect the Work.

3.17.2 CONCEALED OR UNKNOWN WORKSITE CONDITIONS

If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Contractor shall immediately (1) make phone contact with project manager and (2) give written notice of the condition to the Owner and the Owner's Representative before addressing such conditions, unless doing so will not result in any increase in Contractor's cost of performance of the Work. Any change in the Contract Price and/or the Contract Time resulting from the unknown condition above any allowances shall be determined as provided in this Article 3. The Contractor shall provide the Owner with written notice of any claim resulting from unknown conditions within the time period set forth in Paragraph 8.4. Notwithstanding the foregoing or anything to the contrary in the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Price on account of said conditions only if Contractor provided advance written notice of such conditions to the Owner before addressing or covering such conditions and the Owner has given written notice to proceed. If the Contractor has not received written notice to proceed, the contractor shall not be compensated for the work.

3.18 PERMITS AND TAXES

3.18.1 Contractor shall give public authorities all notices required by law and, except for permits and fees which are the responsibility of the Owner pursuant to Paragraph 4.4, shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work, including plumbing, electrical, dig safe, and excavation. Contractor shall provide to Owner copies of all notices, permits, licenses, and renewals as required under this Agreement. All such copies shall be provided in hard copy and wherever possible as digital uploads to the Owner's Representative's FTP web site.

3.18.2 Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Contractor.

3.18.3 The Contract Price shall be equitably adjusted by Change Order for additional costs resulting from any changes in laws, ordinances, rules, and regulations enacted after the date of this Agreement, including increased taxes.

3.18.4 If in accordance with the Owner's direction, the Contractor claims an exemption for taxes, the Owner shall defend, indemnify and hold the Contractor harmless from any liability, penalty, interest, fine, tax assessment, attorney's fees or other expense or cost incurred by the Contractor as a result of any such action.

3.19 CUTTING, FITTING AND PATCHING

3.19.1 The Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

3.19.2 Cutting, patching or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

3.20 CLEANING UP

3.20.1 The Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.20.2 If the Contractor fails to commence compliance with cleanup duties within forty-eight (48) hours after written notification from the Owner of non-compliance, the Owner may, but is not obligated to, implement appropriate cleanup measures without further notice and the cost of the same shall be deducted from any amounts due or to become due the Contractor.

3.21 ACCESS TO WORK

The Contractor shall take all reasonable measures to facilitate the access of the Owner, Owner's Representative, and Others to Work in progress.

ARTICLE 4: OWNER'S RESPONSIBILITY

4.1 INFORMATION AND SERVICES

The Owner shall exercise reasonable efforts to provide any information or services required to be provided by the Owner in a timely manner so as not to delay the Work.

4.2 WORKSITE INFORMATION

The Contractor shall promptly examine all information furnished to it by the Owner. Contractor may not rely on information provided by the Owner and Contractor is responsible for its own investigation of site conditions and information. To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall upon request of Contractor provide the same to the Contractor in the form possessed by the Owner:

- 4.2.1 information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions and environmental studies, reports and investigations;
- 4.2.2 tests, inspections and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical and chemical tests, required by the Contract Documents or by law; and
- 4.2.3 any other information or services requested in writing by the Contractor that are relevant to the Contractor's performance of the Work and under the Owner's control.

4.3 PERMITS, FEES, AND APPROVALS

Except for those permits and fees related to the Work which are the responsibility of the Contractor pursuant to Subparagraph 3.17.1, the Owner shall secure and pay for all other permits, approvals, easements, assessments and fees required for the development, construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

4.4 INTENTIONALLY OMITTED.

4.5 CONTRACT DOCUMENTS

Unless otherwise specified, Owner shall provide (1) copy of the Contract Documents to the Contractor without cost. Additional copies of contract documents can be printed by the Contractor from the bidding website.

4.6 OWNER'S REPRESENTATIVE

The Owner's Representative shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice, except where otherwise stated in the Contract Documents. If the

Owner changes its Owner's Representative or the representative's authority as listed above, the Owner shall immediately notify the Contractor in writing.

4.7 INTENTIONALLY OMITTED.

4.8 OWNER'S RIGHT TO CLEAN UP

In case of a dispute between the Contractor and Others with regard to the respective responsibilities for cleaning up at the Worksite, the Owner may implement appropriate cleanup measures and allocate the cost among those responsible, which allocation-decision shall be final and binding on the Contractor.

4.9 COST OF CORRECTING DAMAGED OR DESTROYED WORK

With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Contractor, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Contractor incurs additional costs and/or is delayed due to such loss or damage, the Contractor shall promptly submit written notice of such loss or damage to the Owner and provide such other information as requested by the Owner. Such notice shall also be subject to any other provisions of these Contract Documents regarding the making of claims.

ARTICLE 5: SUBCONTRACTS

5.1 SUBCONTRACTORS

The Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

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

5.2.1 As soon after the award of this Agreement as possible, the Contractor shall provide the Owner and if directed, the Owner's representative with a written list of the proposed subcontractors and significant material suppliers. If the Owner has a reasonable objection to any proposed subcontractor or material supplier, the Owner shall notify the Contractor in writing and the Contractor will present another subcontractor, or material supplier, who meets the Owner's requirements. Notwithstanding the foregoing, or anything to the contrary herein, the objection or lack thereof by Owner shall not constitute an approval of a Subcontractor for the purpose of M.G.L. c. 30, § 39F.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS

The Contractor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's and Material Supplier's portions of the Work. As between the Contractor and the Owner, the Contractor shall be responsible for the acts and omissions of its Subcontractors and Material Suppliers, and all other persons working on behalf of or for the benefit of the Contractor in connection with the Project.

5.4 LABOR RELATIONS

5.4.1 CONTINGENT ASSIGNMENT OF SUBCONTRACTS: If this Agreement is terminated, at the written request of the OWNER, each subcontract agreement shall be assigned by the Contractor to the Owner, provided that:

5.4.1.1 this Agreement is terminated by the Owner pursuant to Paragraphs 11.3 or 11.4.

5.4.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Contractor in writing.

ARTICLE 6: CONTRACT TIME

6.1 PERFORMANCE OF THE WORK

6.1.1 DATE OF COMMENCEMENT: The Date of Commencement shall be 21 days after the Contractor has received a written Notice to Proceed from the Owner or Owner's Representative.

6.1.2 TIME: Substantial Completion of the Work shall be achieved within 150 days after the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, the Contractor shall achieve Final Completion within 30 days after the date of Substantial Completion. The specific dates involved shall be agreed upon prior to the commencement of the Project.

6.1.3 Time limits stated above are of the essence of this Agreement.

6.1.4 Unless instructed by the Owner in writing, the Contractor shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Contractor,

6.2 SCHEDULE OF THE WORK

6.2.1 Before the Date of Commencement, the Contractor shall submit to the Owner and its Owner's Representative for the Owner's approval a Schedule of the Work that shall show the dates on which the Contractor plans to commence and complete various milestones. The Contractor shall update the Schedule of the Work on a monthly basis or more frequently if required by the conditions of the Work and the Project. Notwithstanding the Owner's approval or lack thereof, the Contractor shall be solely responsible to achieve Substantial Completion and Final Completion within the times required in this Agreement.

6.2.2 The Owner may require the Contractor to alter the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. The Owner may require the Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes prevent Contractor from completing all Work within the times set forth in the Contract Documents as shall be demonstrated in writing by the Contractor to the Owner in a written notice promptly submitted to the Owner, the Contract Time shall be equitably adjusted.

6.3 DELAYS AND EXTENSIONS OF TIME

To the extent a delay in the progress of the Work is caused by adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, general labor disputes (not involving the Contractor or Subcontractors) impacting the Project but not specifically related to the Worksite, governmental agencies, or unavoidable accidents or circumstances, the Contractor shall only be entitled to an extension of the Date of Substantial Completion and/or the Date of Final Completion. Notwithstanding the foregoing, the Contractor shall not be entitled to any extension of time for delays caused, in whole or in part, directly or indirectly, by its employees, Subcontractors, or other persons for whom it is responsible. Notwithstanding anything to the contrary in this Agreement, Contractor's sole remedy on account of any delay shall be an extension of time only, and shall not be entitled, under any circumstances, to any damages, additional

compensation, or other payments on account of or relating to any delay in the Work, whether Contractor styles its claim for such damages, etc. as a claim for delay; a claim for increases costs due to an acceleration of the work; or a claim for increased costs due to performing out of sequence work.

6.4 NOTICE OF DELAYS

In the event delays to the Work are encountered for any reason, the Contractor shall provide prompt written notice to the Owner of the cause of such delays after Contractor first recognizes the delay in accordance with Paragraph 8.4. The Owner and Contractor agree to undertake reasonable steps to mitigate the effect of such delays.

6.5 NOTICE OF DELAY CLAIMS

If the Contractor requests an equitable extension of Contract Time as a result of a delay described in Subparagraph 6.3.1, the Contractor shall give the Owner written notice of the claim in accordance with Paragraph 8.4.

6.6 LIQUIDATED DAMAGES

Completion of work will be in accordance with required construction schedule as outlined in Paragraph 6.2. All construction specifications will be completed in the order provided and by the specified completion date. Liquidated damages of \$1,500 shall be assessed for any delays caused by the Contractor or its Agents for each business day the deadlines are exceeded subject to Paragraph 6.3.

ARTICLE 7: CONTRACT PRICE

7.1 LUMP SUM / UNIT COST / HOURLY COST

As full compensation for performance by the Contractor of the Work in conformance with the Contract Documents, the Owner, at his discretion, shall pay the Contractor as outlined in Article 9 of this Agreement the sum as clearly stated in the Bid Pricing Sheets, attached hereto and limited by the provisions of section 3.3.4. The lump sum, unit prices, and hourly costs payable to the Contractor for the Work as specified herein are hereinafter referred to, collectively, as the Contract Price, which shall be subject to increase or decrease only as provided in Article 8.

7.2 ALLOWANCES

7.2.1 All allowances stated in the Contract Documents shall be included in the Contract Price.

7.2.2 The Contract Price submitted and agreed to herein shall be for the labor, equipment and materials to fully complete the Project. No other sums shall be paid without written permission of the Owner.

ARTICLE 8: CHANGE ORDER AND DIRECT CHANGES

Change Order and Interim Directed Change shall accomplish changes in the Work that are within the general scope of this Agreement, without invalidating this Agreement.

8.1 CHANGE ORDER

8.1.1 The Contractor may request and/or the Owner may order changes in the Work or in the timing or sequencing of the Work, which may (or may not) materially impact the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order. Any requests by the Contractor for a change in the Contract Price and/or the Contract Time shall be processed in accordance with this Article 8.

8.1.2 For changes that the parties agree will require an adjustment in the Contract Price or Contract Time, the Owner and the Contractor shall negotiate in good faith an appropriate adjustment to the Contract Price and/or the Contract Time and shall conclude these negotiations as expeditiously as possible.

8.2 INTERIM DIRECTED CHANGE

8.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Contractor on the adjustment, if any, in the Contract Price and/or the Contract Time, or to direct changes that do not materially impact the Contract Price or Contract Time.

8.2.2 For Interim Directed Changes that the parties agree will require an adjustment in the Contract Time or Contract Price, the Owner and the Contractor shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price and/or the Contract Time arising out of Interim Directed Change. As the Changed Work is performed, the Contractor shall keep detailed accounts of all costs incurred, and shall submit its costs for such work with its application for payment beginning with the next application for payment within thirty (30) days of the issuance of the Interim Directed Change. The Contractor shall provide such other information as may be requested by the Owner in support of the costs incurred by Contractor in connection with the Interim Directed Change. If there is a dispute as to the cost to the Owner, Contractor shall continue working diligently on the project while any claim for additional compensation is resolved.

8.2.3 When the Owner and the Contractor agree upon the adjustment in the Contract Price and/or the Contract Time for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order. The Change Order shall include all Interim Directed Changes issued since the Order.

8.2.4 Notwithstanding any lack of agreement or dispute regarding adjustments to the Contract Price or the Contract Time on account of an Interim Directed Change, the Contractor shall proceed with the work expeditiously and without delay.

8.3 DETERMINATION OF COST

8.3.1 An increase or decrease in the Contract Price and/or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods, at the election of the Owner:

8.3.3.1 unit prices set forth in this Agreement and section 3.3.4

8.3.1.2 a mutually accepted, itemized lump sum;

8.3.1.3 costs calculated on a basis agreed upon by the Owner and Contractor plus a Fee (either a lump sum or a Fee based on a percentage of cost) to which they agree.

8.3.2 If the Owner and the Contractor disagree as to whether work required by the Owner is within the scope of the Work, the Contractor shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Contractor to proceed, the Contractor shall continue working diligently on the project including the disputed work while any claim for additional compensation is resolved, both parties reserve their rights as to whether the work was within the scope of the Work, subject to the requirements of Article 12.

8.4 CLAIMS FOR ADDITIONAL COST OR TIME

The Contractor shall give the Owner written notice of the claim for adjustment in the Contract Price or Contract Time within fourteen (14) days after discovery of the occurrence, giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work. A Change Order shall be negotiated to reflect any agreed-upon change in the Contract Price and/or the Contract Time resulting from such claim. Notwithstanding the foregoing, in the event any other provision of the Contract Documents impose a more stringent procedure for the noticing, making and perfection of a specific type of claim by the Contractor, the more stringent procedure shall apply to such a claim. If there is a dispute as to the cost to the Owner, the Contractor shall continue working diligently on the project while any claim for additional compensation is resolved.

ARTICLE 9: PAYMENT

9.1 SCHEDULE OF VALUES

Within twenty-one (21) days from the date of execution of this Agreement, the Contractor shall prepare and submit to the Owner and the Owner's Representative a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the Contract Price.

9.2 PROGRESS PAYMENTS

9.2.1 APPLICATIONS The Contractor shall submit to the Owner and its Owner's representative a semi-monthly application for payment no later than the 10th day of the calendar month for the preceding month. Contractor's applications for payment shall be itemized and supported by the Contractor's schedule of values and any other substantiating data as required by this Agreement or requested at any time by the Owner or the Owner's Representative. Payment applications shall include payment requests because of properly authorized Change Orders. The

Owner shall pay the amount otherwise due on any payment application no later than thirty (30) days after the Owner has received a complete and accurate payment application, less the fair value of any claims of the Owner against the Contractor. The Owner may also deduct from any progress payment amounts a retainage amount pursuant to Subparagraph 9.2.4.

9.2.2 STORED MATERIALS AND EQUIPMENT If approved by the Owner, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored on-site or off-site including applicable insurance, storage and transportation costs to the Worksite. Approval of payment applications for stored materials and equipment stored off-site shall be conditioned on submission by the Contractor of bills of sale and proof of applicable insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the site.

9.2.3 RETAINAGE From each progress payment made prior to Substantial Completion the Owner may retain 10 percent (10%) of the amount otherwise due after deduction of any amounts as provided in Paragraph 9.3. Retainage shall be due and payable to the Contractor upon Final Completion, less the fair value of any outstanding claims of the Owner against the Contractor.

9.3 ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION

In addition to such other rights and remedies available to the Owner under the Agreement, the Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Contractor is responsible therefore under this Agreement:

9.3.1 the Contractor's failure to perform the Work as required by the Contract Documents;

9.3.2 loss or damage for which the Owner maybe liable arising out of or relating to this Agreement and caused by the Contractor to the Owner or to Others;

9.3.3 the Contractor's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

9.3.4 Defective Work not corrected in a timely manner where this Agreement provides for an opportunity to cure

9.3.5 Reasonable evidence of delay caused by the Contractor or any persons for whom it is responsible in performance of the Work such that the Work will not be completed within the Contract Time, and

9.3.6 Reasonable evidence demonstrating that, due to the wrongful acts of the Contractor or Contractor's failure to comply with the terms and conditions of the Contract Documents, the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work. The Owner shall give written notice to the Contractor at the time of disapproving or nullifying an application for payment of the specific reasons therefore. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

9.3.7 Cost of work has exceeded Contract Price without written permission from the Owner.

9.4 ACCEPTANCE OF WORK

Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

9.5 PAYMENT DELAY

If for any reason not the fault of the Contractor the Contractor does not receive a progress payment from the Owner within fourteen (14) days after the time such payment is due, as defined in Subparagraph 9.2.1, then the Contractor, upon giving seven (7) days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Contractor has been received, including interest from the date payment was due in accordance with Paragraph 9.9. A Change Order for reasonable cost and delay resulting from shutdown, delay, and startup shall equitably adjust the Contract Price and Contract Time.

9.6 SUBSTANTIAL COMPLETION

9.6.1 The Contractor shall notify the Owner and its Owner's Representative in writing when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of the Owner's Representative, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or utilized for its intended use by the Owner without excessive interference in completing any remaining unfinished Work by the Contractor. If the Owner determines, in its reasonable discretion, that the Work or designated portion has not reached Substantial Completion, without limiting any of the Owner's other rights and remedies set forth in the Contract Documents on account of the Contractor's failure to timely achieve Substantial Completion, the Owner shall compile a list of items to be completed or corrected so the Owner may occupy or utilize the Work or designated portion for its intended use. The Contractor shall promptly complete all items on the list.

9.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Contractor shall prepare a proposed Certificate of Substantial Completion that shall establish the Contractor's proposed date of Substantial Completion. The proposed certificate shall also list the items to be completed or corrected, and establish the time for their completion or correction. The Certificate of Substantial Completion shall be submitted by the Contractor to the Owner for written acceptance. If the Owner agrees with the Certificate as prepared, it shall sign the Certificate. If the Owner does not agree with the form of the Certificate prepared by the Contractor but agrees that the Work is Substantially Complete, it shall issue its own Certificate of Substantial Completion, which shall serve as the Certificate of Substantial Completion for the Work, or designated portion thereof. Unless expressly and unequivocally agreed otherwise in writing by the Owner, the Owner's signing of a Certificate of Substantial Completion shall not change the responsibilities of the Contractor for interim items such as security, maintenance, utilities, insurance and damage to the Work.

9.6.3 Unless the Certificate of Substantial Completion specifies a later date, warranties required by the Contract Documents for Work substantially completed shall commence on the date of Substantial Completion of the Work or a designated portion.

9.7 PARTIAL OCCUPANCY OR USE

9.7.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, and (b) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work, unless otherwise agreed by the parties in writing.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon notification from the Contractor that the Work is complete and ready for final inspection and acceptance, the Owner with the assistance of its Owner's Representative shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

9.8.2 When Final Completion has been achieved, the Contractor shall prepare for the Owner's acceptance a final application for payment stating that to the best of the Contractor's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

9.8.3 Final payment of the balance of the Contract Price and retainage shall be made to the Contractor within twenty (20) days after the Contractor has submitted a complete and accurate application for final payment, including submissions required under Subparagraph 9.8.4, and a Certificate of Final

Completion has been executed by the Owner and the Contractor, less the fair value of claims of the Owner, if any.

9.8.4 Final payment shall not be due on the Contractor's submission until the following have been provided to the Owner:

9.8.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

9.8.4.2 as built drawings, manuals, copies of warranties and all other closeout documents required by the Contract Documents;

9.8.4.3 release of any liens and related paperwork for payments made to Contractor; and

9.8.4.4 any outstanding known and unreported accidents or injuries experienced by the Contractor or its Subcontractors at the Worksite, with failure to specify any deemed a representation and warranty that there are none.

9.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted, less the fair value of any claims of the Owner.

9.8.6 **ACCEPTANCE OF FINAL PAYMENT:** Acceptance of the final payment and retainage by the Contractor shall constitute a waiver of all claims by the Contractor arising under this Contract.

ARTICLE 10: INDEMNITY, INSURANCE, WAIVERS AND BONDS

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold the Owner, the Owner's officers, directors, members, consultants, agents and employees, the Owner's Representative and Others harmless from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Subparagraph 10.3.4, that may arise from the performance of the Work, but only to the extent of the negligent acts or omissions of the Contractor, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.2 INTENTIONALLY OMITTED

10.3 INSURANCE

10.3.1 Prior to the start of the Work, the Contractor shall procure and maintain in force Workers Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance (CGL), and Builder's Risk insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The primary CGL coverage and the Builder's risk policies shall also name the Owner as an additional insured on a primary basis for liability arising out of the Work. Upon execution of the Agreement, the Contractor shall provide the Owner with certificates of the insurance coverage required for all of the coverage herein specified. The Contractor's Employers' Liability, Business Automobile Liability, and Commercial General Liability policies, as required in this Subparagraph 10.3.1, shall be written with at least the following limits of liability, on an occurrence and primary, non-contributory, basis.

10.3.1.1 Employers' Liability Insurance

- a. \$1,000,000 Bodily Injury by Accident Each Accident
- b. \$1,000,000 Bodily Injury by Disease Policy Limit
- c. \$1,000,000 Bodily Injury by Disease Each Employee

10.3.1.2 Business Automobile Liability Insurance

- a. \$1,000,000 Each Accident

10.3.1.3 Commercial General Liability Insurance

- a. \$1,000,000 Each Occurrence
- b. \$5,000,000 General Aggregate
- c. \$5,000,000 Products/Completed Operations Aggregate

- d. \$1,000,000 Personal and Advertising Injury Limit

10.3.1.4 Builder's Risk Insurance

- a. \$1,000,000 Each Occurrence

10.3.2 Employers' Liability, Business Automobile Liability and Commercial General Liability coverage required under Subparagraph 10.3.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess and/or Umbrella Liability policies.

10.3.3 The Contractor shall maintain in effect all insurance coverage required under Subparagraph 10.3.1 at the Contractor's sole expense with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Contractor, or terminate this Agreement.

The policies of insurance required under Subparagraph 10.3.1 shall contain a provision that the coverage afforded under the policies shall not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. The Contractor shall maintain completed operations liability insurance for one year after acceptance of the Work, Substantial Completion of the Project, or to the time required by the Contract Documents, whichever is longer. Prior to commencement of the Work, Contractor shall furnish the Owner with certificates evidencing the required coverage.

10.4 BUILDER'S RISK INSURANCE

10.4.1 Before the start of Work, the Contractor shall obtain and maintain Builder's Risk or all risk upon the entire Work for the full cost of replacement at the time of loss with the Owner added as a named insured. This insurance shall be written as a builder's risk "all risk" or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, and hail, smoke, aircraft (except aircraft, including helicopters, operated by or on behalf of Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship or material. The Contractor shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Owner, and Owner's Representative. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this Subparagraph 10.4.1. Prior to commencement of the Work, the Contractor shall provide a copy of the property policy or policies obtained in compliance with this Subparagraph 10.4.1.

10.4.2 Owner and Contractor waive all rights against each other and their respective employees, agents, contractors, subcontractors, sub subcontractors and Owner's Representative for damages caused by risks covered by the Builder's Risk insurance except such rights as they may have to the

proceeds of the insurance and such rights as the Owner may have for the failure of the Contractor to obtain and maintain Builder's Risk insurance in compliance with Subparagraph 10.4.1.

10.4.3 Contractor shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses and expenses, including attorney's fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of the Contractor, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The foregoing is in addition to any other rights and remedies available to Owner, and shall survive the expiration or earlier termination of the Agreement.

10.5 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees that may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify, and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

10.6 BONDS

Payment Bond is required of the Contractor in the amount of 50% of Contract Price to cover the Work which by definition includes any materials provided by the Owner the Owner's representative or Others. Such bond shall be issued by a surety licensed in the Commonwealth of MA and must be acceptable to the Owner.

ARTICLE 11: SUSPENSION, NOTICE TO CURE AND TERMINATION OF THE AGREEMENT

11.1 SUSPENSION BY OWNER FOR CONVENIENCE

11.1.1 OWNER SUSPENSION Should the Owner order the Contractor in writing to suspend, delay, or interrupt the performance of the Work for such period of time as may be determined to be appropriate for the convenience of the Owner and not due to any act or omission of the Contractor or any person or entity for whose acts or omissions the Contractor may be responsible, then the Contractor shall immediately suspend, delay or interrupt that portion of the Work as ordered by the Owner. The Contract Price and the Contract Time shall be equitably adjusted by Change Order for the cost and delay resulting from any such suspension if and only if such an adjustment is required by M.G.L. c. 30, § 39.

11.1.2 Any other action taken by the Owner, including action that is permitted by any other provision of the Contract Documents, that results in a suspension of part or all of the Work does not constitute a suspension of Work under this Paragraph 11.1.

11.2 NOTICE TO CURE A DEFAULT

If the Contractor refuses or fails to supply enough properly skilled workers, proper materials, and/or equipment, to maintain the approved Schedule of the Work in accordance with Article 6, or fails to make prompt payment to its workers, Subcontractors or Material Suppliers, disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Contractor may, in the sole discretion of the Owner, be deemed in default of the Agreement. If the Contractor fails within seven (7) working days after written notification from the Owner to commence promptly and continue satisfactory correction of such default with diligence and promptness, then the Owner, without prejudice to any other rights or remedies, may:

11.2.1 supply workers and materials, equipment and other facilities as the Owner deems necessary for the satisfactory correction of the default, and charge the cost to the Contractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees, and fees of the Owner's Representative;

11.2.2 contract with Others to perform such part of the Work as the Owner determines shall provide the most expeditious correction of the default, and charge the cost to the Contractor, including reasonable overhead, profit and attorneys' fees, and fees of Owner's Representative;

11.2.3 withhold payments due the Contractor in accordance with Paragraph 9.3 until all defaults are cured to the Owner's satisfaction; and/or

11.2.4 in the event of an emergency affecting the safety of persons or property, immediately commence and continue satisfactory correction of such default as provided in Subparagraphs 11.2.1 and 11.2.2 without first giving written notice to the Contractor, but shall give prompt written notice of such action to the Contractor following commencement of the action, charging to the Contractor all costs incurred by the Owner in doing so, including fees of attorneys' and the Owner's Representative.

11.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

11.3.1 TERMINATION BY OWNER FOR DEFAULT If, within seven (7) days of receipt of a notice to cure pursuant to Paragraph 11.2, the Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may terminate the Agreement upon 14 days advance written notice to the Contractor. For avoidance of doubt, the 14-day notice period shall not constitute an additional cure period unless otherwise agreed in a separate writing signed by the Owner. Termination for default is in addition to any other remedies available to Owner under Paragraph 11.2. If the Owner has incurred cost arising out of the Contractor's failure to cure, including but not limited to the cost of completing the Work and attorneys' fees, and such cost exceeds the unpaid Contract Price, the Contractor shall be liable to the Owner for such excess costs and shall pay them forthwith upon demand of the Owner.

11.3.2 USE OF CONTRACTOR'S MATERIALS, SUPPLIES AND EQUIPMENT If at the election of the Owner, the Owner or Others perform work under this Paragraph 11.3, the Owner shall have the right to take and use any materials, supplies and equipment belonging to the Contractor and located at the Worksite for completing any remaining Work. Promptly upon demand of the Contractor after completion of the Work, any remaining materials, supplies or equipment not consumed or incorporated in the Work shall be returned to the Contractor in substantially the same condition as when they were taken, reasonable wear and tear excepted, provided that the Owner shall not be liable to the Contractor on account of the Owner's use, or good faith failure to return Contractor's equipment, etc. not consumed or incorporated in the Work.

11.3.3 If the Contractor, or if Contractor is a legal entity, any person who owns all or substantially all of the ownership interests of Contractor, files a petition under the Bankruptcy Code, this Agreement shall terminate if the Contractor or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurance that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.4 TERMINATION BY OWNER FOR CONVENIENCE

11.4.1 Upon written notice to the Contractor, the Owner may, without cause and for any reason (or no reason), terminate this Agreement. The Contractor shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

11.4.2 If the Owner terminates this Agreement pursuant to this Paragraph 11.4, the Contractor shall be paid for the fair value of the Work performed to date and any reasonable demobilization costs less the fair value of any of the Owner's claims against the Contractor, and this shall be the Contractor's sole remedy on account of such termination.

11.4.3 If the Owner terminates this Agreement pursuant to Paragraphs 11.3 or 11.4, the Contractor shall exercise all reasonable efforts to mitigate damages, which shall include but not be limited to:

11.4.3.1 execute and deliver to the Owner all papers and take all action required to assign, transfer and vest in the Owner the rights of the Contractor to all materials, supplies and equipment for which payment has or will be made in accordance with the Contract

Documents and all subcontracts, orders and commitments which have been made in accordance with the Contract Documents;

11.4.3.2 exert reasonable effort to reduce to a minimum the Owner's liability for subcontracts, orders and commitments that have not been fulfilled at the time of the termination;

11.4.3.3 cancel any subcontracts, orders, and commitments as the Owner directs;

11.4.3.4 sell at prices approved by the Owner any materials, supplies and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

11.5 CONTRACTOR'S RIGHT TO TERMINATE

11.5.1 Upon thirty (30) days' written notice to the Owner, the Contractor may terminate this Agreement if the Work has been stopped for a consecutive thirty (30) day period through no fault of the Contractor for any of the following reasons, unless the Work has re-commenced within the 30-day notice period:

11.5.1.1 under court order or order of other governmental authorities having jurisdiction;

11.5.1.2 as a result of the declaration of a national emergency or other extraordinary governmental act during which, through no act or fault of the Contractor, no materials are available for any of the Work; or

11.5.1.3 suspension by Owner for convenience pursuant to Paragraph 11.1

11.5.2 In addition, upon thirty (30) days' written notice to the Owner, the Contractor may terminate the Agreement if the Owner, through no fault of the Contractor:

11.5.2.1 fails to pay the Contractor in accordance with this Agreement and the Contractor has complied with the notice provisions of Paragraph 9.6, or

11.5.2.2 otherwise materially breaches this Agreement.

11.5.3 Upon termination by the Contractor in accordance with Paragraph 11.5, the Contractor shall be entitled to exercise such rights and remedies available to it. The Contractor shall exercise all reasonable efforts to mitigate damages.

11.6 OBLIGATIONS ARISING BEFORE TERMINATION

Even after termination pursuant to Article 11, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred or obligations arising before the termination date.

ARTICLE 12: DISPUTE RESOLUTION

12.1 WORK CONTINUANCE AND PAYMENT

Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the Schedule of the Work notwithstanding any disputes with the Owner, including during any dispute resolution proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with this Agreement, less the fair value of all of the Owner's claims against the Contractor.

12.2 INITIAL DISPUTE RESOLUTION

If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions between the parties' representatives. If the parties' representatives are not able to settle the dispute within a period of 10 days, the senior executives of the parties, who shall have the authority to settle the dispute, shall meet within twenty-one (21) days after the dispute first arises. If the dispute is not settled within seven (7) days from the referral of the dispute to the senior executives, the parties may, upon agreement, submit the dispute to mediation in accordance with Paragraph 12.3. Notwithstanding the foregoing, nothing herein shall prevent a party from terminating the Agreement in accordance with the express terms hereof, nor from seeking immediate equitable relief from any court in the Commonwealth, including due to perceived irreparable harm.

12.3 MEDIATION

If the dispute cannot be settled pursuant to Paragraph 12.2, the parties may, upon agreement, endeavor to settle the dispute by non-binding mediation under the current Construction Industry Mediation Rules of the American Arbitration Association before recourse to any other dispute resolution procedures, as defined in Paragraph 12.2.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 ASSIGNMENT

Neither the Owner nor the Contractor shall assign its interest in this Agreement as a whole without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both parties, their partners, successors, assigns and legal representatives. If the Contractor attempts to make an assignment not permitted hereunder, the assignment shall be invalid and Contractor shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise expressly and unequivocally agreed by the Owner in an amendment to this Agreement.

13.2 GOVERNING LAW

This Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts without application of any conflicts-of-laws principles. Any litigation arising hereunder shall be brought solely in the state courts of the Commonwealth sitting in the county in which the Owner maintains its principal offices.

13.3 SEVERABILITY

The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.4 NO WAIVER OF PERFORMANCE

The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

13.5 TITLES AND GROUPINGS

The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

13.6 JOINT DRAFTING

The parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

13.7 RIGHTS AND REMEDIES

The parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement. Town's rights and remedies provided in this Contract are in addition to any other rights and remedies provided by law.

13.8 RULES OF INTERPRETATION

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement; (c) subject to Subparagraph 14.2.2 the drawings, specifications and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to Paragraph 4.3; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision is most specific or includes the latest dates shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

13.9 AVAILABILITY OF FUNDS

The compensation by this Contract is subject to the continued availability of Town funds and Town appropriations.

13.10 ACCESS TO RECORDS

Contractor will make all books, accounts, data, records, reports, files and other papers required to be kept or kept in the course of the work to be performed under this Contract available at all reasonable times for inspection, review and audit by Town or its authorized representative.

13.11 CONFLICT OF INTEREST

Each party shall adhere to the provisions of Massachusetts General Laws, Chapter 268A, with respect to the Conduct of Public Employees. In addition, no member, officer, or employee of either party, or its designee, or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter (or such longer period as may be provided in Chapter 268A of the Massachusetts General Laws), shall have any interest in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Contract. Each party shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest, pursuant to the purposes of this subsection.

13.12 MODIFICATION, WAIVER OR CHANGE

No modifications, waiver or change shall be made in the terms and conditions of this Contract except as may be mutually agreed upon in writing by all parties hereto.

13.13 ASSIGNMENT

Town and Contractor recognize that each has a substantial interest in having the other perform or control the acts required of it by this Contract. Neither party shall perform its duties through a delegate nor assign its interest under this Contract without the written consent of the other. Nothing herein shall be construed to prevent an assignor's due performance of its entire obligation.

13.14 SUCCESSORS AND ASSIGNS

Town and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract.

13.15 ENTIRE UNDERSTANDING

This Contract, together with the attachments hereto, represent the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

13.16 SEVERABILITY

In the event that any provision of this Contract shall be deemed invalid, unreasonable, or unenforceable by any court of competent jurisdiction, such provision shall be stricken from the Contract or modified so as to render it reasonable, and the remaining provisions of this Contract or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties as of the date of this Contract. Further, should this Contract omit any statutory or regulatory requirements which would otherwise render this Contract illegal, then this Contract shall be deemed amended to the minimum extent necessary to comply with said statutes or regulations.

13.17 OWNERSHIP OF DOCUMENTS

The parties agree that all documents created for the project by the Contractor shall belong to the Owner.

13.18 STATUTORY COMPLIANCE:

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

General Laws Chapter 30B - Procurement of Goods and Services

General Laws Chapter 30, section 39 et. seq. - Public Works Contracts

General Laws Chapter 149, section 44A et. seq. - Public Buildings Contracts

General Laws Chapter 25A - Division of Energy Resources

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

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

13.18.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work, if any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with and shall cause all its agents, employees and subcontractors to observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town and its duly appointed agents against any claim or liability arising from or based on any violation whether by Contractor, its agents, employees or Subcontractors or any such law, by-law, regulation or decree.

ARTICLE 14: CONTRACT DOCUMENTS

14.1 CONTRACT DOCUMENTS IN EXISTENCE

The Contract Documents in existence at the time of execution of this Agreement are as follows:

- 14.1.1 This Agreement
- 14.1.2 Attachment A - All construction plans, drawings and specifications for the Project
- 14.1.3 Attachment B - Invitation for Bid, all documents, Bid Response by Contractor, all documents
- 14.1.4 Attachment C - Warranties and Extended Warranties
- 14.1.5 Attachment D - Insurance Certificates
- 14.1.6 Attachment E - Payment Bond
- 14.1.7 Prevailing Wage Documentation

14.2 INTERPRETATION OF CONTRACT DOCUMENTS

14.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Contractor shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

14.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner for clarification. The Owner's clarifications are final and binding on all parties, subject to an equitable adjustment in Contract Time or Price pursuant to Articles 6 and 7.

14.2.3 Where figures are given, they shall be preferred to scaled dimensions.

14.2.4 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in this Agreement, shall be interpreted in accordance with their well-known meanings.

ARTICLE 15: SUPPLEMENTARY CONDITIONS

15.1 The Contract Documents shall also include the following:

15.1.1 Application of General Contractor for Consideration of Eligibility

15.1.2 Contract price for specific work listed on the Contractor's bid(s).

15.1.3 Rate schedules of all personnel, equipment, and materials that may be used in conjunction with the Work. The Contractor and Owner agree that this rate schedule will be used in calculation of any change orders, or delays due to Owner. Equipment not included in listing may not be used under this agreement.

15.1.4 The number of dedicated personnel and types of equipment to be used to meet the required work described in these specifications.

15.2 INTENTIONALLY OMITTED

15.3 TERM OF CONTRACT

The initial term of this contract is for completion of all construction requirements noted in the Contract Pricing.

15.4 INTENTIONALLY OMITTED

15.5 DISCREPANCIES AND OMISSIONS

The Contractor shall not take advantage of any discrepancy, error, or omission in plans or specifications supplied by the Owner. In such events, the Contractor shall notify either a supervisor in charge of said construction, or the Engineering Department. Corrections and/or interpretations will then be made to fulfill the requirements of said project.

15.6 SAFETY VIOLATIONS MAJOR AND MINOR

The list of major and minor safety violations shall be supplied to the Contractor upon bid award by the Owner's Representative.

15.6.1 **MINOR** The first violation shall carry a \$100 penalty; second, \$250, third \$500. Each additional violation thereafter shall carry a penalty at which is incremented by \$500 from the previous minor penalty amount.

15.6.2 **MAJOR** The first violation shall carry a \$250 penalty; second, \$500, third \$1000. The Owner reserves the right to terminate the contract following the third and/or subsequent major safety violations.

15.6.3 In addition, the Contractor shall be responsible to pay, or reimburse the Owner for any fine or penalty levied by a regulatory agency due to any safety violation.

15.7 CODE REQUIREMENTS

15.7.1 See Attachment A – Scope of Work and Technical Specifications, Section 2.1 for all applicable standards.

15.8 FEDERAL MANDATORY DRUG CONTROL PROGRAM

All current or potential Contractors for the Owner must comply with drug testing requirements set forth in Department of Transportation (DOT) regulations CFR Part 40 and Part 199. Any person who performs “safety sensitive” functions as described in these regulations must be included in the drug-testing program. This program must be provided to the Owner **before contract award** for review. The Owner will notify the Contractor of any changes to the program required for acceptance. Bid will not be awarded until the Owner has accepted the Contractors Drug Control Program.

15.9 INTENTIONALLY OMITTED

15.10 MATERIALS

15.10.1 The Owner will supply the Contractor certain materials as necessary, unless those materials were included as part of the contract pricing structure to be provided by the Contractor. Refer to section 3.6.

15.10.2 All materials to be installed on the Owner’s infrastructures must meet all applicable Federal and State regulations and shall be initially reviewed by the Owner prior to installation. The Owner reserves the right to reject any material proposed.

15.10.3 All material supplied by the Owner shall be delivered to the Contractor provided staging site which will be determined after contract award and between hours of mutual agreement.

15.10.4 The Contractor shall be responsible for the procurement, delivery, and placement of all other materials referenced below to complete the installation for the Owner’s Projects, as necessary. Refer to section 3.3.6.

15.10.4.1 Bank run sand, gravel, trap rock, trap rock dust, loam and seed, sod, etc.

15.10.4.2 Asphaltic pavement, Portland cement concrete & form materials, tack coat, sealants, etc.

15.10.4.3 Brick, stone, concrete block, mortar, etc.

15.11 EQUIPMENT AND MATERIAL STORAGE

The Owner will not store the Contractor’s equipment or materials on Owner property for any reason or any duration. The Contractor is required to provide the location of staging and material storage to the Owner unless agreed otherwise by the Owner.

15.12 WORK SCHEDULE

The Contractor shall exercise due diligence in maintaining a full complement of men, equipment and tools to the end that the work shall be completed satisfactorily, professionally, and in a timely manner, consistent with the scope of the project, or its parts.

15.12.1 The Owner will only pay hourly rates starting from the time that a complete crew is assembled at the specified job site, to the time that the crew leaves the site. Time to and from the Contractor's home portal shall not be invoiced to the Owner and shall not constitute any portion of a work crew's day rate.

15.12.2 HOURS OF WORK. The Owner may adjust the Contractor work shifts to consist of four 10-hour days or five 8 hours days. The owner shall give a two week notice to the Contractor prior to adjusting work shifts. The working days may be consecutive or non-consecutive, and may consist of any combination of Monday through Saturday. The shift times may be adjusted to commence and finish within the hours of 6 AM to 6PM.

15.12.3 PREMIUM TIME All labor hours worked beyond normal shifts, at the direction of the Owner, will be invoiced at 1.5 times the hourly rates provided on bid rate sheet.

15.12.4 The Contractor shall contact the Owner 24 hours before mobilization/construction in order to arrange for traffic control and all preceding days prior to 4pm to allow for traffic coordination. The Owner shall then notify the Contractor as to the availability of traffic control. Contractor shall cancel work no later than 12 hours prior to scheduled shift. Failure to do so will result in the Contractor paying full compensation for traffic control.

15.13 INTENTIONALLY OMITTED

15.14 INTENTIONALLY OMITTED

15.15 EQUIPMENT DISCOUNT

The Contractor shall provide adequate working equipment necessary to complete the work required. In order to ensure this, the Owner may discount the rate at which the equipment is billed by 10% per year for each year that the equipment is over 5 years old.

15.15.1 The Owner will not accept billing for equipment that is in disrepair, or causing damage to public or private property.

15.16 CONSTRUCTION LOCATION AND DRAWINGS

15.16.1 The Owner will supply any initial construction drawings, if applicable. Any plans, drawings, documentation, or technical information supplied to the Contractor shall, at the completion of the project, remain the property of the Owner. "As built" sketches will be required of the Contractor and returned upon completion of the project. Tie points, equipment installation, and other pertinent information shall be included.

15.16.2 The Contractor shall maintain a neatly and accurately marked set of record drawings showing the final locations and layout of all equipment, piping, conduit, structures and other facilities. Drawing shall be kept current weekly, reflecting the impact of all applicable change

orders, adjustments to accommodate equipment, and construction adjustments. Drawings shall be subject to the inspection of the Owner's representative at all times, and progress payments or portions thereof may be withheld if drawings are not current.

15.16.3 See Attachment A – Scope of Work and Technical Specifications, Section 2.2 for all additional project documentation.

15.17 DAILY PRODUCTION REPORTS

Daily production reports shall be submitted to the Owner. The information detailed shall include, but not be limited to, the following items: type of work, location, work order number, quantity of work completed, number of personnel required for work completed, equipment, and invoices for material purchased under existing Owner contracts. The Contractor shall submit these reports on Owner supplied forms. The data shall include all charges that will be assessed to the Owner on future bills.

15.18 CONSTRUCTION MEETINGS

The Owner may require weekly construction meetings with the Contractor.

15.19 BILLING

Billing of work activity shall be invoiced by the Contractor to the Owner which must include date, location and a description of work completed.

15.20 BID AWARD

The Owner will award the bid to the lowest responsive/responsible and eligible bidder. The term "lowest responsive/responsible and eligible bidder" shall mean the bidder (1) whose bid is the lowest of those possessing the skill, ability, and integrity necessary for the faithful performance of the work; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; and (3) who obtains within 10 days of the notification of contract award the security by bond required; provided that for the purposes of this section the term "security by bond" shall mean the bond of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to the Owner. "Responsible" means demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work called for by a particular contract, based upon a determination of competent workmanship and financial soundness.

15.20.1 The Owner may add costs associated with Owner's representative to overall costs supplied in bid proposal by Contractor. An additional Owner's representative cost will vary by Contractor, based upon experience or reference supplied information, et al.

15.21 DESCRIPTION OF SERVICES

All services provided by the Contractor shall be subject to all documents in existence; refer to section 14.1. All pricing includes mobilization and demobilization, pick-up and delivery of materials from the Contractor's Material Storage location to and from the specified job site.

15.22 2-WAY COMMUNICATION

The Contractor shall maintain Owner acceptable cellular phone communication between its work crews, supervisors, the Department Supervisor and/or its Representative during the performance of the Work. The Contractor shall keep the Owner aware of the location of the crew(s) at all times.

15.23 TURNOVER PACKAGE:

Contractor agrees that within 60 days after acceptance of final completion of the Town of Shutesbury's Fiber to the premises (FTTP) distribution network, that Contractor will provide the MLP a Turnover Package containing the following: (i) a complete package of all final as built plans of the original AutoCAD cable design in legible redline documents. As applicable this will also include updated excel formatted splice sheets for field changes deemed necessary and previously agreed to by Owner's Representative, (ii) all respective manufacturers compliance data or birth certificate (MST)(FO Cable), (iii) all acceptance test plan results and documentation per Technical Specification in hard copy (PDF) and native electronic format, and (iv) an asset listing in Excel format showing the make, model and serial number of all assets employed and by location. Owner's Representative will provide a repository for all respective turnover package documents through access to an FTP Client-server directory.

15.24 VIOLATION OF LAW

Contractor shall observe and comply with all federal, state and local laws and regulations, which may govern the Work to be performed as herein specified.

15.25 NONDISCRIMINATION

Contractor shall not discriminate against any person because of race, gender, age, color, religion, ancestry, sexual identity, gender identity, veteran status, natural origin or any other protected class under the law.

ARTICLE 16: CONTRACT AWARD AGREEMENT

This Contract Award Agreement is entered into as of the date entered in Article 1

(To be completed after bid award)

SIGNATURE _____:

CONTRACTOR: _____

PRINT NAME: _____

TITLE: _____

TOWN OF SHUTESBURY SELECT BOARD CHAIR

SIGNATURE: _____

PRINT NAME: _____

DATE _____

TOWN OF SHUTESBURY MUNICIPAL LIGHT PLANT MANAGER

SIGNATURE: _____

PRINT NAME: _____

DATE: _____

APPENDIX A: BID PRICING FORM

The Contractor shall indemnify and hold harmless the Owner and its governing board, officers and employees from all claims, expenses and liability related to construction, use, occupancy, ownership, operation, maintenance or control of facilities related to services to be performed under this agreement.

The undersigned certifies under 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 section the "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.

Signature: _____

Printed name of person signing bid: _____

Company: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: _____

Email Address: _____