

Town of Lunenburg



INVITATION FOR BIDS

FOR:

Page Street Culvert Replacement

**Town of Lunenburg
Department of Public Works
520 Chase Road
Lunenburg, MA 01462**

Released:

May 10, 2023

Responses Due By:

June 07, 2023

Contact Information:

Julie Belliveau
Assistant Town Manager
(978) 582-4130 x150
jbelliveau@lunenburgma.gov

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Legal Notice

Town of Lunenburg, MA
Invitation for Bids
Page Street Culvert Replacement
Notice of Invitation to Bid

The Town of Lunenburg, by and through the Town Manager, is requesting bids for the Page Street Culvert Replacement project. Bidders must be licensed Contractors in the State of Massachusetts. The IFB will be available after **10:00 a.m. on May 10, 2023** in the Town Manager's Office at the Town Hall, 17 Main Street, 2nd floor, Lunenburg, MA 01462 or by emailing jbelleveau@lunenburgma.gov. Bids are due no later than **12:00 p.m. on June 07, 2023** in the Town Manager's Office, Town Hall, 17 Main Street, P.O. Box 135, Lunenburg, MA 01462. The contact person is Julie Belleveau, Assistant Town Manager, and can be reached at 978-582-4130 x150 or jbelleveau@lunenburgma.gov. The Town Manager is the awarding authority. The Town of Lunenburg reserves the right to reject any or all proposals, waive minor informalities, and to only award a contract if it is in the best interest of the Town to do so. The Town of Lunenburg is an equal opportunity employer.

**TOWN OF LUNENBURG
INVITATION FOR BIDS
(IFB)
FOR
Page Street Culvert Replacement**

BIDDING INSTRUCTIONS

SECTION 1.0 GENERAL INFORMATION ON BID PROCESS

1.1 General

When submitting proposal, please identify the title as “Page Street Culvert Replacement” on the sealed bid submission to:

Julie Belliveau, Assistant Town Manager
Town of Lunenburg
17 Main Street, P.O. Box 135
Lunenburg, MA 01462

- ✓ This project is subject to M.G.L. 30 §39M for Building Construction Contracts and is subject to prevailing wage rates.
- ✓ Complete Bids must contain:
 - Price Proposal signed by the official authorized to enter contracts with the Town. All related appendices therein (Non-Collusion Form, Tax Compliance Form, and Certificate of Authority Form), OSHA cards for Contractors staff, and 5% Bid Deposit must accompany the Price Proposal.
- ✓ Purchase of goods and services by the Town of Lunenburg are exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax, and any such taxes must not be included in any price computations.
- ✓ The Town reserves the right to reject any or all proposals, waive minor informalities, and accept the proposal deemed to be in the best interest of the Town.
- ✓ Please make note that the Town Hall hours of operation are Monday and Wednesday 8:00 a.m. until 4:00 p.m. and Tuesday and Thursday 8:00 a.m. until 6:00 p.m.
- ✓ Late proposals will not be considered. Modifications must be in writing and clearly labeled as such and submitted to the Town Manager prior to the date and hour of the proposal deadline.
- ✓ A proposal may be withdrawn by written request prior to the deadline.

Official copies of this IFB may be obtained from the Town Manager’s Office by requesting, via email, to jbelleveau@lunenburgma.gov on and after May 10, 2023 at 10:00 a.m..

1.2 **Bid Schedule**

Key dates for this Request for Proposals are as follows:

- ✓ IFB issued by May 10, 2023 at 10:00 a.m.
- ✓ Deadline for submitting questions May 31, 2023 by 10:00 a.m.
- ✓ Proposals are due on June 07, 2023 by 12:00 p.m. to Town of Lunenburg, Attn: Julie Belliveau, 17 Main Street, P.O. Box 135, Lunenburg, MA 01462
- ✓ Anticipated contract award week June 19, 2023
- ✓ Anticipated date for services to commence week of July 10, 2023
- ✓ Project completion 6 months from Notice to Proceed

1.3 **Information for Bidders**

Premature Opening: The Town will not be responsible for the premature opening of any bid not properly identified, and any such bids will be rejected.

Rejection of Bids: Waiver of Technicalities: The Town reserves the exclusive right to reject any or all bids and waive minor technicalities to the extent allowed by law. Bids which are incomplete, conditional, not properly endorsed, or signed, or which are otherwise contrary to these instructions may be rejected.

Contract: The award and validity of any contract resulting from this Invitation for Bids is subject to the approval of the Town Manager, the availability of sufficient funds as determined by the Town Accountant and the submission to the Chief Procurement Officer of insurance and bond documents listed in a Notice of Award. The terms of any resulting contract will be valid for the 6 month duration of the project.

Responsibility: The bid for the work detailed in the purchase description must cover all contingencies, including labor, materials, transportation, and all others, necessary for delivery of the project required by the Town of Lunenburg, MA. These specifications require the performance of all things necessary or proper for or incidental to the services specified herein. All services mentioned in these specifications and all things not specified herein, but involved in carrying out their intent, and the complete and proper execution of the services are required by these specifications; and the contractor shall perform same as though they were specifically described and mentioned.

Title: For the delivery of any goods, supplies, or equipment, title in all products shall remain with the successful contractor until delivered or otherwise accepted by the Awarding Authority.

Equal Opportunity: The Town is an equal opportunity employer. All qualified bidders will receive consideration without regard to race, color, creed, religion, disability, sex or national origin.

Responsive Bidders: The Town of Lunenburg will consider only responsive bids from responsible Contractors for a contract award. A responsive bid is one which complies fully with all submission requirements stated in these bid/contract documents. A responsible Contractor is one who demonstrates the skill, ability, and integrity necessary to faithfully perform the work called for in this procurement, judged on the basis of information about the Contractor's experience, performance on recent and current projects and appropriate references.

Modifications prior to Bid Deadline: A bidder may correct, modify, or withdraw a proposal by written notice received in the Office of the Town Manager, 17 Main Street, Lunenburg, MA 01462 prior to the date and time set for opening proposals. After the bids are opened, a bidder may not change the price or any other provision of the bid in a manner prejudicial to the interest of the Town or to fair competition. The Town may waive minor informalities to all bidders and to correct them. If a mistake and the intended offer are clearly evident on the face of the proposal, the Town of Lunenburg may correct the mistake to reflect the intended correct offer and so notify the bidder in writing. The bidder may not withdraw a proposal if a mistake is clearly evident on the face of the proposal, but the intended correct offer is not similarly evident.

Contract Terms: Each bid submitted in response to these bid/contract documents is subject to all contract terms and conditions included herein, and any contract awarded will incorporate all of these contract terms.

Bidders Must Examine All Documents: All bidders are required to examine all documents included in these bid/contract documents or referred to herein. The Town of Lunenburg will not be responsible for errors, omissions, or changes for extra work arising from any failure by the proposer to familiarize itself with the bid/contract documents. Submission of a bid constitutes an acknowledgement that the bidder has examined the bid/contract documents, that the bidder is familiar with them, and the documents are adequate and that the bidder will produce the required results.

Questions: Questions on this IFB can be submitted in writing to the Town Manager's Office, via email, to jbelliveau@lunenburgma.gov no later than May 31, 2023.

Contractor Requirements

Evidence of the following requirements must be submitted to the Town prior to the award of a contract to the successful bidder:

Prior Experience: The Contractor, which will perform the substantive portion of the principal work described in the specifications, must have a documented record of reliable performance in the supply of the materials and services named above, and must submit appropriate references, including contract amounts, and names, and telephone numbers of contact officials. Must be pre-qualified with the Massachusetts Department of Transportation.

Bond: Contractor must supply a Labor and Material Bond in the amount of 50% of the total value of the bid price if the contract is more than \$50,000. The bond must be made out to Town of Lunenburg. The Contractor and Surety must sign each Bond. The Power of Attorney must have Surety's impressed seal or otherwise be an original. Certification of full force and effect in the General Power of Attorney must be dated. Any such bond must be issued by a surety company licensed by the Commonwealth's Division of Insurance, listed in the most recent United States Treasury Department Circular 570 - Surety Companies Acceptable on Federal Bonds, and acceptable to the Awarding Authority.

Indemnification: The successful contractor will be required to indemnify and hold harmless the Awarding Authority for all damage to life and property that may occur by the provision of liability and property damage insurance in the amount of One Million Dollars (\$1,000,000.00) combined single limit or equal, naming the Awarding Authority as an additional insured. Contractor shall, if it has employees, shall also produce evidence of coverage of Worker's Compensation Insurance as required by M.G.L. c 152. It is further-provided that the Contractor will hold the Owner harmless from any liability associated with the acts of the insured, its employees, any subcontractors and any others under its control. Any lack of insurance by Contractor's employees, any subcontractors and any others under its control will not release Contractor from its responsibility to indemnify Owner. All insurance policies shall include written notification to Owner of cancellation or restrictive amendment at least thirty days (30) prior to such action. Notice shall be made as hereinbefore provided.

Ownership of Supplies and Products: The Contractor shall retain title to any products, provisions, construction material and all other supplies provided by it as part of the Work until accepted by the Awarding Authority.

Prevailing Wages: The Contractor will be responsible for compliance with all applicable Federal and State wage rates. Pay requisitions must be submitted with certified payrolls in accordance with the Commonwealth of Massachusetts Division of Occupational Safety, Prevailing Wage Rates. If the one-year contract resulting from this solicitation is renewed by the Awarding Authority, Prevailing Wage Rates shall be adjusted per the Commonwealth of Massachusetts Divisions of Occupational Safety once each fiscal year, effective July 1st, for the second and third years of the contract.

Assignment: The successful Contractor will not be permitted to assign or underlet the contract, nor assign either legally or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the Chief Procurement Officer.

Verbal Orders: Verbal orders are not binding on the Town and work done without a written, executed purchase order or contract amendments is at the sole risk of the Contractor.

Contract: A Form of Contract is included with this bid and it is attached hereto and incorporated herein by reference.

Termination: Any contract resulting from this solicitation may be terminated as described in the attached form of contract.

Amendments: Amendments are strictly regulated and must be signed by officer(s) who may legally bind the company.

Best Price: The “best price” for this solicitation will be lowest priced Grand Total.

SECTION 2.0 SCOPE OF WORK AND SPECIFICATIONS

2.01 Scope of Work

The scope of work described within consists of removing and replacing the existing culvert on Page Street, Lunenburg, MA in the vicinity of Arbor Street, Lunenburg, MA.

All work under this contract shall be done in conformance with the following MassDOT publications and the specifications found herein:

- the *2022 Standard Specifications for Highways and Bridges*,
- the *2017 Construction Standard Details*,
- the *Work Zone Safety Temporary Traffic Control*,
- the *1990 Standard Drawings for Signs and Supports*

Additionally, the work shall be done in conformance with the *2009 Manual on Uniform Traffic Control Devices (MUTCD) with Massachusetts Amendments* and these Special Provisions.

All work shall be performed within the existing town layout lines. No rights to enter upon or occupy private property have been acquired.

Contractors bidding on Public Works Construction Projects estimated to cost \$50,000 or more must be pre-qualified with the Massachusetts Department of Transportation - Highway Division, 10 Park Plaza, Room 7552, Boston, MA 02116.

2.02 Specifications

Refer to the attached 123 page specifications document provided separately.

2.03 Work Schedule

Allowable work hours will be determined by the DPW Director.

Normal working hours are Monday through Friday, 7:00 AM to 3:00 PM. Nighttime work hours are Sunday through Thursday, 8:00 PM to 4:00 AM. No roadway shall be completely closed to traffic at any time during the performance of the work. Work may not proceed beyond the normal 8-hour day unless prior approval is obtained from the DPW Director for that day. Approval to work overtime will only be given when special conditions exist that warrant working overtime as determined by the DPW Director. No additional compensation will be made for scheduled work within a normal 8-hour day. Scheduled shifts beginning on a Sunday evening are considered part of a typical weekday 8-hour day and not subject to overtime rates.

2.04 Contractor Notification

The Contractor is required to provide to the Town of Lunenburg the name(s) and telephone number(s) of a person or persons who can be contacted 24 hours a day for the Contract's duration.

2.05 Non-Response Penalties

If the Contractor has not started scheduled work on site within 24 hours of the time expected, a non-response penalty will be assessed to the Contractor. Contract payments will be reduced by \$250.00 for each day or portion of a day that the work is delayed, excluding Saturdays, Sundays, and Holidays, unless the work was scheduled to be performed on one of these days.

The non-response penalty may be waived at the discretion of the DPW Director when it is determined that the Contractor acted in good faith and adequate notification was made (to the DPW Director) regarding the failure to respond.

2.06 Traffic Accommodation

Traffic control devices shall comply with the relevant provisions of Subsection 850 of the *2022 Standard Specifications for Highways and Bridges*, the applicable sections of the *Manual on Uniform Traffic Control Devices for Streets and Highways* with the MA Amendments, the *Manual for Assessing Safety Hardware*, and the following:

The order of precedence for the document that governs the positioning, sizing, color(s), shape, design, and operation of temporary traffic control devices shall be as set forth below:

1. Details for a specific location that have been designed by the Contractor and approved by the DPW Director.
2. MassDOT's Work Zone Safety Temporary Traffic Control, Typical Details and Massachusetts Guidelines for MassDOT, Municipalities, Utilities, and Contractors.
3. MassDOT's Standard Details and Drawings for the Development of Temporary Traffic Control Plans (<https://www.mass.gov/files/documents/2017/10/24/tcp.pdf>).
4. Massachusetts Amendments to the MUTCD (<https://www.mass.gov/doc/massachusettsamendments-to-the-mutcd/download>).
5. Manual on Uniform Traffic Control Devices for Streets and Highways (<https://mutcd.fhwa.dot.gov/>).

Traffic police, when required, shall be located at a sufficient distance in advance of the work area, so that they can warn oncoming motorists of the work. The cost of traffic police shall be paid for by the Town of Lunenburg.

The Town of Lunenburg reserves the right to provide Roadway Flaggers, who are Town of Lunenburg employees, at the discretion of the DPW Director. The Contractor shall not be charged nor compensated for the use of Town of Lunenburg employee flaggers.

The cost of temporary traffic control (with the exception of Safety Signing For Traffic Management) is incidental to the contract; thus, the contractor shall include the costs in their bid.

2.07 Work Reports

For work performed under this Contract, the Contractor shall record the action in an electronic log, supplied by them, and verified by the DPW Director. Each log entry shall include the item numbers used, a breakdown of the type of Contract materials used and shall include detailed location information (street, cross street(s), direction, etc.) as appropriate. This information shall be submitted by the Contractor as part of their required backup information for each request for payment and supplied to the DPW Director at no extra cost to the Town of Lunenburg.

2.08 Progress Payments

The Contractor shall submit to the Town an itemized Application for Payment, supported to the extent required by the Town by invoices or other vouchers, showing payments for materials and labor, payments to Subcontractors and such other evidence of the Contractor's right to payment.

2.09 Notice to Contractors - Escalation:

Price Adjustment For Hot Mix Asphalt (HMA) mixtures

It is the intention of the Town of Lunenburg to allow price adjustments in the award of this Contract as it is partially funded by the Massachusetts Chapter 90 Program. Municipalities are required to include price adjustment clauses for diesel fuel, gasoline, liquid asphalt, Portland cement concrete, structural steel and reinforcing steel in the bid documents of all construction contracts funded by the Chapter 90 Program.

This contract contains a Price Adjustment for Hot Mix Asphalt (HMA) Mixtures. The price adjustment will be based on the variance in price for the liquid asphalt component of Hot Mix Asphalt (HMA) Mixtures from the base price to the period price. It shall not include transportation or other charges. The base price of liquid asphalt on this project will be a fixed price based on the most current posted price for liquid asphalt as determined and published by the Massachusetts Department of Transportation.

The price adjustment, as herein provided, upwards and downwards, will be made at the end of each month period in which work was accomplished. The adjustment to cover the previous month will be determined by the variance between the period price of liquid asphalt and the base price of liquid asphalt. The asphalt content, for the purpose of the adjustment, will be 5.5% (0.055) for each ton of Hot Mix Asphalt (HMA) Mixture, regardless of the percentages established in the Job Mix Formula. The price adjustment will be a separate payment item. It will be determined by multiplying the number of tons of Hot Mix Asphalt (HMA) Mixture placed during each previous two-month periods by (0.055) times the variance in price between base price and period price of liquid asphalt.

The base price for liquid asphalt on this project is \$665.00 per ton.

2.10 Monthly Price Adjustment For Hot Mix Asphalt (HMA) Mixtures

This provision applies to all projects using greater than 100 tons of hot mix asphalt (HMA) mixtures containing liquid asphalt cement as stipulated in the Notice to Contractors section of the bid documents. Price Adjustments will be based on the variance in price, for the liquid asphalt component only, between the Base Price and the Period Price. They shall not include transportation or other charges. Price Adjustments will occur on a monthly basis.

Base Price

The Base Price of liquid asphalt on a project as listed in the Notice to Contractors section of the bid documents is a fixed price determined by the Department (MassDOT) at the time of the bid using the same method as the determination of the Period Price detailed below. The Base Price shall be used in all bids.

Period Price

The Period Price is the price of liquid asphalt for each monthly period as determined by the Department using the average selling price per standard ton of PG64-28 paving grade (primary binder classification) asphalt, FOB manufacturer's terminal, as listed under the "East Coast Market - New England, Boston, Massachusetts area" section of the Poten & Partners, Inc. "Asphalt Weekly Monitor". This average selling price is listed in the issue having a publication date of the second Friday of the month and will be posted as the Period Price for that month. The Department will post this Period Price on its website at <https://www.mass.gov/service-details/massdot-current-contract-price-adjustments> within two (2) business days following its receipt of the relevant issue of the "Asphalt Weekly Monitor". Poten and Partners has granted the Department the right to publish this specific asphalt price information sourced from the Asphalt Weekly Monitor. This method of period price determination was formerly called the New Asphalt Period Price Method.

Price Adjustment Determination, Calculation and Payment

The Contract Price of the HMA mixture will be paid under the respective item in the Contract. Price Adjustments, as herein provided, either upwards or downwards, will be made after the work has been performed using the monthly period price for the month during which the work was performed. Price Adjustments will be paid only if the variance from the Base Price is 5% or more for a monthly period. The complete adjustment will be paid in all cases with no deduction of the 5% from either upward or downward adjustments.

The Price Adjustment applies only to the actual virgin liquid asphalt content in the mixture placed on the job in accordance with the MassDOT Standard Specifications for Highways and Bridges, Division III, Section M3.11.03.

Price Adjustments will be separate payment items. The pay item numbers are 999.401 for a positive price adjustment (a payment) and 999.402 for a negative price adjustment (a deduction). Price Adjustments will be calculated using the following equation:

Price Adjustment = Tons of HMA Placed X Liquid Asphalt Content % X RAP Factor X (Period Price - Base Price)

No Price Adjustment will be allowed beyond the Completion Date of this Contract, unless there is an extension of time approved by the Town of Lunenburg.

2.11 Monthly Price Adjustment For Diesel Fuel And Gasoline

This monthly fuel price adjustment is inserted in this contract because the national and worldwide energy situation has made the future cost of fuel unpredictable. This adjustment will provide for either additional compensation to the Contractor or repayment to the Town of Lunenburg, depending on an increase or decrease in the average price of diesel fuel or gasoline.

This adjustment will be based on fuel usage factors for various items of work developed by the Highway Research Board in Circular 158, dated July 1974. These factors will be multiplied by the quantities of work done in each item during each monthly period and further multiplied by the variance in price from the Base Price to the Period Price.

The Base Price of Diesel Fuel and Gasoline will be the price as indicated in the Department’s web site (<https://www.mass.gov/service-details/massdot-current-contract-price-adjustments>) for the month in which the contract was bid, which includes State Tax.

The Period Price will be the average of prices charged to the State, including State Tax for the bulk purchases made during each month.

This adjustment will be affected only if the variance from the Base Price is 5% or more for a monthly period. The complete adjustment will be paid in all cases with no deduction of the 5% from either upward or downward adjustments.

No adjustment will be paid for work done beyond the extended completion date of any contract. Any adjustment (increase or decrease) to estimated quantities made to each item at the time of final payment will have the fuel price adjustment figured at the average period price for the entire term of the project for the difference of quantity.

The fuel price adjustment will apply only to the following items of work at the fuel factors shown:

ITEMS COVERED	FUEL FACTORS	
	Diesel	Gasoline
Excavation: and Borrow Work: Items 120, 120.1, 121, 123, 124, 125, 127, 129.3, 140, 140.1, 141, 142, 143, 144., 150, 150.1, 151 and 151.1 (Both Factors used)	0.29 Gallons / CY	0.15 Gallons / CY
Surfacing Work: All Items containing Hot Mix Asphalt	2.90 Gallons / Ton	Does Not Apply

SECTION 3.0 SUBMISSION PACKAGE

Please submit envelope with:

- ✓ Completed price proposal form

- ✓ Non-Collusion Form
- ✓ Tax Compliance Form
- ✓ Certificate of Authority Form
- ✓ 5% bid deposit
- ✓ OSHA cards for Contractor's employees doing work for the Town

The Town reserves the right to contact any firm in order to clarify any aspect of a submitted bid. The overall goal of the evaluation process shall be to recommend award of the contract to the person or firm whose proposal best meets the requirements of the IFB and is the lowest, most responsive, responsible bidder.

SECTION 4.0 SELECTION AND CONTRACT AWARD PROCESS

After the bids have been reviewed to determine if they meet the minimum quality requirements, the bid will be awarded to the lowest, responsible and responsive bidder.

The successful bidder will be required to obtain a 50% Payment Bond for this project.

The Town Manager is the awarding authority for this project.

**Town of Lunenburg, Massachusetts
 Department of Public Works
 Page Street Culvert Replacement**

BID FORM – Please print legibly

**Company
 Name:** _____

Item Number	Quantity	Item with Unit Bid Price Written in Words	Unit Price		Amount	
			Dollars	Cents	Dollars	Cents
101.	0.05	Clearing and Grubbing at Per Acre				
107.02	500.00	Low Alloy Steel Plates at Per Pound				
120.1	20.00	Unclassified Excavation at Per Cubic Yard				
151.	20.00	Gravel Borrow at Per Cubic Yard				
170.0	50.00	Fine Grading and Compacting at Per Square Yard				
241.48	35.00	48 Inch Reinforced Concrete Pipe Class III at Per Foot				
271.36	35	36 Inch Pipe Removed at Per Foot				
Subtotal:						

SIGNED: _____

DATE: _____

**Town of Lunenburg, Massachusetts
 Department of Public Works
 Page Street Culvert Replacement**

BID FORM – Please print legibly

**Company
 Name:** _____

Item Number	Quantity	Item with Unit Bid Price Written in Words	Unit Price		Amount	
			Dollars	Cents	Dollars	Cents
415.1	135.00	Pavement Standard Milling at Per Square Yard				
440.1	180.00	Calcium Chloride for Roadway Dust Control at Per Pound				
452.	36.00	Tack Coat at Per Gallon				
460.23	11.00	Superpave Surface Course – 12.5 at Per Ton				
460.41	7.50	Superpave Base Course – 25.0 at Per Ton				
483.2	46.00	Sawcutting Asphalt Pavement at Per Foot				
628.25	1.00	Transition to Thrie Beam at Per Each				
Subtotal:						

SIGNED: _____

DATE: _____

**Town of Lunenburg, Massachusetts
 Department of Public Works
 Page Street Culvert Replacement**

BID FORM – Please print legibly

**Company
 Name:** _____

Item Number	Quantity	Item with Unit Bid Price Written in Words	Unit Price		Amount	
			Dollars	Cents	Dollars	Cents
632.	18.00	Guardrail Post - Steel at Per Each				
632.4	18.00	Individual Post Removed & Discarded at Per Each				
633.1	18.00	Guardrail Offset Block – Thrie Beam at Per Each				
634.1	7.00	Thrie Beam Guard Panel at Per Each				
697.	50.00	Sedimentation Fence at Per Foot				
748.	1.00	Mobilization (3% of Base Bid) at Per Lump Sum				
751.	6.0	Loam at Per Cubic Yard				
Subtotal:						

SIGNED: _____

DATE: _____

**Town of Lunenburg, Massachusetts
 Department of Public Works
 Page Street Culvert Replacement**

BID FORM – Please print legibly

**Company
 Name:** _____

Item Number	Quantity	Item with Unit Bid Price Written in Words	Unit Price		Amount	
			Dollars	Cents	Dollars	Cents
765.	5.0	Seeding at Per Square Yard				
852.	64.00	Safety Signing for Traffic Management at Per Square Foot				
983.1	13.00	Riprap at Per Ton				
999.2	2.00	48 Inch RCP Wingwall at Per				
		at Per				
		at Per				
		at Per				

Subtotal:

Grand Total:

SIGNED: _____

DATE: _____

TOWN OF LUNENBURG¹

SAMPLE Contract # _____

STATE CONTRACT # (if applicable) _____

DATE: _____

This Contract is entered into on, or as of, this date by and between the Town of Lunenburg, 17 Main Street, Lunenburg, MA 01462 (the "Town"), and

["Contractor"]

[Contact Name for Responsible Person]

[Address of the Contractor]

[Telephone Number]
Number]

[FAX

[email address]

1. This is a Contract for the procurement of the following:
(Describe the work to be performed or attach agreed-upon scope of services)

2. The Contract price to be paid to the Contractor by the Town is:

3. Payment will be made as follows:

3.1 If any portion of the contract price is to be paid by a private citizen(s) no work shall be performed until a sum has been deposited with the Town Treasurer, upon an estimate made

¹ Construction under \$250k

by the board, committee or officer having charge of the work, sufficient to cover the payment for the portion of the said work chargeable to the private citizen(s).

3.2 Fees and Reimbursable Costs combined shall not exceed \$_____ as more fully set forth in the Contractor Documents.

3.3 There shall be no further costs, fees or reimbursable charges due the Contractor under this Contract unless said fees and/or costs are so set forth in writing. The Town will not pay any surcharge or premium on top of the direct out of pocket expenses, if any.

4. Security:

4.1 In the event the contract price exceeds the sum of \$10,000.00, the Contractor must provide security in the form of a bond or otherwise, conditioned upon the faithful performance of this Contract.

4.2 If this Contract is to be used for either Building Construction subject to MGL c. 149 or Public Works Construction subject to MGL. c. 30, § 39M or MGL. c. 30B, § 5 the following chart and notes are provided for clarification on the minimum required security subject to the Town requiring additional security:

Contract Price	Performance Bond	Payment Bond	Bid Deposit
Under \$10,000	No	No	No
\$10,000 - \$25,000	No	No	No
\$25,001 - \$50,000	No	50% of total contract price ²	No
\$50,001 - \$150,000 ³	No	50% of total contract price	5% of total bid
Over \$150,000 ⁴	100% of contract price	100% of contract price	5% of total bid

5. Definitions:

5.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town. Proper acceptance shall be understood to include inspection of

² As required by MGL c. 149, § 29 for Building Construction Contracts as well as Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, or MGL c. 30B, § 5.

³ This \$150,000 threshold is applicable to only Building Construction Contracts subject to MGL c. 149, but not to Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, that are more than \$50,000. This row applies to all Public Works Contracts subject to MGL c. 30, § 39M, that are greater than \$50,000.

⁴ The requirements of this row only apply to for Building Construction Contracts subject MGL c. 149, but not for Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, or MGL c. 30B, § 5.

goods and certification of acceptable performance for services by authorized representatives of the Town to ensure that the goods or services are complete and are as specified in the Contract.

- 5.2 Contract Documents: All documents relative to the Contract including (where used) Request for Proposals and all attachments thereto, Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, all Addenda issued during the bidding period and Contractor's Response to the Request for Proposal. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The purpose of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.
- 5.3 The Contractor: The "other party" to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term "Contractor" shall be understood to refer to any other such label used.
- 5.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract Documents, as modified by approved Amendments and Change Orders.
- 5.5 Goods: Goods, Supplies, Services or Materials.
- 5.6 Subcontractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.
- 5.7 Work: The services or materials contracted for, or both.

6. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before _____, unless extended, in writing, at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. Time is of the essence for the completion of the Contract.

7. Subject to Appropriation:

Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for

damages, penalties or other charges to the Town. In the event this is a multi-year contract, this Contract shall be subject to annual appropriation and in the event funds are not so appropriated, this Contract shall terminate immediately without liability for damages, penalties or charges to the Town.

8. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

9. Termination and Default:

9.1 Without Cause. The Town may terminate this Contract on seven (7) calendar days' notice when in the Town's sole discretion it determines it is in the best interests of the Town to do so, by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

9.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on seven (7) days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

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

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

10. Suspension or Delay

The Town may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the Services without cause for such period of time as the Town may determine to be appropriate for its convenience. In the event of any such suspension, delay or interruption, the Contractor's time for performance may be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Services, or if another provision of this Contract is applied to render an equitable adjustment.

11. The Contractor's Breach and the Town's Remedies:

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be a material breach of this Contract, and the Town of Lunenburg shall have all the rights and remedies provided in the Contract Documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including "Damages" including but not limited to costs, attorney's fees or other damages resulting from said breach ("Damages") as well as specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and Damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

12. Statutory Compliance:

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

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

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

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

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

- 12.3 The Contractor shall comply with all Federal, State and local laws, rules, wage regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the supply of such Work.

The Contractor hereby agrees to indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of the Contractor to comply with the previous sentence. 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. The Contractor hereby agrees to, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and hereby agrees to protect and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree. The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

13. Conflict of Interest:

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract Documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

14. Certification of Tax Compliance

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

15. Non-Discrimination/Affirmative Action

The Contractor shall carry out the obligations of this Contract in compliance with all requirements imposed by or pursuant to federal, State and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973 and Mass. G. L. c. 151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the Commonwealth of Massachusetts and the Town as they may be amended from time to time. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation.

15.1 As used in this section “affirmative action” means positive steps to ensure all qualified persons equal employment opportunity without regard to race, color, religion, sex or national origin at all stages of the employment process: recruitment, selection, placement, promotion, training, layoff and termination. It may include, but is not limited to, the following:

- (a) Inclusion in all solicitation and advertisements for employees of a statement that the Contractor is an “Equal Opportunity Employer”;
- (b) Placement of solicitations and advertisements for employees in media that reaches minority groups;
- (c) Notification in writing of all recruitment sources that the Contractor solicits the referral of applicants without regard to race, color, religion, sex or national origin;
- (d) Direct solicitation of the support of responsible and appropriate community, state and federal agencies to assist recruitment efforts;
- (e) Participation in, or establishment of, apprenticeship or training programs where outside programs are inadequate or unavailable to minority groups;
- (f) Modification of collective bargaining agreements to eliminate restrictive barriers established by dual lines of seniority, dual rates of pay or dual lines of promotion or progression which are based on race, color, religion, sex or national origin; and
- (g) Review selection, placement, promotion, training, layoff and termination procedures and requirements to ensure that they do not intentionally or unintentionally discriminate against qualified persons because of race, color, religion, sex or national origin.

15.2 The Contractor, if applicable, shall include in all compliance and progress reports submitted to the town a report which shall include: (a) A certificate stating that he or she is currently in compliance with the provisions of G.L. c. 152B and setting forth the Affirmative Action he or she is currently undertaking and will undertake during the contract period to provide equal employment opportunity for all qualified persons without regard to race, color, religion, sex or national origin; and (b) A statement in writing supporting information signed by an authorized officer or agent on behalf of any labor union or other agency which refers workers or provides or supervises apprenticeship or other training programs which the Contractor deals, to the effect that the union or other agency’s practices and policies do not discriminate on the basis of race, color, religion, sex or national origin; provided, in the event that the union or other agency shall refuse to execute such a statement, the Contractor need only so certify in writing.

15.3 A copy of any such report as described above, shall be filed in the office of the Town Clerk and shall upon said filing become a public record.

15.4 The Contractor will take Affirmative Action to ensure that employees are solicited and employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin.

15.5 The Contractor will in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

15.6 In determining whether steps taken by the Contractor constitute Affirmative Action, the Town shall take into account the relevant characteristics of the Contractor including, but not limited to, the number of employees and the location of the principal and branch offices.

16. Assignment:

The Contractor shall not assign, sublet or otherwise transfer this Contract, in whole or in part, without the prior written consent of the Town, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the Town.

17. Condition of Enforceability Against the Town:

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by a majority of the Select Board; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

18. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Lunenburg unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth of Massachusetts.

19. Contractor's Personnel:

The Contractor shall utilize only its employees and shall not utilize any third-party contractors without prior written approval of the Town.

20. Liability of Public Officials:

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

21. Indemnification:

The Contractor hereby agrees to indemnify, defend and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor hereby agrees to reimburse the Town for damage to its property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct.

- 21.1 The Contractor hereby agrees to indemnify and hold harmless the Town, including the agents, employees and representatives of either, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- 21.2 The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.**
- 21.3 In any and all claims against the town or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's Compensation Acts, disability benefit acts or other employee benefit acts.
- 21.4 The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from or arising in whole or in part

out of any act, omission, or neglect on the part of the Contractor or of any Subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.

- 21.5 The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

The foregoing provisions shall not be deemed to be released, waived, limit or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

22. Insurance

22.1 Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor hereby agrees to indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article. The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

The Contractor shall furnish to the Town a certificate evidencing such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by the Town.

22.2 Professional Liability Insurance

Liability of \$1 million per claim and \$3 million aggregate. Failure to provide and continue in force such insurance during the period of this Contract shall be a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor hereby agrees to indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article. The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

22.3 Other Insurance Requirements

- a. Comprehensive commercial general liability insurance with limits of at least \$1 Million per occurrence and \$3 Million annual aggregate for property damage and \$1 Million

- per person and \$3 Million per occurrence for bodily injury, which shall include the Town of Lunenburg as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor's employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.
- b. Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least \$500,000 per person, and \$1 Million per accident.
 - c. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, including and not limited to Professional liability insurance where applicable.
 - d. All policies shall identify the Town as an additional insured (except Workers' Compensation and Professional Liability). The Contractor shall notify the Town immediately upon the cancellation or amendment to any policy. Renewal Certificates shall be filed with the Town at least ten (10) days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town upon the execution of this Contract, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. **Failure to provide the notices required in this Section or to continue in force such insurance shall be a material breach of this Contract and shall be grounds for immediate termination.** Said insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverage shall be maintained without interruption from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.
 - e. The Contractor shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Town.

23. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the Town, in the United States or any other country. The Town shall have unrestricted authority to, without payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town at the termination of this Contract. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the Town before making any statement bearing on the work performed or data collected under this Contract to the press or issuing any material for publication through any medium.

24. No Employment

The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its employees, agents, servants nor any person for whose conduct the Contractor is responsible shall be considered an employee or agent of the Town for any purpose and shall not file any claim or bring any action for any worker's compensation unemployment benefits and compensation for which they may otherwise be eligible as a Town employee as a result of work performed pursuant to the terms of this Contract.

25. Audit, Inspection and Recordkeeping

At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

26. Payment

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

27. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Contract, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

28. Severability

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

29. Forum and Choice of Law

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

30. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth on page 1 or furnished from time to time in writing hereafter.

31. Binding on Successors:

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither the Town nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.

32. Entire Agreement:

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands and executed this as an instrument under seal this the day and year first above written.

The Town of Lunenburg by:

The Contractor by:

Town Manager/CPO Date

Signature Date

Print Name

Print Name & Title

Certified as to
Appropriation/Availability of Funds:

Town Accountant Date

BOTH CERTIFICATIONS ON THIS PAGE MUST BE EXECUTED

CERTIFICATION OF GOOD FAITH

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

The Contractor by:

Print Name

Title/Authority

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A

_____, authorized signatory for
name of signatory

_____, whose
name of contractor

principal place of business is at _____,

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

name of contractor

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

Signature

Date

Name

Federal Tax ID # or Social Security #

BOTH CERTIFICATIONS ON THIS PAGE MUST BE EXECUTED

EXAMPLE CLERK'S CERTIFICATE

Action of Shareholders
Written Consent
(Date)

The undersigned, being the Shareholders of _____, a Massachusetts Corporation (the "Corporation") entitled to vote on the action, hereby consent to the adoption of the following votes:

VOTED: That the [President and/or the Vice President or named individual], each of them acting singly is, authorized to execute any and all Contract Documents and to enter into and negotiate the terms of all contracts and to accomplish same and to execute any and all documents, instruments, and agreements in order to effectuate the transaction and that said transaction shall be valid, binding, effective, and legally enforceable.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time, in the name and on behalf of the Corporation to take or cause to be taken all such action(s) as s/he or they, as the case may be, deem necessary, appropriate or advisable to effect the foregoing votes, as may be shown by the officer or officers execution or performance which shall be conclusive evidence that the same is authorized by the directors of this Corporation.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time, in the name and on behalf of this Corporation, under its corporate seal, if desired, attested by an appropriate officer, if desired, to execute, make oath to, acknowledge, deliver and file any and all of the agreements, instruments, certificates and documents referred to or related to the foregoing votes.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time and on behalf of this Corporation, under its corporate seal, if desired, to execute, acknowledge and deliver any and all agreements, instruments, certificates and documents referred to or related to the foregoing votes, with such changes as the officer or officers so acting may deem necessary or desirable, and the signature of such officer or officers to be conclusive evidence that the same is authorized by the directors of this Corporation.

Clerk of Corporation Certificate

I, _____ the Clerk of the foregoing corporation, do hereby certify that the above vote was taken at a duly called meeting of the shareholders of the Corporation on _____, 20__.

Clerk of Corporation
SEAL

SUPPLEMENT “C”

[] CONSTRUCTION

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

(1) Public Buildings and Public Works

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

(2) Public Buildings

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

(3) Public Works

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

1. This form supplements the Town of Lunenburg “Contract and General Conditions” and applies only to contracts for the construction, reconstruction, alteration, remodeling or repair of public works or public buildings.
2. Wherever the law requires one contracting with a city or town to be bonded, such obligation shall be understood to be a term and condition of this Contract. The Contractor agrees to secure such bond (where required) in the form required by the Town and provide an original thereof to the Town prior to the commencement of performance.
3. Equality:
 - 3.1. In the case of a closed Specification written for a specific item or items to be furnished under the Base Bid, such specifications shall, as applicable, be in compliance with the Massachusetts General Laws, Chapter 30, Section 39M and Chapter 149, Sec. 44A et seq.
 - 3.2. Where the name of an item, material or manufacturer is mentioned in the Specifications or on the Drawings, except as above noted, the intent is to establish a standard and in no way should be construed to exclude any item or manufacturer not mentioned by name, but whose product meets the Specifications as to design, utility and quality. Final decision shall rest solely with the Town’s Project Representative (herein after “Project Representative”) as to its acceptability.
4. Change Orders:
 - 4.1. Change orders must receive the approval of the Town Administrator and the appropriate Department or Division Head and must be supported by the project engineers and architects, if any.
 - 4.2. Change orders to contracts governed by General Laws Chapter 30B may not increase the quantity of goods or services provided by more than twenty-five (25%) per cent, in compliance with Sec. 13 of Chapter 30B.

5. The Contractor will carry out the obligations of this contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, Sec. 1, et seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, Sections 26 and 27D (Prevailing Wage), as shall be in force and as amended.
6. The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the property of the Town and others, including adjacent property, from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly due to errors in the Contract Documents or caused by agents or employees of the Town, or due to causes beyond the Contractor's control and not the Contractor's fault or negligence.
7. The Contractor shall take all necessary precautions for the safety of employees on the work, and shall comply with all applicable provisions of Federal, State and local laws and codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Contractor will erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public, shall post danger signs warning against the hazards created by such features of construction such as pits, protruding nails, hosts, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and shall designate a responsible member of its organization on the work, whose duty shall be the prevention of accidents.
8. The Town shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide suitable accommodations for such access.
9. The Contractor shall appoint a competent superintendent and foreman and any necessary assistants, all of whom shall be satisfactory to the Town. If the Town in its sole discretion determines that the construction superintendent, foreman, or assistants are unacceptable to the Town, then upon seven days' notice from the Town, the Contractor shall replace such person or persons with people acceptable to the Town.
10. The Contractor shall give efficient supervision to the work, using its best skill and attention. The Contractor shall carefully study and compare the drawings, specifications and other instructions and shall at once report to the Town any error, inconsistency or omission which shall be discovered. Included in this responsibility shall be supervision of all work performed by subcontractors on the work.
11. Notwithstanding any other provision of this Contract to the contrary, if the Contractor should neglect to prosecute the work properly, or fail to perform the contract or any of its provisions, the Town, upon three days' written notice, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

12. Inspection by the Town's Project Representative

- 12.1. The Town shall have the right to designate a Project Representative who may make periodic visits to the site to familiarize the Town generally with the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract Documents. The Project Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and will not be responsible for the Contractor's failure to carry out the construction work in accordance with the Contract Documents. During such visits and on the basis of these observations while at the site, the Project Representative will keep the Town informed on the progress of the work, will endeavor to guard the Town against defects and deficiencies in the work of contractors, and may condemn structural work as failing to conform to the Contract Documents. The Project Representative shall have authority to act on behalf of the Town only to the extent expressly delegated by the Town, which shall be shown to the Contractor, and shall have authority to stop the work whenever such stoppage may reasonably be necessary to insure the proper execution of the Contract.
- 12.2. In connection with the work, the Project Representative shall not be responsible for construction methods, means, techniques, sequences or procedures employed by the Contractor or the Contractor's safety programs, requirements, regulations, or precautions.

13. Decisions of the Project Representative

- 13.1. The Project Representative shall, within a reasonable time, make decisions on all claims of the Town or the Contractor and on all other matters relating to the execution and progress of the structural work or the interpretation of the Contract Documents.
- 13.2. The Project Representative's decision, in matters relating to the project, shall be final, if within the terms of the Contract Documents.
- 13.3. If, however, the Project Representative fails to render a decision within ten days after the parties have presented their evidence, either party may then avail itself of the remedies provided in this Contract or available to it by law. If the Project Representative renders a decision after such remedies have commenced, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties concerned.

14.1 Use of Premises by the Contractor:

- 14.1. The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, by-laws, permits or directions of the Town and shall not unreasonably encumber the premises with its materials.
- 14.2. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

15. Maintenance of Premises:

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of the work it shall remove all its rubbish from and about the work site and all its tools, scaffolding and surplus materials and shall leave its work "broom-clean", or its equivalent, unless more exactly specified. In case of dispute, the Town may remove the rubbish and charge the cost to the several contractors, as the Town shall determine to be just.

16. Right to Terminate

16.1 In addition to any other remedies herein provided and notwithstanding any other provisions hereof to the contrary, if the Contractor should (1) be adjudged a bankrupt, (2) make a general assignment for the benefit of creditors, (3) have a receiver appointed on account of its insolvency, (4) persistently or repeatedly refuse or fail to supply enough personnel and resources to perform the contract, (5) fail to make prompt payment to subcontractors or to providers of materials or labor, (6) persistently disregard laws and regulations or lawful directives of the Town, or (7) be guilty of a substantial violation of any provision of the Contract, then the Town may, without prejudice to any other right or remedy and after giving the Contractor (or any surety) seven days written notice, terminate the contract and the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it deems appropriate.

16.2 In such cases, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid amount owed to the Contractor for work already completed shall exceed the expense of finishing the work, including compensation for additional architectural, managerial, legal and administrative services, such excess shall be paid to the Contractor. If such expenses shall exceed such unpaid balances, the Contractor shall pay the difference to the Town.

16.3 The Contractor shall not be relieved of liability to the Town by virtue of any termination of this Contract, and any claim for damages against the Contractor relating to the Contractor's performance under this contract shall survive any termination hereunder.

Notwithstanding any other provision of this Agreement, the Town reserves the right at any time in its absolute discretion to suspend or terminate this Agreement in whole or in part for its convenience upon seven days' written notice to the Contractor. The Town shall incur no liability by reason of such termination except for the obligation to pay compensation for all work performed by the Contractor and accepted by the Town to the termination date.

17. Progress Payments:

17.1. The Contractor shall, before the first application for payment, submit to the Town a schedule of values of the various parts of the work, including quantities aggregating the total sum of the Contract, divided so as to facilitate payments to Subcontractors, made out in such form as the Town and the Contractor may agree upon, and, if required, supported by such evidence as to its correctness. This schedule, when approved by the

Town, shall be used as a basis for payment, unless it is found to be in error. If applying for payments, the Contractor shall submit a statement based upon this schedule.

17.2. The Contractor shall submit to the Town an itemized Application for Payment, supported to the extent required by the Town by invoices or other vouchers, showing payments for materials and labor, payments to Subcontractors and such other evidence of the Contractor's right to payment.

17.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of 5 percent (5 %);

.3 Subtract the aggregate of previous payments made by the Town; and

.4 Subtract amounts, if any, for which the Town has withheld or nullified a Certificate for Payment as provided in Section 18, below.

18. Withholding of Payments

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

18.1.1. Defective work not remedied.

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

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

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

18.1.5. Damage to another contractor.

18.1.6. Delays resulting in liquidated damages.

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

19. Claims by Contractor and Liability of Town

19.1 All claims by the Contractor against the Town shall, unless otherwise provided by law, be initiated by a written claim submitted to the Town no later than seven (7) calendar days after the event or the first appearance of the circumstances causing the claim. The claim shall set forth in detail all known facts and circumstances supporting the claim. The Contractor shall continue its performance under this contract regardless of the submission or existence of any claims.

19.2 The limit of liability of the Town under this Agreement is limited to the compensation provided herein for work actually performed, and shall in no event include liability for delays or for incidental, special or consequential damages or lost profits or for damages or loss from causes beyond the Town's reasonable control.

20. Damages for Delay:

The Contractor shall have no claims for any damages, costs, or expenses of any kind or nature, for any suspension, delay, interruption, or acceleration of the work on the part of the Town, architect, or any of their consultants in performing or furnishing any work, or resulting from problems or deficiencies with materials, information, or documentation and/or decisions in connection with the execution of the work. Except as otherwise provided by applicable law, the Contractor's sole remedy for such delay shall be for a claim for an extension of time for contract performance.

21. Liquidated Damages:

Because both parties recognize (1) that the time for completion of this Contract is of the essence, (2) that the Town will suffer loss if the work is not completed within the contract time specified, plus any extension thereof allowed in accordance with the provisions of this contract, and (3) the delays, expense and difficulties involved in a legal proceeding to determine the actual loss suffered by the Town if the work is not completed in time, it is agreed that the Contractor will pay the Town as liquidated damages representing an estimate of delay damages to which the Contractor agrees by entering into this Contract, not as a penalty, the sum of One Thousand Dollars (\$1,000) per day for each calendar day of delay until the work is completed, whether the work is completed by the Contractor or some other person. The Town's right to impose liquidated damages shall in no way prohibit or restrict the Town's right to bring a legal action for damages in lieu of or in addition to its option to impose liquidated damages. The Town may deduct any liquidated damages from money due the Contractor, and if such payment is insufficient to cover the liquidated damages, then the Contractor shall pay the amount due.

22. The Contractors' Mutual Responsibility:

Should the Contractor cause damage to any separate subcontractor on the work, the Contractor agrees, upon due notice, to settle with such contractor by agreement, or by recourse to remedies provided by law or by the provisions of the contract. If such separate contractor sues the Town on account of any damage alleged to have been sustained, the Town shall notify the Contractor, who shall defend such proceedings at the Town's expense and, if any judgment against the Town

arises therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Town including attorney's fees and related costs of litigation.

23. Separate Contracts:

23.1. The Town reserves the right to let other Contracts in connection with this work under similar General Conditions. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.

23.2. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Town any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work except as to defects which may develop in the other contractor's work after the execution of its work.

23.3. To insure the proper execution of its subsequent work, the Contractor shall measure work already in place and shall at once report to the Town any discrepancy between the executed work and the Drawings.

24. Subcontracts:

24.1. All Subcontracts shall be awarded in conformity with the requirements of the General Laws, Commonwealth of Massachusetts, Chapter 149, Sections 44A to 44L, inclusive.

24.2. The Contractor agrees that it is as fully responsible to the Town for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

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

25. Contractor-Subcontractor Relations:

The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Agreement, the General Conditions of the Contract, the Supplementary General Conditions, the Drawings and Specifications, as far as applicable to its work, including the provisions of the General Laws, Commonwealth of Massachusetts, Chapter 149, Section 44A, et seq.

26. The Contractor's Insurance:

Notwithstanding any other provisions of this Contract to the Contrary and in addition to any requirements set forth in the Contract, the Contractor shall provide and maintain the following insurance:

26.1. The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

26.2 Liability Insurance Requirements

In addition to the liability insurance requirements set forth in the Contract, the liability insurance shall include all major divisions and shall be on a comprehensive general basis including Premises and Operations, Owners and Contractor's Protective, Products and Completed Operations, and Owned, Non-owned and Hired Motor Vehicles. All such insurance shall be written for not less than any limits of liability required by law, unless otherwise provided in the contract documents. The Contractor's insurance shall include:

Excess Liability (Umbrella) \$3,000,000

Excess Liability (Umbrella) Insurance (Subcontractors) \$1,000,000 or 1.5 times the value of the subcontract, whichever is higher.

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

25.3.1. Insurance coverage for the Contractor's Comprehensive General Liability, as hereinafter specified under Paragraph entitled "Protective Liability Insurance" shall be written by one and the same insurance company to avoid the expense of duplicate and/or overlapping coverage and to facilitate and expedite the settlement of claims.

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

27. Protective Liability Insurance:

27.1. The Contractor shall purchase and maintain such insurance as described in the preceding paragraph as will protect the Town from claims which may arise from operations under the Contract, including operations performed for the named insureds by independent contractors and general inspection thereof by the named insureds.

27.2. The Contractor shall also purchase and maintain such insurance as will protect the Town against Automobile Non-Ownership Liability in connection with the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

27.3. The limits of liability for coverage required under the Contract shall be as specified within the Contract documents.

27.4. The Town shall be named as an additional insured on the above referenced liability Policies, and the Contractor's insurance shall be the primary coverage. The cost of such

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

28. Liens:

Neither the Final Payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Town a complete release of all liens arising out of the Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed. The Contractor shall comply with all statutory provisions of the General Laws of the Commonwealth of Massachusetts with regard to liens, Chapter 254 and 149 as amended (as a minimum requirement).

29. Guarantees:

29.1 The Contractor guarantees and warrants to the Town that all labor furnished under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

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

29.3. All guarantees and warranties required in the various Sections of the Specifications which originate with a Subcontractor or Manufacturer must be delivered to the Town before final payment to the Contractor may be made for the amount of that subtrade or for the phase of work to which the guarantee or warranty relates. The failure to deliver a required guarantee or warranty shall be held to constitute a failure of the Subcontractor to fully complete his work in accordance with the Contract Documents. The Contractor's obligation to correct work is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications.