

## CONTRACT

**THIS CONTRACT**, made and entered into this 1ST day of JULY, 2021 by and between the Municipalities listed in Attachment A, who are all Municipalities in the Commonwealth of Massachusetts (hereinafter called the "Participants") and **COMPANY NAME AND PHONE** (hereinafter called the "Contractor"), together referred to as "the Parties".

### WITNESSETH:

**WHEREAS**, the Contractor did on the 11th day of May, 2021, submit a Bid to the Franklin Regional Council of Governments, who is facilitating the bid as allowed by MGL Chapter 7 §22B, to provide **SERVICES/BID #** materials and/or services to the Participants and to perform such work as may be incidental thereto; and

**WHEREAS**, the Participants did on the XX day of June, 2021, award [a portion of] the said bid to the Contractor;

**NOW, THEREFORE**, in consideration of the following mutual agreements and covenants, it is understood and agreed by and between the parties as follows:

1. The Contractor is hereby granted the license and privilege within the territorial jurisdiction of the participating Municipalities to perform all of the work called for and described in the Contract Documents.
2. The Contract Documents shall include the following documents, and this Contract does hereby expressly incorporate same herein as fully as if set forth verbatim in this Contract:
  - a. This Instrument
  - b. The Awarding Authorities List (Attachment A)
  - c. The Award Detail (Attachment B)
  - d. The Invitation for Bids, Bidder Instructions, Specifications, and any addenda thereto. (Attachment C)
  - e. The Contractor's Submission (Attachment D)
  - f. Resolution of the Board of Directors of the Contractor authorizing the Contractor's signatory the power to sign this contract and bind the corporation to full performance hereunder. (Attachment D)
  - g. Insurance Certificates evidencing the Insurance required (Attachment E)
  - h. Certified Payroll Reporting Documents and MA Prevailing Wage Schedule (by Reference – see <https://fcog.org/bids> for Prevailing Wage Schedules by County)
3. All provisions of the Contract Documents shall be strictly complied with and conformed to by the Contractor, and no amendment to this Contract shall be made except upon the written consent of the parties. No amendment shall be construed to release either party from any obligation of the contract Documents except as specifically provided for in such amendment.
4. This Contract is entered into subject to the following conditions:
  - a. The Contractor shall procure and keep in full force and effect throughout the term of this Contract all of the insurance policies specified in, and required by the Contract Documents.
  - b. The Contractor shall not be liable for the failure to wholly perform his duties if such failure is caused by catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God or other similar or different contingency beyond the reasonable control of the Contractor.

- c. In the event that any provision or portion thereof of any Contract Document shall be found to be invalid or unenforceable, then such provision or portion thereof shall be reformed in accordance with the applicable laws. The invalidity or unenforceability of any provision or portion of any Contract Document shall not affect the validity or enforceability of any other provision or portion of the Contract Document, so long as the contract documents continue to fairly reflect the intent of the parties.
- d. Per MGL Ch7, §22B, the Franklin Regional Council of Governments will in no way be responsible for the actions of the Parties and each Participant accepts sole responsibility for any payment due a contractor for work undertaken on their behalf.
- e. The Contractor by its signature certifies acknowledgement of the Commonwealth of Massachusetts Supplemental Equal Opportunity, Non-Discrimination and Affirmative Action Program and will provide the provisions to all subcontractors per the attached Certification
- f. Contractor's faithful performance of all obligations contained herein.

**IN WITNESS WHEREOF**, We, the contracting parties, by our duly authorized agents, hereto affix our signatures as of this \_\_\_\_\_ day of JUNE, 2021.

By \_\_\_\_\_  
Contractor's Authorized signature

\_\_\_\_\_  
Printed Name of above

\_\_\_\_\_  
Title of the Authorized Signer

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
EMAIL ADDRESS of the above

BY:

City/Town Name	Authorized Signature	City/Town Name	Authorized Signature
ASHFIELD		HAWLEY	
BELCHERTOWN		HEATH	
BERNARDSTON		HINSDALE	
BLANDFORD		HUNTINGTON	
BUCKLAND		LEVERETT	
CHARLEMONT		LEYDEN	
CHESTER		MIDDLEFIELD	
CHESTERFIELD		MONROE	
COLRAIN		MONTAGUE	
CONWAY		MONTEREY	
CUMMINGTON		MONTGOMEREY	
DEERFIELD		NEW MARLBOROUGH	
EASTHAMPTON		NEW SALEM	
ERVING		NORTHFIELD	
GILL		ORANGE	
GOSHEN		PELHAM	
GRANBY		PLAINFIELD	

GRANVILLE		ROWE	
GREENFIELD		RUSSELL	
HADLEY		SANDISFIELD	
HATFIELD		SAVOY	
SHELBURNE		WARWICK	
SHUTESBURY		WENDELL	
SOUTH HADLEY		WESTHAMPTON	
SUNDERLAND		WHATELY	
SOUTHAMPTON		WILLIAMSBURG	
TOLLAND		WORTHINGTON	

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## **1.00 DEFINITIONS**

- 1.01 Council/FRCOG = Franklin Regional Council of Governments, Greenfield, Massachusetts.
- 1.02 Participating Municipalities / “Participants” = Those municipalities listed on the Contract Award Attachment and Signatory to the Contract.
- 1.03 Contract Documents = This instrument, the Award detail, the Invitation for Bids, and any addenda thereto, General Instructions to Bidders, Contractor's Bid including required Certifications, this Contract, General and Technical Contract Specifications, General Conditions, Resolution of the Board of Directors of the Contractor authorizing Contractor's signatory the power to sign this Contract and bind the corporation to full performance hereunder, MA Prevailing Wage Schedule, Insurance Certificates evidencing the insurance coverage required, and any addenda or changes to the foregoing documents agreed to by the Parties
- 1.04 Contractor - The person, corporation, or partnership performing services under contract with the Participants.

## **2.00 SCOPE OF WORK**

The work under this Contract shall consist of the items contained in the Invitation for Bids and Addenda, including all the supervision, materials, equipment, labor and all other items necessary to complete said work in accordance with the Contract Documents.

## **3.00 COMPLIANCE WITH LAWS**

3.01 The Contractor shall comply with applicable laws, by-laws and codes of the local, state and federal government. The Contractor shall make and keep for at least six years after final payment, books, records, and accounts, which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor [MGL c 30 §39R(b)] and make such records available to the Awarding Authorities.

### **3.02 MA Prevailing Wages ARE REQUIRED FOR THIS PROJECT**

The Contractor shall comply and shall cause its subcontracts to comply with Massachusetts General Law c. 149 § 27B, which requires that a true and accurate record be kept of all persons employed on the project for which the prevailing wage rates have been provided. The Contractor and all Subcontractors shall keep these records and preserve them for a period of six years from the date of completion of the Contract. The Contractor shall, and shall cause its Subcontractors to submit weekly copies of their weekly payroll records to the HIGHWAY SUPERINTENDENT OF THE MUNICIPALITY WHERE THE WORK IS BEING DONE. Attention is directed to the “Information about Prevailing Wage Schedules for Awarding Authorities and Contractors” on the referenced COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF LABOR STANDARDS Prevailing Wage Rates. All requirements for reporting and posting wages shall be followed by the Contractor when required.

## **4.00 WORKFORCE QUALIFICATIONS**

The Contractor shall: (i) employ competent workers; (ii) enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work; (iii) not permit employment of unfit persons or persons not skilled in tasks assigned to them. Whenever the Participant shall notify the Contractor in writing that any work is, in the Participant’s designee’s opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee shall be discharged from the Work and shall not again be employed on the Work except with the consent of the Participant.

If OSHA certification is required by the Contract per MGL Ch. 149, Contractor shall provide OSHA certifications of any personnel on site when requested by the Participant or with submittal of first Certified Payroll. Contractor certifies that all of their employees who will be employed at the work site have successfully passed the OSHA approved 10-hour safety course, and they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

**5.00 NON-DISCRIMINATION**

The Contractor shall not discriminate against any person because of race, color, religious creed, national origin, gender, ancestry, sexual orientation, age, handicap, gender identity, genetic information, military service or any other protected class under the law.

**6.00 INDEMNITY**

a. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and save harmless the Council and Participants and their respective duly elected or appointed officials, agents and employees from and against all demands, claims, damages, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorney fees) (referred to collectively as “demands”) arising out of or resulting from any work performed pursuant to this Agreement including but not limited to any negligent acts, errors, or omissions of the Contractor, any subContractor, or any person directly or indirectly employed by any of them, or by a defect of a product or design supplied by the Contractor or subContractor. Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights of the Town, that otherwise may exist under statute or in law or equity.

b. The Contractor shall defend, indemnify, and hold harmless the Council and Participants from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by the Contractor for work performed in connection with the work hereunder or required by state or federal law, including but not limited to Fair Labor Standards Act and Massachusetts Prevailing Wage Law.

c. The indemnification obligations of the Contractor and subContractor shall not be limited in any way by any limitations on the amount or type of damages, compensations, or benefits payable by or for the Contractor or subContractor under any federal or state law.

d. In the event of a breach of this Agreement by the Contractor, the Contractor shall pay all reasonable attorney fees, costs and other litigation expenses incurred by the Council or Participant(s) in enforcing its rights as a result of said breach in addition to any damages for said breach.

**7.00 LICENSES AND TAXES**

The Contractor shall obtain all licenses and permits (other than the license and permit granted by the Contract) and promptly pay all taxes required by the Participant.

**8.00 INSURANCE**

The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Worker's Compensation, Bodily Injury Liability, Property Damage and General Liability Insurance, including contractual liability coverage for the provisions of Section 6.00. All insurance shall be by insurers and for policy limits acceptable to the Participants and before commencement of work hereunder the Contractor agrees to furnish the Council certificates of insurance or other evidence satisfactory to the Council to the effect that such insurance has been procured and is in force.

For the purpose of the Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

COVERAGES	LIMITS OF LIABILITY
Worker's Compensation	Statutory **
Employer's Liability	\$500,000.00

Automobile Liability	\$1,000,000.00 combined single limit for bodily injury and property damage
General Liability	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Excess Umbrella Liability	\$1,000,000

The Participants shall be named as additional insured under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement.

## 9.00 BOND

9.01 Performance Bond – not required

9.02 Payment Bond

The Contractor shall be obligated to provide the Participant with a payment bond in the amount of 50% of the total amount of the contract for any single project over \$25,000. The Bond shall be submitted to the Participant prior to the Work starting. Premium for the bonds shall be paid for by the Contractor. The bond shall be payable to the Participant and be drawn upon a surety company licensed to do business in the Commonwealth of Massachusetts.

## 10.00 BASIS OF PAYMENT

a. Rates - The charges shall not exceed the rates shown in ATTACHMENT B: Contract Award.

b. The FRCOG is not liable for any costs incurred by the Participants under this contract, and all scheduling, acceptance of products/services and invoicing shall be done directly between the Contractor and the Participants.

c. A Participant ordering work shall be provided with only one invoice for each project. This invoice shall include the description of the item installed/work done, the quantity installed, the original bid unit prices and total price (including any escalation/de-escalation per MassDOT Period Pricing if applicable). A second invoice with any additional charges submitted at a later date shall not be acceptable. For work done during the month of June, all invoices must be received no later than July 15 for year-end close out.

d. A town may hold a retainage up to 5% of the final invoice until Work is accepted.

## 11.00 MATERIALS AND EQUIPMENT WARRANTY

a. Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as “materials”) shall be as specified and approved by the Participant and used in accordance with the best construction practices.

b. The bidder(s) to whom a contract is awarded guarantees to the Participants all equipment, materials or workmanship for a period of one (1) year after inspection and acceptance and shall replace promptly any defective equipment, material or workmanship without additional cost to the Participants

c. The Participant may reject unsuitable work, notwithstanding that such work and materials may have previously been accepted for payment. If any part of the Work shall be found defective at any time before the final acceptance of the whole Work, the Contractor shall promptly correct such defect in a manner satisfactory to the Participant. If any material brought upon the site for use in the Work shall be deemed as not in conformity with the Contract Documents, the Contractor shall promptly remove such materials from the site.

## 12.00 RISK OF LOSS

The Contractor shall bear the risk of loss with respect to any of its or its agents’ employees or



subcontractors' vehicles, equipment or tools brought onto or left at the worksite and for any materials stored at the worksite.

### **13.00 TRANSFERABILITY OF CONTRACT**

No assignment of the Contract or any right accruing under this Contract shall be made in whole or in part by the Contractor without the express written consent of the Participants. In the event of any assignment, the assignee shall assume the liability and duties of the Contractor, but said assignment shall in no way relieve the Contractor of his liabilities or duties pursuant to the Contract.

### **14.00 MODIFICATIONS**

No modifications, waiver or change shall be made in the terms and conditions of this Contract, except as may be mutually agreed upon in writing by all parties hereto and as may be permitted by MGL C. 30, §39M.

### **15.00 TERMINATION**

The Participants may terminate this Contract by providing the Contractor with written notice if the Contractor violates any of the terms of this Contract. Termination of a contract for service to any one Participant shall not necessarily invalidate the contract for services with any other Participant.

In the event of suspension, the Council, on behalf of the Participants, or a single Participant will set forth the specific grounds for the suspension, any actions the Contractor could take to correct the problems or situations, and a stated period of time for the Contractor to comply with the corrections required. Failure to correct the problems or situations that necessitated the suspension within the stated period of time shall be grounds for termination.

The Participant(s) shall have the right to terminate this Contract without cause upon fifteen (15) days notice to the Contractor and all preceding paragraphs herein shall be applicable to this termination.

### **16.00 CHOICE OF LAW**

This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Contractor, and agents thereof, agree to bring any federal or state proceedings arising under this Contract, in which either the Commonwealth or the Awarding Authorities is party, in a court of competent jurisdiction in the County of Franklin, Massachusetts. The parties agree to pursue Dispute Resolution before proceeding to Court. This section shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

### **17.00 NOTICES**

Any and all notices or other communications required or permitted by this Contract or by law to be served or given to the Participant(s) or the Contractor by the other party shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal services when mutually agreed by EMAIL, otherwise sent by U.S. mail, first-class, postage prepaid, addressed to City Hall or Town Office of the Participant or the Contractor at the address in the first paragraph of this Contract document.

### **18.00 CONFLICT OF INTEREST**

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

or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest, pursuant to the purposes of this subsection.

#### **19.00 ENFORCEABILITY**

The Parties agree that any cause of action brought to enforce this Contract or for damages for breach hereof may be brought by either party or by the acknowledged third party beneficiaries to this Contract, namely the Participants who shall be purchasing the supplies or services which are the subject of this Contract.

#### **20.00 AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY**

The Contractor is directed to comply with all applicable Federal and State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement.

#### **21.00 ENTIRE UNDERSTANDING**

This Contract, together with all documents included by reference pursuant to Clause 1.03 of this Contract, represents the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

THE COMMONWEALTH OF MASSACHUSETTS

SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION  
AND AFFIRMATIVE ACTION PROGRAM

ATTACHMENT

APPLIES TO ALL WORK REIMBURSED UNDER MASSACHUSETTS "CHAPTER 90"  
HIGHWAY PROGRAM

I. Definitions

For purposes of this contract,

"Minority" means a person who meets one or more of the following definitions:

- (a) American Indian or Native American means: all persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
- (b) Asian means: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands.
- (c) Black means: All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
- (d) Eskimo or Aleut means: All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.
- (e) Hispanic means: All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.

"State construction contract" means a contract for the construction, reconstruction, installation, demolition, maintenance or repair of a building or capital facility, or a contract for the construction, reconstruction, alteration, remodeling or repair of a public work undertaken by a department, agency, board, or commission of the commonwealth.

"State assisted construction contract" means a contract for the construction, reconstruction, installation, demolition, maintenance or repair of a building or capital facility undertaken by a political subdivision of the commonwealth, or two or more political subdivisions thereof, an authority, or other instrumentality and whose costs of the contract are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part, by the commonwealth.

II. Equal Opportunity, Non-Discrimination and Affirmative Action

During the performance of this Contract, the Contractor and all subcontractors (hereinafter collectively referred to as "the Contractor") for a state construction contract or a state assisted construction contract, for him/herself, his/her assignees and successors in interest, agree to

comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability, shall not discriminate in the selection or retention of subcontractors, and shall not discriminate in the procurement of materials and rentals of equipment.

The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship or on-the-job training opportunity. The Contractor shall comply with the provisions of chapter 151B of the Massachusetts General Laws, as amended, and all other applicable anti-discrimination and equal opportunity laws, all of which are herein incorporated by reference and made a part of this Contract.

The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws Chapter 151B).

In connection with the performance of work under this contract, the Contractor shall undertake, in good faith, affirmative action measures to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability. Such affirmative action measures shall entail positive and aggressive measures to ensure non-discrimination and to promote equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, apprenticeship and on-the-job training programs. A list of positive and aggressive measures shall include, but not be limited to, advertising employment opportunities in minority and other community news media; notifying minority, women and other community-based organizations of employment opportunities; validating all job specifications, selection requirements, and tests; maintaining a file of names and addresses of each worker referred to the Contractor and what action was taken concerning such worker; and notifying the administering agency in writing when a union with whom the Contractor has a collective bargaining agreement has failed to refer a minority or woman worker. These and other affirmative action measures shall include all actions required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability. One purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.

### III. Minority and Women Workforce Participation

Pursuant to his/her obligations under the preceding section, the Contractor shall strive to achieve on this project the labor participation goals contained herein. Said participation goals shall apply in each job category on this project including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers and those classes of work enumerated in Section 44F of Chapter 149 of the Massachusetts General Laws. The participation goals for this project shall be 15.3% for minorities and 6.9% for women. The participation goals, as set forth herein, shall not be construed as quotas or set-asides; rather, such participation goals will be used to measure the progress of the Commonwealth's equal opportunity, non-discrimination and affirmative action program. Additionally, the participation goals contained herein should not be seen or treated as a floor or as a ceiling for the employment of particular individuals or group of individuals.

### IV. Liaison Committee

At the discretion of the agency that administers the contract for the construction project there may be established for the life of the contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering the contract for the construction project, hereinafter called the administering agency, a representative from the Office of Affirmative action, and such other representatives as may be designated by the administering agency.

The Contractor (or his/her agent, if any, designated by him/her as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

### V. Reports and Records

The Contractor shall prepare projected workforce tables on a quarterly basis when required by the administering agency. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also, when updated, to the administering agency and the Liaison Committee when required.

The Contractor shall prepare weekly reports in a form approved by the administering agency, unless information required is required to be reported electronically by the administering agency, the number of hours worked in each trade by each employee, identified as woman, minority, or non-minority. Copies of these shall be provided at the end of each such week to the administering agency and the Liaison Committee.

Records of employment referral orders, prepared by the Contractor, shall be made available to the administering agency on request.

The Contractor will provide all information and reports required by the administering agency on instructions issued by the administering agency and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the administering agency to effect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary non-discrimination, equal opportunity and access and opportunity contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency and shall set forth what efforts he has made to obtain the information.

#### VI. Access to Work Site

A designee of the administering agency and a designee of the Liaison Committee shall each have a right to access the work site.

#### VII. Solicitations for Subcontracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and equal opportunity.

#### VIII. Sanctions

Whenever the administering agency believes the General or Prime Contractor or any subcontractor may not be operating in compliance with the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws Chapter 151B), the administering agency may refer the matter to the Massachusetts Commission Against Discrimination ("Commission") for investigation.

Following the referral of a matter by the administering agency to the Massachusetts Commission Against Discrimination, and while the matter is pending before the MCAD, the administering agency may withhold payments from contractors and subcontractors when it has documentation that the contractor or subcontractor has violated the Fair Employment Practices Law with respect to its activities on the Project, or if the administering agency determines that the contractor has materially failed to comply with its obligations and the requirements of this Section. The amount withheld shall not exceed a withhold of payment to the General or Prime Contractor of 1/100 or 1% of the contract award price or \$5,000, whichever sum is greater, or, if a subcontractor is in non-compliance, a withhold by the administering agency from the General Contractor, to be assessed by the General Contractor as a charge against the subcontractor, of 1/100 or 1% of the subcontractor price, or \$1,000 whichever sum is greater, for each violation of the applicable law or contract requirements. The total withheld from any one General or Prime Contractor or subcontractor on a Project shall not exceed \$20,000 overall. No withhold of payments or investigation by the Commission or its agent shall be initiated without the administering agency providing prior notice to the Contractor.

If, after investigation, the Massachusetts Commission Against Discrimination finds that a General or Prime Contractor or subcontractor, in commission of a state construction contract or state-assisted construction contract, violated the provisions of the Fair Employment Practices Law, the administering agency may convert the amount withheld as set forth above into a permanent sanction, as a permanent deduct from payments to the General or Prime Contractor or subcontractor, which sanction will be in addition to any such sanctions, fines or penalties imposed by the Massachusetts Commission Against Discrimination:

No sanction enumerated under this Section shall be imposed by the administering agency except after notice to the General or Prime Contractor or subcontractor and an adjudicatory proceeding, as that term is used, under Massachusetts General Laws Chapter 30A, has been conducted.

#### IX. Severability

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

#### X. Contractor's Certification

A bidder for a state construction contract or state assisted construction contract will not be eligible for award of the contract unless such bidder has submitted to the administering agency the following certification, which will be incorporated into the resulting contract:

CONTRACTOR’S CERTIFICATION

\_\_\_\_\_certifies that they:  
(Contractor Name)

- 1. Will not discriminate in their employment practices;
- 2. Intend to use the following listed construction trades in the work under the contract

\_\_\_\_\_  
\_\_\_\_\_;

and

- 3. Will make good faith efforts to comply with the minority employee and women employee workforce participation ratio goals and specific affirmative action steps contained herein; and
- 4. Are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and
- 5. Will provide the provisions of the “Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program” to each and every subcontractor employed on the Project and will incorporate the terms of this Section into all subcontracts and work orders entered into on the Project.
- 6. Agree to comply with all provisions contained herein.

\_\_\_\_\_  
(Signature of authorized representative of Contractor) Date

\_\_\_\_\_  
(Printed name of authorized representative of Contractor)

XI. Subcontractor Requirements

Prior to the award of any subcontract for a state construction contract or a state assisted construction contract, regardless of tier, the Prime or General Contractor shall provide all prospective subcontractors with a complete copy of this Section entitled “Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program” and will incorporate the provisions of this Section by reference into any and all contracts or work orders for all subcontractors providing work on the Project. In order to ensure that the said subcontractor's certification becomes a part of all subcontracts under the prime contract, the



Prime or General Contractor shall certify in writing to the administering agency that it has complied with the requirements as set forth in the preceding paragraph.